It is not often that a new area of law emerges. Since the 1980s, however, criminal law and immigration law have increasingly converged to do just that. Pathbreaking scholars have begun to identify and theorize the myriad ways in which criminal law and immigration law have blended into one another. Conduct that has historically been considered about migration has, in some instances, increasingly become the basis for criminal prosecution, while in an ever-expanding set of circumstances criminal activity has become the basis for immigration law enforcement actions. Meanwhile, the investigative tactics of each area of law have left their traditional confines and become central features of the other. Police officers, for example, have commonly become the first layer of investigation about suspected immigration law violations, while immigration agents have increasingly turned to the security-centered practices of police officers.

Crimmigration law, as this new field is called, is everywhere. Although it was initially theorized in the United States, most explicitly by legal scholar Juliet Stumpf's article The Crimmigration Crisis, its array of investigative and prosecutorial features quickly spread. Social Control and Justice: Crimmigration in the Age of Fear (2013), edited by a legal scholar, Maria João Guia, and a pair of criminologists, Maartje van der Woude and Joanne van der Leun, is the first book specifically devoted to crimmigration's development as a distinct mélange of substantive law and law enforcement techniques. Appropriately enough, it does so with a transatlantic focus that illuminates common forces propelling crimmigration's expansion while recognizing important though nuanced distinctions among various locales.

In this pioneering work sure to be followed, the international team of contributors that the editors assembled reveals that national responses in North America and Europe have taken a decisively punitive bent. The Dutch became increasingly intolerant of diverse cultural practices as asylum seekers from Turkey, Morocco, Suriname, and the former...
Netherlands Antilles arrived in large numbers beginning in the 1980s (p. 178). Since the turn of the century, they have also come to rely more on involvement in criminal activity to determine a noncitizen’s authorization to live in the Netherlands (p. 268). In Spain, the government created a special police unit to specifically target for deportation noncitizens who commit crime (p. 259). EU law has also taken a punitive turn by “targeting individuals who facilitate, in one way or another, irregular migration” for criminal punishment (p. 88). In particular, the EU has criminalized human trafficking (p. 89) and made much use of private sector employers “to assist in immigration and to prevent irregular movement or stay” (p. 88) by imposing significant financial penalties for failure to abide by employee identification, record-keeping, and recording obligations (pp. 94–95).

Much of this is reminiscent of the United States. Police officers who historically have had no role in enforcing immigration law have recently become key players as the Immigration and Customs Enforcement agency, the branch of the federal Department of Homeland Security charged with investigating suspected violations of civil immigration law, “has, in effect, outsourced the identification of immigrants for enforcement actions to local law enforcement agencies (LEAs) and jails,” according to Michele Waslin (p. 128). ICE has also recruited the energy and resources of nongovernmental actors by partnering with private corporations, civic groups, and professional organizations to expand its menu of “alternative to detention” programs all of which, writes Robert Khoulish, “for the first time extends immigration control over a population of immigrants that have been released from detention” (p. 82–83).

To be sure, the United States and the various European countries featured have not adopted identical responses to immigration in recent years. In important respects, European nations have avoided some of the crimmigration initiatives most visible in the United States. The United States, for example, has witnessed a spate of subnational restrictions through local and regional elected officials’ attempts to criminalize unauthorized migrants. Meanwhile, at the national level, the United States has developed the most extensive immigration law enforcement regime in its history: 21,444 border guards, 429,247 people detained while waiting to learn whether they will be allowed to remain in the country last fiscal year alone, and an annual budget of approximately $18 billion. In contrast, a strong anti-crimmigration strain in Europe has resulted in meaningful legal interpretations and initiatives at the national and supranational level favoring immigrants. The Court of Justice of the European Union, for example, prohibited the exclusion or deportation of the parents of citizens of EU member states (p. 313). The Palermo Convention Protocol on the Smuggling of Migrants “expressly states that migrants will not become liable to criminal prosecution for the fact of having been the object of smuggling” (p. 92), a far cry from Arizona’s “self-smuggling” statute that does just that [3]. For its part, the Azorean government has proactively attempted to assist deportees returning from elsewhere reintegrate into Azorean life despite the fact that many of these individuals had never known life in the archipelago (pp. 295, 298–99).

Despite these immigrant-friendly initiatives, the trend on both sides of the Atlantic has been the same: to tie together criminal law and enforcement with immigration law and enforcement. Why, despite the unique legal and cultural context of each country studied in this volume (p. 42), have so many responded to migration with similarly punitive policy initiatives? The answer, Social Control and Justice suggests, lies in
the native population’s fear of migrants who are poorer, racially darker, and thought to be culturally dissimilar. Koulish explicitly links contemporary perceptions of immigrants in the United States as inherently threatening given the nation’s racial dynamics. Addressing the situation of unauthorized migration specifically, he writes that the majority white population fears “a population of brown people that reside in their communities without papers or authorization” (p. 62). Likewise, in Flanders, Tuba Bircan explains, “people’s fear of crime is linked with their negative attitudes toward immigrants” (p. 246).

These individuals are to be feared, it seems, because they are perceived to bring little more than risk and uncertainty to the receiving nation. After centuries of treating violations of immigration law as regulatory infractions, governments in North America and Europe have turned to criminal laws and criminal policing norms because immigrants have been framed as a danger to the nation (p. 53). “Fear has the power to produce and shape the contours of crimmigration law and the structures and products of the institutions that seek to control it,” writes Stumpf in her introduction (p. 11). And so it has. The immigrant has become the criminal and the criminal has become the enemy (p. 168). Rather than remain the worker of generations past who toils in invisibility until rising through the economic and social strata, today’s immigrants are visible because they are disturbances to the desired social order; they are visible because they are deemed deviant (p. 167). Against this threat the state has no choice but to protect its people and itself through the power of policing. Security trumps all else (p. 169).

All of this convincingly explains why governments have turned to criminal law and enforcement to “manag[e] migration,” as Jennifer Chacón put it in the context of the United States [2]. But it does not explain why this is a recent phenomenon. The opening lines of a long-forgotten book by the Boston lawyer Daniel Chauncey Brewer neatly summarize sentiments that were common almost a century ago in the United States: “This book has to do with the invasion, the occupation, and the conquest of New England by Continental Europeans within the memory of the passing generation…[N]o one claims that these immigrants compare with the wilderness-trained stock which is now disappearing. New England, therefore, has lost vigor as well as character” [1]. Brewer’s trepidation is reflected throughout Social Control and Justice, but the contributors do not venture to explain why crimmigration resulted now not then.

This is less a shortcoming then a call for future research. Crimmigration as a series of policies and a field of study is perhaps too new for the first book devoted exclusively to the subject to analyze its operations and origins. Concentrating on crimmigration’s operation in multiple countries, the contributors begin to disentangle, contextualize, and analyze its many manifestations. What they accomplish is a far-reaching exploration of today’s attempts to stem the tide of change. The many units of contemporary governmentality—laws, cultural norms, prisons, public police and their private adjutants, and paramilitary units—have all been enlisted in this battle to define the future. Will it look, act, and sound like it did at the close of the twentieth century, or will it be halted by the power, symbolic and concrete, of crimmigration? Only time will tell, but the contributors to Social Control and Justice have taken a significant step toward understanding, and perhaps shaping, that future.
References