A COMPLEX AND CONTESTED REGULATORY SPACE: STUDENT PROTESTS AND GOVERNMENT'S FINANCING OF HIGHER EDUCATION IN SOUTH AFRICA

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31 300 words

TRINITY TERM 2017

ABSTRACT

A Complex and Contested Regulatory Space:

Student Protests and Government's Financing of Higher Education

in South Africa

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Trinity Term 2017

The 2015 Fees Must Fall protests were unique. They were national protests; which culminated in a 0% fee increase for 2016; announced by South Africa's President following a meeting with multiple parties, including various cabinet ministers, vice chancellors, chairs of University Councils, and presidents of Student Representative Councils. This raises the question: how did the protests, and their settlement, affect the regulation of university fees in South Africa?

This thesis answers this question by utilising regulatory space analysis to discern the cascade of regulation through time (1997 to 2015) and space (from South Africa's Parliament to public universities). It maps the interactions between important fora,

including University Councils and student movements, in the regulatory space constituted by university fee decisions. This mapping is based on qualitative empirical data obtained from interviewing a range of key actors involved in the protests and their settlement, and from a review of relevant public policy documents.

The focus is on decisions about university fees, because these show how the confluence of pressures in 2015 destabilised and recalibrated the regulatory space. My analysis tracks how contestation around the organisational identity and locality of the *dramatis personae* disrupted the delicate calibration between the actors (government, university management, and students), and university income streams, which regulated university fee decisions. It focuses on interactions between regulatory insiders and outsiders; and highlights the need to reconceive the resources traditionally focused on in the academic literature on regulatory space analysis.

This investigation reveals noteworthy regulatory effects. The settlement of the protests included an attempt to preserve the prevailing regulatory regime, mostly through channelling the disruptions back through previously established processes – such as those involving University Councils. Whether this created a more stable regulatory space turns substantially on how the ongoing ramifications of the protests and their settlement unfold.

TABLE OF CONTENTS

ABSTRACT i

TABLE OF CONTENTS iii

TABLE OF ABBREVIATIONS vi

CHRONOLOGICAL TABLE OF STATUTES AND IMPORTANT PUBLIC POLICY DOCUMENTS vii

INTRODUCTION 1

General Background 2

Brief Timeline of Important Events 2

The Regulation of University Fee Decisions 5

CHAPTER 1 7

Developing Regulatory Space Analysis 7

'Regulation' 7

Defining 'Regulation' 8

Dispersals Across Boundaries 13

Centrality of Politics to 'Regulation' 16

The Appropriate Analytical Tool 19

Regulatory Space Analysis 21

University Fee Decisions: A Regulatory Space? 21

Exploring this Regulatory (sub-)Space 24

Dramatis Personae 25

Resources 29

The 'Place of Space' 32

The Role of Protests 35

Conclusion 38

CHAPTER 2 40

A Delicate Calibration: Actors, Resources, Spaces 40

1. The Value of Regulatory Space Analysis 41

2. Historical Context to the Funding of Public Universities in South Africa 46

3. Transforming Higher Education 50

3.1 New Governance Structures 50

3.2 *Dramatis Personae* 54
3.3 Critiquing Key Resources available to Organisational Actors 58
4. Organisational Mandates and Foundational Paradigms 62
4.1 Classifying Higher Education 63
4.2 Social Justice Activism / Responsible Financial Administration 64
4.3 Victims and Agents 66
4.4 How Paradigms inform Interactions 67
5. Organising Spaces and Actors 69
5.1 A More Localised and Concrete understanding of 'Place' 69
5.2 Space and Organisational Capacity 70
5.3 The Importance of Relationships 72
5.4 Key Organisations and the Common Spaces they inhabit 75
Conclusion 80
CHAPTER 3 82
Subtle Recalibration: Responding to Vigorous Disruption 82
1. Protest and Disruption 83
1.1 Repurposing Spaces: Disruption and Reclaiming Regulatory Power 85
1.2 Disrupting the Disruptors 87
2. Shifting the Goal Posts 90
2.1 Mushrooming Fora 90
2.2 Shifting Demands 93
2.3 New Modes of Engagement 96
3. A Recalibrating Settlement 100
3.1 Undermining Existing Authority 100
3.2 A Resurgence of Established Structures 107
4. Uncertain Outcomes 110
4.1 Catching-up with the Crisis 110
4.2 *Interregnum* 112
Conclusion: 116
Developing Regulatory Space Analysis and Inconclusive Recalibrations 116
METHODOLOGY APPENDIX 121

1. Sources 121
2. Interview Themes 122
3. Interview Analysis 122
4. My Approach 123

BIBLIOGRAPHY 125

TABLE OF ABBREVIATIONS

ANC	African National Congress
ANCYL	ANC Youth League
DHET	The Department of Higher Education and Training, formerly the Department of Education.
MHET	The Minister of Higher Education and Training, formerly MoE
MoE	The Minister of Education
NSFAS	The National Student Financial Aid Scheme, formerly Tertiary Education Fund South Africa
PYA	Wits Progressive Youth Alliance, comprised of the ANCYL, SASCO, and YCL, amongst others
SASCO	South African Student Congress
SRC	Student Representative Council
UCT	The University of Cape Town
USAf	Universities South Africa; formerly Higher Education South Africa
Wits	The University of the Witwatersrand
YCL	Young Communists League

CHRONOLOGICAL TABLE OF STATUTES AND IMPORTANT PUBLIC POLICY DOCUMENTS

Date	Public Policy Document / Statute
1955	The Freedom Charter
1996	Constitution of the Republic of South Africa
1997	The Higher Education Act
1997	Education White Paper 3: 'A Programme for the Transformation of Higher Education'
1999	National Student Financial Aid Scheme Act
2001	The General and Further Education and Training Quality Assurance Act
2007	Publication of the Higher Education Qualifications Framework
2008	The National Qualifications Framework Act
2008	Report by Higher Education South Africa: 'Tuition Fees: Higher Education Institutions in South Africa'
2010	Report of the Ministerial Committee on the Review of the National Student Financial Aid Scheme
2012	Report of the Working Group on Fee Free University Education for the Poor in South Africa
2015	Medium Term Budget Policy Statement in Parliament by Minister of Finance Nhlanhla Nene
2015	Statement by President Jacob Zuma at the conclusion of consultation with representatives of the university community
2016	National Treasury's Budget Review

2016 Presentation by South Africa's Statistician-General to a meeting of the Portfolio Committee on Higher Education and Training, titled 'Financial statistics of Higher Education Institutions 2015'

INTRODUCTION

On 23 October 2015, South Africa's President, Jacob Zuma, announced that an agreement on the fee increase for public universities had been reached. That morning he had consulted with a range of parties. The consultation and announcement culminated in a 0% university fee increase for 2016. This presents a puzzle. Fee decisions had been the prerogative of individual University Councils. So why did South Africa's President announce the 2016 0% fee increase? Furthermore, this announcement initiated the implementation of a single, national fee increase, primarily in response to national student protests. This national dimension was unique in South Africa, at least in certain respects. Equally intriguing was that the 0% fee increase overruled previous fee increases which universities had sought to implement; another, comparatively new, occurrence.

These phenomena suggest that it was possible to think of the financing of higher education in South Africa, by October 2015, as occurring in an increasingly complex and contested (regulatory) space. One insightful way of investigating this space is to ask: how did the 2015 Fees Must Fall protests, and their settlement, affect the regulation of university fees in South Africa? This question focuses on the relationships of power between key organizational actors who were central to previous university fee decisions; and provides scope to interrogate how those relationships may have been destabilised by, and reconstructed through, what transpired in 2015.

General Background

Fees Must Fall protests were not the first protests by students in response to proposed university fee increases. Part of the broader political backdrop to events in 2015 was growing dissatisfaction with elected representatives generally. Afrobarometer noted a sizeable increase in the disapproval ratings for both President Zuma and elected members of South Africa's Parliament from 2011 to 2015.[1] Having conducted similar surveys in 2000, 2002, 2004, 2006, 2008, and 2011, the 2015 survey stated:

> *Approval of President Zuma's performance almost halved between 2011 (64%) and 2015 (36%) and is now well below the presidential average since 2000 (55%). This is the first time that a majority of South Africans have expressed outright disapproval of a president's performance (62%) since the initial Afrobarometer survey in 2000*.

The survey further noted that '*South Africans are generally dissatisfied with their elected leaders' performance in the past year*'. Reasons cited for this were that '[a] *number of key government officials have been embroiled in corruption scandals*', including around upgrades to President Zuma's residence in Nkandla; and that the government had been '*plagued by mediocre news on the economic and unemployment fronts*'.[2]

Brief Timeline of Important Events

The discontent extended to higher education, especially regarding its accessibility and funding. University enrolments had been successfully expanded by the attempt to

[1] Afrobarometer Dispatch No. 65 (24 November 2015), 'South Africans Increasingly dissatisfied with their elected leaders' performance'.

[2] Ibid.

transform South Africa's higher education system. However, this expansion was combined with increasing university fees, partly because the state subsidy to universities decreased from around 2000 onwards; and insufficient increases in financial aid. A result was a growing number of financially excluded students: primarily because impoverished applicants could not access adequate financial aid; or because applicants' financial resources disqualified them from receiving financial aid, while being concomitantly too meagre to cover the costs of university study.

Several key actors were aware of this perverse rationing. Similar frustrations with institutional culture and the curriculum had boiled over during the Rhodes Must Fall protests in March 2015, while protests demanding the insourcing of previously outsourced staff occurred on 6 October 2015. Also on 6 October 2015, in an attempt to find ways to avert the 'gathering storm', the executive committee of Universities South Africa met with President Zuma and several of his cabinet ministers, including the Minister of Higher Education and Training (MHET). A Presidential Task Team was subsequently established to investigate public universities' short-term funding challenges.[3]

Nonetheless, government and university management were unable to avert the (initially parochial) protests on 14 October, which commenced with a shut-down of the University of the Witwatersrand (Wits) in response to its announcing a 10.5% fee

[3] This Task Team reported back to the President on November 2015: https://www.cput.ac.za/storage/media_and_events/news/2016/01_jan/communique_government_decisions.pdf, accessed 6 July 2017.

increase for 2016.[4] Nor could they have foreseen that these protests would go viral within a week; expanding to disrupting the Department of Higher Education and Training's (DHET's) Second National Higher Education Summit in Durban (15 – 17 October); as well as spreading to several campuses across South Africa by 19 October.[5] The MHET called a meeting on 20 October to dissipate rising tensions. This was one of the first national gatherings at which the MHET sought an agreement from all vice chancellors to implement similar fee increases - capped at 6% for 2016 (roughly consumer price inflation in South Africa).[6] This proposal was ultimately not accepted by students, and the meeting failed to quell the disruptive demonstrations.

The scope of the protests then shifted, literally and symbolically, off-campus. A march on Parliament took place in Cape Town on 21 October, during the government's Medium Term Budget Policy Statement. There was also a march on Luthuli House, the African National Congress' (ANC's) Johannesburg headquarters, on 22 October; and a gathering outside the Union Buildings in Pretoria on 23 October, while President Zuma was consulting and prior to his announcing the agreement on a 0% fee increase for 2016.[7]

[4] Susan Booysen, with Kuda Bandama, "Annotated Timeline of the #FeesMustFall Revolt 2015-2016", in S Booysen (ed.), *Fees Must Fall: Student Revolt, Decolonisation and Governance in South Africa* (Wits University Press, 2016) 316, 320. The University of Cape Town announced a 10.3% fee increase for 2016 in the same week (ibid).

[5] S Booysen, fn 4, 321.

[6] Ibid.

[7] Ibid 321 – 322.

The Regulation of University Fee Decisions

This thesis will argue for the importance of understanding the regulation of university fee decisions in South Africa in terms of a delicate calibration primarily between actors (government, university management, and students) and a university's income streams. This calibration stems from these elements being interrelated and co-determining. This will be shown by utilising the established approach of 'regulatory space analysis', but not as it has been traditionally understood in the literature. It will be applied as an iterative analysis, rather than a static snapshot, of the regulation of university fee decisions.

Regulatory space analysis is apposite because of its focus on the role played by (large) organisations in formulating and implementing regulation. Typically, it focuses on how major actors deploy the resources of organisational capacity and authority, *inter alia*, in their '*ferocious struggle for advantage*'.[8] The case study of the 2015 Fees Must Fall protests suggests several nuances to traditional understandings of these resources. Most notably, that relationships between organisational actors should be treated as a resource in their own right, because they are fundamental to coalition building through developing affiliation, networks, and communities. This building of coalitions can underpin an organisation's capacity to influence regulatory processes. Similarly, unpacking the impact of organisational mandates and foundational paradigms on which interactions take place, is crucial to understanding how the '*play of power*' developed

[8] Leigh Hancher and Michael Moran, 'Organising Regulatory Space' in Leigh Hancher and Michael Moran (eds), *Capitalism, Culture and Regulation* (Clarendon Press, 1989) 271, 277.

in 2015.[9] Similarly, the ensuing reconfigurations of authority in the regulatory space without any associated change in state law, needs to be explored.

This critique and application of regulatory space analysis will be developed across three chapters. The first chapter sets out a critical review of pertinent literature. It will develop the regulatory space approach to enable it to capture the distinct features of the 2015 Fees Must Fall protests and their settlement, and expand on the critique of how 'resources' are understood. This theoretical chapter will be followed by two empirical chapters, which will further develop and exemplify the arguments for applying a nuanced regulatory space approach to this case study.

The second chapter explores the delicate calibration of the actors and income streams which regulated university fee decisions in South Africa. It discusses Wits' and UCT's Councils' approaches to making fee decisions, and the preceding and subsequent interactions between key actors. It analyses students' challenges to the representative mode of governance operating in this regulatory space.

The third chapter focuses on the more immediate effects of the 2015 protests and their settlement. It discusses their initial impact, and the attempt to channel the disruptions they initiated back into the prevailing regulatory architecture. It finishes with a conclusion, and is followed by a methodology appendix detailing how the data underpinning this research was gathered and analysed.

[9] Ibid.

CHAPTER 1

Developing Regulatory Space Analysis

The 2015 Fees Must Fall protests focused on power and resource distributions. One major grievance was dissatisfaction with representative processes, regarding: university management and administration; and the South African government, its incumbents, and institutions. The government became a focus of the protests, including through activists advocating that: '*Universities are an extension of the state and part of the state's apparatus…*'.[1] Less clear is whether the protests and their settlement have a regulatory dimension. This thesis will utilise regulatory space analysis to interrogate how university fee decisions are regulated in South Africa, particularly in light of the protests and their settlement. This requires first exploring what constitutes 'regulatory' conduct. Second, the strengths and limitations of utilising regulatory space analysis will be briefly explored. Third, how regulatory space analysis could be used to elucidate these phenomena will be discussed.

'Regulation'

A broad definition of 'regulation' is preferable, because there are theoretical disputes surrounding the appropriate scope of 'regulation' (as opposed to the scope of appropriate regulation), together with certain complexities with which the study of regulation must grapple. First, this section will explore definitions of regulation apposite to this case study. Second, certain important complexities which regulation

[1] "Simon Rakei (2016) of the [University of Cape Town] #RMF leadership collective", cited in Susan Booysen, 'Two weeks in October: Changing governance in South Africa' in S Booysen (ed.) (fn 4 in Introduction) 22, 43.

must grapple with, will be discussed. Third, the centrality of politics to regulation will be highlighted.

Defining 'Regulation'

What constitutes 'regulation' is contested terrain. It is significantly influenced by underpinning political objectives, including what the state should permit or forbid. It is important to disentangle the question of what regulation is (a general, definitional enquiry) from which regulation is appropriate (a more specific, normative enquiry raising questions about regulatory strategy). The focus in this discussion will be on the former, since it is logically prior to the latter.

The literature on regulation emphasises definitional breadth. Morgan and Yeung construe regulation as "*purposive attempts to influence and control economic and social activities*".[2] Similarly, Lange and Haines adopt a '*wide definition of regulation that seeks to capture both legal and non-legal processes for changing the behaviour of economic actors according to specific standards, backed up by institutions and mechanisms of enforcement*'.[3] Baldwin, Cave and Lodge note the variety of meanings associated with 'regulation', encompassing a range of activities by the state (and other actors) designed to control a variety of actors and processes.[4]

[2] B Morgan and K Yeung, *An introduction to Law and Regulation: Text and Materials* (Cambridge University Press, 2007) 1.

[3] B Lange and F Haines, 'Regulatory Transformations: An Introduction' in B Lange, F Haines and D Thomas (eds), *Regulatory Transformations: Rethinking Economy and Society Interactions* (Hart Publishing, 2015) 1, 7.

[4] Robert Baldwin, Martin Cave, and Martin Lodge, *Understanding Regulation: Theory, Strategy and Practice* (Oxford University Press, 2012) 3.

Four conceptual elements of 'regulation' can be distilled from these definitions. First, it entails the constitution, regularisation, and changing of behaviour. Second, it occurs in a social environment. The protests and their settlement, for instance, speak to regulation 'from below' by students (and other actors). Third, the process of regulation incorporates standard setting, monitoring and enforcement, or the employment of rules.[5] Fourth, these rules and standards are generally institutionalised: by being routinely applied through time, or aspiring to such application; and by both shaping organisations, and becoming institutions in their own right.

The protests and their settlement were a challenge to how the regulation of university fee decisions had been institutionalised in South Africa, and involved an attempt to establish a new model. Key social relations subsisted in a context perceived as: academically and socially alienating, hence requiring 'decolonisation'; and managerially neo-liberal, including through financial metrics (such as recovering the costs of delivering university education) being increasingly emphasised. Moreover, this was perceived as uniquely detrimental for poorer students. Certain aspects of the protests could also be framed as a refraction of general dissatisfaction within South African society; especially the slow pace of socio-economic transformation and racial integration evident in the economy, which was seen by some as prevalent at universities, too. This was evident in the vicious '*revolving door*' confronting poor,

[5] Morgan and Yeung (fn 2) 3; Lange and Haines (fn 3) 7; Jacint Jordana and David Levi-Faur, 'The Politics of Regulation in the age of governance' in J Jordana and D Levi-Faur (eds), *The Politics of Regulation: Institutions and Regulatory Reforms for the Age of Governance* (Edward Elgar, 2004) 3; Hancher and Moran (fn 8 in Introduction) 271.

predominantly black, students.[6] Typically, universities refused to allow large numbers of these students to progress further through higher education owing to their inability to pay historical fee debt. This effectively barred these students from accessing the primary means they may otherwise have had for paying off this debt - secure, formal employment.

Institutionalisation also indicates that regulation should not be treated conceptually as discrete and insulated from other factors affecting social relations, but rather as having the above characteristics which, in turn, mean that it is embedded within, or interacts with, other concepts. In a similar vein, it is important to view regulatory schemes holistically, rather than focusing on individual facets.[7] This broader focus is essential if regulatory successes, failures, and changes are to be assessed properly, because an expansive array of factors influence how (and whether) a regulatory regime operates:

> *institutional frameworks; policy and governmental settings; sets of procedures; enforcement, monitoring and information-using strategies and approaches; clusters of ideas and assumptions about how things are to be done;…levels of resourcing; and groups of persons with their backgrounds, preferences, cultures, disciplines, ideas, incentives and expectations*...[8]

For the protests and their settlement, this multiplicity of considerations should be enlarged to include the background disputes and discussions between universities and the government about funding and institutional autonomy.

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[6] Report of the Ministerial Committee on the Review of the National Student Financial Aid Scheme (January 2010), paragraphs 2.2.2 of the executive summary and 3.4 of the report.

[7] Baldwin, Cave, and Lodge (fn 4), 507.

[8] Ibid.

It is also worth interrogating some of the functional definitions of regulation. These shift attention to how regulation is made, and what it does. Since regulation is made in a number of ways and often with several purposes in mind, definitional breadth is emphasised in the literature. One core function of regulation is to set a standard or norm to shape behaviour; monitor compliance with this norm, including through information gathering; and enforce where there is non-compliance. These functions are performed by, and against the backdrop of, an institutional apparatus.[9]

Another function of regulation raised in the literature is the use or deployment of authority by the state. This could take the form of the state relying on established authority or standards;[10] or the deployment of authority to achieve public policy objectives.[11] Indeed, the state's authority may be established in this way (at least partially), or may underpin the imposition and enforcement of certain standards. For higher education, the South African state has explicitly set out public policy objectives which it is pursuing.[12] This highlights the manner in which regulation can be an aspect of governance, particularly in the context of the 'regulatory state'.[13]

[9] Morgan and Yeung (fn 2) 3; Lange and Haines (fn 3) 7.

[10] Jordana and Levi-Faur (fn 5) 8.

[11] Colin Scott, 'Analysing Regulatory Space: Fragmented Resources and Institutional Design' [2001] Public Law 329, 331.

[12] See section 3 of Chapter 2.

[13] Cf. Jordana and Levi-Faur (fn 5) 1 – 2.

Chowdhury and Wessel, however, correctly argue that regulation and governance should still be distinguished.[14] They add an additional element to the conceptual and functional features of regulation, treating it as: '*the control of private behaviour by public agencies*' to protect the public interest.[15] They proceed to differentiate (multilevel) regulation from (multilevel) governance by virtue of their respective effects. While this fits with their delineation of the central feature of governance as covering '*the shift in nature and process of policy making within the modern nation state…*',[16] it should not be read unduly narrowly. As argued above, regulation should be construed broadly, and often extends beyond purely legal processes or effects. Law may still be central to regulation, especially insofar as law can be an instrument of social control.[17] Rather, while law may have some primacy in regulation, it does not fully determine what regulation is, or what regulation's effects are.

These functional aspects of regulation are enriched by the reflexivity of the formation, implementation and enforcement of regulation. Regulation's functional incidences – establishing a standard, monitoring compliance, and enforcement – should not be seen as linear operations; but instead treated as iterative processes in which the incidences interact with, and feedback to, each other. This enhances the multiplicity of purposes and functions for which regulation may be implemented, extending to

[14] Nupur Chowdhury and Ramses Wessel, 'Conceptualising Multilevel Regulation in the EU: A Legal Translation of Multilevel Governance?' [2012] European Law Journal 335, 344 – 346.

[15] Ibid, who cite Colin Scott for this definition.

[16] Ibid, who cite R Mayntz.

[17] Morgan and Yeung (fn 2) 1.

constituting and controlling certain relations and interactions (such as those between market participants).[18] Where regulation is implemented to manage risks, diversity of purpose could track differing conceptions (e.g. actuarial, socio-cultural, or political) of the risk over which '*technical mastery*' is sought.[19]

In sum, regulation encompasses: the establishment of a norm through setting a rule or standard; monitoring compliance; and enforcing in cases of non-compliance. The norm is generally designed to influence social behaviour, including through facilitating and expressing certain values (e.g. legitimacy); and by controlling and constituting certain actors, institutions, and interactions. Regulating may involve the exercise of power, may challenge distributions of authority, and may embroil the state. The protests and their settlement fall within this conceptual and functional account of regulation because they were responses to an existing regulatory regime, and because they arguably altered its operation – if not its constitution.

Dispersals Across Boundaries

The necessity of defining regulation broadly is compounded by the nebulous boundaries around and within 'regulation'. For instance, conclusive delineations of regulation rather than self-regulation, and the public versus the private, are not readily forthcoming.[20] Moreover, most purported taxonomies are likely to be politically contentious, given regulation's focus on ordering social behaviour. This is borne out

[18] Baldwin, Cave and Lodge (fn 4) 2 and 505.

[19] Fiona Haines, *The Paradox of Regulation* (Edward Elgar, 2011) 3 – 4.

[20] Baldwin, Cave, and Lodge (fn 4) 506.

by the protests and their settlement, which called into question: whether supposedly public universities should implement fee increases exceeding consumer price inflation, in response to dwindling state funding; and how poorer students should be financially supported during their studies, and by whom.

The need for breadth also derives from the polycentricity of regulation, and of what is regulated. This is partly a result of increasing social and economic complexity. Seeking to regulate one social or economic issue (e.g. how poorer students' university education is funded) can rapidly grow to encompass several related issues and actors (such as the state and private sectors' rights and obligations to universities, and to other vulnerable actors). Haines explains this spatially, observing how regulation initiated in one site (e.g. a legislature) to deal with a specific issue (terrorism; an industrial disaster; a financial collapse) proceeds to '*cascade through spaces*' through its implementation and enforcement.[21] This extends to the continuing, iterative process of regulatory reform.[22]

This complexity is exacerbated by the increased extent to which agency is exercised not just by major organisations, but also by networks encompassing combinations of a variety of actors. Networks often contain internal tensions, though; and the same actors may be members of multiple, interacting networks.[23] Who or what is regulated, and how, thus become multifaceted questions. These complexities could

[21] Haines (fn 19) 228.

[22] Ibid 229 – 230.

[23] Lange and Haines (fn 3) 22 – 24.

incline states' (and other major regulatory actors) towards adopting an 'art of governance' approach to regulation, given the mushrooming variety of interconnections and inter-dependencies with which they are faced.[24] Certain accounts of the protests and their settlement allude to this, suggesting that some participants' agendas were more focused on securing individual benefits (middle-class status; advancement and importance within bodies affiliated with political parties) even though they were presented in terms of broader social issues (such as the plight of poorer university students).[25]

Spatial dispersal is also evident in regulation's becoming increasingly multi-level. Powers, resources, responsibilities and authorities are, to a growing extent, being distributed vertically, alongside any horizontal diffusion. Thus the factors Baldwin, Cave, and Lodge highlight as impacting on regulatory schemes apply within one level of regulatory action, and between levels.[26] These dispersals may be particularly apparent where independent regulatory agencies are established, to which power and resources may be shifted (both from the state, and between the other regulatory actors).[27] For the protests, links can be traced from the ruling party to a variety of organisations affiliated with it, and ultimately to organisations operating on campuses during the protests. Certain key actors had multiple, cross-cutting associations, including: university management officials with links to independent university

[24] Jordana and Levi-Faur (fn 5) 23.

[25] Cf., for instance, Vishwas Satgar, 'Bringing class back in: Against outsourcing during #FeesMustFall at Wits' in S Booysen (ed.) (fn 4 in Introduction) 214 – 234.

[26] See Baldwin, Cave, and Lodge, fns 7 and 8.

[27] Jordana and Levi-Faur (fn 5) 8 – 9.

associations seeking to influence the policies affecting universities; and students who had leadership roles both on Student Representative Councils (which, in turn, had representation on University Councils) and within campus organisations affiliated to the ruling party. This also alludes to the presence of significant political contestation.

Centrality of Politics to 'Regulation'

Definitional breadth has been advocated precisely because politics is central to regulation. Ideological and political disputes should be acknowledged and addressed, rather than settled by definitional fiat or concealment. This is important because politics will often be at the core of regulation. Morgan and Yeung highlight the manner in which the politics of regulation is influenced by issues of citizenship, inclusion, and market/state views.[28] Moreover, inherent in all regulatory schemes are questions of legitimacy and accountability.[29] Jordana and Levi-Faur develop this, arguing that regulation may be deployed to build trust, particularly in the context of 'audit cultures'; rather than being purely technocratic.[30] Citizens, especially as "interested and affected parties", have a role to play in 'meaning making', particularly in light of the iterative interactions between the different incidences of regulation (norm establishment, compliance and enforcement).[31] Politics is likely to continue to influence regulation substantially, given the role interest groups can play in lobbying for legislative and

[28] Morgan and Yeung (fn 2) 2.

[29] Ibid 11.

[30] Jordana and Levi-Faur (fn 5) 1 – 2 and 12 – 14.

[31] Lange and Haines (fn 3) 5.

regulatory action, and the manner in which "constellations of interests" can drive regulatory models.[32]

Hence the '*political dimension*' of regulation '*will not disappear*'. [33] Furthermore, seeking its disappearance would be undesirable, because regulation is '*at once a technical, political and social project*'.[34] Particular models of regulation may also speak to specific types of political projects: such as the 'regulatory' or 'developmental' state. Here regulation may be an important mechanism for achieving social outcomes, a useful mechanism for exercising political power, and an aspect of governance. Jordana and Levi-Faur argue that regulation can be a tool of the governing state, particularly in the context of a shift to the 'art of governance' as the best available means for responding to the polycentricity which governments increasingly face.[35]

Baldwin, Cave and Lodge highlight the prominence of this aspect of governing, including through the increasing acceptance (at least in Britain and Europe, since 2011) that '*we are living in an age of the "regulatory state"* '.[36] These claims suggest that there is an interconnection between government (or ruling party) agendas, state conduct, and regulatory models. For South Africa, this is evident in the constitutional and legislative emphasis on the state taking an active role in transforming –i.e. re-

[32] Ibid 13 – 14.

[33] Baldwin, Cave, and Lodge (fn 4) 507

[34] Haines (fn 19) 2.

[35] Jordana and Levi-Faur (fn 5) 1 – 2, and 23.

[36] Baldwin, Cave, and Lodge (fn 4) 2; See also Jordana and Levi-Faur (fn 5) 8 – 9 for a discussion of definitions of the 'Regulatory State'.

ordering – society. Policy documents emphasise that South Africa is a 'developmental state'.[37] Often this 'developmental' conduct extends to institutional reform, and to enhancing South Africa's 'human capital'; both of which entail adjusting a social order.

Law (which often contains a political dimension) plays an important role in this kind of regulation. It often operates as an instrument of social control: through facilitating instrumental problem solving; and through imposing institutional and democratic parameters on social behaviour.[38] For university fees, law is present in at least a background sense, in that it authorises University Councils to determine fees and sets out how Councils are to be constituted. In addition, it establishes the framework for socially acceptable engagement on this issue; including by delimiting which forms of interaction are permissible. Insofar as higher education is viewed transactionally, law could facilitate '*hybrid regulation*' through enabling '*social norms, practices, actors and institutions* [to] *frame…transactions, and thereby regulate* [the] *economic and social risks*' which they generate.[39] This transactionality can be seen in critiques of public universities operating in a financially private manner, given how they were raising the bulk of their funding. A key part of the protests' attack on the economic status quo was to render the social visible, especially the plight of vulnerable actors (poorer students; and later, outsourced workers).

[37] For instance, chapter 13 of the 'National Development Plan 2030' (adopted in September 2012) is dedicated to 'Building a Capable and Developmental State'.

[38]Morgan and Yeung (fn 2) 1 and 5 – 6.

[39]Lange and Haines (fn 3) 4.

Part of what was emphasised was the power and importance of socially-minded regulation of higher education. Morgan and Yeung see this social dimension as central to both law and regulation, emphasising the importance of law's social context. They note that '[i]*t is through the enforcement process that a set of legal standards designed to influence human and institutional behaviour is translated into social reality*'.[40] Similarly, the above discussion has highlighted how the social sphere can '*regulate…at the interstices of states and markets*'.[41] In the South African context, this social sphere appears both unified and fragmented. While it can be argued that the social sphere was able to exercise regulatory power and generate regulatory effects in a manner similar to bottom-up action by civil society, this sphere was neither wholly unified nor homogenous. Within these social mechanisms of regulation, politics evidently also plays a part. This will be explored further in chapters 2 and 3.

The Appropriate Analytical Tool

Having established that the protests and their settlement constitute regulatory phenomena generating regulatory effects, the next question is: how should they be analysed? Adopting a regulatory space approach is appealing, because it provides a broad framing device through which a variety of complex processes can be mapped and interrogated. It is preferable to public, private, and confluence of interest approaches, because it acknowledges the role played by institutions – especially, organisations, organisational status or capacity, and networks.[42] An institutional focus

[40]Morgan and Yeung (fn 2) 10.

[41] Lange and Haines (fn 3) 3 – 4.

[42] Hancher and Moran (fn 8 in Introduction) 277 – 278 and 286; Scott (fn 11) 330, 333 – 334 and 344 – 345; Lange and Haines (fn 3) 13 – 14 and 22 – 23.

is better placed to take account of the interplay between decisions, rules and environment, all of which shape regulatory regimes.[43] A regulatory space approach incorporates some instability, though. The boundaries of regulatory spaces are likely to be perpetually challenged and reviewed, since the '*play of power*' entails vigorous contestation even as certain actors seek to maintain preferred framings and '*consensual and stable regulatory practise'*.[44] The protests and their settlement illustrate this. A discussion about how university fees are set (an arguably narrow question) quite rapidly transformed into a debate about a set of related issues, explored further in section 2 of Chapter 3. This continual shifting may be somewhat ameliorated by regulatory regimes being anchored in specific cultures, histories, and mythological and symbolic orders. Furthermore, the origins of regulatory regimes, together with the place of the space within which regulation occurs, may further constrain this variability.[45]

Regulatory space analysis remains the preferable means of addressing this instability because of its facilitation of the comprehensive mapping of the factors which are at play, as well as its tempering of expectations of what regulation can achieve. [46] It may be best used in conjunction with potentially complementary approaches to regulation. For instance, governmentality approaches are well suited to capturing the complexity of regulation and the manner in which (different understandings of) power may shape regulatory outcomes. This is pertinent given the centrality of the '*play of*

[43] Julia Black, 'New Institutionalism and Naturalism in Socio-Legal Analysis: Institutional Approaches to Regulatory Decision-Making' [1997] Law and Policy 51, 61 – 69 and 73 – 78.

[44] Hancher and Moran (fn 8 in Introduction) 277 and 283.

[45] Ibid 278 – 284; Scott (fn 11) 339 – 341; Jonnergard and Larsson (fn 55) 464 and 479 – 480; Black (fn 43) 82.

[46] Cf. Scott (fn 11) 352.

power' to regulatory space analysis. Similarly, the critique of the literature's delineation of the resources and the interplay between actors within regulatory spaces would be bolstered by an analysis of the discourses operating within a regulatory space; especially insofar as discourses shape parties' relationships and what assets (including such relationships) are usable within a regulatory space.[47] Ultimately, though, regulatory space analysis remains the most fruitful preliminary step, because it provides an insightful means for framing the constituents involved in the regulatory process and interrogating their interactions.

Regulatory Space Analysis

In applying regulatory space analysis to the 2015 Fees Must Fall protests, two inter-related questions are worth discussing. In what space could this conceptual tool be deployed? And how could this space be explored?

University Fee Decisions: A Regulatory Space?

For Hancher and Moran, a regulatory space is an '*analytical construct*' which can be used to facilitate a critique of a specific regulation.[48] Expanding this into regulatory space analysis, Scott treats regulatory space as a '*framing device*', to be used as a mechanism for interrogating experiences of regulation along with institutional design and reform.[49] This 'construct' or 'framing' addresses the regulatory process as a whole.

[47] Cf. Bettina Lange and Christina Cook, 'Mapping a Developing Governance Space: Managing Drought in the UK' [2015] Current Legal Problems 229 – 266.

[48] Hancher and Moran (fn 8 in Introduction) 277.

[49] Scott (fn 11) 352.

These devices help to provide an account of how particular regulation emerges, through detailing the interactions between key actors and the resources which drive them.

The first step is to draw the boundaries which separate one regulatory space from another. This is premised on treating regulation as the product of public discussion. For Hancher and Moran, boundaries can be constructed on the basis of '*the range of regulatory issues subject to public discussion*'. At the forefront is a competitive struggle between the actors involved, through which groups and issues may be organised into, or out of, a regulatory space.[50] Also of importance is how a regulatory issue is defined and delineated. Again, this involves communication and public action – though it may not necessarily always include debate amongst all affected parties.[51] Chowdhury and Wessel expand this by noting that you '*demarcate a regulatory space with reference to a "range of issues in a community"* '. They clarify this as being focused on a specific regulatory objective or subject.[52] Also crucial to the architecture of a regulatory space are the legal rules which construct or operationalise it, including through determining the relevant *dramatis personae* and their particular roles.[53]

Discussion plays an important part in demarcating regulatory spaces. Scott highlights the importance of interactions between various parties given the dispersion

[50] Hancher and Moran (fn 8 in Introduction) 277 – 278.

[51] Ibid 296 – 297.

[52] Chowdhury and Wessel (fn 14) 348 and 351.

[53] Ibid.

of authority within a regulatory space. He describes compliance and enforcement as entailing '*continual interpretation, adjustment and discussion*', with the result that participants are involved in a '*joint construction of meaning*'.[54] Similarly, Jonnergard and Larsson focus on '*regulatory conversations*' between '*interpretive communities*', which demarcate and redefine the regulatory space.[55] Hancher and Moran see organisations as the major interlocutors, describing (economic) regulation as '*a process of intermediation and bargaining between large and powerful organisations spanning what are conventionally termed the public and private domains of decision-making'*.[56]Scott builds on this, citing the manner in which institutions – especially their culture and organisational form – can '*delimit the range of possible actions*', affecting both what is defined as a regulatory issue and which regulatory responses are deemed acceptable. Moreover, regulation may often be better characterised as the management of a network, rather than a hierarchy.[57] This would be apt where norm or standard formation, implementation, and enforcement happen at different administrative levels.[58]

Bolstering this analysis of the role played by organisational interactions, Black provides an illuminating account of the interactions between individuals and institutions in decision making. This encompasses symbiosis between alternative (individual versus institutional) incentive structures, as well as the potential for sets of

[54] Scott (fn 11) 343 – 344.

[55] Karin Jonnergard and Ulf Larsson, 'Developing Codes of Conduct: Regulatory Conversations as Means for Detecting Institutional Change' [2007] Law and Policy 460, 471 and 476.

[56] Hancher and Moran (fn 8 in Introduction) 272.

[57] Scott (fn 11) 333 – 334.

[58] Cf. Chowdhury and Wessel (fn 14) 339 and 350.

social inter-relations to constrain institutional forms and behaviour because of their embeddedness.[59] All of these facets influence both the demarcation of a regulatory space and what happens within it. For the protests and their settlement, the point of contention appears to be the discrete regulatory space of decisions about university fees. These were the protestors' focus, and are the subject of a specific legal and public policy framework. The protestor's focus is graphically captured in the vociferous discontent which followed the announcement of fee increases. Similarly, the legal and policy framework evinces a fairly stable taxonomy in which basic, further, and higher education are separately demarcated; and the determination of university fees is constructed in terms of a specific process unique to higher education. This is not to argue that a range of other factors (most pertinently, state funding) have no bearing on university fees. Rather, these factors confirm that decisions about university fees constitute a distinct regulatory space; or, at least, a sub-space within the regulatory space of the financing of higher education.

Exploring this Regulatory (sub-)Space

The aim of deploying regulatory space analysis in this thesis is to map the interactions between the major actors embroiled in the protests and their settlement, and the resources which they utilised. This sheds light on how the 0% fee increase for 2016 was arrived at. In addition, it tracks and interrogates recalibrations within this regulatory space. These aims are best approached by answering a set of interrelated question about this regulatory space.

[59] Black (fn 43) 61 – 69.

Dramatis Personae

First, who populates this regulatory space? Determining the *dramatis personae* is critical in light of the "play of power" at the centre of regulatory spaces, especially around inclusion in and exclusion from the determination of regulatory outcomes.[60] Both groups and issues can be organised into, and out of, this regulatory space, affecting its dynamics and structure. Inter-organisational interactions and networks of organisations are particularly prominent, in this regard.[61] This links to the publicly discursive character of regulatory spaces, because it is the actors who argue about this demarcation.

Organisations and organisational status are important in this regard, partly because of their influence on the balance of power within a regulatory space. This can differentiate regulation 'takers' from 'producers', 'makers', or initiators.[62] For the protests and their settlement, Student Representative Councils (SRCs) acted as participants in the management and administration of universities, and as bodies representing student interests; as well as organising and participating student protests. This ambivalent, and at times invidious, positioning speaks to the broader breakdown in representative models of governance and engagement. The backdrop for the Fees Must Fall protests was previous protests about fee increases, coupled with the more recent Rhodes Must Fall protests and the emergence of a discourse about decolonisation. These fuelled the perception that various established interests were perpetuating a system which benefited some but excluded others; while also catalysing

[60] Hancher and Moran (fn 8 in Introduction) 277 – 278.

[61] Ibid 278, 286 and 292.

[62] Ibid 278 and 286.

organisation and mobilisation to challenge this status quo and instigate an alternative regulatory regime.

The importance of organisational capacity and power can also be seen in how regulatory power is defined and utilised. Most immediately, such power is the ability to influence the substantive or procedural rules governing the construction of, and outcomes emerging from, a regulatory space.[63] Contesting for influence will often entail managing interactions with other well-placed actors. This will often entail managing a network, rather than a stable hierarchy or set of relations. Navigating these complexities can be quite onerous, even for insiders; and can contribute to regulation being experienced as hierarchically imposed, particularly for outsiders, notwithstanding the apparent absence of any '*overall central locus of control*' in a number of regulatory domains.[64]

This indicates several points of conceptual and practical tension. On the one hand, regulatory processes may be increasingly multi-level. Different regulatory functions being exercised at different levels could precipitate different actors operating in dissonance with each other.[65] Chowdhury and Wessel see the vertical diffusion of functions as encompassing inter-party cognisance, but not hierarchy.[66] This stems

[63] Chowdhury and Wessel (fn 14) 347.

[64] Scott (fn 11) 333 - 334 and 352.

[65] Chowdhury and Wessel (fn 14) 348.

[66] Ibid 340.

partly from their emphasis (following Scott) on the negotiated interdependence and bargaining which takes place within a regulatory space.[67] They note that:

> *the relationship between actors involved within the regulatory space are necessarily non-hierarchical in nature…because the actors are not self-identified members operating within a well-defined and well-ordered regulatory system*.[68]

This observation is too strongly stated. There could well be self-identified actors, as when student protestors deliberately seek to act as regulators, or those in positions of authority (e.g. university management) rely on that authority when acting. Furthermore, particular groupings may wield substantial power within a regulatory space through being a privileged 'interpretive community' (such as being a 'local elite'), or through having special access to key actors.[69] Moreover, system variability and permeability do not preclude the emergence of hierarchies, from the fleeting to the more persistent. The failure to self-identify, and resistance to being identified, as authority figures could also be a strategy participants deploy in pursuing their agendas. Self-identification may be perceived as presumptuous, because it usurps more participatory regulatory and governance regimes.

Institutional culture and social history may also constrain a regulatory space, including through imposing or facilitating hierarchies. Scott notes the manner in which institutions, especially their culture and organisational form, may '*delimit the range of*

[67] Ibid 347.

[68] Ibid 348.

[69] Jonnergard and Larsson (fn 55) 464 and 479 – 480.

possible actions within [a regulatory] *space*'.[70] Similarly, Black explores how embedded social inter-relations constrain both institutional forms, and behaviour.[71] This organisational structuring can track through to a regulatory space's architecture, potentially instilling a hierarchy. Adversarial relations between students and university management could suggest a history of relationship breakdown. In addition, several student organisations were affiliated with the ruling party; albeit a context of growing discontent with the ruling party's performance. Moreover, previous protests around insourcing had forged connections between workers, academics and students: connections, which potentially enhanced support for the subsequent Fees Must Fall protests.

Another dimension to these interactions is the extent to which they foster affinity. Black emphasises the importance of including in accounts of institutional conduct '*the ways in which inter-personal networks both structure the decision process, modifying the organisational or legal arrangements, and affect decision behaviour*'.[72] Affinity may be a powerful driver of regulatory outcomes: being perceived as '*one of us*' may influence major parties' acceptance of other actors, '*affecting not only the enforcement process but the policy process as well*'.[73] Occupying specific roles within an organisation or regulatory process can also have a bearing on the incumbent's preferences and interests, especially given the symbiosis between individuals and institutions shaping which interests are seen as legitimate and

[70] Scott (fn 11) 333 -334.

[71] See fn 59.

[72] Black (fn 43) 78.

[73] Ibid.

which actions are socially available.[74] This account could be too monochromatic, though. The protests and their settlement display a palimpsest of organisational and affinity overlays for a number of actors. Student protestors, for instance, would be actors within the university's institutional structure, as well as within a variety of student organisations.

Resources

Second, what resources are available to the major actors in a regulatory space? The literature emphasises organisational status and structure, and focuses on the interactions and networks which shape a regulatory space.[75] This extends to membership of the interpretive communities and networks which drive the regulatory process.[76] Scott expands the list of resources by adding to organisational capacity: (legal) authority; information; and wealth.[77] He further notes that these resources are fragmented and dispersed.[78]

This theoretical enumeration of resources is not wholly satisfactory. It is problematic to view organisational capacity as a self-standing resource. The analysis of *dramatis personae* showed the extent to which it links to the mapping of actors, communities and networks; and to the depiction of that space's boundaries and architecture. In addition, the relationship between certain resources is logically

[74] Ibid 68.

[75] Hancher and Moran (fn 8 in Introduction) 277 – 278, 286 – 287 and 292.

[76] Scott (fn 11) 343 – 345; Jonnergard and Larsson (fn 55) 471 and 476; Black (fn 43) 78.

[77] Scott (fn 11) 330.

[78] Ibid.

problematic. Information and financial resources especially are better described as aspects of organisational capacity, than as distinct resources. A critique of traditional understandings of these resources therefore appears in order.

Starting with organisational capacity, it is worth asking what status relationships have within regulatory space analysis. Chowdhury and Wessel see actors' relationships as '*contingent on their control of resources*'.[79] This does not seem quite right, though, given the analysis of how affinity, and network and community membership, structure regulatory spaces. Rather, relationships may actually be a resource; with what Chowdhury and Wessel refer to as 'resources' being factors which influence the capacity and desirability of building them.

Relatedly, Chowdhury and Wessel observe that norm production may be dispersed across several fora.[80] This does not belie unity within a regulatory space. Such unity could emerge from an overarching, dominant discourse: as social justice discourses predominate South African public policy discussions. Unity of purpose may also emerge from the cross-cutting affiliations of a variety of actors.

As for (legal) authority, Scott emphasises that: this extends to formal and informal authority; is dispersed; and arguably extends beyond '*formal, state authority*

[79] Chowdhury and Wessel (fn 14) 348.

[80] Ibid 349 – 350.

derived from legislation or contracts'.[81] While adding welcome nuance to understandings of authority, this leaves law's role within regulatory space potentially under-developed. The protests and their settlement potentially reconfigured authority without any change in law. Where this would fit within the literature's resource scheme is not clear. This is further complicated by law and authority possessing symbolic and aspirational dimensions, encompassing:[82] '*expectations of what law is meant to look like*';[83] and important cultural assumptions about the purpose and role of law;[84] all of which affect how law and authority are perceived and operate. Linking back to the discussion above of regulatory power, pseudo-legal standards, as well as standard operating procedures, may also be useful sources of authority and drivers of the regulatory process.[85] These may constitute embedded artefacts constraining a regulatory regime, along with the prevailing history and culture.[86]

The resources pertinent to the protests and their settlement appear to be different types of authority, and organisational capacity (both as critiqued above). The context of regulatory networks and communities, and of affiliations, suggests that these resources may need to be understood together. Chapters 2 and 3 will analyse how the major actors (students, university management, and government) used these resources.

[81] Scott (fn 11) 330 and 336 – 338.

[82] Black (fn 43) 82.

[83] Ibid 83.

[84] Hancher and Moran (fn 8 in Introduction) 280.

[85] Ibid 277 – 278; Scott (fn 11) 340 – 341.

[86] Hancher and Moran (fn 8 in Introduction) 278; Scott (fn 11) 339 – 341.

An important dimension to this was the geography of this regulatory space, as location influenced what conduct actors' could undertake and how resources were dispersed.

The 'Place of Space'

Third, this qualitative empirical case study focuses on two urban universities: the University of the Witwatersrand (Wits), and the University of Cape Town (UCT); located in Johannesburg and Cape Town, respectively. The regulation of university fee decisions in South Africa is more dispersed, though. It encompasses the Departments of Higher Education and Training, as well as Finance; and individual University Councils at each public university. Moreover, protests occurred at numerous other universities, including those located in more rural areas. This extended to differences in profile and coverage of similar issues which had been raised at certain historically black universities. A commonly noted discrepancy was the lack of prominence of those protests, particularly when compared to the spotlight afforded historically white universities (especially Wits and UCT).[87]

Notwithstanding the merit in these claims, this thesis focuses on the protests in October 2015, and their settlement. Wits and UCT are sites relevant to that enquiry because of the protests which occurred at them, the attention which they received during these events, and their link to the nationwide protests which ensued. Both also made arguably unique contributions to the emergence of the Fees Must Fall protests: UCT, through being the site of the much publicised Rhodes Must Fall protests and

[87] Cf. Gillian Godsell and Rekgotsofetse Chikane, 'The Roots of the Revolution' in S Booysen (ed.) (fn 4 in Introduction) 54, 59 – 60.

movement; and Wits, through being the site at which protests against its proposed fee increase were crucial to the genesis of the more national student protests.

Equally noteworthy, Hancher and Moran highlight how '*place matters*' for regulatory space analysis. Political traditions and legal culture are important to the 'place' of organised interests in the policy process.[88] Furthermore, 'place' also means '*available for occupation*'; an issue touched on in the discussion being organised into or out of a regulatory space.[89] The '*complex and shifting relationships between and within*' regulatory participants suggests that such inclusion and exclusion are likely to be a dynamic phenomena.[90]

Locality also impacts on the context in which the discursive interactions which set the parameters for a regulatory space unfold. This includes shaping which subjects or objectives are seen as requiring regulatory attention; and the jurisdictional architecture which shapes specific regulatory spaces.[91] Moreover, 'space's place' has figurative and physical dimensions. Figuratively, each incidence of the regulatory process (norm formation, monitoring compliance, and enforcement) may '*cascade through*' several spaces.[92] Physically, each incidence may generate effects in actual localities: including through enforcement '*translat*[ing norms] *into social reality*';[93]

[88] Hancher and Moran (fn 8 in Introduction) 279.

[89] Ibid 277 – 279.

[90] Cf. ibid 274 - 276.

[91] Chowdhury and Wessel (fn 14) 348 and 355.

[92] Haines (fn 19) 228.

[93] Morgan and Yeung (fn 2) 10.

and regulation 'embedding' the economic within social relations.[94] The Fees Must Fall protests took place in specific public spaces; ranging from management complexes in universities, to the areas surrounding government buildings in Cape Town and Pretoria.

Although, or perhaps because, it is an 'analytical', 'framing' device, regulatory space analysis acknowledges an element of conceptual openness to what it seeks to corral.[95] It functions as a physical and conceptual bounding of phenomena which operate unboundedly. This suggests that the 'place of space' is: centripetal, through being the forum in which discursive delineation takes place and regulation is implemented; and multivalent, because a multiplicity of sites are relevant conceptually and practically. The discussion of the interactive constructionism engaged in by the interpretive communities, networks, and affiliations which shape regulation, alluded to this. It is also evident in the competing symbolisms and mythologies which may attach to those engagements.[96] This would be especially prevalent in the domain of authority, given the centrality of the symbolic and the aspirational to conceptions of authority. For the 2015 protests, it was most clearly on display in the repurposing of certain prominent spaces; as well as in the distinct challenges different spaces presented; both of which are explored in section 5 of chapter 2 and section 1 of chapter 3.

[94] Lange and Haines (fn 3) 7 – 8.

[95] Cf. Hancher and Moran (fn 8 in Introduction) 277; Scott (fn 11) 352.

[96] Cf. Black (fn 43) 82.

The Role of Protests

A fourth aspect of exploring the regulatory sub-space of the 2015 fee protests in South Africa and their settlement is the role the protests may play in regulatory space analysis. This draws attention to several intriguing problems. Protest is inherently disruptive, especially of regulatory practices which had been consensual and stable.[97] While incorporating language, protest extends the array of conduct constituting the discursive determination of regulation to include the physically performative and obstructive.[98] Further, it speaks to confrontation, potentially mutual hostility, and vociferous discontent. These factors could undermine the maintenance of a regulatory process, or the steady implementation of a regulatory agenda. At the more extreme, this could extend to undermining the scope for establishing which issues require regulatory attention, and in what way.

Regulatory space analysis can be amenable to this disruptiveness, even though the literature discussed above may not explicitly address it. Certain framings of regulatory space analysis suggest that vigorous contestation is an inherent part of regulation. The '*play of power*' is at the centre of a regulatory space, with '*occupants* [of a space]…*involved in an often ferocious struggle for advantage*'.[99] This aligns closely with how the regulation of university fee decisions was approached in South Africa: historically, and through the 2015 protests and their settlement. One issue with protest is that it might be doubly corrosive. First, resort to protest can indicate little or no trust in less disruptive forms of public engagement generating acceptable outcomes.

[97] Hancher and Moran (fn 8 in Introduction) 283.

[98] Cf. Gillian Godsell, Refiloe Lepere, Swankie Mafoko and Ayabonga Nase, 'Documenting the revolution' in S Booysen (ed.) (fn 4 in Introduction) 101 – 124.

[99] Hancher and Moran (fn 8 in Introduction).

Second, protesting, together with conduct during and in response to it, may dissipate trust. More broadly, protest could be a rejection of discursive (and consensual) models of regulation.

Nonetheless, there may be several ways in which protest could enrich regulatory space analysis, three of which will be presented here. First, protest can shift prevailing discourses, creating an opportunity to re-frame regulatory issues. In particular, this applies to access to a regulatory space, and determinations of a space's boundaries. The Fees Must Fall protests potentially altered who had a voice in the setting of university fees; or, at least, altering which voices were heard, and how loudly. Here protest capitalises on the inter-community conversations discussed above, by shifting them,[100] realigning inter-community and –organisational interactions, potentially forcibly. It also alters intra-community engagement: for specific organisations, insofar as individually, they constitute an interpretive community; and insofar as the overall regulatory community operates in terms of '*stable and consensual*' regulatory practices (including substantive and procedural rules).[101] In so doing, protestors exercise regulatory power.

Second, protest challenges the distribution and dispersion of resources (particularly authority) within a regulatory space. It can facilitate a re-conceptualisation of what constitute resources, and how they are (or should be) deployed. This occurs

[100] Cf. Scott (fn 11) 343 – 344; Jonnergard and Larsson (fn 55) 471 and 476; and Black (fn 43) 76 – 78.

[101] Cf. Hancher and Moran (fn 8 in Introduction) 283 and Chowdhury and Wessel (fn 14) 347.

through shifting the '*play of power*' at the centre of a regulatory space.[102] It is feasible because of the strong interlinkage between organisational capacity and authority.[103] Being organised in a specific way may enhance an actor's authority, while having authority may facilitate modes of organisation and the attribution of advantageous status once organised. This interlinkage therefore enables one resource to be leveraged to generate or enhance the other, and for combining both to improve an actor's ability to navigate the '*ferocious struggle for advantage*'.[104] During Fees Must Fall in 2015, significant contestation also centred on the resources of wealth and financial information.

Furthermore, the relationships within a regulatory space affect the other resources because that space is shaped by the engagements between the interpretive communities and networks operating within it.[105] Protesting can impose relationships by forcing interaction and can impinge on established relationships, thereby reconfiguring a regulatory space. The disruptive occupations which occurred during Fees Must Fall are an example of this. Moreover, relationships affect perceptions of authority. This is because of the symbiosis between decision-makers and their institutional setting, as well as their embeddedness within specific social relations.[106]

[102] Hancher and Moran (fn 8 in Introduction).

[103] Cf. Ibid 286; Scott (fn 11) 330, 335 – 338, 341 and 343.

[104] Cf. Hancher and Moran (fn 8 in Introduction) 283.

[105] Cf. fn 79.

[106] See fn 59.

Cumulatively, these reinforce the role of interpersonal networks and affinity in the regulatory process – both of which protests can disrupt and reconfigure.[107]

Third, and relatedly, protest impacts on all incidences of regulation, because of the interplay between these incidences, combined with the contestation around defining regulatory issues (especially as 'political' or 'technical').[108] This creates scope for elite actors to dominate specific interpretive communities, and manage important networks within a regulatory space.[109] Protest can facilitate such control through its disruption of traditional modes of engagement, including through utilising more forceful engagement. This is arguably exacerbated where norm production is dispersed across several fora, since such fragmentation increases the potential points of confrontation and occupation.[110] Furthermore, aggravating this fragmentation and dispersion may be a means of protesting against, and altering, a regulatory regime.

Conclusion

This chapter has argued for a broad definition of regulation that acknowledges the centrality of politics to regulatory regimes. The effect of the 2015 Fees Must Fall protests and their settlement on the regulation of university fee decisions falls within this broad definition. The most appropriate tool for analysing these phenomena is regulatory space analysis, provided it is developed beyond how it has traditionally been

[107] See fns 72 and 73.

[108] Cf Hancher and Moran (fn 8 in Introduction) 293.

[109] Cf. Jonnergard and Larsson (fn 55) 464 and 476; Scott (fn 11) 333 – 334.

[110] Cf. Chowdhury and Wessel (fn 14) 349 – 350.

understood in the academic literature. This development allows for: organisational capacity and the resource of relationships to be properly understood; and reconfigurations of authority without changes in state law to be analysed. The next chapters will apply these theoretical findings to the empirical case study of the protests and their settlement.

CHAPTER 2

A Delicate Calibration: Actors, Resources, Spaces

Chapter 1 developed theoretical arguments for analysing the regulatory space of university fee decisions in South Africa. It is pertinent to turn now to the empirical features of that regulatory space, focusing primarily on the October 2015 protests and their settlement. These disruptions destabilised and recalibrated this regulatory space. This occurred against the backdrop of significant structural and institutional continuity: with University Councils, as well as state and university budgeting processes, remaining key sites.

This suggests two specific, tentative conclusions. First, the processes established by the prevailing regulatory regime remained active, even if only residually so, at specific junctures. Second, and relatedly, how the major actors (government, university management, and students) engaged with each other regarding the income streams central to South Africa's financing of public universities, continued to exert substantial influence over the regulation of university fee decisions. One consequence was that the broader state and university budgeting processes, whose operation was vigorously challenged by the protestors, continued to shape those decisions; including through influencing how the protests were managed, and the settlement was implemented.

This chapter therefore argues that applying regulatory space analysis to university fee decisions in South Africa indicates that these decisions display a delicate

calibration of key actors, resources, and spaces. Chapter three delves into the emergence of new actors and interactions initiated by the protests and their settlement, and discusses the ensuing recalibration of the regulatory space.

The argument in this chapter will be presented in five sections. The first section revisits the value of applying regulatory space analysis to this empirical case study. The second section briefly sets out the context in which the protests and settlement took place. The third section explores the key actors, resources, and interactions in this regulatory space. It analyses the applicable governance framework, and further details the *dramatis personae* and their resources. The fourth section explores three significant paradigms (models, or ways of viewing matters) which shaped how organisational mandates and relationships were construed. The fifth section maps how key spaces and actors were organised.

1. The Value of Regulatory Space Analysis

The first question Chapter 1 addressed was whether the protests and their settlement could be analysed in terms of regulatory space analysis. Analysing the protests and their settlement in terms of the concepts of governance and regulation offers a new explanatory account of those events; and, more broadly, of how university fee decisions operated in South Africa. It could be contrasted with a social movement approach. While also valuable, social movement approaches tend to focus on specific actors pursuing particular objectives: such as how movements like *Occupy* or the *Indignados* rallied against austerity and the lack of accountability of key operators in the financial

sectors in the US and Spain following the 2007 credit crisis.[1] In contrast, regulatory space analysis facilitates a more comprehensive mapping of the interactions between a range of organisations (and their incumbents), alongside an interrogation of how these actors utilised a variety of resources and may drive the implementation of regulation.

Chapter 1 extended this broad scope of analysis to how regulation is conceived. One view treats regulation as the preserve of a nominally independent agency, often tasked with specific objectives regarding the area it regulates (e.g. financial regulators stress-testing banks post-2007). Another, related approach treats regulation as the state-sanctioned pursuit of a nebulous public good (e.g. responding to market failures), potentially amenable to being captured by private interests (insofar as the public and private could be clearly delineated). Both of these views should be superseded by the richer, more nuanced account provided in Chapter 1. This account emphasised the multifaceted interactions between a range of actors and resources operating in any given sphere of regulation. A spatial metaphor provides a useful mechanism for corralling these intricacies, because it is a means of distinguishing which interactions are germane to specific fields of regulation, while preserving the complexity inherent in particular regulatory spheres and enabling their mapping. Furthermore, it incorporates an appreciation of the diffuse, horizontal nature of these interactions, thus moving beyond directly linear and traditional hierarchical understandings of regulation (as, for instance, a form of command and control). Moreover, a spatial metaphor allows for movement, including movement through time. This temporal dimension is

[1] Cf. M Castells, *Networks of Outrage and Hope: social movements in the internet age* (Polity Press, 2015).

important, because regulation both "cascade[s] through spaces" and operates through time.[2]

Such an analysis is not solely of theoretical interest. In exploring how the 2015 protests and their settlement affected the regulation of university fee decisions, one immediate question is whether such decisions are regulated. Several of my interviewees were of the view that they were not: at least, not directly and explicitly, prior to 2015. The absence of regulation of university fee decisions can be seen in the limited legal and organizational provisions detailing how those decisions were to be made. Professor David Everatt[3], responding to a question about the regulation of university fees prior to October 2015, said that '*fees weren't particularly regulated*'. Similarly, a university management official observed in an interview that one of government's responses to the protests was to establish a task team '*to look at the question of regulating fees… there's no current mechanism for the Minister* [of Higher Education and Training] *to regulate fees*'. Here, "regulation" of university fee decisions is associated with subsidiary legislation promulgated by the Minister of Higher Education and Training (MHET), or ministerial control or intervention.

Understood in the broader frame advocated in this thesis, though, I argue that there was a system regulating university fee decisions. This system linked government, university management, and students; and the three income streams that are key to the financing of the majority of public universities in South Africa. These streams are:

[2] See fns 21 - 22 in Chapter 1.

[3] Head of the University of the Witwatersrand's (Wits') School of Governance.

funding from the Department for Higher Education and Training (DHET)[4]; university fees; and "third stream income", which covers donations to universities (e.g. bequests). A number of interviewees explicitly linked university fee decisions to the funding provided by the DHET. A fairly common refrain was that fee increases were a response to a fall in the funding received from the DHET, from around 2000 onwards. Although allocations to public universities over this period had nominally increased, a DHET official noted in an interview that '*the funding in a teaching input unit, or…per capita; ha*[d] *decreased. Because of the erosion of inflation and* [a] *growth in enrolments*'. This provides an initial sense of how university fee decisions were, in fact, regulated. It indicates that these three income streams need to be considered in conjunction with each other, and that changes in one stream could have knock-on effects on another.

A further instance of this inter-determinacy is the policies regarding financial aid for students. These policies were a crucial part of the transformation of higher education pursued by the post-Apartheid government. Financial aid for poorer students was an important means of enhancing their access to university education. In an interview, Mr Hugh Amoore[5] drew a link between the significant increase in the government's provisions of financial aid following the establishment of the Tertiary Education Fund South Africa, followed by the inauguration of the National Student Financial Aid Scheme in 1999;[6] and increased government exposure to university fee decisions. This is because one of the most significant expenses which recipients of

[4] Until 2009, it was referred to as the Department of Education. In 2009, it was split into the Department of Basic Education, and the DHET.

[5] Former Registrar at the University of Cape Town.

[6] See the NSFAS Act 56 of 1999.

financial aid would need to meet would be university fees. When those on financial aid paid their university fees, this would translate financial aid into a university's fee income.[7] Increases in university fees could, therefore, create pressure for increasing the financial aid provided by government.

Because this financial aid created unique interactions and discrete pressure points; and because it is subject to specific regulation;[8] it should be kept distinct from university fee income. This means that the fuller picture of how public universities are financed in South Africa incorporates government funding through the DHET, university fee income, third stream income, and financial aid. These operate in conjunction with each other, and bring together government, university management, and students. This suggests that they calibrate each other, in that the interactions between these actors and income streams determine how public universities are funded. Moreover, actions taken by, or in respect of, one of these elements impinge on the others, thereby affecting how the subsequent funding operates.

A fruitful unit of analysis for this calibration would be university fee decisions, for three interrelated reasons. First, the final fee decisions are the most pertinent object of study because they are readily separable from surrounding decisions, events, and processes (such as prior engagements about proposed fee increases). Second, university fee decisions are one focal point for important changes. This is most clear in 2015,

[7] See also Education White Paper 3 (1997), titled 'A Programme for the Transformation of Higher Education' at paragraph 4.45: '*A significant portion of student financial assistance currently flows into institutional revenues as fee payments*.'.

[8] See fn 6.

where fee decisions triggered the protests which culminated in the unique agreement on a 0% fee increase at all South African public universities for 2016. Third, university fee decisions are one mechanism through which regulation '*cascades through spaces*'.[9] Specific decisions are individual events (e.g. the Wits University Council originally deciding on a fee increase of 10.5% for 2016), and may also give rise to other events (e.g. protests in response). Similarly, key events may give rise to specific decisions, as the protests in October 2015 resulted in the agreement on a 0% fee increase for 2016. Focusing on university fee decisions shows how the confluence of pressures in 2015 destabilised and recalibrated this regulatory space, highlighting a noteworthy set of regulatory effects. Before considering the intricacies of this recalibration, it is useful to set out the historical context.

2. Historical Context to the Funding of Public Universities in South Africa

Chapter 1 highlighted the need to investigate the 'place of space'. This extends from how history; embedded social practices and customs; as well as legal culture and political traditions shape the implementation of regulation;[10] to 'place' having connotations of being '*available for occupation*';[11] and to regulation '*cascad*[ing] *through spaces*'.[12] Specific spaces provide the context for the discursive interactions which play a fundamental role in the formulation and formation of regulatory regimes.[13] Two embedded practices and political traditions relevant to understanding

[9] See fn 22 in Chapter 1.

[10] See fn 88 in Chapter 1.

[11] See fn 89 in Chapter 1.

[12] See fns 21 - 22 in Chapter 1.

[13] See fns 91 - 94 in Chapter 1.

university fee decisions in South Africa are the prevalence of calls for affordable or free university education, and students' resort to disruptive protest.

Advocacy for affordable higher education in South Africa took place at key historic junctures. Mr Busani Ngcaweni[14] noted in an interview that '*…the call for affordable education is as old as 1955. And prior to that. But since 1955, it was in the Freedom Charter*'.

One relevant shift worth noting here is that the Freedom Charter (1955) stated that:

> *The Doors of Learning and Culture shall be opened!*
>
> *...Higher education and technical training shall be opened to all by means of state allowances and scholarships awarded on the basis of merit...*

Although South Africa's Constitution was drafted with the Freedom Charter in mind, section 29(1)(b) of the Final Constitution (1996) states '[e]*veryone has the right… to further education, which the state, through reasonable measures, must make progressively available and accessible*'.

Two points bear mention. First, the reference to "higher education" in the Freedom Charter was substituted with a reference to 'further education' in the Final Constitution. As one interviewee observed, these are distinct sectors of education. South Africa's legislation and policy bears this out, dividing education into 'basic', "further", and 'higher'. 'Basic' education is supposed to be universal.[15] 'Further'

[14] Deputy Director-General: Presidency of South Africa.

[15] Section 29(1)(a) of the Constitution states: "*Everyone has the right to basic education, including adult basic education"*.

education is defined with reference to particular qualification levels under the National Qualifications Framework.[16] 'Higher education' covers all subsequent qualification levels under that framework.[17] Thus the Constitution granted a right with a narrower scope than that envisaged in the Freedom Charter. Second, the Constitution qualifies this right through imposing obligations on the state to make it '*through reasonable measures…progressively available and accessible*'.[18] The Freedom Charter makes no mention of that imperative. Furthermore, the progressive realisation in the Constitution is qualifying the right to further, not higher, education.

Progressive realisation provides one means of cutting through the interpretative distinction between higher and further education, while also raising additional debates. One reading of progressive realisation is that existing access must be preserved, and steadily expanded over time. Several interviewees argued that the decreases in the funding provided to public universities by the DHET fell foul of this. Progressive realisation also speaks to the dispute about whether public university education should be affordable, or available for free. Rekgotsofetse Chikane[19] pointed out in an interview that the South African Student Congress (SASCO) not only called for free education

[16] The General and Further Education and Training Quality Assurance Act (2001) defines '*further education and training*' as '*all learning and training programmes leading to qualifications on levels 2, 3 and 4 of the National Qualifications* Framework'. For the National Qualifications Framework, see the National Qualifications Framework Act (2008), read with the National Qualifications Framework.

[17] The Minister of Education (MoE) clarified in 2007 that '[h]*igher education qualifications occupy ...levels 5 to 10* [of the National Qualifications Framework]' - GN 928 in *Government Gazette* 30353, 5 October 2007.

[18] Again, this can be contrasted with the Constitution's (and the Freedom Charter's) blanket and unqualified codification of a right to basic education – see fn 15.

[19] National President of InkuluFreeHeid, and a member of the South African Student's Congress.

nationally, but had also convinced the African National Congress (ANC) at its electoral conference in Polokwane in 2007 to adopt free education as a policy position.

What this means is contentious, because at least two further issues remain. First, for which students would public university education be free? The DHET, along with a number of commentators, had explored the possibility of providing fee-free university education '*for the poor in South Africa*'.[20] A number of student bodies during and following the 2015 Fees Must Fall protests, though, called for free university education for all, which would generally mean abolishing university fees.[21] Second, which aspects of public university education were to be provided for free? Models range from covering just fees; to assisting students with fees, accommodation, textbooks, food, and potentially a stipend. These debates have not yet reached finality, with President Zuma appointing on 14 January 2016 a '*commission of inquiry into free higher education in South Africa*'.[22]

Disruptive protest is one powerful means of advocating for free or affordable public university education, and had historically been a feature of university fee

[20] Cf. fn 6 in Chapter 1, and the Report of the Working Group on Fee Free University Education for the Poor in South Africa (October 2012). Cf. John Pampallis, 'The doors of education and culture shall be open: the centrality of education in the history of the ANC' in B Ngcaweni (ed.), *The Future We Chose: Emerging Perspectives on the centenary of the ANC* (Africa Institute of South Africa, 2013) 98, 104: '*In 2007, a resolution of the ANC Conference, partly the result of student pressures, called for the progressive introduction of free education up to undergraduate level for poor students.*'.

[21] The NSFAS Report (ibid), paragraph 4.9, provides an example of the issues which could arising from these debates: '*The Committee also heard reports that on some campuses in 2009, students refused to accept NSFAS loans because of national general election campaign promises of free higher education. In the words of one* [Higher Education Institution] *manager: "Our students are very politicised, so whatever government says is taken very seriously…as soon as there was noise of free education, they refused to take up NSFAS…" '.*

[22] S Booysen (fn 4 in Introduction) 324

decisions. Mr Ngcaweni noted in an interview that '…*what happened in 2015 is a continuation of struggles; student struggles; pre- and post-Apartheid struggles, for affordable higher education in South Africa…since '94, those protests have been there...*', albeit with slightly different triggers and modalities. A similar sentiment was expressed by an academic research participant, though directed at events in the 2000s: '…*protests in response to the announcement of fee increases were something like an annual ritual; and constituted part of the negotiating tactics of the students, generally led by the* [Student Representative Council (SRC)]'.

One major departure in 2015 was the emergence of national, and potentially nationally co-ordinated, protests. Moreover, the 2015 protests expressed growing dissatisfaction with the slow pace of transformation at public universities, and in South African society more generally; notwithstanding that transformation had been one of the main imperatives driving the post-Apartheid government's policies, including in higher education.

3. Transforming Higher Education

3.1 New Governance Structures

Education White Paper 3 recognised the importance of transforming higher education to the post-Apartheid government's broader goal of transforming South African society. This was premised on acknowledging the public and private developmental benefits which higher education could provide.[23] The necessity of transformation stemmed from what one interviewee referred to as universities' 'legacy issues' as a

[23] Education White Paper 3 at paragraph 1.3.

result of Apartheid. The White Paper noted the Minister of Education's (MoE's) similar concern with '*evidence of institutionalised forms of racism and sexism as well as the incidence of violent behaviour on many campuses…*'.[24] The White Paper detailed the following '*fundamental principles that should guide the process of transformation*': equity and redress; democratisation; development; quality; effectiveness and efficiency; academic freedom; institutional autonomy; and public accountability.[25] Pursuing these principles would ideally facilitate South Africa's development and the amelioration of its inequitable past by: enhancing society's pool of skilled labourers and researchers; and, simultaneously, improving individuals' quality of life by improving their socio-economic prospects (including through elevating their skill levels, and therefore their employability and prospective income).

The White Paper adopted a planned, steered, co-operative approach towards realising these principles. Acknowledging the fraught nature of the prevailing governance of higher education, it emphasised '*the importance of government*['s] *working co-operatively with institutions of civil society in a spirit of partnership and mutual dependence*', which would require that '*our model of governance must be interactive*' – '*a model of co-operative governance for higher education in South Africa based on the principle of autonomous institutions working co-operatively with a pro-*

[24] Ibid at paragraph 3.41. In March 2015, protests galvanised under the banner 'Rhodes Must Fall' would raise the failure to address these concerns almost 20 years later.

[25] Ibid at paragraphs 1.17 – 1.25.

active government'.[26] This would be achieved through changes to how funds were allocated to public universities by the MoE, and to the existing governance structures.

On the funding side, fee-free education was rejected as neither '*affordable* [n]*or sustainable*', partly because of the need for '*the costs of higher education* [to be] *shared equitably between public and private beneficiaries*'.[27] The allocation of funds to public universities by the MoE would take place in terms of a rolling three year framework. In essence, the number of '*funded student places*' or '*publicly subsidised* [full-time equivalent] *enrolments*'[28] would be negotiated between public universities and the MoE for '*each year in respect of the following three years of the rolling triennium*'. It would be based on the '*institutional plans*' which public universities were expected to draft. These plans would incorporate, *inter alia*: '*indicative targets of enrolment levels by programme, race and equity goals and proposed measures to develop new programmes…*'. The ensuing allocation of funding would be publicised by the MoE issuing '*an annual statement…that provides the estimated level of block grant funding*' each public university could expect to receive for each of the next three years.[29]

This would facilitate the MoE's adoption of '*goal-oriented incentives as part of the public funding framework*'.[30] It would extend to enhancing access to higher

[26] Ibid at paragraphs 3.2 – 3.7. Further, '[o]*ne implication of this is…that institutional autonomy is to be exercised in tandem with public accountability*'.

[27] Ibid at paragraph 4.7.

[28] Hence the more common reference by several interviewees and commentators to funding provided by the DHET as the 'state subsidy'.

[29] Education White Paper 3 at paragraphs 2.18 and 4.20 – 4.23.

[30] Ibid at paragraph 4.10.

education, and could be utilised to enable '*institutional redress*' – '*ensur*[ing] *that inherited inequalities between the historically black and historically white institutions are not intensified, but diminished*'.[31] This could occur primarily through '*the provision of earmarked funds to achieve specific purposes*'.[32] It could also extend to the institutional block grant. Mr Chikane noted in an interview that alongside the overall decrease in the subsidy provided by the state to public universities, the state subsidy provided to historically white institutions had been decreasing as a significant portion of those funds were allocated to Technical and Vocational Education and Training Colleges. Thus the state subsidy ultimately received by a public university was determined by a number of calibrations, including: the interactions between government officials and university management; and how the forces shaping South Africa's development and transformation buffeted the government's pursuit of its policies, together with public universities' pursuit of their autonomous, academic missions.

Within this calibration, public universities were given comprehensive autonomy to set their fees. The White Paper stated that '*institutions should determine their own fees for subsidised student places as well as for student places outside the publicly funded quota*'.[33] This was borne out in the Higher Education Act (1997). Two pertinent bodies which it established are the University Council, and the University Senate. University Councils are at the apex of this system, and must '*govern the public*

[31] Ibid at paragraph 2.19.

[32] Ibid at paragraph 4.16.2.

[33] Ibid at paragraph 4.25. Paragraph 4.24 of the White Paper indicated that public universities could '*enrol students in addition to the agreed number of publicly-subsidised* [full-time equivalent] *places*", provided that this was done "*from funds raised by themselves, not from the government*'.

higher education institution, subject to [the Higher Education Act (1997)] *and* [their institution's] *institutional statute*'.[34] University Senates are '*accountable to* [University Councils] *for the academic and research functions*' of their University.[35] These two bodies could interact, including through a Council delegating functions to a Senate.

University Councils may not delegate fee decisions.[36] There were, though, conflicting interpretations of within whose prerogative those decisions fell. One interviewee highlighted the disagreement which had occurred within their university's Council on this score. The juxtaposing views concerned whether university fee decisions were solely about the responsible management of the university's finances, therefore falling wholly within council's jurisdiction; or, by contrast, implicated what courses the institution could offer and which students would be able to access them, raising concerns germane to the university's academic programme and hence falling within Senate's remit. This indicates another point at which the calibration of several interpersonal interactions and a variety of forces could shape university fee decisions.

3.2 *Dramatis Personae*

Chapter 1 explored who operated within the regulatory space of university fee decisions in South Africa. Delving into more granular detail on this question allows for a fuller understanding of how this regulatory space was calibrated. Several organisational fora are noteworthy for this thesis. They were composed of interpersonal alliances and

[34] Higher Education Act (1997) section 27(1).

[35] Ibid section 28(1).

[36] See, e.g., section 20(2)(n)(vi) of the Statute of the University of the Witwatersrand; and section 12(5)(d) of UCT's Institutional Statute.

relationships. An analysis of the regulatory space of university fee decisions reveals that a spectrum of organisations - from more micro-level associations to the macro fora of fora - vied for control and influence.

This stemmed partly from the multiplicity of interests recognised within the governance structures established by the Higher Education Act (1997). Councils are comprised of, *inter alia*:[37] the chancellor and vice chancellor; up to five people appointed by the MHET; a number of representatives elected by the Senate;[38] and a number of students elected by the SRC.[39] Councils therefore include academic and student representation, including that which is channelled through the Senate and SRC respectively. Senates have a similarly comprehensive membership, including *inter alia*:[40] the chancellor and vice chancellor; academic employees; members of the Council;[41] and members of the SRC.[42] The legislation therefore mandates engagement with most of a university's stakeholders, albeit through elected representatives.

[37] Higher Education Act (1997), section 27(4).

[38] 4 at Wits – Statute of the University of the Witwatersrand, section 16(1)(f); 3 at UCT – UCT's Institutional Statute, section 13(1)(c).

[39] 2 at Wits and UCT: Statute of the University of the Witwatersrand, section 16(1)(n); UCT's Institutional Statute, section 13(1)(f). At Wits, one of the students must represent the SRC and the other must represent Wits' Postgraduate Students' Association. At UCT, one of the elected students must be a postgraduate.

[40] Higher Education Act (1997), section 28(2).

[41] 2 at Wits and UCT: Statute of the University of the Witwatersrand, section 29(1)(d); UCT's Institutional Statute, section 23(1)(i).

[42] 10 at Wits, with 8 elected by the SRC and 2 elected by Wits' Postgraduate Students' Association: Statute of the University of the Witwatersrand, section 29(1)(i). 6 at UCT, of whom at least 2 must be postgraduates and 1 must be a member of the SRC: UCT's Institutional Statute, section 23(1)(h).

SRCs were a major actor in this framework. A noticeable feature of student politics on a number of campuses was that it could be quite highly party politicised, even before 2015. As Professor Mary Metcalfe[43] noted in an interview (referencing events which extended into 2016), SRC elections were not fought on the basis of specific issues (e.g. improving student accommodation) so much as '*on the basis of political organisations*'. Mr Chikane noted in an interview that SASCO, which had a significant presence on a large number of university campuses, was allied to the African National Congress (ANC). Similarly, the ANC Youth League (ANCYCL) and Young Communists League (YCL), the youth wings of the ANC and South African Communist Party respectively, also had a presence on university campuses. Ditto for the Democratic Alliance Students Organisation, whose parent body is the Democratic Alliance; and for the Economic Freedom Fighters' Student Command, whose parent body is the Economic Freedom Fighters. Mr Chikane also pointed out that SASCO, the ANCYL and the YCL might work together, or against each other, on specific campuses. The former occurred at Wits, where these (and other bodies, such as the Muslim Students Association) stood together in SRC elections under the auspices of the Progressive Youth Alliance (PYA).

Another body which played a prominent role in October 2015 was Universities South Africa (USAf). USAf had historically provided a common forum for public higher education institutions in South Africa to articulate and lobby around issues affecting them. Significantly in 2015, USAf was chaired by Professor Adam Habib (Wits' vice-chancellor), while Dr Max Price (UCT's vice-chancellor) was its vice-

[43] A former Director-General in the DHET (2009 – 2011); currently the Change and Management Director at the Programme to Improve Learning Outcomes.

chairperson. Fora such as SRCs and USAf are noteworthy because of their conduct, and their link to the resource of organisational capacity. Analysing their interactions sheds light on how this regulatory space was calibrated, as well as providing insight into how the resource of organisational capacity was deployed.

Chapter 1 analysed the traditional understanding of organisational capacity. It focused on the capability of (larger) organisations to influence regulatory processes, including through the organisation of workflows (such as through standard operating procedures). Decisions about fee increases at Wits and UCT potentially occurred in terms of quasi-standard operating procedures. University Councils made the ultimate decision on what the fee increase for the subsequent year would be. This decision was fundamental to how university budgets were drawn up, since fees were a major income stream. A Council's decisions would be preceded by engagements between university management and the SRC; which could run from around April until August. These engagements would commence with the Council Finance Committee opening up discussions with the SRC, including by providing certain financial information to the SRCs (although the adequacy of what was provided would frequently be subject to some contestation). The ensuing discussion could result in a joint proposal (i.e. one agreed between university management and the SRC) being taken to the university's Council. The Council would make the final university fee decision; which could be in line with, or a departure from, the SRC's and Council Finance Committee's proposals. In October 2015, this process culminated with Wits announcing a 10.5% fee increase, and UCT a 10.3% increase, for 2016.[44]

[44] S Booysen (fn 4 in Introduction) 320.

As has also been noted above, another common feature of this regulatory space was the '*annualised ritual*' of protests by students (at least at certain universities) in response to university fee decisions. Protests occurred at Wits in October 2015, and constituted the genesis for the ensuing, national, Fees Must Fall protests. Protests could therefore also be part of the quasi-standard operating procedure in terms of which fee decisions were made. To further explore how actors utilised key resources in this regulatory space, though, traditional understandings of those resources (particularly organisational capacity) require nuance.

3.3 Critiquing Key Resources available to Organisational Actors

A perverse, wealth-driven rationing drove the storm which several interviewees saw gathering in October 2015, but which they thought would break only in January 2016. Both the factors driving this storm and how it was responded to implicated the resources of organisational capacity and authority. Chapter 1 explored which resources are utilised in a regulatory space according to the academic literature. The unfolding events bolster the critique of organisational capacity set out in Chapter 1. They justify treating relationships as a resource, and highlight the importance of collaboration and coalition construction. The resource of authority was also affected, though this will be explored primarily in Chapter 3.

To develop these critiques, it is helpful to begin by setting out how the perverse rationing within the South African higher education system was operating. The interplay between income streams, particularly the decline in the state subsidy from

around 2000 onwards, contributed to average annual fee increases exceeding South Africa's consumer price inflation from 2009 onwards.[45] These increases meant that public university education was becoming increasingly unaffordable for a large number of South Africans.[46] As several interviewees noted, one bitter consequence was an increase in financial exclusions: poorer students were prevented from entering, or proceeding through degrees (including graduating and receiving transcripts), because of their historical student debt.

Two further perversities accompanied this. First, individual fee levels and increases were determined by Councils. One result was that universities like Wits and UCT had both higher than average fee levels, and fee increases. These fee discrepancies were problematic where the state subsidy and government financial aid were allocated on the basis of the average cost of study.[47] As several interviewees noted, while such allocation may be sensible from the state fiscus' perspective, it could limit poorer students' access to public universities which charged higher fees; especially where

[45] See, for instance, the meeting of the Portfolio Committee on Higher Education and Training (16 November 2016), at which South Africa's Statistician-General gave a presentation titled 'Financial statistics of Higher Education Institutions 2015', available at https://pmg.org.za/committee-meeting/23682/ (accessed 16 March 2017).

[46] For instance, Higher Education South Africa (HESA) noted in 'Tuition Fees: Higher Education Institutions in South Africa' (February 2008), 36, that: '*…a key factor in establishing a viable approach to cost sharing in South Africa must start with the realities of income inequality. Discussions on cost sharing tend to refer to high income countries where the differentiation between the top and bottom deciles of household income tends to be in the order of 1:10. In South Africa, the differentiation is greater than 1:100 (Seekings & Nattrass,2005)...*'.

[47] The Ministerial Committee's Report on the NSFAS (fn 20), for example, stated at paragraph 10.3.4.3 that the prevailing allocation to universities, '*…based on each institution's self-determined Full Cost of Study (FCS) and the demographic profile of the student population…should be replaced*' and that '*all institutions should receive the average FCS per student, regardless of the institutionally-determined FCS*'.

those universities were based in cities with higher costs of living.[48] Second, the proportion of students on financial aid could severely impact on a university's finances. Mr Amoore indicated in an interview how stark this disparity could get: '*If you take, say,* [UCT's] *2014/2015 intake…of our undergraduates, probably 13 – 14%...were eligible for the NSFAS, on a NSFAS means-test basis. University of Limpopo, 97%*'.

This could place universities in 'different financial worlds'. Mr Chikane added, in a separate interview, that this also affected how an SRC might engage in fee negotiations. Having an idea of how many students were eligible for, or on, financial aid would provide an awareness of what fee increases most students at a university could actually afford. This could reinforce these perverse disparities, in that universities charging above average fees were likely to have wealthier student cohorts; a significant portion of which could potentially afford above average university fee increases.

These perverse outcomes were shaped by wealth, which spilt over into organisational capacity. This is partly because Fees Must Fall developed through the concatenation of disparate groupings facing overlapping exclusions. It followed the March 2015 Rhodes Must Fall protests, which highlighted alienating institutional cultures at a number of South African universities. Financial hardship was another layer to this exclusion; bringing together both those on financial aid, and those who were too affluent for financial aid (based on means-tests) but too poor to pay the ever-increasing

[48] Ibid, Executive Summary at paragraph 2.2.3: '*…if all institutions were to receive the average FCS per student…the vast majority would benefit from this allocation mechanism. Only five universities charge more than the average.*'.

university fees. It also provided a galvanising point, as one student activist indicated in an interview:

> *I was watching* [the initial disruptions at Wits on 14 October 2015]...*The people were not decreasing, they were increasing…because there's a hashtag, it was very easy to be in touch…The common thing was: we hate this institutional* [culture]. *And we hate Professor Habib. And we hate* [fees]…

The potent combination of trenchant disaffection, congregation in specific places, and the use of social media, allowed for Fees Must Fall's explosive growth as a social movement.[49] Intriguingly, the reliance on social media and the institutions at which Fees Must Fall originated also highlighted the wealth of those involved. In an interview, Mr Ngcaweni contrasted Fees Must Fall with earlier student protests, including at historically black institutions: '[t]*his time they use social media. There's something to say about the symbolism of it. Because it means they have access to resources.*'. Several interviewees picked up on this, including the student activist quoted above. One refrain was that middle class participation was a core factor of Fees Must Fall. This was further evident in the nature of the institutions targeted, with both Wits' and UCT's student populations having a significant middle class component. Furthermore, Professor Metcalfe noted in an interview that these were institutions which matter in the national psyche. Rhodes Must Fall and Fees Must Fall could, therefore, leverage this privileged standing in order to garner national profile.

The dispersal of wealth within the regulatory space of university fee decisions therefore influenced how this space was calibrated. One novelty of the Fees Must Fall

[49] Cf. fn 1.

movement was that it saw individuals harnessing certain facets of wealth (e.g. access to social media) to seek redress for their and others' impoverishment (including incapacity to afford university fees). It reinforces the argument that relationships may themselves be a resource, given the significant influence and power which may be exercised through collaboration and coalition construction. Furthermore, the manner in which Fees Must Fall went viral indicates how forming relationships can surmount the dispersal of other resources within a regulatory space. Moreover, fostering relationships gave dynamic impetus to a reconfiguration of authority within the regulatory space of university fee decisions. This included the shifting position of SRCs: as both part, and outside, of Fees Must Fall at different points; and with respect to retaining their privileged, though at times precarious, access to vice-chancellors and University Councils, given their legislatively mandated role of representing students.

4. Organisational Mandates and Foundational Paradigms

One important fault line affecting relationship formation was how key roles within organisations were perceived. Organisational mandates, together with the relationships and modes of engagement prevailing in a regulatory space, shape this perception. In particular, the paradigms adopted by specific actors can influence which mandates are foregrounded, and how they operate. Paradigms can be patterns or modes; ways of seeing or viewing matters. They provide insight into what the '*ferocious struggle for advantage*' focuses on.[50] University fee decisions were partly calibrated through a clash of paradigms. Three interrelated paradigms were particularly prevalent: how the costs and benefits of higher education are classified; the log-jam between social justice

[50] Hancher and Moran (fn 8 in Introduction).

activism, and responsible financial administration; and victims versus agents. Each will be explored in turn, followed by a discussion of the more adversarial relations they instilled between key regulatory actors.

4.1 Classifying Higher Education

One conflicting set of paradigms concerns whether higher education is a public or private good. This debate comes through in the clash between the activists and the managers explored in sub-section 4.2 below. Activists opposed the privatisation and commodification of university education, including through escalating fees; while managers noted the significant returns which redound to individual graduates, together with the public benefits of university education. Relatedly, university education incurs public and private costs.[51] A DHET official noted in an interview that the DHET's policy since the late 1990s had followed a mixed approach: '*…the way in which the system is set up under the Higher Education Act, and White Paper 3 specifically, was around the cost-sharing model.*'. A National Treasury Official similarly stressed in an interview that from an economist's perspective, higher education was a private and public concern. This was a criticism of groupings which insisted on discussing the financing of higher education on the basis that it was solely a public good. Some of these groupings would overlap with the (radical) social justice activists discussed in the next sub-section.

[51] The HESA (fn 46) provides a summary of the '*private and social costs and benefits of higher education*' on page 33.

4.2 Social Justice Activism / Responsible Financial Administration

Chapter 1 noted two important ways in which an individual's role within an organisation may shape what decisions are taken, and how. First, the symbiotic interaction between individuals and institutions was explored.[52] Second, it was argued that affinity and inter-personal networks could significantly affect how decisions were viewed and taken. One major log-jam in the regulatory space of university fee decisions occurred between social justice activists and "responsible" administrators. This was partly about the interface between the technical (or technocratic) and the political. In an interview, a National Treasury official noted that financial planning (such as that followed in universities' or government's budgeting processes) implicates a difficult political-technical interface. Each choice has consequences, and the more technical budgeting process will not resolve the political and policy challenges which are presented.

An important overlay is that organisational settings may foster specific viewpoints. A number of those involved in the various social movements which congregated in Fees Must Fall saw themselves as social justice activists. For example, Leigh-Ann Naidoo[53] was very critical of the DHET's 2nd National Higher Education Summit which she attended in October 2015. This summit ran at the time Fees Must Fall was starting at Wits, and was organised in response to issues in higher education which had been percolating since Rhodes Must Fall occurred in March 2015. Mx Naidoo critiqued the summit in an interview:

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[52] See fn 59 in Chapter 1.

[53] A Wits student who is completing a PhD on RhodesMustFall, and participated in the FeesMustFall protests.

> *I realised when I walked into that space that this is a classic example of exactly what we don't want to change our education. It's the basic bureaucratisation of processes of accountability and change…You have stakeholders of Higher Education: from academics, students, SRCs, government officials. Everyone who's in Higher Education, including statutory bodies [such as the Council for Higher Education]. We sit like sheep in a conference venue of 450... I'm looking critically at this whole exercise. How will this unsettle and allow for critical and radical conversations?...*

At the same time, those occupying positions of authority within universities may have shared this perspective, though their being official figures may have led them to manifest it differently. Professor Habib wryly commented in an interview:

> *I always thought that I'd report on, and be a supporter of, these protests;* [not]*…that I would* [as vice-chancellor]…*have to manage the*[ir] *consequences…And if you're in that position, your responsibility is try and do it as thoughtfully as you can. Understanding the trade-offs and the consequences,* [while] *keeping the social justice goal in mind.*

The National Treasury Official and Mr Ngcaweni echoed the importance of acting as responsible administrators. Parallel to Professor Habib, this would incorporate acting under long-term financial responsibilities.

This log-jam is unfortunate, since the social justice and responsible administration paradigms can combine. This combination may be what both sets of actors sought to achieve. Put simply, a social justice paradigm is not inherently fiscally and administratively irresponsible; nor is a responsible budgeting paradigm necessarily anti-social justice. They do, though, have flashpoints. For instance, moving outside of what had been budgeted would arguably be irresponsible. From a different angle, though, focusing on what could be budgeted would be problematic. Speaking about the lobbying which resulted in Wits agreeing to insource workers, Mx Naidoo referred in

an interview to '*the continual delaying, by using the financial as the primary indicator of what's possible*'. In a separate interview, Professor Nieftagodien[54] nuanced this point, highlighting the importance of political will to conceiving and achieving particular outcomes. Earlier in 2015, though, Professor Habib had indicated in an online post a financial connection between the insourcing question and university fee determinations:

> *Wits does not have the resources required to insource these services and put the workers directly onto our payroll. If we were to do this without throwing the institution into financial crisis, we would be required to increase student fees by an additional 15% above the normal annual increase, or get an equivalent increase in the subsidy from the state*.[55]

4.3 Victims and Agents

Further complicating this dynamic interplay was how agency influenced the paradigms just discussed. Exclusion and alienation from universities, and from the more affluent and powerful sectors of South African society more generally, was a major undercurrent to the discontent expressed in the Rhodes Must Fall and Fees Must Fall protests in 2015. Part of the paradox of these protests was that some of those deleteriously affected by this alienation and exclusion, were able to leverage it to lobby for a more inclusive regulatory regime. Professor Everatt pointed out in an interview how these disruptive protests were an attempt to reclaim, and an affirmation of, agency:

> *You have discontent growing some way before 2015…The whole movement emerging around blacks can only be victims, blacks can't be racist. We're disempowered…That all began to pick up speed 2014, 2015 in particular. Rhodes Must Fall comes out of this...with people*

[54] Associate Professor at Wits, involved *inter alia* in the Workers' Solidarity Committee and the October 6th Movement.

[55] A Habib, 'Opening the conversation: Accelerating transformation for an inclusive and competitive Wits' (21 May 2015); available at http://blogs.wits.ac.za/vc/2015/05/21/opening-the-conversation-accelerating-transformation-for-an-inclusive-and-competitive-wits/, accessed 20 July 2015.

> *trying to reclaim agency. And many are just replete with agency. They are the best educated, most empowered young generation that we've ever produced, of any race.*

This links back to the critique of key resources set out in section 3.3 above. It highlights their multifaceted context, as well as participants' complex circumstances. The operation of the above paradigms could compound complexity, rendering key interactions more adversarial.

4.4 How Paradigms inform Interactions

How the feasibility, especially of funding policies, was determined became a key issue in the regulatory space of university fee decisions; as did questions around appropriate advocacy. Both influenced how regulatory actors perceived and engaged with each other. Most starkly, treating counterparties as adversaries or as friends would entail very different interactions. Mr Chikane accounted in an interview for certain changes in the demands presented by SRCs regarding fees, on this basis. Drawing on his own experience of fee negotiations at UCT, he indicated how distrust emanating from the financial information provided by the university led him to approach his counterparties as adversaries. This links to key office holders viewing themselves as 'responsible administrators'. As Mr Chikane elucidated in an interview: '*…the feasibility proposed by vice chancellors and the university, isn't the same as the most feasible option available.*'.

Professor Habib was equally critical of unconstrained advocacy, though, stating in an interview:

> *I have been very critical of groups that have…engaged in violence; that have engaged in what I call…the politics of the spectacle; who have sought to include and resolve other issues as part of this matter. And who don't understand trade-offs…Who don't understand… how you engage in reforms…that can consolidate towards a broader social justice goal*.

For Professor Habib, the danger these groups ran was of not only undermining the achievement of social justice, but also "*creating perverted outcomes*".[56] Such advocacy could lead to an undue focus on the short term; as opposed to the vice-chancellor's focus on ensuring that "*10 years from now* [Wits] *is…a going concern*". Moreover, it could result in a disregard for data, especially financial information; at least insofar as social justice concerns were seen as trumping that data.

Part of the rebuttal to this response could be a re-iteration of the points made by Mx Naidoo and Professor Nieftagodien: that the collation of data and assessment of what was feasible were inevitably shaped by specific viewpoints and orthodoxies. This would mean that resort to them implicated political will: because reliance on those metrics spoke to maintaining a set of outcomes, and to retaining the metrics underpinning them. Similarly, the other paradigms constituted important facets of how the "*play of power*" shifted through struggles for advantage and for social justice. It also reorganised key spaces and organisational actors.

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[56] In his online post about transformation at Wits (see fn 55), Professor Habib similarly criticised '*the abstraction from institutional power*' which followed when advocates of transformation refused to engage in established institutional process and channels. He cited the example of '*a leading advocate of the Rhodes Must Fall movement* [who] *recently wrote in a national newspaper about what he would do to advance Transformation. Every one of his recommendations is already policy or practice at Wits, and I suspect at many other universities. Yet they have not had the desired outcome…*'.

5. Organising Spaces and Actors

5.1 A More Localised and Concrete understanding of 'Place'

The '*place of space*' is important to understanding regulation.[57] The Higher Education Act (1997) placed University Councils at the centre of university governance. These bodies and their complement of staff are often housed in relatively central administration buildings.[58] The disruptive influence of social media is another instance of this, especially insofar as it engendered new solidarities that transcended more immediate spaces and times. Mx Naidoo, commenting in an interview on events that took place outside of Johannesburg on the date that October 6th handed over its memorandum at Wits, emphasised the '*expansion of time and space*' resulting from '*something happening at the same time with agreed demands in completely different places*', engendering solidarity. Similarly, the hashtag for Fees Must Fall consolidated more localised gatherings into a national movement. It is further evident in the emphasis placed by universities' media and public relations teams on maintaining a favourable view of their institutions across various media.

Space is also an insightful means for investigating three further dimensions to regulation. First, a theme running through Chapter 1 was dispersal. This covered both the dispersal of resources, and of the localities in which the enforcement of regulation occur. It extended to the dispersal of regulatory functions across different administrative levels and to different bodies, potentially suggesting that '*the relationships between actors involved within the regulatory space are necessarily non-*

[57] See fns 88 - 89 in Chapter 1.

[58] Such as Solomon Mahlangu House at Wits, or the Bremner Building at UCT.

hierarchical…'.[59] Second, many actors may nonetheless experience the ensuing regulation as hierarchically imposed: a point noted in Chapter 1, and borne out in Fees Must Fall's critique of the regulatory regime governing university fee decisions.[60] Third, a spatial conceptualisation of regulation is well suited to tracking knock-on effects and spill-overs. The continuities from Rhodes Must Fall to October 6th to Fees Must Fall can be considered conjunctively, which is important in light of their ultimately having some impact on how university fee decisions were made in 2015.

5.2 Space and Organisational Capacity

Space is further significant because location within a regulatory space can significantly shape an actor's identity, including through determining their role. Taken together, paradigms and location can situate actors within specific organising roles: such as being the vice chancellor of a university, the president of an SRC, or the MHET. Occupying such organisational roles is not always planned, however. A feature of the protests and their settlement was that a number of individuals found themselves placed in particular organising roles. This was borne out by several interviewees' comments regarding the very short time span in which Fees Must Fall went viral. This led to a number of actors becoming embroiled in the ensuing whirlwind, rather than having the (time and) space to implement premeditated plans.

Another vector of the capacity to organise is the ability to function as a particular institution (a university, an SRC, the DHET). This includes operating at a

[59] See fn 68 in Chapter 1.

[60] See fn 64 in Chapter 1.

specific location within the regulatory regime. Such identity and locality may confer advantages and hindrances. One instance would be an appeal to an organisation's identity and locality as grounds for special consideration. These appeals could foster a privileged position within the regulatory space. SRCs, for example, could appeal to their legislated, institutionally recognised role of representing students, as generating a right to be consulted regarding university fee decisions. A similar appeal to being representative of students grounded the claims of those in movements such as Fees Must Fall, to have a right to an audience with university management.[61] The latter appeal occurred outside of, and at times in direct conflict with, the institutional and legislative architecture of this regulatory space. Movements like Fees Must Fall are not explicitly recognised in the Higher Education Act (1997), or government or university policy.

The pursuit of privileged positionality is also evident in inter-institutional jockeying. Professor Everatt commented in an interview (regarding developments prior to, and after, October 2015) that:

> *Universities are set up to compete, and yet we're told to collaborate… we're set up that we compete for funding,… for the best students,…for grants,…for everything. And then told: you must work together to find a single solution to your problems*.

One distinguishing facet of this competition was how universities identify as centres of excellence. For Wits and UCT, Professor Habib and a university management official emphasised in interviews that those were research intensive

[61] On a similar basis, members of Rhodes Must Fall could claim a right to attend the DHET's National Higher Education summit in October 2015.

institutions with notable postgraduate constituents. Moreover, both universities were highly ranked: in South Africa and Africa, being amongst the top 5 and competing for the top spot; as well as internationally.[62] This influenced their organisational roles, because part of their mission in office would be to maintain these favourable rankings; and to improve them, where possible. This would also influence the broad academic mandate pursued by each, and (the vice chancellors would argue) the costs associated with successfully fulfilling that academic mission.

Relatedly, this highlighted a spatial dimension to social justice activism: the international aspects of the privilege of location. Professor Habib explained in an interview that:

> *…from an agenda of social justice…it is fundamental that Africa retains…its research universities. Otherwise we replicate the* [global] *inequities in the academy…we recreate unequal relations in knowledge production…*

The competition around organisational identity and locality therefore speaks to the "*ferocious struggle for advantage*". This extended to the occupation of specific places within the broader regulatory space of the financing of public universities in South Africa; within which the sub-space of university fee decisions is located.

5.3 The Importance of Relationships

Organisational identity and locality were consolidated partly through fostering relationships between key regulatory actors. Chapter 1 argued that relationships are a

[62] UCT was ranked 148 and Wits was ranked 182 according to the 2016 - 2017 *Times Higher Education World University Rankings* (https://www.timeshighereducation.com/world-university-rankings/2017/world-ranking#!/page/0/length/-1/sort_by/rank/sort_order/asc/cols/stats, accessed 24 July 2017).

resource in their own right, rather than being '*contingent on* [actors'] *control of resources*'.[63] The empirical data from the case study on the South African fee protests support this argument. The overlapping and competing loyalties evident in the protests and their settlement suggest that fostering specific relationships could shape university fee decisions. Similarly, the lack of a working relationship between key organisational actors could undermine certain calibrations. This suggests that having a working relationship could be a resource to draw on; including to enhance one's status as a regulatory insider.

One example of this would be Mr Chikane's reference in an interview to SASCO successfully lobbying the ANC at its electoral conference at Polokwane in 2007 to adopt free education as a policy position.[64] A reverse instance would be the ANC, as parent body, exerting influence to have affiliated bodies such as SASCO, the ANCYL, and the YCL (and, therefore, also the PYA) '*toe the line*' after the agreement on a 0% fee increase had been announced, by ceasing to protest and returning to class. Similarly, the consequences of relationships breaking down may bear out the role played by affinity (including liking other key actors, and seeing them as '*one of us*'), and network and community membership, in interpreting and implementing regulation.[65] A university management official stated in an interview that one important driver of fee negotiations was the relationship between university management and the SRC. Similarly, Mr Chikane noted in an interview the importance of the relationship between the SRC president and the vice chancellor, at least when seeking to present a

[63] See fn 79 in Chapter 1.

[64] Cf fn 20.

[65] See fn 73 in Chapter 1.

joint position to Council. At Wits, certain relationships had soured before the protests took place in October. Professor Habib noted that two prominent figures within Wits' Fees Must Fall had previously been subjects of disciplinary proceedings (for separate, unrelated occurrences): Mcebo Dlamini, who had been suspended and removed as SRC president as a result;[66] and Vuyani Pambo, a member of the Economic Freedom Fighters Student Command, who had been suspended. An alternative view is that these suspensions were politically motivated and a historical feature of this regulatory space.[67] Whichever view is correct, the souring of these relationships had some impact on how university fee decisions were made at Wits in 2015.

This indicates the importance of considering the interplay between key organisational actors and organisational capacity. How organisations constitute collective bodies would be one example of this: including Fees Must Fall's beginning to consolidate a national student movement from more parochial organisations and protests; and USAf acting as a common forum for public higher education institutions in South Africa. Meetings between the President, the MHET (as well as other ministers) and university vice chancellors (including, predominantly, the CEO of USAf) are further instances of this. Calling such meetings indicates the attempts made to resolve the impending crisis in a way that was acceptable to all attendees. For example, the MHET's meeting with vice chancellors and some student bodies on 20 October 2015 culminated in the proposal to cap fee increases for 2016 at consumer price inflation;

[66] See A Habib, 'Mcebo Dlamini no longer SRC president or member' (4 May 2015), available at http://blogs.wits.ac.za/vc/2015/05/04/mcebo-dlamini-no-longer-src-president-or-member/, accessed 2 August 2017.

[67] S Booysen (fn 4 in Introduction) 319.

with the state making up the difference between this figure and the fee decisions originally made by Councils. Such direct interaction between universities and the government regarding a specific fee decision was novel for South Africa, notwithstanding that this proposal was rejected by students and not implemented.[68] One important aspect of the formation of these relations was how certain regulatory actors came to share, as well as construct, common spaces.

5.4 Key Organisations and the Common Spaces they inhabit

Another reason for treating relationships as a resource is that this highlights how larger regulatory actors may influence regulation. This influence can stem from important relationships between smaller, seemingly less prominent organisations. The congregation and dissipation of actors is a central theme for the protests and their settlement. It highlights how actors and issues may be organised into, or out of, specific regulatory and physical spaces; while fora may similarly bring actors together, or keep them apart. Most notably, shared spaces allowed for smaller groupings of actors to organise into larger bodies with concomitantly enhanced organisational capacity. Key to this process was the fostering of networks (webs of overlapping and interconnected relationships between actors) and communities (groupings together of otherwise discrete and potentially adversarial actors).

One way to trace this is through the involvement of the same actors, and the use of similar processes, from Rhodes Must Fall to Fees Must Fall. In an interview, Mr Chikane provided two examples of this consolidation at UCT. Mr Chikane described

[68] Ibid 321.

Rhodes Must Fall as initially '*three different groups doing three different things*', with little communication or co-ordination. A more coherent Rhodes Must Fall movement emerged once these groups, and those interested in what they were doing, were brought together at a mass meeting. The second concerned Fees Must Fall, where '*you had Rhodes Must Fall trying to organise students…and SASCO trying to organise students. Both parties not necessarily talking to each other*'. There, too, convening a meeting of all parties gave greater coherence to the subsequent protests.

The October 6th movement, which brought together students, academics and university staff opposing the outsourcing of university staff, displays a parallel pattern. Having attended the occupation of Bremner Building which followed the initial Rhodes Must Fall protests, Mx Naidoo returned to Johannesburg and was part of October 6th. Professor Niegtagodien and Mx Naidoo each mentioned, in separate interviews, how October 6th had explicitly sought to bring together students, academics, and university staff, from within and across different universities. Professor Nieftagodien saw this as essential to addressing the inherent parochialism of student politics: being an institutional parochialism, and potentially an issue parochialism. Hence the need for a common forum to enhance cross-party solidarity.

In the shared, common space of October 6th, those participating brought with them their pre-existing connections. Mx Naidoo mentioned in an interview having made certain connections at UCT during her time there earlier in 2015; connections which could be used to organise more national demonstrations around outsourcing at universities come 6 October 2015 (and potentially carrying over into Fees Must Fall).

Similarly, Professor Nieftagodien took into October 6th his extensive prior involvement with university staff and students in opposing outsourcing. This multifaceted networking is important because it expands the scope of participation in the causes being advocated; especially when the utilisation of social media is added into the mix.

It also meant that there was substantial, though latent, capacity to organise around new issues, such as university fee decisions. Mx Naidoo recalled in an interview that Shaeera Kalla (a former Wits SRC president) had complained on 7 October 2015 during an October 6th meeting that Wits management was again looking to increase university fees, and that '*the whole system* [for arriving at university fee decisions] *is set against us…No matter what we say, they just listen to us, say well you had your say, you are part of a democratic structure, but sorry, we will increase* [fees]…'. It is significant that this complaint was voiced in the forum of the October 6th movement, the day after that movement had held demonstrations on several campuses about insourcing, and one week prior to the occupation at Wits which set off Fees Must Fall. The occurrence of protests at Wits would provide another opportunity to gather people together – a gathering which would be amplified by the emergence of '#FeesMustFall' trending on social media.

The utilisation of common spaces and gatherings could also be inadvertent or opportunistic. The DHET's Second National Higher Education Summit is a case in point. It commenced on 15 October 2017; the day after the shut-down at Wits began in response to the announcement of a 10.5% fee increase for 2016. The Summit sought to bring together most, if not all, of the stakeholders in higher education. This included

SRCs and some of the newer student movements, such as Rhodes Must Fall. Thus a range of fora were congregated in the same space, in a volatile context and very soon after a protest about fees had begun. Mx Naidoo recalled in an interview how she and other students attending this Summit sought to intervene and use it to highlight the fees issue at Wits. This included Mx Naidoo requesting, and being emailed, a statement from Mx Kalla about what was happening at Wits. The statement was subsequently read out at the Summit '*from the floor*'. In addition, Mx Naidoo changed the presentation she was going to give at the Summit, using '*what comrades and students were sending* [her] *about what was happening at Wits*…'.

Bringing together previously disparate parties was not necessarily a recipe for enduring cohesion, however. Several factors contributed towards the emerging student movement having the potential to fragment along factional lines. This destabilised the regulatory space of university fee decisions; creating new avenues for, and necessitating, recalibration. In part, this was because the fluctuating interplay between established and emerging actors and fora placed SRCs and the affiliated student bodies associated with them (such as SASCO, the ANCYL, the YCL, etc.) in precarious positions. These organisations had an awkward relationship with Fees Must Fall. They operated within and outside of it at different times and in different places. It also meant that some of the common actors (including those discussed above) could have overlapping and competing loyalties.

More generally, political spats could undermine attempts to construct coalitions. An underlying question concerns whether the protests were, or became,

party-political. Several interviewees were explicit that, at least at the outset, Fees Must Fall was not party-political. Several accounts bear this out, as does the above analysis of how the movement drew together multiple discrete individuals, movements, protests, and issues. However, the party-politicised nature of student politics on several university campuses cannot be ignored. Several interviewees were equally explicit on this score, especially with regard to the far more party-politicised turn they saw events taking in 2016.

Even before this turn, though, Professor Metcalfe's comment in an interview that SRC elections were fought '*on the basis of political organisations*' could be applied to 2015 (and before). While requiring a case by case analysis, as Professor Metcalfe noted, certain trends are evident: including the presence on a number of campuses of party-political student organisations (the ANCYL, the YCL, the Economic Freedom Fighters Student Command, etc.), vying for representation on SRCs. Furthermore, even bodies such as SASCO appear to walk an awkward line. Mr Chikane stated in an interview that SASCO is in an independent body, aligned with the ANCYL and YCL. While this affords SASCO latitude regarding its policy positions, two comments made by Mr Chikane are striking: '*…SASCO is an ally to the ANC. In the 2007 Polokwane leadership conference, SASCO was able to convince the ANC to take…a policy position… to implement free education…*';[69] and '*then we have this interesting thing where SASCO, as a national body; because it wants to toe the party line which the President has essentially made (which is the 0%* [fee increase for 2016]*); exits the* [2015 Fees Must Fall] *protest en masse…*'.

[69] Cf fn 20.

These comments are consistent with independent bodies in an alliance making their own decisions. They allude to the processes behind, and drivers of, those decisions. A parallel argument could be made with respect to the student wings of political parties. As Mr Ngcweni noted in an interview: '…*the student movement* [is] *a highly contested space*…'; and '…*student politics is seen as a preparation, a political school, a preparing ground for the future leaders…most people who led student struggles ended up having dominant roles in society, in one form or the other. They also got noticed*'.

Conclusion

This chapter has used regulatory space analysis to tease out the delicate calibration between key actors (government, university management, and students) and income streams (state subsidy, financial aid, third stream, and fees) which shaped the regulation of university fee decisions in South Africa by 2015. Employing regulatory space analysis has highlighted that coalitions, including various fora, were a key element of the 2015 protests and their settlement, especially through their shaping interactions between major regulatory actors.

Government's attempt to transform higher education enhanced the prominence of organisations such as Councils and SRCs; as did the advocacy for affordable higher education. The roles major actors occupied were highly contested, as borne out in the contestation around organisational mandates and paradigms, and how spaces and actors

had come to be organised by October 2015. The next chapter will use regulatory space analysis to explore the recalibration which the disruptive protests triggered.

CHAPTER 3

Subtle Recalibration: Responding to Vigorous Disruption

Chapter 2 detailed the delicate calibration regulating university fee decisions at South African public universities, as well as the perverse rationing which had become entrenched. The effort to transform higher education brought both of these phenomena to the fore, precipitating the repeating annual combination of increased enrolments, decreased state subsidisation, and increased university fees. This combination resulted in higher education being less affordable for a growing swathe of South Africans; driving a rationing which precipitated the 'gathering storm' predicted for January 2016, but which broke in October 2015.

The October 2015 Fees Must Fall protests resulted in new fora participating in university fee decisions, and new modes of engagement between regulatory actors. A hybrid regulatory regime emerged, combining what had previously been in operation (especially the centrality of Councils to fee decisions) with elements advocated by protestors (primarily an enhanced voice for students). Aspects of this combination suggest that it was tilted in favour of the processes prevailing prior to October 2015, albeit that the *modus operandi* had been significantly shaken up. How long this settlement will prevail is unclear. Even the immediate successes and outcomes of the 2015 protests and their settlement appear tenuous, while the longer term ramifications are still unfolding.

This chapter analyses how the regulation of university fee decisions was disrupted and recalibrated by Fees Must Fall 2015. First, the protests' impact on the delicate calibration detailed in Chapter 2 will be discussed. Second, the shifting demands presented during the protests will be explored, together with the mushrooming of fora and new modes of engagement which emerged. Third, how the settlement of October 2015 was arrived at and implemented will be analysed. Fourth, the subsequent, uncertain hiatus will be discussed. These sections will continue the analysis of how the regulation of university fees was calibrated, focusing on the interactions between key organisations (established and emerging) which shaped the regulatory regime. The chapter will finish with an overall thesis conclusion.

1. Protest and Disruption

Disruptive protest was a historical feature of the regulatory space of university fee decisions in post-apartheid South Africa, and the core tactic deployed by those participating in Fees Must Fall. It links together the themes of space and organisational capacity, because it strategically exploits the permeability of each to bring together, or keep apart, actors and issues. Key disruptive protests were the occupation of Solomon Mahlangu House at the University of the Witwatersrand (Wits), which inaugurated Fees Must Fall Wits; and prior to that, Rhodes Must Fall's occupation of the Bremner Building at the University of Cape Town (UCT). These disruptions undermined the established use of, and re-purposed, spaces – especially the central administrative buildings at each university.

This occurred on an impressive scale. Fees Must Fall was quite successful very quickly. As Professor Everatt noted in an interview: '*…this government… has faced genuinely moral, large constituency-based, popular…coalitions and organisations. And has said: go to hell, we won't budge. The students, the government blinked; said you can have 0%*'. Mr Chikane made a similar observation in an interview regarding the timescale for Fees Must Fall: '*you get this demand for 0%. And a professor at Wits made me acknowledge this… at no other place in the world, can you have a protest, …have a simple demand on Monday, that is met on the Friday*'.

Added to this was the national turn which the protests took. This is significant because though Rhodes Must Fall influenced Fees Must Fall, several interviewees noted that the former did not initiate a similar trajectory. Professor Nieftagodien highlighted in an interview how this national turn somewhat circumvented what he referred to as the parochiality plaguing student politics; a circumvention substantially attributable to the role played by media, and social media in particular:

> *…the hashtag Fees Must Fall…gives the movement an identity; which captures the zeitgeist of the student movement…you suddenly have a political identity to which students across the country can identify with, or attach themselves to…it's quite remarkable, because…you have a national student struggle, but you don't have a national student movement…there's this…paradox of a national discourse, a national critique, national politics, but it has not been able to morph into a national student movement*.

This section will provide more granular detail to the delicate calibration discussed in Chapter 2 by discussing some of the disturbances that ensued, and then analysing how the disruptors themselves were disrupted.

1.1 Repurposing Spaces: Disruption and Reclaiming Regulatory Power

The protests encompassed a wide spectrum of disruptive activities, including damage to property, and resort to riot police and the use of tear gas and rubber bullets to disperse protestors. Even where events were less dramatic, the ordinary functioning of affected institutions was undermined. Professor Habib left the Department of Higher Education and Training's (DHET's) Second National Higher Education Summit early, to deal with what was unfolding at Wits. He noted in an interview that these occurrences took place in an explosive political environment in which there was substantial '*political turmoil in the system*'. This included the occurrence of '*spectacles*' at which '[p]*eople were howled*…'. Professor Habib argued that these conditions made the Summit '*explosive*' too, and that the students at Wits '*used* [this environment] *quite ingeniously*'. They shut down the campus by blocking the main gates and not allowing people to drive out, which '*completely paralysed the institution*'.

Within a week, from 14 to 19 October 2015, the disruptions went national, with protests taking place at a number of campuses.[1] The MHET's attempt to resolve them on 20 October failed, and what followed was a literal and symbolic shifting of the protests off-campus. The march on Parliament on 21 October took place during the Medium Term Budget Policy Statement. Where before the target had often been universities' administrative buildings, this march occurred outside and around the heart of South Africa's representative democracy. Mx Naidoo stated in an interview that '[the s]*tudents* [were] *going to parliament to say* [that they were] *willing to disrupt these processes because talk shops are insufficient. And mid-term budgets should answer to*

[1] See fns 4 - 7 in the Introduction.

what [they had] *been demanding*'. Equally symbolic were the marches on Luthuli House, the ANC's Johannesburg headquarters, on 22 October; and the gathering outside the Union Buildings in Pretoria on 23 October.[2]

Mr Chikane (referring to events in 2015, but which extended into 2016 and 2017) identifies how this kind of disruption, coupled with a national consolidation of student grievances into a social movement, could exert significant (political and) regulatory power:

> *…it shifted the discussion around fee negotiations from each institution on their own,* [they] *make a plan; to…you negotiate as a collective to increase your bargaining power. And your bargaining power is essentially* [leveraging] *the chaos that you've seen for the past two years.*

The response to these disruptions triggered a recalibration of parties' interactions. This stemmed partly from the attention and profile which these protests had garnered. One dimension of this speaks to the discussion in section 5.2 of Chapter 2 about identity and locality within a regulatory space. Professor Metcalfe suggested in an interview that Fees Must Fall rose to prominence at particular universities because those were '*institutions which matter in the national psyche*'. While this could be leveraged to enhance the profile of the disruptions, it also generated tensions within Fees Must Fall; since the issues raised were ones which '*students at historically black universities have been grappling with for no attention*'. This would combine with other political and politicised forces, further undermining the cohesion of the emerging '*national critique*' of university fee decisions.

[2] Ibid 321 – 322.

1.2 Disrupting the Disruptors

At least four splits within Fees Must Fall were noted by one student activist who had been involved in the movement in 2015. The first centred on a dispute about whether female protestors should be more prominent and in more leadership positions, when the movement initially took shape. Debates like this, and those around intersectionality, were often fraught, as Mx Naidoo noted in an interview:

> *Difficult as it is to get power to engage at universities outside of students, through academics, administrators and management, it is as difficult inside to get people to engage critically and think about how to create a space where everyone can feel like the vision that we're creating is one that's not simply going to replicate the struggles of the past*.

The second and third split revolved around party-political roles in the movement, and party-politicisation. This links back to the discussion in section 5.4 of Chapter 2 of how party politicisation influenced student politics. It came out in disputes about what role certain actors were playing. This included interrogations of the role played by specific formations in the movement: such as what political party affiliated bodies were doing; or whether SRCs dominated by such bodies should be welcomed into the movement, or denounced. For example, a meeting of the Progressive Youth Alliance (PYA) on 25 October 2015 at Wits was highly contentious, with some arguing that '*ANC national structures intervene*[d] *in the Wits Struggle in particular…it is reported that the ANC* [at this meeting] *instructs its PYA campus partners to take the gains and suspend/end protest*'.[3]

[3] Ibid 322.

The spaces of Parliament, Luthuli House, and the Union Buildings each presented additional challenges. The march on Luthuli House provides insight into the political machinations which were unfolding. Mr Chikane analysed these in an interview as follows:

> *There is that pressure that if you don't do it, the* [Economic Freedom Fighters (EFF)] *will do it. Trying to keep control of the narrative of the protest. If you allow the EFF to control the narrative of the protest, you as an SRC are delegitimised... So SASCO had to deal with certain things we would never usually deal with. So march on Luthuli House, because the grander image is that we must control this narrative, as far as possible*.

Paralleling the changes of spaces, new exercises of power disrupted the disruptors. The fourth split mentioned by the student activist concerned whether protests should continue after the 0% fee increase had been announced. This proved divisive, with several interviewees noting that while the protests did continue (particularly with regard to the issue of insourcing), a significantly smaller number of protestors participated. The presentation of this agreement was, moreover, an exercise of power; as were Professor Habib's utilisation of a Facebook poll in making the case that the majority of Wits' students wanted campus to re-open, and the resort to public order police to deal with protestors, including at the marches on Parliament and the Union Buildings. These exercises of power could escalate the situation, and undermine or divide the Fees Must Fall movement in terms of how best to adapt or respond to them.

Two further disruptive forces battered Fees Must Fall. A movement that vibrant was going to attract significant political attention. Speaking partly with reference to events in 2016, Mx Naidoo commented in an interview that:

> *…when a student movement or any formation has a lot of political energy, the current power structures want to co-opt it. So, you have the non-partisan impetus out the window…you even have student political parties and leaders coming into the space of Fees Must Fall, using…Fees Must Fall practices as rhetoric*.

The movement's success made its co-option enticing, while presenting dilemmas to participants with cross-cutting affiliations. SASCO, for instance, had arguably been able to play a substantial role in Fees Must Fall because of its significant presence on most university campuses. Mr Chikane noted in an interview that government's and universities' acceding to the demand for a 0% fee increase created a problem:

> *…SASCO…because it wants to toe the party line…which is 0%; exits the protest en masse…So you leave the protest, and you create this huge gap…the body that has been in charge of* [managing] *this mainstream, co-ordinated protest, simply because …you are represented across SRCs, exits the protests. The students still want to protest. You create the space for new parties and new organisations to fill that void.*

The analysis of these disruptions suggests a strong, fraught, connection between disruption and recalibration. This is because the protests shifted the delicate calibration that had prevailed in the regulatory space of university fee decisions. Further instability was instilled through fluctuations in the major organisations involved in the protests and their settlement, and in the demands which came to the fore. These shifts altered what the protestors sought and advocated, as well as how government and university management responded.

2. Shifting the Goal Posts

One weakness of regulatory space analysis is that it could be treated as providing only a static snapshot of a regulatory regime. Chapters 1 and 2 have argued that this would be a mistake, since regulation operates both through time and in space.[4] Regulatory space analysis should rather be utilised to discern the '*cascade*' of regulation along both of those dimensions. This is particularly pertinent to the protests and their settlement, because of three interrelated dynamics which they incorporated: a mushrooming of fora participating in the regulation of university fee decisions; an evolving set of demands presented by the protestors; and new modes of engagement between regulatory actors.

2.1 Mushrooming Fora

The increased reliance on novel fora in 2015 initiated new modes of calibration between actors in this regulatory space; and, in response, enhanced resort to that space's prevailing architecture. These novel aspects were most evident in the new gatherings which occurred, together with the deliberative praxis which they incorporated. This praxis probably encompassed a broad spectrum. Within a meeting or public seminar held by Fees Must Fall (and Rhodes Must Fall before it), several interviewees and commentators noted the excitement accompanying the creation of spaces in which previously unheard voices conversed in new ways. Inter-campus interactions, though, incorporated the distinctions of legacy and privilege discussed in Chapter 2. Similarly, the tenor of discussions in fora in which a mix of constituents congregated (such as

[4] See fns 21 - 22 in Chapter 1.

October 6th) potentially differed from that in fora dominated by a particular grouping (e.g. students).

Fora mushroomed primarily through entirely new organisations emerging, and through existing actors operating with enhanced prominence. The emergence of Fees Must Fall as a national phenomenon and social movement was one of the most striking instances of new organisation occurring. It was, however, neither monolithic nor entirely cohesive. As detailed in Chapter 2, it amalgamated a range of bodies, including through building on organisational work begun by Rhodes Must Fall in March 2015. Moreover, this amalgamation was replete with fissures, some of which were evident in the splits discussed above. Nonetheless, its national character precipitated increasingly national responses to the protests, including the national settlement announced by the President of the Republic of South Africa on 23 October 2015.

Through and because of Fees Must Fall, organisations in addition to SRCs had more space to participate in university fee decisions. This was especially attributable to the novel deliberative spaces which Fees Must Fall (and Rhodes Must Fall) inaugurated. Similarly, the disruptive protests throughout 2015 contributed to heightened activity by bodies such as Universities South Africa (USAf), and more frequent engagement between government [particularly the Minister of Higher Education and Training (MHET), but also the President], university management, and students. This included: USAf's chairperson meeting with the President and others on 6 October to discuss the impending crisis; the DHET holding its Summit from 15 – 17 October 2015; the abortive meeting convened by the MHET on 20 October 2015; and

the meeting convened by the President on 23 October, prior to announcing the agreement on a 0% fee increase for 2016.

These engagements suggest an increased prominence for USAf and the MHET. For USAf, this prominence is evident in its initiating the meeting with the President on 6 October 2015. Furthermore, several interviewees stated that USAf played a significant role in advocating a 0% fee increase for 2016 to end the impasse, on condition that the state make up the difference between this increase and university fee decisions taken earlier in 2015. Such prominence is not surprising, given USAf's constituents (including the vice chancellors of Wits and UCT as its chair and vice-chair) and its role (akin to an industry-type body for higher education institutions in South Africa). For the MHET, involvement in all of these meetings and the abortive meeting on 20 October speaks to elevated – and novel – participation in university fee decisions. This is because this participation went significantly beyond the calibration between parties (government, university management, and students) and university income (state subsidy, financial aid, fees, and third stream) set out in Chapter 2.

An important consequence of this mushrooming of fora was that a broader range of interpretive communities sought, and at times achieved, input into the formulation and implementation of the regulation of university fee decisions.[5] This affected the enforcement of regulation, too. As discussed in Chapter 2, one endpoint at which university fee decisions were enforced was financial exclusions. Since these were

[5] Cf. fn 55 in Chapter 1.

premised on historical fee debt, they were intimately associated with previous fee decisions. Fees Must Fall affected enforcement on two scores: by having the previous fee increases for 2016 overruled, and changed to a 0% increase; and through obtaining certain exemptions regarding historical fee debt and up-front fee payments for 2016.[6] This was achieved through a challenge to the architecture around fee decisions, along two noteworthy trajectories. First, which issues fell within the ambit of fee decisions was vigorously contested. Second, an attempt to overhaul the prevailing modes of engagement, including the emphasis on representative governance (especially in Councils and SRCs), was made. Each will be explored in turn.

2.2 Shifting Demands

The machinations around which demands were presented, and how they were phrased, is fairly congruent with the '*play of power*' at the centre of a regulatory space.[7] One aspect of this would be the use of language to engender solidarity and cohesion which could, in turn, drive what decisions were subsequently taken. This links language with organisational capacity. Developing a new and common language around the experiences of alienation and exclusion fed into both the emergence of the Fees Must Fall movement, and the demands which it made. The '#FeesMustFall' centred the debate on university fee decisions. Several interviewees noted, though, that there were numerous underlying issues which were driving what was happening; fees being just

[6] S Booysen (fn 4 in the Introduction) 324: '*The Wits SRC (15 December* [2015]*) announces that all students with R15,000.00 (or less) outstanding fees will be allowed to graduate*…'. See also Wits University 'Presidential Task Team's Recommendations on Student Funding' (18 December 2015), available at https://www.wits.ac.za/news/latest-news/general-news/2015/2015-12/presidential-task-teams-recommendations-on-student-funding.html (accessed 26 July 2017); and clauses 3 and 4 of the 'Memorandum of Understanding between the University of the Witwatersrand Management, Outsourced workers and Students' (13 November 2015), in S Booysen (ed.) (fn 4 in Introduction) 335 - 337.

[7] See fn 8 in the Introduction.

one of them. What was novel in 2015 was that a national student movement gained traction around this idea of fees 'falling' (in the same way that Rhodes' statue, colonialism, etc. needed to 'fall'). Furthermore, the advocacy engaged in by this movement culminated in University Councils overruling previous fee increases by implementing a 0% fee increase for 2016.

The common language developed from Rhodes Must Fall to Fees Must Fall facilitated the evolution of demands, instilling a longevity which had been absent from previous, more parochial protests. Mx Naidoo highlighted a noteworthy continuation in an interview:

> *If you go back and look at* [the demands and mission statement developed by Rhodes Must Fall], *the*[se] *demands were much much more than the statue: fees; ending outsourcing; thinking about future student relations;* [Black Economic Empowerment] *and the professorate [that] remained unchanged; curriculum change; housing; and and and…*

A substantial part of the genesis of these demands was arguably the public seminars which Rhodes Must Fall developed, and which occurred again during Fees Must Fall. These seminars performed a number of functions, including being spaces in which these demands were developed through public discussion.

Mx Naidoo provided an example of this public discussion, and of the transfer of some ideas from Rhodes Must Fall to Fees Must Fall, in an interview. Mx Naidoo noted that one outcome of certain October 6th meetings was that '…*we came up with a question that we hoped would frame what we were trying to understand: what is a decolonised, public, African university?*'.

This does not imply that the same demands with the same meanings were transposed from Rhodes Must Fall to Fees Must Fall. Professor Habib contended in an interview that the Wits SRC's demand during its initial engagement with Wits' Council (prior to Fees Must Fall) was for an increase for 2016 that was below 10%; not for a 0% increase. Subsequent developments though, culminated in a new demand for fees to fall, or for a 0% fee increase. Mr Chikane noted in an interview that, over time, not only did the demand for a 0% fee increase change into a demand for free education; but "…*the demand for free education* [mutated] *into free decoloni*[sed education]". One consequence of these evolving demands was that government's and university management's responses to them might shift in parallel. Moreover, what was encompassed by the demands became increasingly cross-issue; moving from university fees to the insourcing of workers; and to how public universities should be funded and structured, and what curriculum they should offer. These shifts played on the permeable parameters of the regulatory space of university fee decisions.

At its broadest, these shifts could recast the framework within which university fee decisions were made. A notable instance of this was the trenchant criticism by several interviewees and protestors of the financial lense through which these decisions were viewed. This criticism was partially explored in section 4 of Chapter 2. One leg to it concerned the adequacy and veracity of the financial information provided by university management to SRCs during fee negotiations. Another, more foundational leg was whether the language of business and finance (e.g. maintaining universities as '*going concerns*') was apposite to a public university.

These framing questions brought together the key resources of wealth and information. At the same time, advocacy of the primacy of social justice concerns could alter the utility of these resources, without changing their distribution. Such advocacy rarely redistributed wealth or information in favour of its most vocal promoters (often, students); instead attacking how these resources were deployed by those who possessed them (usually university management, and vice chancellors especially). This could render possession of these resources disempowering; or, at least, impose obligations on those possessing them to further social justice aims. This could make the absence of wealth or financial information a boon to those lacking these resources. It could also shift the manner in which key regulatory actors interacted with each other.

2.3 New Modes of Engagement

The contestation around financial information and related debates highlighted the permeability of the boundaries between the regulatory space of university fee decisions and the broader financing of higher education, and questions around institutional culture and curriculum. Chapter 1 analysed how these boundaries are drawn based on the '*range of regulatory issues subject to public discussion*'. These are shaped by a competitive struggle between the actors involved, through which groups and issues may be organised into, or out of, a regulatory space.[8] At the time Fees Must Fall occurred, there was a prevalent debate around transformation and decolonisation alongside other, related contestations already discussed. This debate straddled a variety of distinct regulatory spaces, focusing as it did on grievances about a community's inclusions and exclusions. Most immediately, it contributed to the conjunction of

[8] See fn 52 of Chapter 1.

university fee decisions and the campaign for the insourcing of workers. This shift was partly driven by exploratory engagements within the protesting communities around the demands being made; including through the evolution of those demands.

A major undercurrent to the discontent expressed in these contestations was the alienation and exclusion felt by many from what purported to be public spaces. One apt response by (Rhodes Must Fall and) Fees Must Fall was to make universities' administrative centres sites for occupations, primarily because they were at the heart of the regulatory regime being challenged. Although these occupations undermined the ordinary functioning of those spaces, as, if not more, effective disruption could take place through occupying other spaces: most notably, entrances and exits to campuses. In discussing both Rhodes Must Fall and Fees Must Fall, several interviewees mentioned gatherings at entrances and exits which disrupted access to and from Wits and UCT as a whole, alongside the occupation of the administrative buildings. This suggests that the occupation of administrative buildings was motivated not solely by practical considerations focused on disruption. It begins to tease out important spatial contrasts between the occupations of different sites: ranging from universities' administrative buildings, in which public seminar spaces were held at Wits and UCT; to locations within and around universities, focused on disrupting overall access; to the gathering around public buildings (Luthuli House, Parliament, and the Union Buildings).

Three significant aspects of the occupations within universities emerge. First, the administrative buildings were the metaphorical heart from which fundamental

aspects of institutional culture were disseminated. This made them a key site for challenging the prevailing regulatory regime, as well as constructing a new one. Second, and relatedly, these buildings became the locations for contestation around competing manifestations of power. This occurred through their being renamed by the occupiers, independent of any officially sanctioned process. Bremner Building at UCT was renamed Azania House during Rhodes Must Fall, and Senate House at Wits was renamed Solomon Mahlangu House during Fees Must Fall. Moreover, it occurred through public seminars being held to develop collective demands and a manifesto; and through key individuals being invited into, or excluded from, these buildings. It also took place through specific interactions: including Wits' vice chancellor, Professor Adam Habib, sitting on the floor of Solomon Mahlangu House with the occupiers; and Wits' Council's Executive Committee having a meeting in front of students for the first time.[9]

Third, one important facet of (Rhodes Must Fall and) Fees Must Fall was the construction of a new, arguably more participatory praxis within the emerging collectives. This praxis emphasised open participation and involvement, as well as flat or horizontal leadership structures; as opposed to the representative governance model implemented through University Councils and SRCs. This praxis was built directly parallel to the prevailing hierarchies. Thus protestors were challenging the prevailing regulatory regime and presenting alternative ways of regulating; while organising their challenge in a way which sought to realise the principles for which they were lobbying. This organisation of the collective, together with the inauguration of public seminar

[9] See fn 6.

spaces, was an experiment in a new way of regulating a range of issues, including university fee decisions.[10] Furthermore, this re-organisation took place within the administrative centres of the prevailing regime, during their occupation.

Another dimension to this reconstruction is its exploitation as a means of undermining established power structures, including SRCs. One prominent critique of some of the solutions proposed by these new structures, especially to the lack of transformation at universities, was that key advocates engaged in what Professor Habib referred to as '*…an abstraction from institutional power that limits one's ability to understand both the possibilities and the limitations of the moment*'.[11] This could include a failure to engage with the trade-offs necessitated by policy decisions, regarding both transformation and university fee decisions. With respect to remedying the lack of transformation, Professor Habib noted that several solutions emanating from Fallists already constituted '*policy and practice'* at certain institutions, but had not achieved the desired results.[12] One response might be, though, that major institutional actors (including vice chancellors) adopted overly conservative estimates of what was feasible. Here, too, it seems that significant aspects of the ensuing '*ferocious struggle for advantage*' played out along the lines detailed in section 4 of Chapter 2, including the clash between social justice activism and responsible administration. These machinations carried over into the settlement.

[10] Cf. fn 1 in Chapter 2.

[11] Ibid fn 55 in Chapter 2.

[12] Ibid.

3. A Recalibrating Settlement

The protests challenged established modes of engagement in the regulatory space of university fee decisions, implicating the resources of organisational capacity and authority. Chapter 1 alluded to the disruptive challenges reconfiguring aspects of authority within this regulatory space, even though state law on university fee decisions did not change. Further insight into this paradox can be garnered from teasing out the recalibration which the protests triggered.

3.1 Undermining Existing Authority

Disruptive protest undermines existing authority, partly through compromising established procedures. SRCs often found themselves in invidious positions; especially given their constituents' frequently having multiple, overlapping affiliations. More broadly, the protests raised questions about which authorities can meet what demands. And, relatedly, what the legitimate targets are when advocating demands. Each of these points will be developed in turn.

SRCs are recognised within university governance structures as the authorised representatives of students. Several interviewees noted that Rhodes Must Fall and Fees Must Fall increasingly called this into question. By the DHET's Summit in October 2015, non-SRC bodies such as Rhodes Must Fall were included alongside SRCs as organisations to be consulted regarding students' views. Mx Naidoo recalled in an interview insisting with certain organisers of the Summit on the inclusion of these new organisations, because '*…you can't just have SRCs...students are critiquing SRC's as the only legitimate expression of student interests. There is a student movement emerging*.'

More starkly, Mr Chikane recalled in an interview that there was:

> *…this huge wave going across the country of Fees Must Fall trying to delegitimise the SRC…Fees Must Fall leaders come out saying: you should follow us…we should be recognised as an authority for students, more than* [SRCs]…*You have* [Dr] *Max Price* [UCT's vice chancellor, who decided] *to no longer discuss student issues with the SRC. And rather negotiate with the student protestors, because he realised that they hold a lot more legitimacy, in the eyes of students, than the SRC.*

This could have stemmed partly from Rhodes Must Fall and Fees Must Fall disrupting SRC's capacity to operate normally, including having elections, meeting, and engaging with university management and students. It also extends to controlling what Mr Chikane referred to in an interview as the narrative around the protests, particularly once Fees Must Fall had become a popular, national movement. Yet under the Higher Education Act (1997) and individual university statutes, SRCs remained the bodies authorised to represent students within university governance structures. This shift could have stemmed partly from the more general disaffection with representative democracy which characterised Rhodes Must Fall and Fees Must Fall; coupled with both of those movements presenting alternative power bases to those who had unsuccessfully contested SRC elections.

It would be a false dichotomy to analyse the attacks on SRCs' legitimacy as either a deliberate attempt to create an alternative power base, or a spontaneous, people-driven experiment in more participatory democracy. Given the plethora of organisations that moved in and out of Fees Must Fall, together with the various divisions which ensued, it is possible that there were both deliberately perpetrated attacks on SRC's legitimacy, and a groundswell of dissatisfaction with how university

fee decisions were being taken. This groundswell raised problems of its own, though, as Professor Everatt captured in an interview (referring to events in 2016, too) using the following hypothetical example:

> *Part of the problem is simply that 'the students' are not the students. There are multiple bodies of students. Deeply divided. The more political they are, the more divided they are. And the more they are terrified about not being as radical as…other students… So when you negotiate…you have 5 or 6 negotiating rooms. Run from room to room saying: Will you sign off? Have they signed off? No. Well then I won't. Have they signed off? Well they're sell-outs. It's this endless attempt to get students to say: 'yes, we agree to this and won't shift; even if we take some heat from a more political grouping who say we're sell-outs.*

This reinforced the difficulty of determining who needed to be consulted regarding university fee decisions. It also called into question how that engagement should take place. On one level, this came down to a clash between what Professor Habib referred to in an interview as a '*politics of spectacle*', and what others would argue were (at least partially) successful critiques of the prevailing regulatory regime. Spectacles could shut down any debate beyond the presentation of, and response to, specific demands. They could also lead to conflicting perceptions of who had been allowed to speak, and who had been heard. Professor Habib described this as taking place through people being '*howled*' – booed, shouted down. A DHET official, speaking about the DHET's Summit, noted in an interview that:

> *…student voices were the ones that were heard almost continuously. Nobody else really had a chance to speak. And yet, everyone accused the* [MHET], *the* [DHET] *and the vice chancellors…of never listening…Part of that 'not listening' was…: 'if you do not accept our point of view as the truth, you're not listening to us'…it was an interesting change in the discourse.*

From Mx Naidoo's perspective, the critique from the students was directed at their being summoned to a conference venue to be addressed by authorised representatives on one issue (transformation, rather than decolonisation), while another issue (fee increases) was boiling over.

More broadly, the contestation around who must be consulted, and how, speaks to who could meet which demands. This tied together disruption, authority, and organisational capacity, because the ensuing disruptions were organised with a view to undermining established processes and authority. In response, the larger organisations affected by these disruptions acted to bolster their authority, including through undermining the organisational and logistical capacities of protestors. Partly because of their elevated profile, Wits and UCT may have been appealing targets for protest given the national profile which could be garnered from shutting them down. Relatedly, universities may have been a target for certain social justice activists because they saw them as emanations of the state.[13] This made them targets because their public status was undermined by perpetual fee increases; and because the perverse rationing indicated that the state and universities were failing to keep higher education sufficiently accessible. A more calculated, and perhaps more cynical, approach would be to note that universities were vulnerable targets. This point was made by some interviewees regarding events that transpired in 2016, but it may also apply to some of what happened in 2015.

[13] See fn 1 in Chapter 1.

A related reason for universities' becoming the sites for the 2015 protests is that they are, as several interviewees stated, microcosms of South African society. This thesis has argued that university fee decisions implicate three inter-related parties: students, the government, and university management. What each can promise, and what they can actually provide, differ significantly. Moreover, this thesis has argued that specific university fee decisions should not be considered in isolation; but rather as stemming from the interplay between all of a university's income streams, and key organizational actors. Political and regulatory power could be exercised by changing this interplay. As Professor Nieftagodien observed in an interview:

> *…the students recognised that the question of the nature of the universities, the question of free education, can only be achieved at a national level. They'll say Adam Habib must give them free education, but they know it's not possible. There are very few of them who believe it's possible.*

Pragmatically, there are benefits to making universities the focal point of the protests and disruptions, even though the issues being raised are national. Several interviewees extended this, noting that come 2016, the impact and (initial) success of Fees Must Fall made it an appealing vehicle for advancing an even broader agenda – at least, to certain actors. In turn, this possibility (and the perception of it as a possibility) could feed back into the regulatory space of university fee decisions, further complicating how the actors involved might seek to calibrate their engagements.

This recalibration was also affected by media coverage of the protests and their settlement. This coverage influenced how regulatory actors and broader society perceived developments. It could determine how major actors were perceived, and

what actions they were able to take. Professor Habib noted in an interview that this could degenerate into an irresponsible presentational politics, through increasing incidences of spectacles and through how blame was publicly assigned:

> *One of the problems that emerges…is…what I call irresponsible politics. By ANC politicians; in particular,* [ANC Secretary-General] *Gwede Mantashe. Some cabinet ministers, who were very quick to blame the vice chancellor*[s] *for increasing the fees by 10, 11%. What they don't understand is that they created the systemic conditions that forced us to make* [those] *decisions...*

This suggests that the protests and their settlement destabilised how government and university management were calibrating each other regarding university fee decisions. These public recriminations depart notably from the previous engagements between university and management: including the more recent attempts to head off the gathering storm; and prior interactions around how public universities were financed. It also raises the related question of why universities, rather than the state, were initially targeted by the protests. Professor Habib's criticism could be extended to political organisations affiliated to the ANC which advocated for free education on university campuses without challenging within their affiliations the decrease in the state subsidy provided to universities while their parent body (the ANC) was in government. At the same time, though, university autonomy (particularly with regard to university fee decisions) remained an important principle: as recorded in Education White Paper 3 (1997); and to be appealed to by a range of actors, each adopting varying interpretations and pursuing various objectives.

These intricacies indicate how fractious the regulatory space relating to university fee decisions could be; as does the contestation around the march on Luthuli House.

Moreover, the allegations and counter-allegations would have played out in the media. For the protestors, too, the media's portrayal of their cause and demands had a significant impact on what they were able to achieve. As one student activist noted in an interview, the media "*was doing its own* [thing]", including around each of the splits which occurred within Fees Must Fall. This could compound what were already difficult and politicised interactions, as a student activist observed in an interview:

> *…you'd get very uncomfortable with being associated with certain political groups… You'd be approached by certain people to do certain things…it got very uncomfortable. All of these people had power; the sort of power that we did not have. They started shaping it… The media also capitalised, and decided which direction everything should take…*

All of which adds yet another dimension to the '*ferocious struggle for advantage*' which was unfolding, this time within the constraints of established party politics in South Africa.

One final, potentially inadvertent, challenge to established authority came from the settlement. Announced by President Zuma as an agreement reached between several parties, the 0% fee increase for 2016 was applied nationally. This was probably the first time the same fee increase had been applied to all public universities in South Africa. In at least some sense, this subverted the previous, more parochial and individualised decisions made in each University Council. True, key personnel (including vice chancellors and chairs of council) had attended the meeting prior to this agreement being announced. Moreover, the agreement was implemented through each University Council meeting and deciding to substitute a 0% increase for 2016 in place of its earlier decision. In addition, government had promised funding to make good (at

least most of) the difference between the 0% increase and what University Councils had previously agreed to.

Nonetheless, several interviewees stated that it would not have been politically feasible for Councils to do otherwise than implement the agreement on a 0% increase, once it had been announced. This suggests that the recalibration had partially reconfigured the University Councils' authority regarding university fee decisions; at least insofar as Councils could stand by their fee decisions despite protests about the fee increases which they set in motion. This is a departure from previous occurrences in this regulatory space, where several fee decisions had remained in place notwithstanding the '*annualised ritual*' of protest in response. Albeit that these prior protests had not been on the same national scale as Fees Must Fall. As with the attack on the authority of SRCs, this reconfiguration took place without any change in legislation, or to university statutes.

3.2 A Resurgence of Established Structures

The settlement also created space for established structures to reassert their authority. Where the protests challenged existing authorities and organisations, and inaugurated new ones, the settlement witnessed a reassertion of authority by previously established organisations. This was most notable in how the clash between social justice activism and responsible administration developed. Social justice concerns both informed, and were ultimately interpreted in terms of, budgetary constraints. Where challenges to reliance on certain financial data (or to the adoption of a responsible administrator paradigm) may have garnered some traction vis-à-vis students, SRCs, and university

management, the broader response to Fees Must Fall was ultimately channelled along budgetary lines. This is evident in universities' and the government's engaging in a discussion, in light of the student protests, around how the state fiscus (and university financial managers) could modify budgets so as to alleviate the perverse rationing of access to higher education.

Fees Must Fall appeared to have scored an initial victory over the prevailing responsible administration paradigm. The Medium Term Budget Policy Statement in October 2015 had been delivered while Fees Must Fall protests were taking place outside parliament on 21 October 2015. Despite the protests preceding this Statement, together with those occurring on the day of its delivery, all that the then Minister of Finance said regarding allocations for higher education was:

> *Honourable Members, we have been reminded this past week of the challenges of financing the expansion of further education and university opportunities. It needs to be said that disruption of learning is not constructive. But Minister Nzimande has rightly indicated the need to strengthen student financing further, and to find solutions where current arrangements are inadequate.*[14]

This statement does not mention any concrete amount that the state would allocate to ameliorate the situation highlighted by the protests. Yet two days later, President Zuma convened the meeting at the Union Buildings, one outcome of which was that the state committed to providing increased funding to public universities. The forceful demonstrations under the banner of Fees Must Fall had contributed to the subversion of the ordinary, annual budgeting cycle; and (potentially) fast-tracked the

[14] Medium Term Budget Policy Statement speech by Minister of Finance Nhlanhla Nene (21 October 2015), accessed at http://www.treasury.gov.za/documents/mtbps/2015/mtbps/speech.pdf on 26 July 2017.

appropriation of additional funding for universities. As an official in the National Treasury noted in an interview, Treasury was then required to find the requisite funds (i.e. reprioritise other allocations) within the national budget. This amounted to an ultimate cost to the state fiscus of R5.7 billion for '*the funding shortfall at universities caused by*' the 0% fee increase for 2016.[15]

The subsequent budgeting for and appropriation of these funds by the state fiscus, however, occurred through previously established processes. These included extensive consultation within National Treasury, and engagement with other government departments. In a similar vein, the meeting convened by President Zuma on 23 October 2015 focused on bodies which were traditionally associated with the governance of universities. It included vice chancellors and chairs of University Councils. With respect to students, it was '*presidents of student representative councils and…of student organisations nationally*' who were invited.[16] The latter ('*student organisations nationally*') was a reference to bodies such as SASCO, rather than to movements like Rhodes Must Fall and Fees Must Fall. Significantly, this meeting took place just before the announcement of the agreement on a 0% fee increase for 2016; and within one week of the DHET's Summit, which had been attended by movements like Rhodes Must Fall alongside SRCs. Furthermore, the subsequent implementation of the agreement on a 0% fee increase ultimately took effect through individual University Councils making

[15] National Treasury's Budget Review 2016 (24 February 2016), p 77; available at http://www.treasury.gov.za/documents/national%20budget/2016/review/default.aspx accessed 10 September 2017.

[16] 'Statement by President Jacob Zuma at the conclusion of consultation with representatives of the university community', 23 October 2015; available at http://www.thepresidency.gov.za/speeches/statement-president-jacob-zuma-conclusion-consultation-representatives-university-community, accessed 4 October 2017.

new, individual fee decisions for 2016, thereby overriding their previous fee determinations. It seems as though an attempt was being made to restore the prevailing regulatory order; primarily through channelling the ripples of the Fees Must Fall protests back through previously established processes and structures. How successful this attempt was, is moot; given that the issues raised by Fees Must Fall were not fully resolved by the initial settlement.

4. Uncertain Outcomes

As much as the settlement to the protests culminated in an agreement being implemented, subsequent events and comments made by several interviewees indicated that the '*ferocious struggle for advantage*' rumbled on. This is important, since the analysis and conclusions in this thesis are based on a qualitative empirical case study that applies primarily to events that took place in 2015, and October 2015 in particular. The settlement following the protests only incompletely ameliorated the perverse rationing in access to higher education which had been one of the major triggers of the protests. What emerged was an attempt by policy makers to catch-up with an unfolding crisis; and the instilling of an *interregnum*, as the former regulatory regime was restructured, and the issues raised only partially dealt with.

4.1 Catching-up with the Crisis

Several key actors within government and university management had, by the beginning of October 2015, met to discuss the '*gathering storm*' which they foresaw. Previous policy discussions around regulating university fees and improving financial aid provisions displayed some awareness of the perverse rationing triggered by how

higher education's cost structures were operating. These and the subsequent attempts to resolve the impending crisis appear to have foundered, though. This could be partly attributed to a failure to appreciate the delicacy of the existing inter-party and cross income stream calibration. It could also be argued that some of these issues trace back to the initial attempts to transform higher education: especially the plethora of principles enunciated in Education White Paper 3 (1997); and the twin goals of expanding access and maintaining quality, while fostering institutional autonomy and academic freedom. Absent a more concretely developed understanding of how these goals and principles were to be aligned, their calibration was likely to remain subject to the vagaries of the inter-party engagement - and organisational mandates and paradigms - detailed in this thesis.

This is not to say that alternative regulation of university fee decisions was never discussed. It was acknowledged that any such regulation would need to be coupled with increased state funding to universities. Yet state funding was ultimately forthcoming in only relative terms, to enhance financial aid and through progressive redistribution in favour of Technical and Vocational Education and Training. While the agreement on a 0% fee increase for 2016 contributed to the aversion of more protracted demonstrations, the issues which Fees Must Fall highlighted had not been resolved. Protests continued in November 2015, including around insourcing and merging into the call for free, decolonised, quality, public, African universities. These shifting demands highlight how the 0% increase did not address all of the issues which were being raised. Even on the question of university fees, a student activist commented in an interview that '*…2015 was definitely a fail…We said fees must fall, not fees must pause…*'.

Further protests occurred in 2016, albeit in a much more confrontational and politicised way. This could have been another instance of the '*annualised ritual*' of protests around fees; albeit that these disruptions sought to pick up where Fees Must Fall 2015 left off. While the necessity of responding to students' predicament had been broadly acknowledged, the responses had been, for the most part, to make promises and commitments: with universities implementing a 0% fee increase for 2016, alongside other measures; and government promising additional funding for universities. Further uncertainty about future university fee decisions was instilled through discussions about the most appropriate regulatory regime for university fee decisions being transposed to a range of newly established fora.

4.2 *Interregnum*

These developments speak to the fragility of the settlement, suggesting that the recalibration established towards the end of 2015 was unlikely to be lasting. The new fora to which debates about the appropriate regulation of university fee decisions were transposed were inaugurated primarily by the government. Chronologically first on this score was President Zuma's establishment in October 2015 of a task team to look into, and make recommendations concerning, the short term funding challenges facing higher education. Reporting back at the end of November 2015, the recommendations impacted on government's and universities' budgets for 2016 (by triggering reprioritisations by the state fiscus of the National budget, and through university's re-evaluating their projected cash-flow for 2016), as well as altering how university fee decisions were enforced (in terms of certain exemptions being conferred, as discussed

in section 2.1 above).[17] On 14 January 2016, President Zuma announced '…*a commission of enquiry into free higher education in South Africa*'.[18] It was several months before this Commission began its work, and it was due to report back in August 2017. In addition, the MHET in April 2016 established a Ministerial Task Team '*with a mandate to determine and advise on alternative financing and operating models for funding poor and "missing middle" students'*, which published its report in November 2016.[19] Relatedly, the Council on Higher Education (a statutory body) released a publication regarding student funding in March 2016.[20] USAf also entered the fray, convening a special board meeting on 12 December 2015, following which a report was released '*on member's support for quality and increased access to higher education, along with financial support for poor students*…'.[21]

One key outcome of the protests and their settlement was enhanced student participation in university fee decisions. As a university management official and several other interviewees noted, Fees Must Fall made it clear that student voices had to be heard on this score. One reading of how this was done is that the recalibration channelled these voices back into established processes. This rippling out, then channelling back, suggests that the regulatory space of university fee decisions may be governed by fairly stable and residual processes. For all their flaws, the fora established

[17] See 'Communique on the decisions made by government as announced by the President of South Africa in the January 8th Statement' (13 January 2016).

[18] S Booysen (fn 4 in the Introduction) 324.

[19] 'Report of the Ministerial Task Team to develop a Support and Funding Model for Poor and "Missing Middle" students' (14 November 2016), 30.

[20] See 'Kagisano Number 10 – Student Funding' (March 2016), available at http://www.che.ac.za/media_and_publications/kagisano-series/kagisano-issue-number-10-student-funding, accessed 27 July 2017.

[21] S Booysen (fn 4 in the Introductions) 324.

by the Higher Education Act (1997) had remained mostly unchanged. Furthermore, although their legitimacy was attacked, these bodies retained the law's and government's imprimatur. This is most evident in who drove the consultations leading up to the agreement on 23 October, and how this agreement was implemented. As analysed in section 2.1 above, bodies such as USAf played a prominent role in these engagements, as did the DHET and the MHET. Similarly, SRCs and Council chairs were consulted at key points.

Two dimensions to the Fees Must Fall protests and their settlement may explain part of this. First, while Mr Chikane, SASCO and possibly even Rhodes Must Fall '*realised that Fees Must Fall was bigger than people realised*', as Mr Chikane stated in an interview, established structures were still some of the important conduits for Fees Must Fall's expanding mobilisation of students. National bodies such as SASCO, student organisations affiliated with major political parties, and SRCs comprising various combinations of these fora, to return to a quote from a student activist, '*had power; the sort of power that we did not have*'. This can be seen in the interplay between these organisations, including with their parent bodies; and in the role which Mr Chikane ascribed to SASCO, at least up until the agreement on a 0% increase was announced. How regulatory insiders and outsiders grafted onto each other was, therefore, an important dynamic. It meant that established structures would play a role in the ensuing recalibration. Nonetheless, insiders were not always able to insert themselves meaningfully into a process that incorporated considerable grassroots mobilisation.

Second, the response to the disruptions drew together the other two major constellations of actors relevant to university fee decisions: university management, and government. Just as Fees Must Fall saw increased intra- and inter-campus collaboration amongst students, academics and university staff; so the factors driving it and the ensuing protests fostered closer inter-university engagement. The elevated role played by USAf is a prime example of this. Similarly, the increased interaction between vice chancellors and government – primarily through USAf, the Presidency and the DHET – reinvigorated elements in the established regulatory architecture. However, this seems to have remained within the space delineated by the interactions between government, university management, and students, and universities' primary income streams; particularly as these were parameterised by the governance framework detailed in the Higher Education Act (1997) and Education White Paper 3. Put differently, new engagements and interactions, as well as concentrations of actors and issues, certainly took place. They occurred, however, within the pre-existing boundaries and established architecture of the regulatory space of university fee decisions. This meant that the recalibration substantially preserved the prior contours of that regulatory space.

Conclusion:

Developing Regulatory Space Analysis and Inconclusive Recalibrations

The 2015 Fees Must Fall protests and their settlement brought to a head the complexity and contestation inherent in the financing of higher education in South Africa. In answering how these occurrences affected the regulation of university fees, this thesis has argued that the narrower and traditional understanding of how university fee decisions could be regulated (predominantly through ministerial intervention) should be superseded by an analysis of how the main organisational actors (government, university management, and students) and a university's major income streams were calibrated. This is because the interactions between these parties and income streams were fundamental to shaping the processes through which university fee decisions were made. More generally, these were subsumed within overarching budgeting processes and social justice agendas – at both the university and government levels.

How these interactions had previously occurred was substantially disrupted by the 2015 protests and their settlement. This disruption traversed, created, and repurposed a multiplicity of places and fora within the regulatory space. It led to a noticeable recalibration within this regulatory space, with the initial disruptions being channelled back through established processes. This arguably reinvigorated the regulatory space, while leaving its architecture mostly unchanged. The ensuing settlement partially succeeded in averting longer and more wholesale destabilisation of the prevailing regulatory regime. It did not, though, ameliorate the perverse rationing of access to higher education, or the clash between organisational mandates and paradigms, which precipitated the protests.

This thesis has applied regulatory space analysis to the October 2015 Fees Must Fall protests in South Africa, and their settlement. It has shown the utility of analysing these phenomena in terms of this analytical lense: most notably, because such analysis captures important aspects of how regulatory interactions '*cascade*' through time and space; and how the regulation of university fee decisions occurs through the calibration of a range of actors and forces. In applying regulatory space analysis to these events, this thesis has developed how this conceptual tool may be used by critiquing how, in the existing academic literature, the key resources mobilized in regulatory spaces are usually identified. More traditional understandings of organisational capacity have been questioned, and it has been argued that relationships should be conceived as resources within regulatory spaces. Furthermore, the case study of the 2015 protests and their settlement shows, somewhat surprisingly, that reconfigurations of authority can take place within a regulatory space without any changes to state law occurring.

This application of regulatory space analysis to the October 2015 fee protests and their settlement, and the findings garnered from it, are significant in two ways. First, they have shown how regulatory space analysis can be applied fruitfully to phenomena outside the scope of those with which it has traditionally been associated, such as business regulation. This thesis argues that the modified version of regulatory space analysis presented here can provide an enhanced understanding of how university fee decisions were affected by those the protests and their settlement.

Second, the thesis has developed how regulatory space analysis can be utilised. It has highlighted the importance of a nuanced appreciation of how regulation is initiated, implemented, and enforced, especially given the importance of (and contestation around): how the costs and benefits of higher education are classified economically and socially; social justice activism and responsible administration; and how agency is perceived. For the regulatory space of university fee decisions, this yielded the significant finding that a calibration of actors and university income streams could be said to be regulating university fee decisions. That finding is based on an analysis of the views expressed by several interviewees, while also jarring with the common perception that university fee decisions were not 'regulated'.

This thesis has sought to analyse a series of events which triggered ramifications which are still unfolding – a point made by several interviewees. The conclusions drawn are contingent on how further developments (particularly those in 2016 and 2017) unfold. A further limitation of this research is that the interviewees from whom the qualitative data was gathered for this empirical case study were based almost exclusively within major South African cities. Most of the interviewees were, furthermore, associated with institutions that are historically white. This means that the perspective of people from less urban areas; and who had studied at, or who were associated with, historically black universities; has not been included in the data gathered. Interviewees from historically black institutions may have highlighted alternative networks and communities which also protested disruptively, but did not achieve the prominence or outcomes associated with Fees Must Fall. Similarly, their perspectives could enrich the analysis of how authority and legitimacy operated in this regulatory space.

In addition, those interviewed were predominantly elite actors: primarily, where possible, those occupying leadership positions or performing key roles in the regulation of university fees (including through their participation in the protests and their settlement). Although an attempt was made to canvass a broad array of regulatory actors; and although a number of the actors canvassed could and did speak to experiences extending beyond any official role they may have occupied; the focus on elite actors means that a significant range of experiences were not included in the data gathered. This limits the extent to which my findings can be generalised, including the more granular detail regarding interactions around specific university fee decisions. The main reasons for this limited access are a combination of this being a smaller and more contained one year research project, and initial limits in my access points in South Africa.

These limitations open up additional questions about the regulation of university fee decisions, and could be explored in further research. One major line of analysis could explore the more comprehensive data which could be garnered from engaging with these additional perspectives and experiences. Similarly, looking beyond primarily October 2015, and incorporating developments in 2016 and 2017, could provide further data regarding university fee decisions and how they were affected by the 2015 protests and settlement, thereby further elaborating the idea that regulation cascades through spaces over time. In addition, an analysis of the flow of state and university funds could shed further light on how the financing of higher education in South Africa is regulated. It could provide further insight into how the

resources of wealth and organisational capacity were utilised. This could be in respect of (whether and) how public universities receive subsidies from the state, especially given the 2016 promise by government to make good the shortfall resulting from the 0% increase; and universities' own funding flows. Another question potentially worth exploring could be what role the '*spectacles*' and radical challenges to prevailing modes of engagement play in regulating the financing of higher education in South Africa. Lastly, and relatedly, further exploration of the discourses and paradigms prevailing in this regulatory space – as found in protestors' demands and in public policy documents - could be insightful.

METHODOLOGY APPENDIX

1. Sources

The data utilised in this qualitative empirical case study were gathered primarily from semi-structured interviews with 15 interviewees, and an email exchange with one interviewee. In addition, 20 public policy documents dealing with the financing of higher education in South Africa; produced primarily between 1994 and 2015, mostly for the Department of Higher Education and Training (DHET); were consulted.

Interviewees were selected based on their involvement in, or exposure to, the 2015 Fees Must Fall protests and their settlement. Participation in university fee decisions, and prior involvement in the financing of higher education in South Africa, were also criteria for inclusion as an interviewee. Interviewees represented a range of key organizational actors, including through their involvement in: university management (five); national government (four), including the DHET (two); and student activism (three directly, three more peripherally). Direct participation in student activism included participating in protests, while indirect involvement covered engagement with student activists in common fora (such as October 6th). Certain interviewees were engaged in several roles (e.g. being a vice chancellor and sitting on the board of Universities South Africa).

Interviewees also included several academics, some of whom had sat on university Senates and who participated in subsequent debates about alleviating the funding and access crises facing public universities in South Africa. Most academically affiliated interviewees (students and academics) were associated with the University of

the Witwatersrand (Wits) and the University of Cape Town (UCT). These universities were, respectively, the sites of the initial Fees Must Fall and Rhodes Must Fall protests. Practically all interviewees (including most of the student activists) were elite actors.

Nonetheless, the data gathered were sufficient to address my key search questions as part of a one year Master's by Research. They were garnered from major systemic role players. UCT was the site of Rhodes Must Fall, and Wits (with the University of Johannesburg) of the October 6th movement. Moreover, the shutdown of Wits on 14 October 2015 arguably set Fees Must Fall in motion.

2. Interview Themes

The interviews focused on the 2015 Fees Must Fall protests and their settlement, together with university fee decisions and the financing of higher education in South Africa. Most interviews touched on further protests which continued into 2016, though, and their ramifications. The majority of interviews also canvassed historical matter pertinent to university fee decisions, and to the other protests which took place in 2015.

3. Interview Analysis

I audio recorded and transcribed the interviews. Transcriptions were loaded into NVivo and coded. The main coding themes were 'governance and regulation', 'space', and 'organisational capacity'. Sub-themes for 'governance and regulation' were 'decisions', 'norms', and 'paradigms'. 'Norms' subdivided into 'language' and 'legitimacy'. 'Organisational capacity's' sub-themes were 'fora' and 'reconstruction'.

'Space' was divided into 'disruption', 'symbolism', and 'transformation and decolonisation'.

These themes helped to elaborate empirically the conceptual lense of regulatory space analysis. They spoke to key concepts emerging from the critical literature review, addressed the main questions this research explores, and collated related observations which were originally located in discrete interviews.[210] 'Governance and regulation' was an overarching consideration for this research project, and weaved through most of the interviews. 'Space' was a similarly important dimension to the protests, their settlement, and to how university fee decisions were made. It was also central to the key metaphorical analytical tool utilised in this thesis. 'Organisational capacity' offered insight into how important interactions between key actors (government, university management, and students) unfolded, and how they were affected by the protests and settlement. It also linked with 'governance and regulation' and 'space', by tracking the challenges confronting key fora, especially around their congregation and dissipation.

4. My Approach

I conducted the interviews as guided conversations. On average, each interview lasted about one hour. I did seek clarification on points which jarred with other information I had. My goal was to make sure that I had understood each interviewee's comments, rather than probe the correctness of their views. This chimes with the interpretative qualitative orientation of my research.[211] The data was further assessed once all of the

[210] Cf. Alan Bryman, *Social Research Methods* (Oxford University Press, 2001) 398.

[211] Cf. Alan Bryman, *Quantity and Quality in Social Research* (Routledge, 1988) 46 and 52.

interviews had been completed, and further information had been acquired. This entailed reviewing the data in its totality, and cross-checking (such as against other interviews, or media publications and public policy documents), where possible. This grounded the analysis presented in the thesis, which sought to utilise the data gathered from interviewees respectfully but not naively.

I was quite fortunate in gaining access to the people I interviewed. Some of them were accessible to me through former contacts I had as a result of completing my undergraduate studies at Wits. Others were suggested to me during the course of interviews, or through other contacts which I had (i.e. there was some snowballing). Most of the people I contacted for interviews, including the interviewees, were very helpful. They were often quite forthcoming, too. I did have to change tack on a few occasions. For my contact with certain government officials, efforts were made to accommodate me but did not always result in my interviewing the person I had initially contacted to speak to. These redirections were often fruitful and insightful. I am also cognisant of my having requested interviews with a number of very busy officials (including in government and university management), at a time when these people were dealing with several pressing concerns.

BIBLIOGRAPHY

Articles

Afrobarometer Dispatch No. 65, 'South Africans Increasingly dissatisfied with their elected leaders' performance'(24 November 2015)

<http://afrobarometer.org/sites/default/files/publications/Dispatches/ab_r6_dispatchno65_south_africa_leadership_performance_24112015.pdf> accessed 16 January 2017

Black J, 'New Institutionalism and Naturalism in Socio-Legal Analysis: Institutional Approaches to Decision-Making' (1997) 19(1) *Law and Policy* 66.

Chowdhury N and Wessel R, 'Conceptualising Multilevel Regulation in the EU: A Legal Translation of Multilevel Governance? (2012) *European Law Journal* 335.

Hancher L and Moran M, (1989) 'Organizing Regulatory Space', in Hancher L and Moran M (eds.), *Capitalism, Culture and Regulation* (Clarendon Press 1989).

Jonnergard K and Larsson U, **'**Developing Codes of Conduct: Regulatory Conversations as Means for Detecting Institutional Change' (2007) 29(4) *Law and Policy* 460

Lange B and Cook C, 'Mapping a Developing Governance Space: Managing Drought in the UK' (2015) *Current Legal Problems* 1

Morgan B and Yeung K, *An Introduction to Law and Regulation. Text and Materials* (Cambridge University Press 2007)

Scott C, 'Analysing Regulatory Space: Fragmented Resources and Institutional Design' (2001) *Public Law* (summer) 329

Times Higher Education World University Rankings 2016 - 2017 <https://www.timeshighereducation.com/world-university-rankings/2017/world-ranking#!/page/0/length/-1/sort_by/rank/sort_order/asc/cols/stats> accessed 24 July 2017)

Wits University, 'Presidential Task Team's Recommendations on Student Funding' (18 December 2015)

<https://www.wits.ac.za/news/latest-news/general-news/2015/2015-12/presidential-task-teams-recommendations-on-student-funding.html> accessed 26 July 2017

Blogs

A Habib, 'Mcebo Dlamini no longer SRC president or member' (4 May 2015)

<http://blogs.wits.ac.za/vc/2015/05/04/mcebo-dlamini-no-longer-src-president-or-member/> accessed 2 August 2017.

--'Opening the conversation: Accelerating transformation for an inclusive and competitive Wits' (21 May 2015)

<http://blogs.wits.ac.za/vc/2015/05/21/opening-the-conversation-accelerating-transformation-for-an-inclusive-and-competitive-wits/> accessed 20 July 2015

Books

Baldwin R, Cave M and Lodge M, *Understanding Regulation: Theory, Strategy and Practice* (Oxford University Press, 2012)

Booysen S (ed), *Fees Must Fall: Student Revolt, Decolonisation and Governance in South Africa* (Wits University Press 2016)

Bryman A, *Quantity and Quality in Social Research* (Routledge 1988)

--*Social Research Methods* (Oxford University Press 2001)

Castells M, *Networks of Outrage and Hope: Social Movements in the Internet Age* (Polity Press Second Edition 2015)

Habib A, *South Africa's Suspended Revolution: Hopes and Prospects* (Wits University Press 2013)

Haines F, *The Paradox of Regulation* (Edward Elgar 2011)

Jordana J and Levi-Faur D, 'The Politics of Regulation in the age of Governance' in Jordana J and Levi-Faur D (eds), *The Politics of Regulation: Institutions and Regulatory Reforms for the Age of Governance* (Edward Elgar, 2004)

King G, Keohane R and Verba S, *Designing Social Inquiry: Scientific Inference in Qualitative Research* (Princeton University Press 1994)

Lange B and Haines F, 'Regulatory Transformations: An Introduction' in Lange B, Haines F and Thomas D (eds), *Regulatory Transformations: Rethinking Economy and Society Interactions* (Hart Publishing 2015)

Pampallis J, 'The doors of education and culture shall be open: the centrality of education in the history of the ANC' in Ngcaweni B (ed), *The Future We Chose: Emerging Perspectives on the centenary of the ANC* (Africa Institute of South Africa, 2013)

Public Policy Documents and Statutes

Communique on the decisions made by government as announced by the President of South Africa in the January 8th Statement' (13 January 2016)

<https://www.cput.ac.za/storage/media_and_events/news/2016/01_jan/communique_government_decisions.pdf> accessed 6 July 2017

Constitution of the Republic of South Africa (1996)

Education White Paper 3, 'A Programme for the Transformation of Higher Education' (1997)

The Freedom Charter (1955)

The General and Further Education and Training Quality Assurance Act 58 of 2001

Higher Education Act 101 of 1997

The 'Higher Education Qualifications Framework', published by the Minister of Education under GN 928 in *Government Gazette* 30353 (5 October 2007)

Kagisano Number 10, 'Student Funding' (March 2016)

<http://www.che.ac.za/media_and_publications/kagisano-series/kagisano-issue-number-10-student-funding> accessed 27 July 2017

Medium Term Budget Policy Statement speech by Minister of Finance Nhlanhla Nene (21 October 2015)

<http://www.treasury.gov.za/documents/mtbps/2015/mtbps/speech.pdf> accessed 26 July 2017

Meeting of the Portfolio Committee on Higher Education and Training (16 November 2016), at which South Africa's Statistician-General gave a presentation titled 'Financial statistics of Higher Education Institutions 2015'

<https://pmg.org.za/committee-meeting/23682/> accessed 16 March 2017

The National Development Plan 2030 (adopted September 2012)

The National Qualifications Framework Act 67 of 2008

National Student Financial Aid Scheme Act 56 of 1999

National Treasury's Budget Review 2016 (24 February 2016),

<http://www.treasury.gov.za/documents/national%20budget/2016/review/default.aspx> accessed 10 September 2017

Report by Higher Education South Africa, 'Tuition Fees: Higher Education Institutions in South Africa' (February 2008)

Report of the Ministerial Committee on the Review of the National Student Financial Aid Scheme (January 2010)

Report of the Ministerial Task Team to develop a Support and Funding Model for Poor and 'Missing Middle' students (14 November 2016)

Report of the Working Group on Fee Free University Education for the Poor in South Africa (October 2012)

Statement by President Jacob Zuma at the conclusion of consultation with representatives of the university community (23 October 2015)

<http://www.thepresidency.gov.za/speeches/statement-president-jacob-zuma-conclusion-consultation-representatives-university-community> accessed 4 October 2017

Statute of the University of the Witwatersrand, as published in *Government Gazette* No 23132 (15 February 2002) and *Government Gazette* No 26350 (14 May 2004) respectively

University of Cape Town's Institutional Statute (as at October 2013)