

Iniuria Migrandi: Criminalization of Immigrants and the Basic Principles of the Criminal Law

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Abstract In this paper I am specifically concerned with a normative assessment, from the perspective of a principled criminal law theory, of norms criminalizing illegal immigration. The overarching question I will dwell on is one specifically regarding the way of using criminal law which is implied in the enactment of such kinds of norms. My thesis will essentially be that it constitutes a veritable abuse of criminal law. In two senses at least: first, in the sense that by criminalizing illegal immigration criminal law puts a ban on (certain categories of) persons, rather than on their actions/omissions, in a way in which a principled criminal law should not do; and—second—in the sense that the criminalization of illegal immigrants represents a perversion of the criminal law, being a case in which criminal norms are (unjustifiably) used as means to attain extrapenal aims.

Keywords Illegal immigration · Criminalization · Tatstrafrecht versus Täterstrafrecht · Stereotypes · Expulsion · Subjection to state's administrative dominion

Introduction

When, in 2008, the former Italian Minister of the Interior, Roberto Maroni, publicly announced the Italian government's and parliament's intention to pass a statute criminalizing "illegal entrance into, or stay on, the state's territory", left-oriented public opinion, as well as the great majority of academic criminal lawyers, argued that such a political choice would have been merely populist and highly discriminatory. Minister Maroni candidly replied that many other countries, both inside and outside the European Union (henceforth: EU), were already criminalizing illegal immigration. Unfortunately (throughout this article I shall try to justify my using this adverb here), he was right. The

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