Although still a relatively understudied subject, the involvement of private actors in controlling and managing migration has gained attention in recent scholarship and has triggered a debate on \textit{inter alia} the legitimacy, accountability and effectiveness of the privatisation of immigration control. In her book, which is based on her dissertation defended in Nijmegen in March 2014, Sophie Scholten provides a valuable contribution to this debate by in-depth examining the role that private transport companies play in controlling immigration in the Netherlands and the United Kingdom. She particularly focuses on the so-called carrier sanctions that can be imposed on private transporters who carry passengers without proper travel documents to either of the two countries.

As Scholten outlines in her introduction, carrier sanctions entail an additional burden for private companies as checking passengers’ documents for immigration control purposes in the interest of the state exceeds their core business and their commercial interests. Indeed, they become key actors in immigration control, a field of governance that is traditionally regarded as one of sovereign state power but that is gradually subjected to privatisation. This development is part of larger trends both towards the externalisation of borders and towards the privatisation and outsourcing of allegedly core public tasks in the field of security management, including for example in the contexts of policing, military operations and penitentiary institutions.

The central question posed in the book is what the consequences of involving private carriers in the area of immigration control have been for the development of carrier sanctions regimes in the Netherlands and the UK and for the mutual relationships between these states, carriers and passengers. Indeed, explicitly focussing on the working of carrier sanction mechanisms in practice as the ‘law in action’, Scholten identifies three key parties that are “inextricable bound up with each other”: the state, the carrier and the passenger. In answering the central question, the book first addresses the development of carrier sanctions regimes both in the Netherlands and the UK, after which the impact of private carrier involvement in immigration control on the relationships between the three key parties is examined. Scholten does so by examining the legal framework, national and European legislation, case law, policy documents, political debate and literature. The second part of the analysis is in addition based on interviews and observations.

Whilst the Netherlands and the UK have different traditions of border control and of using sanctions vis-à-vis private carriers, they fall within the same common EU legislative framework on carrier sanctions. They are particularly interesting to compare given the difference in potential points of entry: whereas the UK’s policy on carriers’ liability extends to carriers operating at air, sea and land borders, the Netherlands only subjects air and sea transporters to such liability given that it has no external land borders due to the abolition of internal borders in the Schengen Area. As a result, contrary to the Netherlands, the UK is able to check every person entering the country and policies that involve private carriers in controlling such persons have hence featured much more prominent in the British context than in its Dutch counterpart.

The first part of the book looks into the theoretical underpinnings of the research as well as into the way in which legislation and policy on carrier sanctions have been developed both in the Netherlands, in the UK and on the European level. In an eloquent manner, Scholten describes that in the field of immigration control, state-centred ‘government’ has gradually been replaced by a multi-actor and dynamic form of ‘governance’. This can be explained both in terms of the possibilities that a dynamic form of governance provides to the authorities to effectively control
and manage immigration far beyond their own sovereign borders, as well as in terms of the alleged cost-effectiveness of such multi-actor partnerships. Indeed, not only can it be cheaper to have private actors assessing migration statuses before prospective immigrants reach the physical sovereign border, but private involvement also provides the state with possibilities to circumvent or overcome legal constraints that ordinarily limit its otherwise unfettered sovereign authority to control its borders and to decide on the entrance and expulsion of aliens. The border is therewith displaced to remote sites of control and, as a result of concurrent increasingly strict measures geared at irregular or illegal immigrants residing within the country, internalised at the same time.

Both the Netherlands and the UK have introduced carrier sanctions over the past decades. In the Netherlands, carrier liability increased in particular after the Schengen Agreement was signed. In addition, European legislation has resulted in a significant increase in the amount of fines, extended carriers’ duties and an enlarged toolbox to recoup costs from carriers. Given that the UK is not party to the Schengen Acquis, carrier sanctions developed rather differently there. Being an island nation without long land borders, the country’s incoming traffic is ‘naturally channelled’ through airports and seaports which are relatively easy to check and control. After an initial liberal immigration regime, restrictions have been increasingly implemented since the 1960s. This resulted not only in carriers’ liability legislation but also in civil penalty schemes and in the ‘e-Borders’ passenger information regime. The three concurrent schemes are jointly applied in order to prevent the entrance of undocumented passengers and clandestine entrants as well as for security purposes. Both the Netherlands and the UK have in addition introduced accompanying (or, as Scholten calls them, ‘contiguous’) measures that aim at the diligent checking of travel documents in order to make the system as water-proof as possible, including measures related to training and advice.

The book aptly recognises that both countries did not develop such legislation and policies in a vacuum. Indeed, an entire chapter (Chapter 5) is devoted to the fact that the Dutch and British carrier sanction regimes cannot be seen in isolation of their legislative counterpart at the international and European levels. The book makes clear that national legislation does not necessarily derive from the supranational level, nor that national measures automatically evolve into supranational ones. At the same time, the book persuasively shows that international and European measures have witnessed a similar tendency as national legislation, with carrier obligations becoming increasingly strict and comprehensive. Carriers have, as such, not only become key actors in national border control strategies: they are also a structural part of border management and immigration control at the European level.

Chapters 7 and 8 constitute what I consider one of the key strengths of this publication. In these chapters, Scholten moves beyond the legislative and policy levels to consider the relationships between carriers and the government. She impressively deconstructs the relationships between both key actors by looking at their cooperation on different levels. In an illustrative way, the book shows how political pressure and incidents have caused the Dutch government to move from a rather lenient approach to carrier sanctions to a more harsh and strict attitude. At the same time, this stricter approach has allowed sufficient space for the negotiation of alternative dispute resolution options between the government and carriers. Instead of taking cases to court, Dutch airliner KLM has for example negotiated a Memorandum of Understanding with the Dutch government that signifies a willingness to settle dispute in an alternative fashion. Through a persuasive examination of such examples, Scholten convincingly argues that such agreements have changed and consolidated the working relationships and the cooperation between both actors and that they increasingly cause a sense of responsibility in the carrier. In turn, such agreements are indicative of the fact that carrier sanctions are not simply the result of a command-and-control style regulation, nor of top-down governance, but are rather embedded in a more flexible and hybrid governance system that allows for reciprocal relationships and interactions. The case of seaport controls, where immigration officers are generally more lenient and maintain a cooperative approach to the shipping companies, provides a further illustration that carrier sanctions are not simply embedded in a principal-agent dichotomy but operate in a
more flexible and hybrid field of governance and regulation. At the same time, this experience is not widely shared: to the contrary, the relationships between the Dutch government and airlines other than KLM resemble to a large extent a command-and-control strategy. In the UK, the situation resembles the flexible and hybrid mode of governance to a certain extent as the relationships between the UK immigration authorities and the various carriers have developed in different ways as a result of court decisions, the carriers’ competitive positions, their different characteristics as well as the fact that carriers have to cooperate with different governmental departments and on different levels. Although the power balance between the UK authorities and carriers remains unequal in favour of the government, carriers do have some power as their opinions are nowadays taken seriously by government departments.

The relationships between governments and passengers on the one hand and carriers and passengers on the other are discussed in Chapter 9. However, no interviews were conducted with passengers as this was deemed beyond the possibilities of the research. Scholten consequently resorts to the views of state representatives, carriers, NGOs and other authors to measure the impact of carrier sanctions on the relationships that passengers have with states and carriers. However, in light of the perspective adopted – that of the law in action – and the key aim of the publication – to understand the meaning of laws and policies for the ‘real social state of affairs’ and to address what people do with law – it appears unfortunate that the passenger, constituting one of the three key actors, is left out of the subsequent empirical research. Indeed, whilst Scholten has gained an impressive insight into the effects of carrier sanctions on the state actors and the private carriers, the actions of – and the consequences for – those who are ultimately subjected to exclusion as a result of strict carrier sanctions ultimately remain unclear. The chapter’s findings consequently provide few surprises, which may be considered a weakness in an otherwise excellent publication. The development of carrier sanctions policies has made it more difficult for some categories of travellers to reach the territory of their preferred destination country, which is particularly troublesome for asylum seekers. Even though the Netherlands and the UK have taken measures to prevent this from happening in line with international and human rights law, carriers in practice make no exception for those who want to lodge an asylum claim. In particular at this point, it would be interesting to learn how refused asylum seekers cope with these changing relationships. As Scholten rightfully states, various studies have pointed out that denied travellers may look for loopholes, alternative routes or counterstrategies to circumvent the existing regulations and measures. Empirical research into such responses would hence have benefited the analysis of the changing triangular relationships between the passenger, the state and the carrier. The conclusion that “[s]till, the effects of carrier sanctions for passengers remain unclear” is therefore not fully satisfactory in light of the book’s aim and approach.

Some additional limitations can be discerned. The empirical data collection has focused on the Netherlands, not on the UK, which leads to a certain empirical unevenness which is unfortunately not fully explained. Furthermore, at some points the book would have benefitted from additional critical reflection. For example, in the introduction, Scholten explains that at some airports, authorities oblige airlines to employ specific handling agents to perform document checks which ultimately means that airline carriers may not have a choice in the quality of the agent yet nevertheless are responsible for its actions. This raises serious questions of effectiveness, accountability and in particular of legitimacy, which one would expect to be more prominently surveyed in a book that sets out to examine the way in which carrier sanction mechanisms operate in practice.

None of these criticisms are, however, insurmountable. Indeed, the empirical unevenness and the fact that further critical reflection would at certain points be appropriate do not fundamentally hamper the answering of the posed research question. In addition, it is exactly the effect of carrier sanctions – that of externalizing the border and the border control process far beyond the national sovereign boundaries – that prevents the researcher from conducting interviews with denied passengers who largely remain invisible. The fact that this perspective is
missing in the empirical part of the book is hence, from a practical perspective, understandable and does not affect the relevance of this publication for contemporary scholarship.

In fact, given the ongoing concerns over immigration in contemporary political and public debate, as well as the increasingly strict legislative and policy responses in this domain, the book could not have come at a better time. Its rich descriptive and empirical findings point out that in the realm of immigration control, the way in which law and policy are employed in practice has real implications not only for those carrying out the measures, but certainly also for those being subjected to them. Given that developments in this area are continuous, Scholten’s unique and topical publication is a valuable and timely contribution to the literature on immigration control and border securitization and provides ample basis for further descriptive, empirical and normative inquiry.