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Exclusive Inclusion

The Violation of Human Rights and US Immigration Policy

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In this article, we examine US immigration policies relative to those who work as nurses and those who are manual/low-wage laborers. Recruiting foreign nurses from developing countries to alleviate the nursing shortage is a common practice. While specialized visas for these healthcare professionals facilitate the visa application and approval process, immigrants employed in low-wage positions are subjected to long waits for visas, workplace raids, and subsequent deportation. Selective assistance to some immigrants violates basic human rights and global expectations of justice. Moral and ethical frameworks need to guide US immigration policy. **Key words:** *foreign nurses*, *global rights and responsibilities*, *human rights*, *immigration*, *immigration reform*, *laborers or workers*, *nursing shortage*, *public policy; social justice*, *undocumented workers*

IMMIGRATION and immigration policy are volatile topics in political environments across the globe. According to the International Organization for Migration,[1] approximately 191 million people (3% of the world's population) currently live outside of their native countries. This tally, based on numbers of permanent immigrants, migrant workers, refugees and asylum seekers, does not account for undocumented migrants. Given the magnitude of international migration, most, if not all, nations have instituted policies that regulate the entry of immigrants.

In the United States, the number of legal immigrants allowed into the country varies by occupation. One highly valued immigrant group is nurses, making immigration of particular interest to the discipline of nursing. While the exact number of migrating nurses is unknown, given the inconsistency in data collection among various nations,[2] it is clear that limited economic opportunities in source countries and the coercive power of money and prestige in destination countries have increased the flow of nurses who seek employment with healthcare institutions located in more economically secure and industrialized states. The international nursing shortage has left many countries in short supply of care providers, sparking recruiting efforts through which many high-income countries hire nurses from low-income countries. Nurses, particularly from the Philippines, India, and Africa, are targeted by the United States and other nations to help ease the nursing shortage in their respective countries.[2] Some have condemned this recruiting practice, claiming that it drains highly skilled workers from source countries, thus depleting natural human resources needed to address the source nations' health needs[3]—the so-called "brain drain." Yet, limited critiques and few actions are evident with respect to promoting economic opportunities for low-wage workers, particularly manual laborers. In fact, there are massive efforts to block such immigration of unskilled laborers or to deport them back to lives of poverty, hunger, and injustice. The chasm between one group of workers who are highly sought-after (nurses)

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and another group of workers who are largely unwelcome (low-wage laborers) calls for theoretical frameworks that advance global accountability to those seeking better lives through international immigration.

For those immigrating to the United States for employment purposes, attaining a work visa is generally a lengthy and convoluted process. However, to expedite the process for certain categories of skilled workers, nurses and other healthcare workers are given *preferred status*, an identifier that dramatically shortens the visa application and approval process. Granting visa assistance and priority status to those immigrants possessing higher levels of education and needed skills is a widespread practice used to meet the needs of aging and increasingly comorbid populations. We explore the incongruities between privileging a worker (in this case, a nurse) who fills a gap in the professional/scientific workforce juxtaposed to the manual laborer whose work is deemed "less worthy." The unequal application of fairness in these cases is rationalized as "the way the world is," given the overall shortage of nurses and an ever-growing demand for skilled healthcare providers. However, the disparate policy of selective assistance to immigrants violates basic human rights and global expectations of justice and illustrates the links between inequality and injustice and processes of "othering" and social exclusion.

We begin with a history of US immigration policy, followed by an overview of the parameters of the global nursing shortage and US legislative responses to the shortage. We conclude with suggested frameworks for responding to the inequity between workers who are valued and welcomed in the United States and those who are not. It is our intent to focus on the human rights issues associated with immigration processes and their impact on differing categories of workers, rather than on foreign nurses specifically. Although the nursing shortage informs our discussion of immigration rights, the nursing shortage and the ethics of foreign nurse recruitment are not the central issues for this article, as these concerns have been widely discussed elsewhere; rather, we highlight applying moral and ethical reasoning to immigration policies that affect "other" workers. Preferential inclusion of immigrant nurses as valued workers in comparison with immigrant low-wage and manual laborers is unjust; from our perspective, *all* workers ought to be recipients of morally and ethically informed immigration policies.

US IMMIGRATION LEGISLATION

The United States is a nation of immigrants. With the exception of Native American groups and some Mexican descendants, few in the population can point to an ancestry that has its origins within US geographic borders.[4] Over the years, many immigrants have settled in the United States, with the hope of finding freedom from oppression, improving their economic situations, and building lives in relatively safe and stable environments. Those fleeing places of political and economic oppression are seeking, in many instances, freedoms of speech, religion, and political safety, as well as wage and job opportunities. To secure these freedoms and opportunities, early American lawmakers drafted the US Constitution and the Bill of Rights (the first 10 amendments to the constitution). While the nation's founders—Jefferson, Hamilton, Madison—needed immigrants to assist with populating the young nation, they remained uneasy about the political leanings, language, and work ethics of some of the newcomers. From their perspectives, not everyone was welcome to the country's shores.[4] Unfortunately, tensions between "worthy" and "unworthy" foreigners have not diminished with the passage of time.

Initial federal immigration policies, beginning with the Immigration Act of 1875, had their birth just after the US Civil War and were driven primarily by downturns in economic growth.[5] Early immigration policy was racialized; besides identifying prostitutes and convicted felons as personae non grata, Asians also were on the excludable "alien"

list. Racialization of immigration policy was in full force by 1882 with adoption of the Chinese Exclusion Act. This act launched an almost yearly passage of revised or new immigration legislation, much of which was propelled by racist assumptions about "physically, genetically, and intellectually inferior" immigrants.[6(p532)] In 1903, beggars, epileptics, the insane, and anarchists were added to the list of those who could be denied legal admission to the United States, followed 21 years later by the Immigration Act of 1924, which limited legal immigrants to 150,000 individuals per year.

The Immigration and Nationality Act (INA), better known as the McCarran-Walter Bill of 1952, provided the basic framework of present-day US immigration law.[7] In this act, although some quotas based on race remained, children and spouses of citizens were exempt. Quota preferences were granted to immigrants with skills needed in the US workforce, to parents of adult US citizens, to spouses and children of legal aliens, and to siblings and married children of US citizens.[5] In 1965, the INA was substantially modified in 3 ways. First, quotas by national origins were phased out. Second, a system of preferences was altered from emphasizing national origin to emphasizing reunification of family members and finding workers for those occupations deemed to be in short supply (eg, nurses and physicians). Third, labor certification was initiated. Known as a Labor Condition Application, this step mandated that the US Department of Labor verify that foreign workers were filling jobs for which there were insufficient qualified US workers and that employment of foreign workers did not harm the working conditions or wages of US workers.[7,8]

By 1965, several categories of visa status were in place. *Permanent residence* (immigrant) status meant that the incoming individual had the possibility of becoming a citizen with all its attending rights and privileges, while *temporary* (nonimmigrant) status allowed a foreign worker into the United States for a limited time, and, generally, for a specific job. Currently, temporary status is used to either meet seasonal job needs (such as for agriculture) or to fill more permanent positions often considered undesirable by native workers (often low-wage jobs such as those offered in the fast food industry) or for which native workers lack the requisite skills. Highly skilled workers, such as registered nurses (RNs), usually enter through the H-1 program, a category constituted by "aliens of distinguished merit and ability."[7]

The 1986 Immigration Reform and Control Act established civil and criminal penalties for employers who knowingly hired illegal immigrant. Each new immigration legislation resonates of earlier legislation that, at times, restricts immigration and, at other times, expands employment-based immigration.[9] For example, the 1990 Immigration Act actually increased annual immigration levels such that there was a tripling of occupational visas from 54,000 to 140,000. This act also implemented a new H-1b program for nonimmigrants entering in "specialty occupations," making it much easier for professional workers to gain temporary employment.[10] Requirements for the H-1b included the applicant having at least a bachelor's degree and the employer submitting a Labor Condition Application.

Attempts at immigration "reform" continued with passage of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act. This legislation focused on stemming illegal immigration through increasing both the border patrol and civil penalties for illegal entry. New immigration legislation was introduced, yet again, in the US Congress in early 2007, and would have allowed illegal immigrants to obtain a "Z" visa starting them on the process to citizenship, added 20,000 more border agents, created a new temporary guest worker program (primarily for lower skilled workers), established an employment-based point system for new immigrants on the basis of education and skill level, and provided an additional 40,000 H-1b visas for skilled workers with advanced degrees.[11]

In June 2007, the immigration bill failed to pass out of the US Senate and with it any

possibility that the Bush presidency would sign into legislation a revised immigration policy. Noteworthy was the proposal's deemphasis on admitting those with family ties and the creation of a new merit-based points system determined by an applicant's education and skills. The new legislation would have reinforced treating immigrants differently on the basis of education and skills, pointing to disparity in treatment for various immigrant groups and raising questions about the fundamental fairness of US immigration policy. Of particular interest to us were the high value and preference given to healthcare workers in comparison with manual/low-wage workers. Justification for this disparity and the international competition for RNs generally revolve around growing healthcare demands and the diminishing number of nurses.

GLOBAL NURSING SHORTAGE AND MIGRATION

The *nursing shortage*, defined as "an imbalance between demand for employment and the available supply,"[12(p34S)] is a global phenomenon. According to a 2004 report on the international nursing shortage, the nurse-to-population ratio varies widely from a low of less than 10 nurses per 100,000 population to a high of more than 1000 nurses per 100,000.[13] The African continent has the lowest number of nurses, with some African states reporting fewer than 10 nurses per 100,000 population.[14] Not surprisingly, the most developed and prosperous countries experience much less severe shortages when compared with low-income countries. Importantly, within low-income countries there is an uneven supply of nurses, which further aggravates the shortage. In some cases, it is the limited number of skilled nurses that accounts for the shortage, and in other instances, there are more nurses than available employment. In fact, in India and the Philippines, the out-migration of nurses has long been encouraged to such an extent that "essentially, [these countries] train for export."[14(p23S)] Destination countries for RNs include the United States, the United Kingdom, Canada, Australia, Saudi Arabia, and Ireland.[15]

There are numerous *push* and *pull* factors that drive international migration of nurses. Push factors are those reasons that influence a nurse to leave her home country, while pull factors are those aspects that make another country more attractive.[15] Increasingly, nurses are *pushed* by low wages and lack of career advancement in their home countries and *pulled* by the wages and career and educational opportunities of foreign countries.[13] An increase in chronic diseases and rising incomes have contributed to the demand for health services, particularly in high-income nations.[16] Simultaneously, the nursing labor force has aged and is moving toward retirement,[15,17] such that severe nursing shortages are predicted for industrialized nations within the next 15 years.

Physicians and nurses comprise the majority of health professional immigrants.[8] Polsky and colleagues[18] reported that foreign-trained nurses went from 6.5% of the US nursing workforce in 1990 to 9.1% by 2000, representing a 40% increase in the number of foreign RNs. In 2000, most foreign nurses were from Asia, particularly from the Philippines.[8,18] In the 1960s and 1970s, about 50% of foreign nurses were from high health status countries (as measured by mortality burden), and another one-third were from moderate health status countries, with low health status countries being relatively insignificant sources for nurses.[8] New data based on a nation's economic rather than health status (although we assume that, generally speaking, high health status and high income correlate) pointed to a dramatic shift in source countries such that by 2000 the percentage of foreign nurses coming from high-income countries had dropped to 25.4%, while those from low-income countries grew to 20.7%.[18]

Facilitating the migration of foreign nurses to industrialized countries are scores of international recruiting agencies, including those based in the United States. Buchan and Sochalksi[19] noted that the United States

recruits skilled workers primarily from lower middle income and low-income countries. Ironically, despite concerns about a shortage of working nurses, the United States "is often depicted as the final destination in the ever-present migration pattern of health professionals—invoking the image of a prize at the end of a global treasure hunt."[17(p208)] The World Health Organization considers such "brain drain" a serious problem, noting that loss of healthcare professionals from low-income nations may create reductions in available health services and the capacity to create healthier populations.[20]

Over the last 20 years, the demand for nurses in the United States has been cyclical; shortages in the 1980s were followed by a drop-off in demand by the early 1990s as a result of an economic recession and a shift to managed care.[21] By the start of the 21st century, the shortage returned and, according to some prognosticators, is here for the long term. Shortage estimations for the United States vary from 340,000 RNs[22] to more than 1 million by 2020.[23] Factors contributing to the US RN shortage include limited number of nursing school faculty, fewer new nurses entering the profession, and nurses leaving the profession from job dissatisfaction.[23] Although foreign RNs are not viewed as the sole solution to the nursing shortage, they remain important elements of the US healthcare system.

LEGISLATION TO ADDRESS US NURSING SHORTAGE

Concern about the nursing shortage induced legislators to propose measures that would increase foreign RN immigration to the United States. Several US public laws and reauthorizations specifically addressed the nursing shortage, beginning with the Immigration Nursing Relief Act of 1989, which created a special visa grouping for RNs. The danger that large numbers of foreign nurses with expired H-1 visas would be sent home, leaving the healthcare industry without an important part of their labor force, provided the incentive for the 1989 act. These H-1 nurses who were cost-effective alternates to agency nurses came prepared to take on major responsibilities and brought racial and ethnic diversity to many healthcare settings.[21] The act allowed healthcare facilities to recruit foreign nurses while requiring these employers to create protections for so-called "native" RNs and to work toward lessening the facilities' dependency on immigrating nurses.

Although the act was allowed to expire with the subsequent reduction in the worker shortage, a reemergence of an RN shortage later in the decade led to the Health Professionals Shortage Area Nursing Relief Act. Proposed in 1997, The Nursing Relief Act became the Nursing Relief for Disadvantaged Areas Act and was signed into law in 1999, with reauthorization in 2005 (PL 109-423). The new law created a new category of visas, H-1c, used to employ foreign nurses in Health Professional Shortage Areas as designated by the Department of Health and Human Services.[24] Existing rules requiring that these workers not adversely affect the wages and working conditions of "native" workers applied. Garrett[25] reported that with legislation reauthorization in 2005, the US Congress established 50,000 special immigration visas for those RNs willing to work in the United States. These employment preference visas were distributed by early 2006, at which time Senator Brownback (R-Kansas) sponsored legislation to remove all limits on immigrating nurses.

More recently, the Nursing Relief Act of 2007 (H.R. 1358), if passed, would create a new nonimmigrant visa category for RNs. Rationale for the bill included the national shortage of RNs, the "oversupply of nurses" from such countries as China, India, and the Philippines, and the inefficiencies and costs associated with trying to recruit qualified foreign nurses through present immigration processes.[26] Given the global perspective of healthcare and the ongoing nursing shortage, active recruitment of foreign nurses to compensate for a US nursing shortage has raised ethical concerns.

ETHICAL CONCERNS IN NURSE MIGRATION

As noted earlier, there is unease in some quarters about the effect international nurse migration has on the source country, the destination country, and the immigrating RN. Tensions exist between honoring an individual nurse's right to migrate in order to secure better pay and working conditions and the nurse's departure, which leaves the source country with diminishing numbers of health professionals and a subsequent weakening of its healthcare system.[17,20,27] As Kingma pointed out, "There is a delicate balance between the human and labour rights of the individual and a collective concern for the health of a nation's population."[17(p210)] At the same time, industrialized countries, the most common destinations for immigrant nurses, have moral and ethical obligations to provide quality healthcare to their own citizens.

Various nursing organizations have issued policy positions with respect to foreign nurse recruitment. For example, the American Organization of Nurse Executives (AONE) acknowledged that foreign professional nurses have the right to emigrate in search of better employment, even though the "wholesale recruitment . . . can jeopardize the health and safety of indigent populations."[28] From AONE's perspective, more public and private monies are needed to address the nursing shortage across the globe. Others[29] have argued that the shortage of skilled healthcare professionals in some of the world's poorest nations has dire effects for those populations' health and have called for the development of policies that apply moral and ethical reasoning in response to the international migration of healthcare professionals.

ETHICAL CONCERNS FOR MANUAL/LOW-WAGE LABORERS

Having adequate numbers of RNs to care for an increasingly older and potentially frail US population accelerates immigration processes for those qualified professionals deemed to be in short supply. However, the same immigration officials do little to provide manual/low-wage laborers with similar opportunities. In fact, substantial resources are expended in either preventing the immigration of many low-wage workers or deporting them back to the originating countries. One such attempt is illustrated by a March 2007 arrest of 360 immigrant workers at the Michael Bianco Inc factory, a military contractor. The workers were primarily from Central America and constituted the majority of the 500-person factory work force.[30] Since many families were unaware of the raid, family members just seemed to "disappear," with working parents (including single parents) separated from their children, and children channeled into social service agencies. The *Washington Post* reported that after the raid, 1 child telephoned a hotline asking for her mother, and a breastfed infant was hospitalized for dehydration when its mother was sent to a detention center in Texas.[30]

US law clearly and explicitly discriminates. Although there are federal and state statues making *some* forms of discrimination illegal, this is not the case for some immigrants seeking work in the United States. Visas come with mandatory requirements that are not expected of US native born residents, including labor certification.[31] Thus, current immigration laws contradict basic principles of tolerance and acceptance making immigration restrictions "a form of government-mandated employment discrimination."[32(p2)] Using the argument of a US nursing shortage as mandate for increasing professional nurse recruitment in developing countries creates an international promulgation of injustice. For a nation founded on the concept of equality, this unfairness based solely on being born outside US territory collides with social justice doctrines. It is ironic that a nation that often sees itself as a global leader in upholding justice and in protecting the vulnerable has yet to implement policies that treat all humans as equal.

Anti-immigrant positions are motivated by 4 elements.[33] First is the public impression

that the federal government fails to fully carry out existing immigration regulations through its failures to check visas or staunch the movement of Mexicans across the US-Mexican border.* Second is the belief that illegal immigration and increased crime are correlated. Similarly, the third factor entails the perception that immigration, particularly illegal immigration, adversely affects the US economy in terms of available jobs, wages, and resources used. For example, Senator Harkin (D-Iowa), according to *The New York Times*, has expressed that "guest workers could drive down wages for Americans 'on the lower rungs of the economic ladder'."[34] In effect, the immigrant "is the perfect scapegoat for our nation's economic concerns."[33(p504)] Finally, there are elements of racism as White America deals with demographic changes that highlight diversification of the US population. Echoes of these anxieties are evident in English-only regulations, California's Proposition 187 (which made illegal immigrants ineligible for public social services, healthcare services and public school education, and was approved by nearly 60% of voters in 1994),[9] threats made to US senators who supported the recently proposed legislation to change the immigration system,[35] citizens who form groups to "fight" illegal immigration (eg, Help Save Manassas at www.helpsavemanassas.org/santuary.php), and "volunteers" (generally, white males) who watch for illegal immigrants and report them to US Border Patrol agents through organizations such as the Minuteman Project (http://www.minutemanproject.com/mmp/) and the Minuteman Civil Defense Corps (http://minutemanhq.com/hq/). This form of vigilantism against some immigrants and not others reveals a deeply held sense of entitlement and an operative philosophy of inequality with respect to the allocation of societal rights and privileges. Processes of "othering" and social inclusion/exclusion are foundational to these anti-immigration forces.

OTHERING, SOCIAL INCLUSION/EXCLUSION

Construction of some groups as being more valued and with more due respect and privilege than others occurs in all societies. Becoming the "other"[36]—the unwanted outsider—is a process that "defines and secures one's own identity by distancing and stigmatizing an(other)."[37(p1933)] "Othering" serves to establish what is "normal" (us) and what is "abnormal" (them). Part of that process is seeing lower wage immigrants as abnormal in that they are rarely seen as individuals "with agency, skill or resilience, with capacity to contribute and be an asset to their new communities."[37(p1935)] Instead, they are burdens to society who use up supposedly limited resources, including medical resources. Consequently, "othering" leads to negative emotions such as distrust, dislike, and resentment that then are linked to particular groups according to signifiers such as race, nation of origin, and language.

Once an individual or group has been marked as "not us," they are seen as existing on the outer boundaries of society, marginalized by the majority of that society.[38] This positioning away from the Center (ie, dominant structures, policies, and other sources of power) generally means the marginalized have limited access to resources, are subject to differential treatment, and exert minimal social influence and authority.† Although Vasas claimed that "marginalized people are

*Concerns about illegal crossings at the Canadian-US border pale in comparison to the attention given those individuals crossing at the Mexican-US border.

†Although nurses, particularly foreign nurses, may be marginalized and treated as "other" at times, for the most part they retain power via their education and expertise. Our intent is not to minimize nurses' experiences of "othering" and exclusion; rather, we attend to how nursing garners authority and special treatment at the expense of others (in this case, low-wage immigrants).

invisible to those in the Center,"[38(p196)] this is not the case for the unwanted foreign worker. The Center is constantly reminded of the worker's presence through such symbols as the fence being built on the US-Mexican border and the individuals who serve in the US Border Patrol. Individuals, social structures, and policies that maintain the Center also function to maintain the margins.[38] Thus, immigration policies function to further perpetuate a process of "othering," especially with unequal allocation of assistance in securing a work visa.

The immigrant entering an unfamiliar culture often encounters difficulties in finding his place in the new society. For the immigrant who is in the country illegally, marginalization and social exclusion are actively sought as he tries to hide his existence and identity from authorities and those who can expel him. Since the Center and its attendant structures and policies focus on these acts of deception and dishonesty, the unstated message is that it is the "responsibility of the [S]tate to uphold moral principles, and fulfill a range of legal duties and obligations."[37(p1935)] If this responsibility is true, it is contradictory that the State maintains policies that determine who merits being included in US society and who should be excluded (policies that are inherently immoral and unjust), and yet can prosecute an immigrant on moral grounds of deception. It is unlikely therefore, that the State, in the context of immigration, holds the moral high ground here.

Harris and Williams refer to social inclusion as a "policy metaphor" and suggest that "official" social inclusion policies are linked to ideas of national identity, which, in turn, "set out the attributes and values of a person who truly belongs."[39(p206)] Social inclusion "works" in much that same way that citizenship and community do—it tells us who belongs to a particular group and who does not.[40] Social inclusion simultaneously determines the included and the excluded. Thus, enforcement of immigration policies that provide expedited visa processes to "high-value" workers, such as nurses and other healthcare professionals, produces a community of undesirable and low-value workers (eg, factory workers) through the construction of foreign nurses as more "worthy" immigrants.

Often the answer to exclusion is to cross the border and become an insider in a society whose exclusionary structures and practices often go unchallenged. In modern society, employment is the mechanism by which the once excluded are brought into the fold of society.[41] Prohibited from working, the unworthy immigrant worker has little chance to move from margin to the Center. And if, by chance, she does move closer to the Center through employment, there is little incentive for her to interrogate those structures that created the Center and margin in the first place, particularly if she is working illegally and is in constant fear of deportation. If the marginalized are unwilling or unable to question and analyze social structures that keep them marginalized, then who should? We believe the answer is those of us who are welcomed and included in society.

THE MORAL IMPERATIVE TO ACTION

Immigration policies and laws create substantial hindrances to immigration, reflect intolerance of certain groups of people, and, in so doing, disregard justice principles. Rawls[42] postulated that there were 2 foundational concepts enlivening justice: liberty and equality. These concepts lead to 2 basic moral powers guiding human interaction—the conception of good and the capacity for advancing good.[42] From there, the question arises of whom to treat as free and equal persons. Are all human beings worthy or only those who are "official" members of US society? If we take as our point of departure that all human beings, regardless of birth origin, require respect, then any obstacles to immigration become "morally suspect."[32(p6)] From a moral viewpoint, we cannot justify privileging some over others.

Social justice and human rights

Addressing marginalization is the work of all of society's members, and one framework

upon which this can be implemented is human rights grounded in a commitment to social justice. Inequity in how immigrating workers are treated has implications for human rights and implementation of justice in US immigration policy. Justice is defined by Beauchamp and Childress[43] as the fair dispersal of rights and responsibilities to people. Justice differs from the legal system in that it arises from the discipline of philosophy, not law and precedent. Although legislation often is used to remedy societally imposed injustices (eg, through civil rights legislation), ethics, unlike law, should not be mandated or regulated, as a moral principle extends far beyond the scope of litigation and the litigious process.

Human rights are a subset of values within the ethical principle of justice and are defined as protection for individuals and groups against actions that prohibit or obstruct freedoms and human dignity[44] and cover a broad range of cultural, political, economical, and social rights.[20] The just allocation of burdens and benefits among people means there is a fundamental assumption of equality in a society. The rights of the rich and powerful should not take precedence over the rights of the marginalized, the "othered," the excluded.

Rights emerged as an important idea during the medieval era as Western philosophers hypothesized about natural law—that is, human beings' commitment to living according to the nature with which a "creator" had endowed them. This commitment entailed individuals having responsibilities, such as not harming other human beings and not being dishonest; those who were injured by such transgressions had personal claims for recompense. The concept of rights was expanded by Locke, Bentham, and Marx, among others, to the effect that happiness and freedom were seen as part and parcel of human rights. Modern ideas of rights came about in 1948 with the United Nations' Universal Declaration of Human Rights, a document designed to prevent future occurrences of the type of atrocities committed during World War II.

Rights discourse brings with it the "language of priority"—particularly of the individual.[45(p3)] Certain rights are seen as belonging to human beings as human beings rather than to the type of person, the particular context, or the role the person might play in society.[45] Principles of justice then serve as the theoretical foundation upon which human rights are constructed.

Nursing's call to action and social justice

On the topic of the global nursing shortage and recruitment of international nurses, Chinn noted, "nurses ... remain culpable as participants if they ignore the looming harm created by the worldwide nursing crisis, and fail to bring their perspectives to bear in debates and the decision-making arenas."[27(p1)] As some of the most privileged in Western society, members of the discipline have a responsibility to be politically engaged,[40] particularly with respect to inequities that ignore ethical and moral principles. We contend that nurses are especially obligated to address the injustices detailed in this article as nursing has benefited from the unfairness of the immigration process. When we speak of action though, we do not mean action in which nurses are the sole intended target. It is not that the nursing shortage, recruitment of foreign nurses, and "brain drain" are unimportant issues; the discipline, however, needs to take actions that take into account how nursing has been privileged over more marginalized groups with respect to finding employment in the global economy.

Time and again, the importance of social justice and the call to take political action appear in the nursing literature.[46,47] These authors remind us that social justice, as a guiding concept for practice, needs to move beyond merely acknowledging injustice to taking actions to address it. Despite these increased calls, evidence of nursing's influence on policy remains nearly nonexistent.[47] Bekemeier and Butterfield's[46] analysis of the American Nurses Association's *Code of Ethics for Nurses With Interpretive Statements, Nursing's Social Policy Statement,* and *Nursing: Scope and Standards of Practice*

revealed ambiguous and cursory references to social justice in these documents, such that nurses were directed to be "aware of" social circumstances that impair health; to, in the authors' terms, "think small."[46(p158)] Using language such as "be aware of" diminishes social justice and sends a message that issues of social justice need only minimal reflection and effort for implementation.

Although it is clear that there are challenges to influencing policy change—nurses' insufficient education in policy and policy reform, socialization to being politically "neutral," being understaffed, overworked, and out of time[47]—educators, practitioners, and researchers *can* work as change agents. Educators *can* more directly teach about policy advocacy. Practitioners *can* join professional nursing *and* political organizations and push for change. Researchers, educators, and practitioners *can* apply frameworks that assist them in identifying, analyzing, and addressing instances of inequity.

Schuftan[48] espouses using a "human rights-based framework" as opposed to a "human needs framework" to figure out how to address social injustices. In a human needs framework, the focus remains on needs being met or satisfied; needs are not necessarily universal, may be addressed by charity or benevolent means, and can be prioritized from most to least important. In contrast, a human rights framework acknowledges rights as respected, protected, and facilitated to fulfillment. Rights also imply obligations or responsibilities; rights are universal, and human rights only can be attained when both outcome and process are equally valued. This system allows for the full engagement of all parties. Ultimately, the use of a human rights framework mandates collaboration and the building of alliances to ameliorate practices of social exclusion and "othering." From our perspective, this framework is useful in challenging current immigration policies and future immigration reform. This framework does not let us "off the hook" of addressing injustices, as all injustices become our ethical and moral obligation.[46(p158)]

An additional useful perspective for critical engagement with social justice issues is postcolonial feminism.[49] Kirkham and Browne pointed out that "postcolonialism is inherently concerned with social justice ... that encompasses national power struggles, oppressions, *diasporas* [emphasis added], and globalization."[49(p334)] A feminist perspective provides a lens for analyzing the intersections of postcolonial concerns with other social factors such as class, gender, and religion, as well as an opportunity to understand how inequities develop on the basis of racial identities and assumptions.[49] Postcolonial feminism, therefore, is an important standpoint from which to examine disparities that emanate from immigration policies. Without the critical perspective offered by postcolonial feminism and the ethical and moral perspectives from the human rights framework, "we are left in positions where we facilitate *adaptation* to current unjust social structures rather than any effective *address* of issues."[49(p337)] Inherent in adaptation is the acceptance of the status quo; there is no ameliorating the injustice or reclaiming the dignity that was lost with the dominant culture's stifling of difference and resulting policies that privilege a few.

Although our examples are limited to the United States, international immigration, nursing shortages, and recruitment of foreign nurses are worldwide concerns. Nursing, wherever it is practiced, is required to address not only the rights of the discipline's members but also those of all human beings as they traverse the globe. Ultimately, altering hegemonic practices such as immigration policies are accomplished only through being attentive to and actively confronting social injustices;[49] of having, in Giddings' terms, a "social consciousness" that propels us to action.[50(p226)]

CONCLUDING REMARKS

Throughout US history, amendments to the constitution were added when it became

clear that modification of federal practice and policy was in order. Two notable examples are Amendment 13, the abolition of slavery in 1865, and Amendment 19, women's suffrage awarding women the right to vote in 1920. Clearly, reforming governmental practices is laborious as these practices change only incrementally over long periods of time. Perhaps, there are new areas for reform under which another amendment could now be created: the fair and just treatment of potential immigrants to the US.

Reforming immigration policy is necessary to address the US' disregard of human rights as it discriminates between the skilled professional worker and the skilled manual worker. Human rights entail a set of responsibilities inherent to rights received; any time we deny the responsibility of fair and equitable treatment for all potential immigrants, we violate human rights. Systematic development of policy that grants priority status to certain people *and* fuels a vigilante mentality toward other workers creates a dichotomously unjust practice that reinforces actions of bias and discrimination seen in social exclusion. Workers, who cut and package the meat for our tables or build the structures that house our society's functions, are no less integral to society than are those who work as professionals caring for the sick.

Linda Chavez-Thompson, AFL-CIO Executive Vice-President, called for equality and justice in immigration:

> We cannot shy away from the cruel fact that immigrants are systematically denied their most basic rights both as workers and as human beings. Too often, employers don't pay them their wages, retaliate against them for exercising their legal rights, discriminate against them because they're immigrants, and forcefully interfere when they try to improve their wages and working conditions.[51]

The act of exclusion that implicitly nurtures this systematic injustice and inequality must be called into question and abandoned as a formal US immigration policy.

Oven pointed out that US policy creates "artificial borders to mask our 'sameness ' as humans" and argued that US law and policy must go "beyond the mere accident of geography of birth."[33(p500)] That is, human rights are accorded on the basis of the individual being a sentient human being, not on whether the individual is a citizen of some particular nation. Blatant disregard for human rights for immigrants, whether, for example, as nurses or as farm workers, translates into a national policy that arbitrarily privileges some and pursues and prosecutes others. The United States, purported world leader with respect to freedom and economic opportunity, needs to be "an ethical leader as well, motivated by a set of morals;"[33(p529)] as such, moral and ethical frameworks ought to guide the nation's immigration policies. As an organized profession, nursing also has a moral obligation to help create just immigration policies.

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