

*BOOK REVIEW*

Mark P. Thomas. 2009. *Regulating Flexibility: The Political Economy of Employment Standards*. Montreal & Kingston: McGill-Queen's University Press. ISBN 978-0-7735-3528-2. Paperback: 32.95 CAD. Pages: 248.

Reviewed by Bryan Evans  
Ryerson University

Thomas has made an important contribution to the literature on labour policy and its correspondence to capitalist economic development. He skilfully applies a political economy analysis to the specific case of employment standards regulation in Ontario, though this is situated in a larger global context. That he chose to deal with employment standards regulation, the effective 'collective agreement of the unorganized', is itself commendable and long overdue. This is particularly so given the relative paucity of analysis afforded this vitally important area of employment law. What makes Thomas' work immediately significant is that his subject matter is politically and practically so central to our working lives. The aggressive pursuit of flexibilization strategies by capital, begun in the 1980s, will continue as the restructuring of work progresses through the 'recovery' from the Great Recession. And, of course, it is not just employment standards regulation that is tattered but the entire Keynesian era legacy regulatory regime that remains. We need only consider the inadequacies of public pensions and the debate respecting Employment Insurance. However, the case of employment standards legislation presented by Thomas is of more general significance as it deftly illustrates the interlinked relationships between the forces leading the neoliberalization of the state, public policy and broader economic transformation. Thomas' theoretical and methodological frame could easily be applied to the full range of public policies that were at one historical moment intended to provide some modest degree of protection and redistribution but have been transformed by design and/or neglect.

In this context of a broad and incremental erosion of post-war policy interventions designed to regulate and mediate class relations, the case of employment standards takes on much greater importance as precarious employment continues its expansion. Employment standards legislation establishes a floor of minimum protections regulating working

hours, minimum wages, vacation time, equal pay for equal work, and a host of provisions governing the employment relationship of domestic and home-based workers. As the labour market restructures, these minima are becoming increasingly important. He situates the origins of labour flexibilization within the general crisis of capitalism in the 1970s. At that time, organizations such as the OECD promoted such strategies as a policy framework that would lead to reduced unemployment, increased productivity and low labour costs. In concrete terms, labour flexibilization entails enabling capital to approach labour as simply another factor in the production process by allowing employers to grow and shrink their workforces at will and at minimal cost. In this respect, Thomas provides the reader with an important conceptual lesson – flexibilization is not deregulation. Rather this is more accurately characterized as re-regulation, as the power of the state to develop and implement public policy is, in this case, used to promote market-oriented regulation. The outcome of this re-regulation of labour markets and employment arrangements is to curtail social protections and to expose workers to the discipline of market forces. Thomas captures one of the noted paradoxes of neoliberalism here. Rather than weakening the state, the process of neoliberal restructuring requires a strong state as it is by and through the state that neoliberalism is animated and advanced.

Thomas' political economy theoretical frame presents employment standards regulation in historical perspective. The evolution of employment standards in Ontario is rigorously documented by Thomas who scoured the archives for primary sources. The Ontario Employment Standards Act (ESA) was enacted in 1968 essentially as an amalgam of already existing minimum standards that had been put in place in 1940s and 1950s including hours of work, paid vacations, minimum wages and equal pay for equal work. But the Act included some new provisions such as a legislated overtime premium rate. In sum, the ESA was a century in the making and was ultimately a compromise resulting from the countervailing pressures from organized labour and the women's movement who had struggled for a legislative comprehensive minimum floor on the one hand and the arguments of the employer community, on the other hand, that such interventions undermined their ability to compete. It was these latter arguments that tended to capture the attention of political and bureaucratic policy makers. Ultimately even at its inception, the ESA ensured a significant degree of flexibility for employers given the number of exemptions it explicitly allowed and substantive provisions that either trailed or did little more than reflect prevailing business human

resources practices. The economic priorities of business sat well with the economic development ambitions of the Ontario state and together they would trump any movement toward standards too favourable to workers. However, this is not to detract from the fact that the period of the 1970s, 80s and early 90s (which included minority governments propped up by New Democrats and the NDP win in 1990), allowed for some substantive building of the ESA including new standards.

In the case of Ontario, according to Thomas, the abrupt rupture with this model arrived with the 1995 election of the Progressive Conservative Party led by Mike Harris and the start of its Common Sense Revolution. In 1996, one of the earliest interventions of the new government was to amend the ESA in several fundamental ways. The minimum wage was frozen at \$6.85; the wage protection program was eliminated thus effectively empowering employers to evade responsibility for unpaid wages and severance pay; and the time limit in which a worker can file a complaint was shrunk from 2 years to 6 months thus effectively disenfranchising workers from the protections provided by the Act, as historically most complaints were filed after the worker had left the job. In 1999 the Conservatives announced the second phase in their assault on the ESA stating that their intention to carry out a fundamental review and overhaul of the ESA in an effort to 'modernize' the legislation that the government viewed as ideologically driven and a case of over-regulation. The social protections embedded through the ESA became cast as 'red tape' serving to impede business competitiveness. The end result was a sweeping and fundamental re-writing of the ESA to better align it with the business competitiveness priorities of neoliberalism including expanding maximum working hours from 48 to 60. The Common Sense Revolution was neither hesitant nor apologetic.

Thomas has made a significant contribution with *Regulating Flexibility*. It is a must read for any one interested in the neoliberalization of labour policy. Equally important is the skilful way Thomas weaves together how the various social and political forces, and the imbalance of power between them, is understood and acted upon by the state. What Thomas has done is introduce a radical analysis of public policy and public administration that calls for some greater application to other areas of labour policy but also other policy fields.