

Criticizing Crimmigration

Author : Maartje van der Woude

Date : March 23, 2021

David Mofette & Anna Pratt, *Beyond Criminal Law and Methodological Nationalism: Borderlands, Jurisdictional Games and Legal Intersections*, in [Contemporary Criminological Issues: Moving Beyond Insecurity and Exclusion](#) 15 (Carolyn Côté-Lussier, David Mofette & Justin Piché eds. 2020).

The publication I would like to discuss in this Jot is a chapter in a book that is, in its entirety, a great and important read for those interested in the field of (critical) criminology and criminal justice. The 2020 edited collection “Contemporary Criminological Issues” provides its readers with an interesting set of chapters that challenge current critical criminological theoretical perspectives, themes and methods.

In the opening chapter, Mofette and Pratt introduce a new way to look at the intersection of criminal justice with immigration. According to the authors, this process is by no means fully captured – or understood – by applying the increasingly popular conceptual lens of ‘crimmigration’. The authors claim that the crimmigration lens tends to unjustly focus on finding evidence for the notion of the convergence – or merger – of criminal law and immigration law. As a result, the heterogeneity, contingency, and multiplicity of ordering and bordering practices, including the important ways that jurisdiction brackets and authorizes different legal powers and practices, remains hidden. This leads to false – and oversimplified – claims concerning the mechanisms driving the intersection of criminal justice with immigration. It also pushes into the background many other legal and quasi-legal regimes that are engaged in bordering practices and that contribute to the regulation and punishment of immigrants.

The authors therefore introduce a new concept that, they argue, allows us to better understand and unravel the intersection: the *legal borderlands* of the domains of immigration and criminal justice. These borderlands are sites of ‘interlegality filled with nonsynchronic, unequal, and unstable interplays between various laws, techniques, and normative regimes’ ([Mofette 2018](#), 156). Research into these legal borderlands is situated at the crossroads of different legal and quasi-legal regimes, scales and jurisdictions, and is careful not to reify any of them, while also being attentive to the interlegal and multi-scalar jurisdictional games at play in governance.

In developing their alternative theoretical frame, the authors borrow the notion of jurisdictional games from Marianne Valverde ([2009](#)). By linking jurisdictional games to the concept of the legal borderlands to assess developments tackled by others under the rubric of ‘crimmigration,’ the chapter offers a refreshing and important contribution to the scholarship addressing the governance of crime and migration. The authors invite scholars to reflect on two themes that are obscured in some of the crimmigration literature. First, they stress the coexistence of multiple legal and quasi-legal regimes and actors that operate at different scales (local, national, global, private, public) in the same spaces and the challenges and opportunities this creates for those who are governing migration as well as for those who are governed. Second, they emphasize the fact that each of the actors involved in the governance of migration are (un)consciously claiming, negotiating and enacting their (perception of their) jurisdiction through their practices.

Whereas legal scholars might see the concept of jurisdiction – and therewith also the notion of jurisdictional games – as a technical legal construct and practice, Mofette and Pratt clearly use a much wider, a more social-scientific, definition of the concept by stating that jurisdiction is to be seen as a performance that can only be fully understood by observing and analyzing discourse and practice. Anyone who summons the law can, in so doing, make claims about the “where”, the “who”, the “what”, the “when”, and the “how” of the law and therewith provide rationales for why an act or a person, in a particular place and time, falls under the authority of a particular body and, accordingly, to which kind of procedure they should be treated. This is exactly how the notion of jurisdictional games can help to further flesh

out the complexity of what is going on in those cases when criminal justice and immigration seem to intersect. By focusing on the negotiations that are happening as part of this 'game' – negotiations over what belongs to immigration law, criminal law, or other legal regimes, negotiations over what falls under municipal, provincial or federal authority – the concept helps to better understand the dynamics and struggles lying behind what, on the outside, might merely look as an easy 'conflation' of two legal regimes.

The authors illustrate their conceptual framework with two examples from their own work. The vignettes they discuss show how municipal bylaws or immigration law may be more central to some strategies of legal regulation, how actors such as port authorities or custom officers also need to be considered and how state sovereignty is a concept much less obvious than it appears. In other words, they illustrate the interconnectedness of local, organizational and national regulatory frameworks in making sense of bordering practices. In choosing these examples – [Pratt and Templeman's](#) work on the Canada-US maritime borderlands and [Mofettes](#) work on urban policing of immigrant street vendors in Barcelona – the authors also want to highlight that 'legal borderlands' are not to be understood only as the classical geographical borderlands between two countries or states. The 'urban' can be as much of a borderland as it is a site that is crisscrossed by dynamics that unfold at local, national, regional and global scales where governance is profoundly interlegal and, at times, transnational.

The lens provided by Pratt and Mofette offers an alternative and more dynamic way to look at the intersection of criminal justice and immigration. This framework seems more naturally to allow for attention to be paid to the ways in which formal and informal laws play out in the everyday lives the various players in the game of 'crimmigration control.' It also helps to avoid the pitfalls of methodological nationalism without denying the importance or the complexity of state power and violence.

Cite as: Maartje van der Woude, *Criticizing Crimmigration*, JOTWELL (March 23, 2021) (reviewing David Mofette & Anna Pratt, *Beyond Criminal Law and Methodological Nationalism: Borderlands, Jurisdictional Games and Legal Intersections*, in **Contemporary Criminological Issues: Moving Beyond Insecurity and Exclusion** 15 (Carolyn Côté-Lussier, David Mofette & Justin Piché eds. 2020)), <https://crim.jotwell.com/criticizing-crimmigration/>.