

Not Welcome

A Critical Analysis of Ableism in Canadian Immigration Policy from 1869 to 2011

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Abstract

A Foucauldian discourse analysis of Canadian immigration policies and state practices reveals the ableist foundations of the Canadian nation-state. Throughout much of Canadian history, people with disabilities have been excluded through the immigration system. People with disabilities are often times prohibited from obtaining legal status, and even when status is obtained, it is often marked with precariousness. In order to contextualize ableism in the immigration system, I argue that borders are socially constructed, serving to segregate the labour market and to create precarious circumstances for workers in the contexts of capitalism and neoliberalism. These foundations of the Canadian immigration system, which have existed throughout Canada's history and can be seen in today's policies, serve to pathologize, playing a major role in the marking of bodies as disabled. Furthermore, immigration policies construct people with disabilities as societal burdens who are unable to contribute to the community.

Keywords: Ableism, immigration, racism, deportation, excessive demand, pathologization

Pas bienvenus:

Une analyse critique des politiques d'immigration discriminatoires basées sur le handicap de 1869 à 2011

Résumé

Une analyse du discours foucauldienne des politiques d'immigration canadiennes et des pratiques de l'état-Nation Canadien, démontre que celui-ci est fondé sur des bases discriminatoires contre les personnes handicapées. Tout au long de l'histoire du Canada, les personnes handicapées ont été exclue par le système d'immigration. Les personnes handicapées sont souvent prohibées d'obtenir un statut légal, et même si ce statut est obtint, il est souvent de

nature précaire. Afin de contextualiser la discrimination basée sur le handicap dans le système d'immigration, je maintiens que des frontières sont érigées socialement pour séparer le marché du travail et pour créer des conditions précaires pour les travailleurs au sein du capitalisme et du néo-libéralisme. Ces bases du système d'immigration Canadien, qui ont existées à travers l'histoire du Canada, et peuvent être perçues dans nos politiques présentes, sont utilisées pour pathologiser, et jouent un rôle majeur dans la construction de certain corps en tant que handicapés. De plus, les politiques d'immigrations présentent les personnes handicapées comme des fardeaux sociétaux qui sont incapables de contribuer quoi qu ce soit à la communauté.

Mots Clefs : Discrimination basée sur le handicap, immigration, racisme, déportation, demande excessive, pathologisation

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Throughout much of Canadian history, people with disabilities have been excluded through the immigration system. People with disabilities are often times prohibited from obtaining legal status, and even when status is obtained, it is marked with precariousness, in that status may be stripped in certain circumstances. In this study, I take a Foucauldian approach to understanding the history of immigration policy in Canada as it pertains to the concept of 'disability.' With a Foucauldian approach, the basis of understanding these policies and state actions is an examination of their underlying discourses, seeing as discourses, while not deterministic, influence and shape human expression. According to Foucault, discourses are a "system of representation," "a group of statements which provide a language for talking about – a way of representing the knowledge about – a particular topic at a particular historical moment. Discourse is about the production of knowledge" (Hall, 2001, p. 72). In other words, discourses delimit knowledge that is considered legitimate and illegitimate. And within the context of the immigration system, ideas of legitimacy and illegitimacy are imposed upon migrant bodies.

A focus on discourses leads to a specific way of examining history. While history has often been conceptualized, both by Marxist and Liberal scholars alike, through what can be described as a "total history," where it is conceptualized as moving from period to period in a progressive fashion (Chambon, Irving & Epstein, 1999, p. 55). This approach is characterized by "hylomorphism," the idea of things emerging into a predetermined form, as well as "periodization," or the organization of history into stages (Ruddick, 2008). Foucault's genealogical approach counters these trends, however, and attempts to destabilize and blur the boundaries between established historical periods. Instead of seeing truth and history as

universal, where a single 'origin' can be found, this approach contends that what is conventionally seen as the truth is in fact produced and transmitted by dominant political and economic institutions. Accepting this interpretation, history can be seen as in fact heterogeneous, having many versions (or 'genealogies') depending on the perspective taken (Chambon, 1999, p. 54). I utilize this approach to examine concepts that are central to issues of immigration, such as the border, which leads to an understanding of them as social constructs and technologies that serve to segregate the labour market and increase the pool of disposable able-bodied workers so desired by capital.

With the ideas of the border and the immigration system understood as serving to delimit the 'desirable' (who are permitted entry, even if temporarily) from the 'undesirable' (who are barred or deported), I further explore how these institutions reinforce and are the result of classist, racist and ableist discourses. Indeed, the examination of the history and current circumstances surrounding the Canadian immigration system easily reveals its role in the systemic exclusion of people with disabilities from acquiring citizenship status. In this study, though, I go further and argue that the very category of disabled is constructed, or at least reinforced or contributed to, by the immigration system through this delimitation of desirable and undesirable. As Garrity (2010) states: "It is through discourse that the object becomes nameable, describable, and manifest" (p. 205). Discourses, produced and reinforced by the border, construct and contribute to the idea of the racialized and the disabled other. In this paper, I begin with an exploration of the border and the immigration system as social constructions, examining the roles they play in capitalism and neoliberalism. Secondly, I analyze how these foundations of the Canadian immigration system, which have existed throughout Canada's history and can be seen in today's policies, serve to pathologize, playing a major role in the

marking of bodies as disabled. Specifically, I argue that this process of pathologization is interlocked with discourses of race and class. Lastly, I examine a specific narrative within the immigration system that is attached to the category of 'disabled,' namely, the understanding of people with disabilities as societal burdens and as unable to contribute to the community.

Capitalism, Neoliberalism, and Borders

To understand how ableism operates through the Canadian immigration system, both today and historically, we must examine the nation-state and the borders critically, recognizing that they exist as socially constructed phenomena and serve specific roles. In fact, despite this being the supposedly new era of neoliberal globalization, the nation-state and the border have remained strong components of capitalism. Indeed, they both have served to justify and naturalize social hierarchies, ultimately constructing the very concept of the desired and undesired.

While the nuances of constructions of desirability and national belonging have shifted throughout history, the constructions themselves have not fundamentally changed in purpose (ie. as a means of reinforcing social hierarchies). Popular understandings suggest that the nation-state is being neutered by forces of globalization (Wolf, 2001, p. 178); however, there are a number of problems with this analysis. Firstly, there is a tendency to reify the segmentation of populations into nations, misrepresenting a nation's population as "labouring together for a common cause" (Sharma, 2006, p. 35). (Such reification does not reflect the truth, of course, and it ignores issues of ableism, racism, sexism, and other forms of oppression that divide and marginalize certain segments of the population within a nation [Bannerji, 2000, p. 93].) As well, the nation-state is a discursive regime that should not be considered self-evident or a natural

outcome of human development. The creation and maintenance of the nation-state and its borders are crucial to “material, existential, and ideological practices that organize the contemporary exercise of power” (Sharma, 2006, p. 1). In truth, the nation-state has had a relatively short history. The Treaty of Westphalia, signed in 1648, facilitated the development of the nation-state with the introduction of the concept of borders (Lynn, 1999, p. 161). The emergence of the modern nation-state arguably occurred in the 1800s, with the French Revolution (Godechot, 1988, p. 17). Prior to this period, the primary relationship of one's identity was to family, kin groups, or tribes, unlike today, where people identify with mappable boundaries and borders that are patrolled by soldiers (Grewal & Kaplan, 2002). A second problem with the argument that globalization neuters the state is the fact that the state has not actually withered; instead, it has taken up a crucial role in globalization. According to Harvey (2005), “we can clearly see that neoliberalism does not make the state or particular institutions of the state irrelevant . . . there has, however, been a radical reconfiguration of state institutions and practices” (p. 78). This ‘reconfiguration’ meant that the state's primary preoccupation would no longer be “full employment, economic growth, and the welfare of its citizens” (p. 11), as it was after World War II. Instead, the state's new purpose would be to facilitate the movement of capital across borders through the negotiation of trade barriers reduction and the opening of markets (p. 66). The state also serves a crucially important role in defending the newly restored class power from social movements, through direct repression and the fostering of a ‘false consciousness’ – which will be elaborated on shortly.

While, historically, capital has been relatively unrestricted, the sale of labour on the other hand has been under the control of the state. The global market of labour is structured through borders so that workers compete with other workers within each national space. Nandita Sharma

(2006) asserts that border controls reproduce and are a product of a “global regime of apartheid,” whereby one set of laws regulates national subjects, and another set of laws regulates “foreign objects” (p. 7). Sharma argues that borders are ideological boundaries, a means through which people are manipulated into believing that the nation is some sort of localized space. She defines localized space as a “home . . . which stands in contrast to all things defined as foreign or ‘unfamiliar,’” “an ideological space of belonging” (p. 10). With the belief that the nation is localized, that which is outside the nation can be considered ‘foreign’ and, thus, at a justifiably inferior position in the social hierarchy. Importantly, the author also argues that “establishing mechanisms to regulate people's movement both across and within national borders is a key aspect of producing the nationalist imagination essential to depoliticizing this privilege” (p. 49).

Sharma examines the role of borders in shaping the “circumstances through which capital can be accumulated within the territories they control” (2006, p. 49). Canada's immigration policies have a direct effect on the price and strengths of those categorized as citizens, permanent residents, or migrant workers. This migrant worker category's current inception began with the Non-Immigrant Employment Authorization Program (NIEAP) in 1973 (Sharma, 2006, p. 19). NIEAP created a category of workers that could stay for the duration of their contracts but had to leave the country as soon as the contracts ended. With no access to things that make Canadian workers ‘expensive,’ like collective bargaining rights and access to social programs, NIEAP provided employers with a post-Fordist workforce (ie. flexible and globally competitive) (p.19). It is through immigration policies that the Canadian state shapes the supply of labour in order to “be more competitive with nationalized labour markets elsewhere” (p. 50). This is necessary because labour remains the greatest variable cost of production and, thus, plays a major role in where a firm locates its sites of production. In the context of neoliberalism, with the arguably

greater competition between nation-states, Western nation-states have emphasized the procurement of new labour forces (ie. migrant workers) “in order to enforce greater restrictive conditions of employment within nationalized labour markets” (p. 50). Since the introduction of the NIEAP program, the Canadian state has increasingly shifted from an emphasis on immigrants (migrants given permanent residency) to an emphasis on temporary migrant workers. This is reflected in the proportion of migrant workers relative to immigrants. For example, in 1973, 57% of migrants recruited for Canadian labour markets were immigrants. By 1993, this proportion had dropped to 30% (Sharma, 2000, p. 20). This emphasis is the result of the fact that restricted labour makes Canada more marketable to global corporations.

We must also consider that while there may be an increasing shift in emphasis on migrant workers, the foundation of the Canadian immigration system has always been the procurement of disposable migrant workers. A key example is the recruitment of Chinese migrant workers for the construction of the Canadian Pacific Railway in the late 19th to early 20th century. Unlike the recruitment of Western European immigrants, Chinese workers were actively discouraged from settling. They were stripped of their voting rights (Elections BC, 2003) and forced to pay head taxes in order to discourage family reunification (Robert, 2005). By doing so, Chinese workers were maintained as a transient and disposable workforce, a situation that fosters the internalization of ‘otherness.’ Furthermore, this division, also contributed to by capitalist promotion and distribution of racist propaganda (Chan, 2002, p. 64), would prevent the cooperation of non-racialized and racialized workers against business interests and the capitalist structure. As can be seen, the idea of the creation of a disposable workforce has had a long history in this country.

To summarize, borders play a very specific role in capitalism historically and in today's era of neoliberalism. The very existence of migrant workers and non-status individuals in Canada indicates that border controls and immigration restrictions do not necessarily control people's mobility across borders. Instead, in the context of those that do make it past the border, such measures of control serve to make these workers vulnerable and expendable, precisely what global corporations ask for in a workforce. Anna Pratt (2005) comments in *Securing Borders: Detention and Deportation in Canada*: "The negative and coercive effects of border practices and immigration penalty should not obscure their productive and positive effects. Indeed, immigration penalty actively produces historically specific conceptions of 'the border,' national identity, citizenship, and the desirable/undesirable citizen" (p. 10). It can be seen from this quote that borders and immigration controls not only contribute to the precarious nature of non-status migrants but create the very notion of non-status migrants – people deemed undesirable. Non-status migrants are made disposable through such technologies. After workers are no longer needed (say with the end of their contracts or if they never had migrant worker contracts) they are to 'dispose' of themselves by leaving the country. Should they refuse, border controls will 'dispose' of them through deportation. Often times, these non-status individuals are people with disabilities, conceptualized as unable to contribute and, thus, considered disposable after disability emerges, barred from entry, or deported. When considering these functions of the immigration system, we must also recognize how migrants with disabilities are constructed within the system. As can be seen in subsequent sections, migrants with disabilities are further marginalized, marked as undesirable, and ultimately deported or rejected.

The Intermingling of Pathologization with Race and Class

As stated, the Canadian immigration system selects candidates based on how desirable they are, or how well they fit into Canada's national imagination. Ironically, the process of painting people with disabilities as undesirable also serves to impose the identity of 'disabled' onto people. Through recognition that identities are imposed and not natural, we avoid reifying the socially constructed category of disability. The marking of individuals as disabled is done through processes of pathologization. Pathologization refers to the conceptualization of social conditions and problems as medical conditions (Mama, 1995, pp. 17-41). Throughout Canadian history, pathologization has been a key means of obfuscating and justifying hierarchies that privilege white, able-bodied, heterosexual men.

An example of these processes of pathologization can be found in the experiences of Chinese migrants, with the space of Chinatown playing a significant role in essentializing the 'Chinese' as unsanitary and prone to disease. In 1890, during a cholera fear in Vancouver, the local press demanded that the government initiate policies targeting Chinatown. Despite there being no accounts that cholera had arisen from Chinatown, the city council designated Chinatown as an official entity in the medical health officer rounds and health committee reports. No other neighbourhoods, despite comparable sanitary conditions, would be given such a designation or have their conditions tied to an inherent racial quality. That said, conditions were indeed poor for Chinatown residents but due to no fault of their own and certainly not because of their racialized identity. The area was filled with garbage, as the government refused to provide services and sewers. Unsurprisingly, tuberculosis and other diseases disproportionately affected the 'Chinese,' but as we can see, this was a result of discrimination in service provision (Anderson, 1991, p.86-118).

Interestingly, Canada's very first piece of immigration legislation, the Immigration Act of 1869, was also justified by claims for need of quarantine and supposed fears of spreading of diseases like cholera and tuberculosis (Hanes, 2011). Not surprisingly, given the context of racism, those most suspected of carrying diseases were racialized people. Pathologization would quickly spread to areas outside infectious diseases, however. For example, in response to the migration of thousands of Black families from Oklahoma to the Canadian Prairies in the late 19th century, after the Canadian government had advertised in Oklahoma for American farmers to settle in the Prairies, the Canadian government drafted an Order-in-Council. The order stated that "for a period of one year from and after the date hereof the landing in Canada shall be and the same is prohibited of any immigrants belonging to the Negro race, which race is deemed unsuitable to the climate and requirements of Canada" (Vernon, 2011, p. 37). Black people were constructed as inherently unable to survive in Canada, given the geography and climate, in addition to 'requirements' of white Canadians. In essence, Black people as a whole were made disabled in the national imagination of Canada: they were unable to function and did not belong. While the Order-in-Council was retracted two months later for fears of affecting trade relations with the United States, the government continued with similar attempts to discourage Black immigration. These attempts were ironically framed in humanitarian terms of protecting Black migrants from the climate and prejudices. The government sent two immigration agents to Oklahoma to actively discourage those who considered leaving for Canada, warning them of "the difficulties of climate and the general prejudice that was sweeping over Canada against the negro" (Vernon, 2011, p. 37). Likewise, the medical establishment was recruited into playing a major role in the pathologization of racialized people and others. For example, the commissioner of Immigration for Western Canada offered money to the medical inspector at Emerson, Manitoba, for every Black person he rejected (Vernon, 2011, p. 37).

While claims that Black migrants would not be able to survive in the Canadian climate were born out of complete fiction, issues of functioning in Canadian society faced by people with disabilities did have some basis. However, this was not because of innate characteristics of people with disabilities. Instead, this was because Canadian society privileged and was built for the 'able-bodied.' For example, the presumption that people with wheelchairs have mobility issues because of their physical characteristics ignores the fact that the reason people with wheelchairs have difficulties maneuvering is because doors are not large enough and ramps are not available. Conversely, the built space of a society that privileges a different body would be difficult for an 'able-bodied' person to traverse. Thus, as can be seen from this analysis, the assigning of labels like 'deficient' and 'defective'¹ through the immigration system's exclusion process reinforces the making of an individual as disabled in the built and imagined space of Canadian society.

Physical pathologization also extended to mental pathologization in the Canadian immigration system throughout much of its existence. This can be seen with the deportation of 65 Chinese asylum patients in 1935. Considering the context of their departure and the hardships of migration, of racism, and of economic marginalization, many of these migrants faced significant strains on their mental health and psyches. Nevertheless, many of these individuals were incarcerated in the asylums of British Columbia and portrayed as inherently 'broken' because of race. This can be seen in medical notes, with the characterization of Cantonese-speakers as "speaking in tongues," a symptom of "some unseen pathology" (Menzies, 2008, p. 214). In essence, Chinese culture was made into a mental disease. With the pathologization of the 'Chinese,' social control - including segregation, detainment, and deportation - was justified.

¹ This terminology was used in the first federal immigration policy, *An Act Respecting Immigrants and Immigration*. "The defective class" referred to people with disabilities who could be excluded from Canada should they be found to be a potential state burden (Hanes, 2011).

Indeed, “above all else, the power of medical professionals . . . was marked by . . . their ability to remove immigrant patients by deporting them” (Menzies, 2002, p. 215). In the case of the 65, immigration investigators provided information to physicians that would be added to patient medical files in order to justify deportation through the bypassing of the restrictions pertaining to domicile status – indicative of just how precarious status can be for the disabled and racialized other. Asylum workers also actively attempted to extract information from the patients for this use (Menzies, 2002, p. 215). As can be seen, individuals with unconventional behaviours, some of which were developed as a result of social problems, were pathologized and expunged from Canadian society.

The practices of pathologization and deportation of people have continued to this day. In 2011, Audley Horace Gardner was deported to Jamaica after having been sponsored by a sister 30 years previously. He was stripped of his permanent resident status after being convicted of assault, attributed by a forensic psychiatrist to schizophrenia. A closer examination reveals that prior to his brush with the law, he had become homeless after eviction and faced deteriorating life circumstances. Despite appeals by the United Nations to stay the deportation, given the lack of support systems and family in Jamaica, the Canadian government continued with the deportation in September 2011 (Keung, 2011). This case reveals the intermingling of criminalization, pathologization, and the Canadian immigration system.

Pathologies and disabilities, given their existence as social constructs, are often arbitrary and fluid. This can be seen throughout history with the changes in definitions of who falls within these categories. The prohibited category that encompasses the immigration system's definition of who is disabled (and who is thus targeted for exclusion) has been expanded and contracted. The first federal immigration policy, of 1869, classified “the deaf and dumb, the blind, the lunatic, the idiotic and the infirmed” in the prohibited category (Hanes, 2011). Thirty-seven years later,

the classification was expanded and elaborated: "No immigrant shall be permitted to land in Canada, who is feeble-minded, an idiot, or an epileptic, or who is insane, or has had an attack of insanity within five years" (Hanes, 2011). More recently, these categories changed once again with the 1966 White Paper on Immigration calling for an updating of classifications based on current "scientific and medical" knowledge (Hanes, 2011). Problematic terms like "physical defectives, mental defectives, idiots, imbeciles, and lunatics" (Hanes, 2011) were replaced; nevertheless, "the language changed but the consequences of the legislation for people with disabilities and their families remained the same" (Hanes, 2011). The Excessive Demand clause, introduced with the first immigration act of 1869, coupled with existing requirements of medical examinations at the time, allowed state bureaucrats and medical clinicians a greater say in defining individuals as disabled (Hanes, 2011). These definitions were also rooted in classism. Indicative of the arbitrary nature of these labels, the 1906 Immigration Act stipulated that the wealthy did not have to pass medical inspection and, therefore, were never considered by the Canadian immigration system as disabled (Hanes, 2011). This case demonstrates how pathologization is both resultant from and reinforcing of the immigration system in its sorting of desired and undesired immigrants. Indeed, the very label of disabled is imposed on individuals, reifying a socially constructed category.

'Excessive Demand' and the Framing of People With Disabilities as Unproductive Labour and Burdens to Society

The label of disability also attaches specific narratives to people carrying the label. A key narrative, one prominent in the immigration system, is the understanding of people with disabilities as unproductive and burdensome to society. Pratt's (2005) argument that immigration penalty serves to define "the desirable/undesirable citizen" is especially relevant to understanding the border's effect on people with disabilities and other oppressed people (p. 10).

The border serves to mark individuals who pass through it as desirable or undesirable for a nation. As mentioned, the Canadian immigration policy focuses on the recruitment of ‘productive workers.’ This, in effect, excludes people with disabilities, who are seen as undesirable, since they are also often not conceptualized as productive workers within a capitalist system. It is important to recognize that the argument is not that people with disabilities are inherently unable to productively contribute to society, but simply that they are understood as unable by the state and by capitalists in a system geared towards able-bodiedness.

Through a discourse of dependency and excessive demand, migrants with disabilities have been defined by the Canadian immigration system as unable to contribute productively to society. Historically, Canadian immigration policy did not explicitly bar migrants with disabilities; instead, this was done latently through restrictions on individuals suspected to become dependent on the state or charities. For example, the Immigration Act of 1869 stipulated that if “... such a person is, in the opinion of the Medical Superintendent, likely to become permanently a public charge,” they are not to be permitted to enter Canada (Hanes, 2011). Although there were exceptions, such as for people with disabilities who were to be cared for by family members or who could produce evidence that they had a job or family members already living in Canada (Hanes, 2011), the demand for evidence reveals the underlying assumption that people with disabilities are unlikely to contribute to society. This inability is constructed as inherent to the individual, without questioning the fact that Canadian society, because of its ableist foundations, creates barriers for people with disabilities aiming to contribute in ways that are traditionally recognized as legitimate, such as through paid employment. For example, a disability allowance of \$800 “does not give a person much leeway to pursue her goals in life” (Dossa, 2005, p. 2532). At the same time, the many ways people with disabilities do contribute to society are often not

recognized. Dossa (2005) highlighted the experiences of Mehrun, a racialized social worker with polio, who spoke of how the agency she worked for saw her more as a client, rather than a peer, and paid her less than other workers (p. 2534).

This depiction of people with disabilities as unable to contribute to society occurs concurrently with the depiction of people with disabilities as a drain on state coffers. This representation can be seen throughout Canadian history, including the case, explored earlier, of the 65 Chinese patients who were confined in various asylums and deported to China in 1935. Before the deportations, asylum superintendent R. I. Bentley deplored “that this undesirable class should be such an expense to the country” (Menzies, 2002, p. 201). Bentley’s successor also commented that “it certainly seems to be a hardship upon the taxpayers of this Province that they should be compelled to maintain these decrepit and unprofitable Chinese lunatics” (p. 202). Administrators did not see the ‘Chinese’ as worthy recipients of public resources, nor was their forced unpaid labour recognized. The deportations were also framed dichotomously, in that the resources saved were thought to be better spent providing for ‘other’ patients. As reported by the *Victoria Daily Times* on February 11th, 1935, “the removal of these patients will allow more room for other cases” (Menzies, 2002, p. 217). It did not matter that, according to the Chinese consul, there were no institutions in China to provide care for the patients, as it was clear that the intentions of the Canadian state were never to provide care. Instead, the intentions were to maintain social control at a reduced cost for the state.

A major component of our contemporary immigration system's means of excluding people with disabilities is the “Excessive Demand” clause. Section 30 and 34 of the Canadian Immigration and Refugee Protection Act stipulates:

30. (4) Every foreign national referred to in subsection (1) who seeks to enter Canada must hold a medical certificate, based on the most recent medical examination to which they were required to submit under that subsection within

the previous 12 months, that indicates that their health condition is not likely to be a danger to public health or public safety and, unless subsection 38(2) of the Act applies, is not reasonably expected to cause excessive demand.

34. Before concluding whether a foreign national's health condition might reasonably be expected to cause excessive demand, an officer who is assessing the foreign national's health condition shall consider

- (a) any reports made by a health practitioner or medical laboratory with respect to the foreign national; and
- (b) any condition identified by the medical examination.

(Department of Justice, 2011)

This states that anyone who requires medical or social supports would be inadmissible for citizenship as they would exert 'unreasonable' demands on Canadian healthcare and social services. Excessive demand is further defined as anyone who places

(a) a demand on health services or social services for which the anticipated costs would likely exceed average Canadian per capita health services and social services costs over a period of five consecutive years immediately following the most recent medical examination required by these Regulations, unless there is evidence that significant costs are likely to be incurred beyond that period, in which case the period is no more than 10 consecutive years; or

(b) a demand on health services or social services that would add to existing waiting lists and would increase the rate of mortality and morbidity in Canada as a result of an inability to provide timely services to Canadian citizens or permanent residents.

(Department of Justice, 2011)

The government considers any required support as unreasonable if it is found to be costly or to affect waiting lists. The excessive demand criterion applies to all potential immigrants, with the exception of refugees, or the spouse, common law partner, or child of a sponsor in the family class (Baker Law, 2011). Often times, families and people with disabilities are excluded because of this criterion and have no choice but to appeal directly to the Minister of Immigration for allowance on humanitarian and compassionate grounds. However, the ministry has frequently deflected calls to address this issue, responding with claims that they are not personally

responsible for these matters. For example, a spokesperson for Minister of Citizenship, Immigration, and Multiculturalism, Jason Kenney, stated that “in our immigration system, independent, highly trained public servants — not politicians — make immigration decisions. The immigration minister's role is to ensure that Canada's immigration laws are respected” (Canadian Press, 2010).

While excessive demand has existed in Canadian immigration policy in some form since Canadian Confederation, it has been argued that today's iteration has been especially effective in excluding people with disabilities. An attempt to challenge this policy through the courts occurred in 2005, with the Council for Canadians with Disabilities (CCD) and several other organizations appealing to the Supreme Court of Canada after Citizenship and Immigration Canada denied the application of two families who had children with ‘intellectual disabilities’ on these grounds (El-Lahib & Wehbi, 2011, p. 5). Arguing that the Excessive Demand clause is discriminatory and based on the stereotyping of people with disabilities as burdensome, these organizations were able to secure a positive ruling for the families. The Supreme Court called for individualized assessments when there is a family member with a disability: “Instead of only relying on a medical assessment, ‘immigration officials should consider the resources, time, personal and financial supports, as well as community supports, that families are able and willing to provide to children with disabilities’” (El-Lahib & Wehbi, 2011, p. 6). It was argued that eligibility for permanent residency should be consistent with the Canadian Charter of Rights and Freedoms and international human rights principles (p. 6).

The victory was short-lived, however, as it became clear that the discriminatory nature of the Excessive Demand clause would remain. This can be seen with the case of the Barlagne family. In the aftermath of the 2005 Supreme Court decision, the family applied for permanent residency upon the encouragement of the Canadian embassy in Paris. After establishing themselves in

Montreal and submitting to medical examinations, the family was accepted in 2009 (El-Lahib & Wehbi, 2011, p. 7). However, to their dismay, status was not given to their six-year-old daughter who had cerebral palsy (Canadian Press, 2010). Immigration officials argued that she would pose an 'excessive demand' to Canadian health and social services, despite the offer by the family to pay for rehabilitation services. An attempt to appeal this decision at the Federal Court failed after the judge ruled that immigration officials had acted fairly. It was not until intervention by the Quebec Ministry of Immigration, reaching an agreement with the Federal Government, that the entire family was allowed to stay (CBC, 2010).

Even when migrants attain favorable decisions in their cases, the Excessive Demand clause often places them through the humiliating process of being scrutinized and categorized as either deserving or undeserving of status. For example, immigration applicants are required to submit a "Declaration of Ability and Intent." Baker Law, a law firm specializing in human rights and immigration, advises clients to respond with clear indications that they do not intend to use Canadian health services for elective surgeries. However, if it is found that conditions, if worsened, may not permit the applicant to continue refusing surgery, status may still be denied. The law firm also advises clients to show that they will not rely on publicly funded social services, by indicating that similar services were not accessed in their country of origin (Baker Law, 2011).

Nevertheless, immigration to Canada would be especially difficult for people with disabilities even if the Excessive Demand clause did not exist, as the point system is also inherently discriminatory. The point system is a means by which the Canadian government determines whether or not to accept an applicant as a permanent resident on the basis of criteria such as education, income, and language. In the same way that Thobani (2000) argues that the point system excludes women of colour, it can be argued that the point system places applicants with disabilities at a disadvantage. Specifically, El-Lahib and Wehbi (2011) find that the strong

emphasis on employment and educational attainment by the point system is exclusionary for people with disabilities. Thus, “if people with disabilities lack the education and employment experience in their countries of origin due to marginalization and exclusion, they are less likely to have the necessary qualifications to meet the selection criteria in the current Canadian immigration point system” (p. 4). In essence, a ‘colour-blind’ or ‘disability-blind’ system that does not take into account oppression becomes inherently unfair for people with disabilities.

This discourse of the person with disabilities as burdensome (a discourse that masks and excuses systemic marginalization) can also be seen with the refugee process. In 2004, Abdelkader Belaoui, a blind man, was rejected by the Immigrant and Refugee Board (IRB) (CSAB, 2008). Fleeing civil war in Algeria and racist backlash in post September 11 USA, Belaoui attempted to start a new life in Canada. He appealed the subsequent deportation order on humanitarian and compassionate grounds. Unfortunately, this was denied on the basis that he did not have employment. Denial for this reason is especially problematic considering Belaoui had taken considerable steps in finding paid employment, registering at a job bank and taking mobility courses. Nevertheless, he was unable to find employment, unsurprising considering systemic discrimination. In fact, the Canadian Federation of the Blind estimates that unemployment rates for blind people are as high as 90% (CSAB, 2008). In addition, programs designed to create opportunities for blind people were not available to Belaoui because of his lack of status (CSAB, 2008). The Quebec Civil Liberties Union found that “Mr. Belaoui was a victim of discrimination based on disability,” noting that “this refusal was discriminatory in that it did not take into account the obstacles to his [*sic*] work integration faced by Mr Belaoui, based on his handicap, taken that he presents a visual impairment which makes him totally blind” (QCLU, 2006). The failure to recognize systemic ableism in the labour market and Belaoui’s substantive volunteer work at the Multi-Ethnic Association for the Integration of the Handicapped of Quebec (AMEIPH),

as well as the emphasis on labour market participation in immigration decisions, is indicative of how immigration policy paints people with disabilities as burdens and unproductive workers (CSAB, 2008).

Although Hanes argues that with the introduction of the Excessive Demand clause in 1869, “disabled immigrants were not treated much differently than nondisabled immigrants, as long as [they] could provide for themselves and/or their families, or if the individual needed care and the family was willing to provide for the individual” (2011). This does not recognize the fact that many people who require additional supports and care in the first place, as described earlier, do so because of ableism in Canadian society. In addition, the emphasis by the immigration system on securing productive labourers for the market does not recognize systemic discrimination in the labour market and, instead, conceptualizes people with disabilities as unable to contribute and as burdens to society. At the same time, contributions from people with disabilities outside of the labour market are often erased.

Conclusion

As can be seen, the fundamentals and foundations of the Canadian immigration system have not substantively changed throughout history. While changing social contexts, such as neoliberalism today, alter the implementation and framing of policies, the fundamental theme of the immigration system operating on the basis of obtaining and controlling disposable labour remains. With this underlying role, the Canadian immigration system produces specific concepts of desirability and undesirability. People marked as disabled, racialized, and working-class fall under the category of undesirable. This undesirability is illustrated by cases like the deportation of 65 Chinese ‘mental patients,’ the barring of Oklahoma Blacks, and modern day deportations and rejections of status. These cases also illustrate how the immigration system contributes to pathologization and the marking of a person as disabled, two processes that often intersect with

other forms of structural oppression, including those based on race and class. Finally, pathologization attaches specific narratives to its targets, an example of which is the idea that people with disabilities are unproductive and burdensome to society. Such arrangements frame the migrant with disabilities as one that is necessarily reliant on state support and unable to contribute to the community. However, it is evident that this narrative can only exist through the erasure of issues of systemic marginalization in an ableist society and the debasement of the many ways that people with disabilities do contribute.

References

- Anderson, K. (1991). *Vancouver's Chinatown: Racial Discourse in Canada, 1875 – 1980*. Montreal: McGill-Queen's University Press.
- Baker Law. (2011). *FAQ: Excessive Demand Provision of the Immigration and Refugee Protection Act*. Retrieved November 22, 2011, from <http://www.bakerlaw.ca/node/138>
- Bannerji, H. (2000). *The Dark Side of the Nation: Essays on Multiculturalism, Nationalism and Gender*. Toronto: Canadian Scholars' Press Inc.
- Canadian Press. (2010, May 18). Disabled child can't stay in Canada: court. *CBC News*. Retrieved November 20, 2011, from <http://www.cbc.ca/news/canada/montreal/story/2010/05/18/mtl-disabled-child-court-ruling.html>
- CBC. (2010, April 20). Disabled child can stay in Canada: Que. government intervenes to reach deal with Ottawa on residency. *CBC News*. Retrieved November 20, 2011, from <http://www.cbc.ca/news/canada/montreal/story/2011/04/20/barlagne-family-residency.html>
- Chambon, A. S., Irving, A. & Epstein, L. (1999). *Reading Foucault for Social Work*. New York: Columbia University Press.
- Chan, A. B. (2002). Bachelor Workers. In F. Iacovetta, P. Draper & R. Ventresca (Eds.), *A Nation of Immigrants: Women, Workers, and Communities in Canadian History, 1840s – 1960s* (pp. 231 - 290). Toronto: University of Toronto Press.

Committee to Support Abdelkader Belaouni (CSAB). (2008). *Background*.

Retrieved November 22, 2011, from

<http://www.soutienpourkader.net/en/background.php>

Department of Justice. (2011). *Immigration and Refugee Protection Regulations*.

Retrieved November 20, 2011, from

<http://laws-lois.justice.gc.ca/eng/regulations/SOR-2002-227/page-11.html?term=excessive+excess+demand#s-30>

Dossa, P. (2005). Racialized bodies, disabling worlds: "They [service providers] always saw me as a client, not as a worker." *Social Science & Medicine*, 60, 2527-2536.

El-Lahib, Y. & Wehbi, S. (2011). Immigration and disability: Ableism in the policies of the Canadian state. In *International Social Work*. DOI: 10.1177/0020872811407941.

Elections BC (October 23, 2003). *Electoral History of British Columbia*.

Retrieved November 20, 2007, from

http://www.elections.bc.ca/elections/electoral_history/part3-4.html

Garrity, Z. (2010). Discourse analysis, Foucault and social work research: Identifying some methodological complexities. *Journal of Social Work*, 10(2), 192-210.

Godechot, J. (1988). The New Concept of the Nation and its Diffusion in Europe. In O. Dann & J.

Dinwiddy (Eds.), *Nationalism in the Age of the French Revolution* (pp. 13-26).

Worcester: Billing and Sons.

Grewal, I. & Kaplan, C. (2002). Gendered Identities: Individuals, communities, nations, worlds. In I.

Grewal & C. Kaplan (Eds.), *An Introduction to Women's Studies: Gender in a Transnational World* (pp. 159 -164). Boston, MA: McGraw Hill.

Hall, S. (2001). Foucault: Power, knowledge and discourse. In M. Wetherell, S. Taylor & S. J. Yates (Eds.), *Discourse theory and practice: A reader* (pp. 72-81). London: Sage publication.

- Hanes, R. (2011). *None is Still Too Many: An Historical Exploration of Canadian Immigration Legislation As It Pertains to People with Disabilities*. Council of Canadians with Disabilities. Retrieved November 20, 2011, from <http://www.ccdonline.ca/en/socialpolicy/access-inclusion/none-still-too-many>.
- Harvey, David (2005) *A Brief History of Neoliberalism*. New York: Oxford University Press.
- Keung, N. (2011). Ottawa defies UN plea not to deport mentally ill man. *The Star*. Retrieved October 2, 2011, from <http://www.thestar.com/news/article/1048066>
- Lynn, J. A. (1999). *The Wars of Louis XIV, 1667 – 1714*. Singapore: Pearson.
- Mama, A. (1995). *Beyond the Mask: Race, Gender and Subjectivity*. London: Routledge.
- Menzies, R. (2002). Race, Reason, and Regulation: British Columbia's Mass Exile of Chinese 'Lunatics' aboard the Empress of Russia, 9 February 1935. In J. McLaren, J. Menzies & D. Chunn (Eds.), *Regulating Lives: Historical Essays on the State, Society, The Individual, and the Law* (pp. 196-230). Vancouver: University of British Columbia Press.
- Pratt, A. (2005). *Securing Borders: Detention and Deportation in Canada*. Vancouver: University of British Columbia Press.
- Quebec Civil Liberties Union (QCLU). (2006). *Open Letter in Support of Abdelkader Belaouni*. Retrieved November 22, 2011, from <http://www.liguedesdroits.ca/>
- Robert, J. (December 8, 2005). Asian Immigration. *Canada in the Making*. Retrieved October 22, 2007, from http://www.canadiana.org/citm/specifique/asian_e.html
- Ruddick, S. (2008). *GGR452 Course Summary*. Toronto: University of Toronto, Department of Geography.

- Sharma, N. (2006). *Home Economics: Nationalism and the Making of Migrant Workers in Canada*. Toronto: University of Toronto Press.
- Thobani, S. (2000). Closing Ranks: Racism and Sexism in Canada's Immigration Policy. *Race and Class*, 41(1), 35-55.
- Vernon, K. (2011). The First Black Prairie Novel: Chief Buffalo Child Long Lance's Autobiography and the Repression of Prairie Blackness. *Journal of Canadian Studies*, 45(2), 32-57.
- Wolf, M. (2001). Will Nation-States Survive Globalization. *Foreign Affairs*, 80(1), 178-190.