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The Inclusion of Economic Impact as an Essential Service: The Shifting Governmentality of Labour Relations in Canada

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Abstract

Building off of the theoretical framework of cultural political economy developed by Bob Jessop, this paper will combine critical semiotic analysis with an evolutionary and institutional approach to political economy to examine how the governance of the labour market in Canada has shifted following the global recession of 2008-2009. In particular, this paper will investigate if the increasing propensity of the Canadian Government to use back-to-work legislation to intervene in the collective bargaining negotiations in 2011-2012 reflects a new mode of governance towards labour relations. Following the 2007 decision by the Supreme Court of Canada that the "freedom of association guaranteed by s. 2(d) of the Charter includes a procedural right to collective bargaining," the justification for the use of back-to-work legislation was broadened to explicitly include economic impact. Toward this end, Labour Minister Lisa Raitt noted in October 2011 that the Federal Government's decision to intervene in collective bargaining is increasing driven by economic concerns and that she is considering changing labour code to include the impact of work stoppages on the national economy in the category of essential services. Through examining the shifting governance of labour relations in Canada, my paper will both further develop the emerging theoretical framework of cultural political economy and determine how the broadening of essential services to include economic impact affects the governance of the labour market in Canada.

Introduction

Within the last year, the governance of the labour market in Canada has begun to tighten and to become more disciplined, as illustrated by two recent statements made by Canadian Cabinet Ministers. First, on October 21, 2011, Labour Minister Lisa Raitt mused that she is considering revising the Canadian Labour Code to broaden the definition of "essential services" to include the impact that a work stoppage would have on the "national economy" as a justification for introducing back-to-work legislation. Following the second rejection of a collective agreement by unionized flight attendants that was negotiated between the Canadian Union of Public Employees [CUPE] and Air Canada, Minister Raitt referred the matter to the Canadian Industrial Relations Board to stop a strike and threatened that she would introduce back-to-work legislation if strike did occur. In explaining her rational for intervening in these labour negotiations, Minister Raitt argued "when we see there's effect on the national economy, we introduce an act in Parliament to ensure there's not a work stoppage ... Our code is specific that it has to be health and safety in order to avoid a work stoppage ... but we are seeing more and more this notion of the economy" (Quoted in CBC News, 2011a). Both the intervention and the statements by Minister Raitt signified a chilling effect on the governance of the labour market in Canada; through its increased willingness to intervene within labour

negotiations if it deemed the work stoppage would have a negative impact on the national economy, the Canadian government signaled a shift in labour market governance that seeks to circumvent collective bargaining.

Second, in the 2012 Federal Budget, the Canadian government introduced reforms to the Federal Employment Insurance [EI] program that would change the definitions of both "suitable work" and "a reasonable job search," and increase pressure upon unemployed claimants to move into paid employment. While the final regulations will not be introduced until 2013, the government began releasing details of the changes in May 2012 that suggests how the reforms will take shape. Toward this end, Finance Minister Jim Flaherty commented on the nature of the future regulations and the privileged role that paid employment has for the Canadian government by stating that "there is no bad job, the only bad job is not having a job" (quoted in Canadian Press, 2012). As illustrated by this comment, the proposed changes to the EI program are directly embedded within a broader neoliberal discourse of employability that positions paid employment as the sole mechanism to achieve social integration and cohesion. Through tightening access to EI and enhancing the government's ability to compel unemployed claimants into an expanded scope of paid employment that are less conditional on existing skills or historical wages, these proposed changes are both grounded in, and reinforce by, the perception that the condition of unemployment reflects a "personal defect of the unemployed" (Overbeek, 2003: 27). In this way, paid employment becomes positioned as a panacea for all social ills and the unemployed become positioned as flawed individuals that need to be forced to become 'productive' members of society.

As these two examples illustrate, key policy actors are using both discursive and material processes to shape how the labour market and labour relations in Canada are governed. On the one hand, by expanding the justification for the use of back-to-work legislation and reinforcing the privileged role of paid employment, the Canadian state is promoting a discourse of governance that positions citizens as workers and subsumes their existence within the economic imaginary of the national economy. On the other hand, by directly intervening in more forceful manner, both at an earlier stage of labour negotiations and in moving the unemployed into paid employment, the Canadian state is signalling an increased willingness to use material power to establish the existence of the dominant economic imaginary. Importantly, these two factors interact in a constitutive way to shape the evolution of governance and the operation of power. In this way, neither discursive nor material power can be privileged in holding a higher degree of analytical ability and the interrelatedness of both aspects is critical to understanding how and why a particular mode of governance is promoted and sustained (Jessop and Oosterlynck, 2008: 1156-57).

Toward this end, this paper combines insights from poststructuralism and critical political economy to analyze how discursive and material power is being used by state actors to govern the labour market and labour relations in Canadian society. First, this paper provides an overview of the key elements of this theoretical approach to demonstrate how discursive and material power is used to shape the formation and the entrenchment of socio-economic governance. Second, the paper details how the mode of governance of the Canadian labour market became sedimented in the 1990s-2000s and explores the degree to which the policy window opened for more substantive

reforms in the late 2000s. Third, the paper examines the increased propensity of the Canadian state to use back-to-work legislation to intervene in labour negotiations in order to discipline trade unions and weaken the practice of collective bargaining in Canada. Following this discussion, the paper concludes by an initial examination of changes to EI legislation announced in May 2012 to detail how these proposed revisions are embedded within a broader neoliberal discourse of employability and practice of governance.

Discursive Power and Socio-Economic Governance

Understanding the practice of socio-economic governance requires an analysis that includes, and takes seriously, the role of discursive power. Importantly, ideas serve a meditating role between different components in society, smoothing over conflicts, and enhancing the perceived legitimacy of dominant social forces. In this way, ideas and discourse play a central role in shifting a system of governance principally defined by coercion into one supported by consent and acquiescence, in which "the power basis of the structure tends to recede into the background of consciousness" (Cox, 1996b: 99). By using different institutions within society to shape and define the consciousness of the public through transmitting values, lifestyles, cultural orientations, and behaviours, the dominant actors are able to present their particular interests as the general interest of the society (Cox, 1996a: 126-127). That said, the capacity of competing ideas to shape policy debates is principally limited by the particular focus and scope of each individual group. As noted by Cox, this particularity reflects the division of ideas into two principal components, intersubjective meanings and collective images of social order: "whereas intersubjective meanings are broadly common throughout a particular historical structure and constitute the common ground of social discourse (and conflict), collective images may" differ between competing social forces within a society (1996b: 99). In order to influence the outcome of a broader policy debate, these collective images--reflecting the particular interest of any given group--must be renegotiated and reinterpreted as a general interest for the entire system. To a large degree, this reflects the idea of sedimentation proposed by Bob Jessop, which "covers all forms of routinization that lead, *inter alia*, to forgetting the contested origins of discourse, practices, processes, and structures ... [and] gives them the form of objective facts of life, especially in the social world" (2009: 340). By analyzing the role of discursive power in shaping socio-economic governance, this paper seeks to contribute to the developing theoretical framework of cultural political economy (Best and Paterson, 2010a; Fairclough, Jessop and Sayer, 2004; Jessop, 2004; Jessop, 2010; Jessop and Sum, 2001; Sayer, 2005; and Sum, 2009).

However, being attuned to the role of semiosis, or the the intersubjective production of meaning, cannot privilege discourse as an explanatory factor over the role that material power also plays in shaping socio-economic governance. Rather, analysis must be cognizant of the manner in which material and discursive power interacts in a constitutive fashion to shape the practice of governance in an evolutionary fashion (Jessop and Oosterlynk, 2008: 1160). In other words, discursive and material power must be understood as separate, but interrelated, factors that cannot be reduced into each other, in that "culture gives meaning to and becomes embodied in concrete

institutions, practices and rituals but cannot be reduced to those material effects .. [and] forces us to consider the mutual implication of the ideal and the material" (Best and Paterson, 2010b: 18). As such, the analysis of the impact that discursive power has on the practice of socio-economic governance must be grounded in the interrelated and the overlapping nature of both semiotic and extra-semiotic factors.

For example, the nature of socio-economic governance within advanced capitalist economies must be understood within the context of globalization and the restructuring of the global political economy that has been occurring since the 1970s. However, a distinction must be made between the material processes of globalization, principally defined as the accelerated growth of transplanetary and supraterritorial connections between people (Scholte, 2005: 61), and the competing political projects that have been promoted by different social forces, such as neoliberalism. Despite the significant influence of neoliberalism in defining how globalization has unfolded, this relationship is neither inevitable nor inherent. Nevertheless, the social transformations engendered by the processes of globalization promote, and are promoted by, a "discourse of governance that stresses the efficiency, welfare and freedom of the market and the actualization of self through the processes of consumption" (Gill, 2003: 119). Characterized by a substantial expansion in both the type and the scope of social relations identified as commodities, as well as the new structural conditions of transnational accumulation and production, this new discourse has strongly influenced debates over socio-economic governance at both the national and international levels. Global in nature, these structural changes have penetrated the negotiations surrounding socio-economic reforms, as different social forces seek to establish a policy framework that both promotes and reflects their particular worldview.

In this way, neoliberal actors have successfully promoted a discourse of fear since the late 1970s that asserts welfare systems will not survive unless governments focus upon questions of efficiency, competition, personal responsibility, and innovation. To a large degree, they accomplished this narrowing of the policy debate through the introduction of flexibility as a defining concept to frame both the perceived challenges posed by globalization and the best practices that need to be adopted in order to meet those challenges. Advocates for greater flexibility draw upon the "spectre of 'global competition'" (Scholte, 2005, 302) to promote an understanding of globalization that is premised upon the ability and willingness of transnational corporations to relocate their operations to the areas of lowest cost. Consequently, these same actors maintain that governments must create a flexible business environment, by adopting pro-market regulations, for a country to achieve economic success. As such, the range of viable policy options open to governments seems to narrow; by accepting the premise of capital mobility, governments also accept a policy model of competitive deregulation geared towards making their economy more attractive to globalized investors (Rose, O'Malley, and Valverde, 2006, 91-92). Over the last 40 years, successive governments in most advanced capitalist economies have adopted this neoliberal mode of governance and have implemented pro-market reforms that emphasize flexibility.

However, the global economic and financial crisis of 2008-2009 (re)politicized the practice of socio-economic governance. The increased volatility of financial markets following the collapse of Lehman Brothers in September 2008 resulted in substantial losses for major investment commercial banks in both the United States and Europe. As

the financial crisis began to affect other economic sectors and develop into a global recession, the debate shifted towards implementing broad-based economic recovery packages that seemed to signify a variation in the dominant approach governments have been taking towards economic policy since the late 1970s. For example, in the lead up to the 2008 G20 Summit on Financial Markets and the World Economy in Washington, DC, French President Nicholas Sarkozy began calling for a "new form of capitalism" and British Prime Minister Gordon Brown proposed for "a new Bretton Woods" to regulate international financial markets (quoted in Taylor, 2008). Moreover, while the Canadian economy was less affected by the global recession then other countries in the G7 (see, for example, Boivin, 2011), the Canadian government similarly adopted a series of economic recovery packages titled *Canada's Economic Action Plan* that suggest the crisis event had opened the policy window for socio-economic governance and that alternative models may be developing to challenge the sedimented practice of neoliberal governance. Nevertheless, and despite widely framed as a return to Keynesianism and a widespread acceptance of socialism by the media (see, for example, Fox, 2008, Weisbrot, 2008, and Meacham, 2009), key policy actors explicitly emphasized the temporary nature of these changes and the degree to which the underlying principles of neoliberalism remained sound. Through the use of discursive power, key policy makers in Canada are both contributing to, and are reinforcing, the emerging economic imaginary that frames the global recession as a crisis *in* neoliberalism and not a crisis *of* neoliberalism (Jessop, 2009: 347-348). To a large degree, it is within this context that recent actions taken by the Canadian government to (re)shape the governance of labour relations and the labour market must be understood.

The Sedimentation and (Re)Politicization of the Canadian Labour Market

Following the crisis of accumulation that unraveled the post-World War II regime of embedded liberalism in the 1970s, the mode of governance over the Canadian labour market entered into a period of sedimentation throughout the 1990s and 2000s. As argued by Panitch and Swartz, the expanded use of coercive labour interventions in the 1970s and the 1980s, such as back-to-work legislation and wage controls, reoriented the perception of these legislative tools for the Canadian state; whereas restrictions on collective bargaining were previously seen as temporary or stopgap measures, the expanded use created a form of "permanent exceptionalism" of direct and coercive intervention by the Canadian state (2003: 25-45). Indeed, despite "a few dramatic flashpoints of industrial conflict" in the early 1990s, governance of the labour market began to solidify under the ideological project of neoliberalism as "strikes became less common" and "many locals assumed a more prudent position" that did not systematically challenge the new mode of governance (Heron, 2012: 156). In this way, the economic imaginary envisioned by neoliberal actors became entrenched as the contested origins of these practices underwent the process of sedimentation. While challenges to this mode of governance continued, they were increasingly marginalized as fringe elements as governments and policy actors promoted neoliberal discourses in an uncritical manner (Heron, 2012: 178).

While a comprehensive account of this form of governance is beyond the scope of this paper, there are two key elements of this discourse that directly shaped how the governance of the labour market evolved during this time. First, the neoliberal discourse prioritizes a particular form of international competitiveness, which argues state regulation reduces the ability of companies to react to changing labour needs and that the state must respond by establishing an economic environment that enhances labour market flexibility (Esping-Andersen, 2000: 122). Second, this perspective assumes high levels of taxation and unemployment benefits actually perpetuate an environment of long-term structural unemployment (Hetemäki, 2000: 91-92). Contending that the deregulation of the labour market is the most efficient way in which to lower the level of unemployment, this approach prescribes

> the adoption of labour management policies that include increased resistance to and, where possible, avoidance of collective bargaining, shifting from more to less secure employment forms by using more part-time, temporary, and so-called self-employed workers, and demanding more from, while paying less to, its current workforce (Tucker, 2008: 152).

In other words, the neoliberal approach to job creation and governance of the labour market is based upon the principle of liberalizing the labour market to create a globally competitive national economy. With this discourse acting to define the realm of potential solutions for dominant policy makers, governance of the labour market in the 1990s and 2000s focused on subordinating concerns of de-commodification and social solidarity "to the demands of labour market flexibility and employability and to the demands of structural or systemic competitiveness" (Jessop, 2003: p. 39).

However, as noted above, the global economic and financial crisis of 2008-2009 acted as a crisis moment that (re)opened up the space for debate over socio-economic governance. With the adoption of the 2009 *Canada's Economic Action Plan*, which included both a wide ranging program of infrastructure spending and an expansion of social welfare payments, it initially appeared as though the neoliberal mode of socio-economic governance was under a period of critical reexamination and possible replacement. While the regulatory environment and mode of governance was not substantially shifted by the changes introduced through these 'economic recovery packages, labour activists were still cautiously optimistic that a new form of labour market governance was achievable due a landmark decision made by the Supreme Court of Canada in 2007 that ruled the Charter of Rights protected the right of public sector workers to engage in a process of collective bargaining (*Health Services and Support-Facilities Subsector Bargaining Association v. British Columbia*).

This case began in 2002, when the government of British Columbia enacted *Bill 29: Health and Social Services Delivery Improvement Act*, which enabled the government to initiate widespread privatization, transfers of service, and closures in the health sector. As well, the legislation directly targeted unionized public employees in the health sector by stripping "the existing collective agreement covering support workers of important protections in relation to contracting out, successor rights, bumping, and job retraining and placement, and prohibit[ing] future collective bargaining over these issues" (Tucker, 2008: 154). In response, the Hospital Employees' Union [HEU]

launched a court challenge to legislation in 2003. While the court case was initially unsuccessful, with the both lower courts dismissing the union claims based upon existing precedent and case law (Tucker, 2008: 155), the HEU was granted leave to appeal to the Supreme Court of Canada, which found in its favor in 2007. In this decision, the Supreme Court of Canada explicitly overruled three of their own previous decisions to "conclude that s. 2(d) of the Charter protects the capacity of members of labour unions to engage, in association, in collective bargaining on fundamental workplace issues" (*Health Services and Support-Facilities Subsector Bargaining Association v. British Columbia, para 19*). Nevertheless, while this decision established a new legal environment for collective bargaining in Canada, it was also fairly limited in scope. As noted by Tucker,

> the constitutionally protected right to bargain collectively requires the government to negotiate with its unionized employees over any proposed changes to existing collective agreements. This does not mean that the government cannot eventually pass legislation that strips rights from existing collective agreements, but such legislation must be preceded by good faith consultation and bargaining over these rights (2008: 158).

Moreover, the Supreme Court refrained from a determination on whether section 2(d) of the Charter of Rights also included the right to strike; while the Court did not preclude such a right, they also stated that such a determination was outside the scope of the present case (*Health Services and Support-Facilities Subsector Bargaining Association v. British Columbia*, para 19). Still, this decision did open up the space for such ruling in the future (Heron, 2012: 189), and it is currently the subject of three separate court challenges by the Canadian Union of Postal Workers [CUPW], the Air Canada Pilots Association and the International Association of Machinists and Aerospace Workers [IAMAW], who are all contesting the constitutionality of back-to-work legislation passed by the Federal government in 2011 and 2012.

Justifying a More Coercive Approach to Labour Market Governance

Despite this new judicial environment that is arguably more conducive to an expansion of labour rights, the material transformations during the the global economic and financial crisis of 2008-2009 gave rise to a new 'fragile economy' discourse that was use to preclude wide ranging challenges to the practice of socio-economic governance. While I am still in the process of tracing out this discourse and analyzing the impact that it has had on shaping socio-economic governance, my initial findings indicate that it began in late 2009 by government actors in an attempt both to forestall criticism of the government's economic recovery plan and to frame the government's policies as the sole solution to offset possible economic disaster. Toward this end, Prime Minister Stephen Harper framed the fourth report on the *Canada's Economic Action Plan* on December 2, 2009 by arguing that "our Plan is working; our economy is recovering ... However, the recovery remains fragile (Office of the Prime Minister, 2009). Granted, a signal quotation does not prove the existence of a emerging discourse, but it is

suggestive of the framing technique used the Canadian government in shaping debate over socio-economic governance.

Moreover, this same discourse is repeatedly used by state actors in 2011-2012 as the Canadian government adopted more coercive measures to govern the labour market and discipline workers. For example, in explaining her rational for intervening in these labour negotiations, Minister Raitt argued "when we see there's effect on the national economy, we introduce an act in Parliament to ensure there's not a work stoppage" (Quoted in CBC News, 2011a). Similarly, in announcing the 2012 reforms to the EI program, the Minster of Human Resources and Skills Development, Diane Finley, proclaimed that "our country's economic performance continues to be strong in 2012 ... Our economic prosperity, however, depends on our ability to meet emerging and growing labour-market challenges" (Finley 2012). In this way, both Ministers are using a fragile economy discourse to justify more intrusive and coercive labour market policies in order to 'protect' the Canadian national economy. Reflecting this shift, the federal government introduced four back-to-work legislation four times from June 2011 to May 2012, which represents a higher frequency of usage since it was first introduced in 1950 by the St. Laurent government to end a nation-wide strike by Canada's railway unions. By examining these pieces of legislation, four key elements of this (new) mode of labour market governance become evident (see table 1).[2]

First, all four pieces of legislation empower the Minister of Labour to appoint any arbitrator that she deems appropriate. While this condition is fairly common in federal back-to-work legislation, it is rare within the context of arbitration processes more broadly; when two parties turn to arbitration, the typical procedure is for the two parties to jointly select an arbitrator that is appropriate to both. Granted, by itself the presence of these clauses does not necessarily indicate a more coercive or intrusive process beyond the introduction of back-to-work legislation. However, when combined with the next two elements, it may be seen as part of a systematic attempt by the federal government to increase control over the process of arbitration.

As well, the arbitrators that were appointed by the Minister further indicates a more intrusive process. For example, in the case of Canada Post vs. the CUPW, the Minister first appointed Coulter Osborne, a retired Ontario judge, and the CUPW challenged his appointment in Federal Court on the grounds that he was a unilingual anglophone and lacked experience in labour relations (Canadian Association of Postal Employees, 2011a). In this regard, the appointment of Justice Osborne echoes the attempt by the Ontario government in the late 1990s to appoint retired judges as interest arbitrators; this policy was subject to a legal challenge in 2003 and, as noted by Rose, was declared "patently unreasonable" by the Supreme Court (2008: 550), who ruled appointments must be made with "regard to relevant labour relations expertise, independence, impartiality and general acceptability within the labour relations community" (*C.U.P.E. v. Ontario (Minister of Labour)*). The legal challenge launched by the CUPW was successful in Federal Court on January 27, 2012 and the appointment of Justice Osborne was overturned. As a result, a new arbitrator was appointed, Guy Dufort, on March 13, 2012 from a list of nominees provided by both Canada Post and the CUPW.[3] Even though the new appointment, as well as subsequent appointments, seem to reflect the spirit of mediation more directly, as the appointment by the Minister was now based upon lists provided by the two parties to the dispute, the

final selection of the arbitrator is still outside of the control of the parties to the dispute, which further decreases their autonomy in the process.

Second, the first three pieces of legislation (Bill C-5, Bill C-6, and Bill C-33) define the process of arbitration as 'final offer selection,' which further constrains the scope of arbitration. In contrast to conventional arbitration, in which both parties submit their bargaining position and the arbitrator acts to find a compromise solution, final offer selection requires that both parties submit collective agreement language and limits the arbitrator to select one submission in its entirety (Geare, 1978: 374-375). As noted by Geare, the objective in proscribing final offer selection is "not to achieve an acceptable and workable solution but instead its objective is to make the cost of failing to reach a negotiated settlement so high that both parties are forced--by fear--to negotiate and reach a settlement" (1978: 374). By limiting the process in this way, the back-to-work legislation constrains and controls the process itself, further limiting the autonomy of the parties.

Third, the first three pieces of legislation (Bill C-5, Bill C-6, and Bill C-33) also includes a set of 'guiding principles' for the process of arbitration that have to be taken into account in the determination of the final settlement. Simply the inclusion of a guiding principle alone is extremely rare within back-to-work legislation, which demonstrates a strong degree of interference, and a substantial reduction of autonomy, in the process of collective bargaining. However, the nature of the principles themselves clearly establish the ideological orientation of these legislative tools. While the specific language in each piece of legislation differs slightly,[4] all three direct the arbitrator to select a final offer that will "provide the necessary degree of flexibility to ensure the short- and long-term economic viability and competitiveness" of the firm and "ensure the sustainability of its pension plan." In this way, all three pieces of legislation are directly embedded within a broader neoliberal discourse of labour governance. By enshrining the ideal of labour market flexibility as a foundational component of the arbitration process, the Federal government is able to ensure that any resulting collective agreement is directly embedded within the "cultural pattern" of neoliberalism (van der Pijl, 1989: 31). As such, these three pieces of legislation all act to reassert the mode of labour market governance under neoliberalism, which seeks to subordinate concerns of de-commodification and social solidarity "to the demands of labour market flexibility and employability and to the demands of structural or systemic competitiveness" (Jessop, 2003: p. 39). In addition, the guiding principles within *Bill C-6: Restoring Mail Delivery for Canadians Act* interfered even more directly within the arbitration process by fixing wage increases in the subsequent collective agreement at 1.75%, 1.5%, 2%, 2%, annually, for the term of the agreement, which, as revealed by the CUPW, "fall significantly below Canada Post's last offer. Canada Post's last offer was 1.9% in 2011, 2012 and 2013, and 2.0 % in 2014, well below the 3.3% rate of inflation" (2011b).

Fourth, the last two pieces of legislation (Bill C-33 and Bill 39) added a new clause that was not present in the earlier pieces of back-to-work legislation and seeks to limit the ability of any of the parties subject to the legislation to challenge it in the Court system. From Bill C-39 (though the language is identical in Bill C-33):

> 10. No order is to be made, no process is to be entered into and no proceeding is to be taken in court

> (a) to question the appointment of the arbitrator; or
> (b) to review, prohibit or restrain any proceeding or decision of the arbitrator.

Arguably, this clause was added in response to the court challenges launched by the CUPW regarding the constitutionality of Bill C-6: *Restoring Mail Delivery for Canadians Act* and the initial appointment of Justice Osborne. Nevertheless, both the Air Canada Pilots Association and the IAMAW launched court challenges in April 2012 that argue back-to-work legislation is unconstitutional. As such, it remains to be seen what the long-term implications of this clause will be or if it will be overturned by the Courts.

Disciplining and Categorizing the Unemployed

Finally, when the trend in back-to-work legislation passed by the Federal Government from 2011-2012 is coupled with the recently announced changes to the EI Program, the degree to which the governance of the labour market in Canada is embedded within a broader neoliberal discourse is further reinforced. While the final content of the regulatory changes to the EI program have yet to be introduced, there was a key clause in the 2012 budget implementation bill, *Bill C-38: Jobs, Growth and Long-term Prosperity Act*, that will enable the Canada Employment Insurance Commission to make substantial changes to the EI program through regulation:

> 608. (1) Section 54 of the Act is amended by adding the following after paragraph (k):
> (k.1) establishing criteria for defining or determining what constitutes suitable employment for different categories of claimants for the purposes of any provision of this Act;
> (k.2) establishing criteria for defining or determining what constitutes reasonable and customary efforts for the purposes of subsection 50(8);

Under pressure from opposition parties and the wider public to clarify the nature of these future regulations prior to holding a vote on the budget implementation bill, Minster Finley announced additional details regarding the question of “suitable employment” would be determined and assessed on May 24, 2012. According the Minister, the new definition of suitable employment would be assessed on six criteria: personal circumstances, working conditions, hours of work, commuting time, type of work, and hourly wage (Finley, 2012). Of these proposed criteria, the last two indicate a fairly substantial shift in the operation of the EI program. Under the existing rules, individuals on EI presently have a degree of autonomy in assessing the meaning of suitable employment and ability to reject jobs that they deem unsuitable without losing their existing benefits. However, the proposed changes seek to categorize the unemployed into three groups, based upon previous behavior in the labour market and how frequently the individual accessed EI benefits, and impose greater control on some unemployed claimants, depending upon how they are classified. According to the new regulations, workers who had a history of regular employment and some experience with the EI program will be designated “long-tenured workers” and will be granted the highest level of autonomy to determine suitable employment for themselves (Finley,

2012). In contrast, “occasional claimants,” who are defined as individuals “who have limited experience in being unemployed,” and “frequent claimants” will find their autonomy to self assess whether employment is suitable will be progressively constrained, and they will be forced to accept employment a broader range of employment, and at a lower wage level, the longer they collect EI benefits (Finley, 2012).

Through categorization of different types of unemployed workers and reorienting the focus of the EI program towards moving the unemployed into paid employment, these reforms embed the EI program further into a neoliberal discourse of labour governance in two interrelated ways. First, these reforms privilege paid employment as the sole mechanism to achieve social integration and cohesion. For example, when announcing the reforms, Minister Finley argued that they were motivated by the need

> to meet emerging and growing labour-market challenges ... [such as] skills shortages, which will be intensified by our aging population, and strong competition for skilled workers at the international level. Some of these challenges are very much present now and are hindering our ability to prosper as a country (Finley 2012).

Similarly, Finance Minister Jim Flaherty extended this argument further by stating the objectives of the changes were “to encourage more persons with disabilities to work, more seniors to work, more aboriginal people to work, including young people. We need to get rid of disincentives in the employment insurance system to people joining the workforce” (quoted in The Canadian Press, 2012). Through discursive moves such as these examples, the EI reforms become embedded within the neoliberal discourse of employability in which “re-integration into the labor market is held up as the optimal outcome for *all* adults” (Walters, 2000: 129, emphasis original). In effect, this perspective conceptualizes job creation and paid employment as the panacea for all economic ills and de-values other forms of activity.

Second, these reforms seek to reinforce the perception that the causes of unemployment are not a “a structural function of the capitalist economy” but rather “a personal defect of the unemployed” (Overbeek, 2003: 27). By dividing the unemployed into three categories, based upon their perceived capability to move themselves into paid employment, the changes explicitly forward a particular economic imaginary in which (some of) the unemployed are incapable of helping themselves so the state has to step in to assist. This particular discourse was driven home by Minister Finley, who proclaimed that

> we know Canadians *want* to work, but they often face challenges *finding* work. Now, the reasons for this are many: some individuals may not know where or how to find available jobs, while others may not be aware that their skills match needs in another industries or occupations. So what are we going to do to help unemployed workers find jobs? (Finley, 2012, emphasis original).

In a similar vein, the the Minister for Public Works, Rona Ambrose, took up this argument via twitter to declare that the “New EI changes are like 'E-Harmony' for job

seekers and employers: matching Cdns looking for work with available jobs, data, support" (2012). As such, these discursive actions seek to frame the reforms as a new 'best practice' for social policies: the state should act as "a 'gateway' or a 'pathway' back into society for people who are 'trapped'" (Walters, 2000: 128). By positioning state action as simply facilitating the ability of the socially 'excluded' to take up employment 'opportunities' through active labour market policies, the proposed changes to EI were repeatedly framed by state actors as mechanism to help connect unemployed people to existing jobs and reinforce the notion that the condition of unemployment merely resulted from an inability to succeed within a modern society.

As such, the announced reforms to the EI program, as well as the recent interventions into collective bargaining through new forms of back-to-work legislation, represent a use of both material and discursive power to shape how the labour market is governed. By categorizing the unemployed into three different groups, based upon their perceived ability to move themselves into paid employment, the reforms to the EI program are reinforced by, and contribute to, the neoliberal discourse of employability and its assertion that unemployment is caused by an inability of the employed to 'help themselves.' Similarly, by directly intervening in a more coercive manner within labour negotiations, and by limiting the process of arbitration to ensure that the resulting collective agreement prioritizes labour market flexibility and competitiveness, the recent trend of back-to-work legislation acts to reassert the neoliberal mode of labour market governance following two crisis events in the late 2000s that threatened to open up the space for new forms of socio-economic governance. Through use both material and discursive power, the labour market in Canada is being (re)inserted into the neoliberal project of neoliberal governance.

Notes

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2. The four pieces of Federal back-to-work legislation are: *Bill C-5: Continuing Air Service for Passengers Act*, which was introduced on June 16, 2011, but not passed as Air Canada and Canadian Auto Workers (Local 2002, representing customer service and sales staff) reached a deal shortly after Minister Raitt tabled legislation; *Bill C-6: Restoring Mail Delivery for Canadians Act*, which was introduced on June 20, 2011, addressed the labour dispute between the Canada Post Corporation and the Canadian Union of Postal Employees, and received royal assent on June 26, 2011; *Bill C-33: Protecting Air Service Act*, which was introduced on March 12, 2012, addressed both the labour dispute between Air Canada and the Air Canada Pilots Association and Air Canada and the International Association of Machinists and Aerospace Workers, and received royal assent on March 15, 2012; and *Bill C-39: Restoring Rail Service Act*, which was introduced on May 28, 2012, addressed the labour dispute between Canadian Pacific Railway and the Teamsters Canada Rail Conference, and received royal assent May 31, 2012.

3. On March 13, 2012, the CUPW requested that Guy Dufort recuse himself as the arbitrator in the case, despite submitting his name to the Minister, due to a conflict of interest discovered by the CUPW following his appointment: he had previous represented Canada Post in a labour dispute and had unsuccessfully run for the Progressive Conservatives in 2000 and the Conservative Party of Canada in 2008 (Canadian Union of Postal Employees, 2012). As Dufort declined to recuse himself, the CUPW launched a challenge in Federal Court regarding his appointment on April 18, 2012.

4. From *Bill C-5: Continuing Air Service for Passengers Act*: "(2) In making the selection of a final offer, the arbitrator is to be guided by the need for terms and conditions of employment that are consistent with those in comparable airlines and that will provide the necessary degree of flexibility to ensure the short- and long-term economic viability and competitiveness of Air Canada and the sustainability of its pension plan."

From *Bill C-6: Restoring Mail Delivery for Canadians Act*: "(2) In making the selection of a final offer, the arbitrator is to be guided by the need for terms and conditions of employment that are consistent with those in comparable postal industries and that will provide the necessary degree of flexibility to ensure the short- and long-term economic viability and competitiveness of the Canada Post Corporation, maintain the health and safety of its workers and ensure the sustainability of its pension plan, taking into account (a) that the solvency ratio of the pension plan must not decline as a direct result of the new collective agreement; and (b) that the Canada Post Corporation must, without recourse to undue increases in postal rates, operate efficiently, improve productivity and meet acceptable standards of service."

As there were two industrial disputes being legislated back to work by *Bill C-33: Protecting Air Service Act*, there were separate guiding principles outlined for the arbitrator to take into account for each dispute, but the only difference between the two is that arbitrator in the case of IAMAW had "to take into account the tentative agreement reached by the employer and the union on February 10, 2012 and the report of the conciliation commissioner dated February 22, 2012 that was released to the parties" (14(2)). Otherwise, the direction for both was the same: 29(2) In making the selection of a final offer, the arbitrator is to be guided by the need for terms and conditions of employment that are consistent with those in other airlines and that will provide the necessary degree of flexibility to ensure (a) the short- and long-term economic viability and competitiveness of the employer; and (b) the sustainability of the employer's pension plan, taking into account any short-term funding pressures on the employer."

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