

Criminal Law & Canadian Immigration Law

Research Proposal

Introduction

At the moment, the interaction between immigration and criminal law is very complex and technical. At the middle of criminal and immigration laws, there is an immigrant. Whether looking for admission, trying to avoid deportation, or attempting to predict any crime, the rights of undocumented immigrants are of considerable importance. Violation of these rights may result in grave consequence on the part of the illegal immigrant. This is especially the case when the illegal immigrants have committed criminal offense, or where the offense is worsened by the status of an immigrant. Indeed, as noted by Cornelisse (20), criminal and immigration laws have customarily been viewed as slightly separate by judicial and governing institutions. In addition, whereas criminal law is under the powers of the state, immigration law is normally under the powers of the federal administration. With considerable and constant interactions, hard questions arise, such as, what degree criminal law impacts immigration law, and whether their functions in influencing immigration continue to overlap. This paper will critically examine the interaction of criminal law and immigration law in Canada.

Literature Review

Canadian immigration consists of a set of directives, policies, rules, and regulations. Immigration has been instrumental in shaping the history of Canada. Over the years, Canadian immigration has become complex prompting the development of the Canadian immigration law (*Immigration Law and Practice* 20). The interaction between immigration and criminal laws is usually quite complex, and in many

occasions, an immigrant often finds him/herself in the middle of this controversy. In many cases, the most crucial issue facing noncitizen defendants (undocumented immigrants) charged with committing a crime is whether being convicted and sentenced for the crime, they have contravened certain provisions contained in the Immigration and Refugee Protection Act, which leads to their deportation from Canada. Usually, noncitizen defendants do not understand how critical this matter is until it is too late. The present provisions of immigration amount to severe consequences for those who commit a crime. On the other hand, noncitizens convicted of seemingly minor offences, such as theft, can face devastating consequences.

The moment they are convicted and sentenced, noncitizens could face such severe consequences as direct deportation, being permanently barred from returning to Canada, and a likely indefinite detention by the Canada Border Service agency. These consequences are often applicable to all convicted immigrants in spite of the time they have lived in Canada, the family ties they may have, or whether their staying in the country is legal or not. In addition, most of the noncitizen offenders are not represented during their immigration proceedings. As pointed out by Guild and Minderhoud (6), many of these noncitizen offenders are usually kept in the immigration detention facilities in the course of their proceedings.

When a noncitizen commits an aggravated crime, he/she may be deported. As explained by Guild and Minderhoud (8), the effect of an aggravated crime conviction differs for those who stay in Canada, both legally and illegally. For the legal immigrant, an aggravated crime conviction is the basis for deportation (Guild and Minderhoud 12). Therefore, any immigrant legally living in Canada will be put in deportation proceedings

and deported if he/she is convicted of a crime that is classified as aggravated offense. This implies that legally permanent citizens (for example, those with Landed papers and refugees) will certainly face deportation if they are found guilty of an aggravated offense. On the other hand, the immigration laws specify a special process referred to 'expedited removal of aggravated offenses' (*Canadian Immigration & Refugee Law Practice* 18). Any noncitizen who is not legally residing in Canada and who has been convicted of aggravated crime can be '*expeditiously deported*' (Cornelisse 21). Assuming that the CBSA officers execute this task to facilitate the process implementation, the individual will not be given a hearing before the immigration judge; instead, the ICE issues 'unreviewable' instructions for deportation, and the individual will not be given any type of 'relief from deportation.' The result of the continued focus on criminal immigration enforcement taken by the criminal justice system in relation to immigration has been poorly examined.

Immigration and criminal law experts have provided varying interpretation regarding the criminal justice system and its relationship to immigration enforcement. As observed by Eagly (1281), law experts have taken an antiformalist analytic position whereby the focus is on the disjuncture existing between the criminal system and the criminal law's doctrinal principles. In addition, scholars in this field of law have stressed race and class inequality in the criminal justice system, but they have failed to give noncitizens defendants any form of special attention on the basis of their alienage (Cornelisse 27). As such, their literature highlights the key disadvantage faced by noncitizen defendants; for example, cultural barriers and language difficulties, which could result in abuse (Cornelisse 27). Nonetheless, their circumstances are not

doctrinally or systematically differentiated from those that can be seen in other minority groups of this imperfect criminal justice system.

Results

With regard to the immigration law, available literature puts a lot of emphasis on the inverse of criminal law, and it is highly concerned with the manner, which noncitizens are treated by the immigration system. According to Eagly (1282), this approach is taken due to the increasing focus on the relationship between criminal activities and immigration, and the effect of this relation on the immigration system of the civil administrative bodies that determine the entry of immigrants in Canada. Experts in immigration law assert that noncitizens are treated 'asymmetrically' by criminal law. They add that immigrants are increasingly subjected to heavy burdens of criminal law. For instance, they are deported when convicted of a criminal offence, yet they are not given any benefits by criminal law.

Thus, the two literatures regarding criminal law and immigration law take opposing analytic and formative views. Nonetheless, they are supported by a general assumption regarding the operational relations between criminal and immigration fields. The first common assumption is what can be termed as *doctrinal equality* meaning that noncitizens defendants share equal playing field as any other defendant in the criminal justice system does meanwhile the second assumption is what can be termed as *institutional autonomy* meaning that criminal and immigration systems work as independent institutions with divergent adjudicatory approaches, players and sanctioning systems (Eagly, 1282).

Conclusion

Although criminal and immigration laws have divergent views on the manner which noncitizens are treated, they agree on two aspects of law, such as *doctrinal equality* and *institutional autonomy*. With immigration related crimes accounting for high percentage of federal crime, the issue of immigrants has attracted a lot of attention. Nonetheless, the interaction between immigration and criminal law is still complex and technical, and, therefore, it requires critical examination to understand its interaction.

Works Cited

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