

BOOK REVIEW

BOOK REVIEW: GOD AND THE ILLEGAL ALIEN, UNITED STATES IMMIGRATION LAW AND A THEOLOGY OF POLITICS BY ROBERT W. HEIMBURGER

*Reviewed by Chelsea M. Baltes**

Robert W. Heimbürger is Associate Chaplain with the Oxford Pastorate, Associate Researcher at the Fundación Universitaria Seminario Bíblico de Colombia, and Editor of IFES Word & World.¹ Heimbürger begins his book connecting to the reader on an emotional level with first-hand accounts of individual's unsuccessful attempts to illegally enter the United States. In a culmination of studies and research he takes on the contentious topics of immigration policy and law while throwing in the added delicate component of religion. Broken into three units, six chapters, Heimbürger discusses; (1) how we arrived at the word "alien", (2) a religious perspective on coming near to distant neighbors, (3) the development of an "alien" becoming illegal, (4) how immigration should be governed under God, (5) how individuals from physically close nations can become illegal aliens, and (6) showing justice and mercy towards neighbors.

Overall, the book provides a unique perspective on Immigration and the law but misses the mark in its arguments. It takes a simplistic approach, arriving at no real solution, on a topic that is much more intricate than the book leads on. In a time where so many groups of people are divided, it was refreshing to read about the hope of coming together and loving one another. Unfortunately, the book interprets biblical stories and values to reach an intended outcome and dismisses some of the most important topics of discussion when it comes to immigration law and policy.

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1. ROBERT W. HEIMBURGER, GOD AND THE ILLEGAL ALIEN-UNITED STATES IMMIGRATION LAW AND A THEOLOGY OF POLITICS (2017).

I. THE IMMIGRANT AS ALIEN

In Part I, the book studies the terminology surrounding immigration and concludes that the use of the word “alien” stands for a negative connotation that does not reflect God’s world and Church.

Chapter One analyzes the development of the term “alien” through the years in a way that is not only hard to follow but difficult to understand the importance. Heimburger’s concludes that “alien” implies suspicion as an outsider based on the extraterrestrial meaning, the meaning in novels like *Silas Marner*, Medieval England, common law and more.² Heimburger’s winding and convoluted analysis of words, could easily lose and confuse the reader.

By the end of the chapter, he finds the term “alien” offensive and wrong because it is a term condescendingly referencing someone who “lies outside of the bond between subject and sovereign.”³ He states that “alien” is the strongest term short of “enemy.”⁴ Heimburger writes that it would be less offensive to simply add the word “born” after alien because then instead of defining a class of people it is a “helpful” suffix.⁵ This argument is easily lost on the reader as “alien born” still defines a class of people in the same way as “French born”, which he also argues is the more appropriate description.⁶ Heimburger believes that the term contributes to the distasteful view some Americans have of outsiders. However, he reads too far into the word “alien”, especially when immigration raises more substantial issues to be discussed. Furthermore, alien is a legalistic term meant for the U.S. judicial and political system. There is not a vindictive underlying meaning to it as he implies, and while he argues using it as a legal term politicizes a class of people, he is overcomplicating a simpler topic while later in the book simplifying very complex topics. Throughout the chapter, there is a focus on the subject-alien distinction, and ultimate argument that protection by a government and nation stems from being a subject. This protection stems from being a subject because as such, you bear “faith and allegiance to that sovereign.”⁷ He writes that this distinction determines who has privileges and can do things, and who cannot.⁸ However, the line is not so black and white. People who come to the United States are afforded many protections and privileges in whatever capacity they come. Whether traveling, temporarily staying on a visa, or becoming a citizen (or “subject” in Heimburger’s words), they are granted many protections legally and politically and are provided with extensive opportunities. As Heimburger himself notes, being classified as an alien can also be temporary.⁹ The United States of America is a country of law, it is

2. *Id.* at 44.

3. *Id.* at 36.

4. *Id.* at 38 (referencing Sir Edward Coke’s report on “Calvin’s Case”).

5. *Id.* at 39.

6. *Id.* at 39.

7. *Id.* at 43.

8. *Id.* at 44.

9. *Id.* at 33.

true, but that law does not call for blind obedience of its government. It calls for a social contract of behavior for the common good to achieve the ends of all people: freedom, life, liberty, and the pursuit of happiness.

In chapter two, Heimbürger focuses on how those far away are situated to bring God's world to its fulfillment and how those from far away are situated in the church. In attacking the first question, he relies on Karl Barth's *Church Dogmatics* to conclude that individuals should identify with humanity and not nationhood, and that in doing so they should be drawn to seek out others both near and far.¹⁰ Heimbürger and Barth both bring attention to a valid reminder: we are all human. Humanity in the immigration discussion can be overshadowed when trying to achieve a balanced solution and outcome. Heimbürger's use of Barth's writing at times comes across as a reprimand to those who are proud of where they come from in a more particularized way. Heimbürger brings into the discussion Barth's harsh view on nationhood and nationalism as detrimental, relying on Germany's Third Reich as an example.¹¹ While the fear that placing one's nation above God and humanity clearly rests on valid grounds, nationhood is one of the primary features that unites a country and keeps it functioning. Being proud of what one's country stands for, relating to its people, and upholding its values are acceptable beliefs to have and one should not be shamed for having them. Patriotism, or, "vigorous support for one's country" by definition, does not mean parallels should be drawn to the Third Reich. One can identify with humanity while still reasonably identifying with one's nation.

In approaching the question of how those from far away are situated within the church, Heimbürger presents ways of relating to migrants and foreigners through Christian Scripture. He draws on the Apostle Paul's traveling as a missionary to spread the word of God, to demonstrate "coming near to distant neighbors."¹² This analogy is not clear. In this biblical scenario, Paul is traveling to different places "becoming" those he encounters to teach them about God. He is going to various towns, temporarily, and meeting different individuals to share the Gospel with them in a relatable way. Paul is working to "win more of them over to participating in Christ's victory over death."¹³ It is unclear if Heimbürger hopes to draw a migrant acceptance by these groups of Paul, or whether he hopes to draw an acceptance by Paul of these various groups. It is hard to find the coming near to distant neighbors analogy to immigration of the alien. He does note that as a person of God, an individual is held to a higher solidarity with migrants.¹⁴ This solidarity, he concludes, "means that the simple unqualified term 'alien' is not a true term for a

10. *Id.* at 46; KARL BARTH, *CHURCH DOGMATICS* (1951).

11. HEIMBURGER, *supra* note 1, at 46.

12. See BRIAN BROCK & BERND WANNENWETSCH, *THE MALADY OF THE CHRISTIAN BODY: A THEOLOGICAL EXPOSITION OF PAUL'S FIRST LETTER TO THE CORINTHIANS 190-225* (referencing Paul's rights as an Apostle in the Bible); 1 *Corinthians* 9.

13. HEIMBURGER, *supra* note 1, at 55.

14. HEIMBURGER, *supra* note 1, at 50.

believer to use since the migrant is not fundamentally different from the believer.”¹⁵ This again raises the argument that human beings should identify primarily with humanity. Yet, it also argues that a religious individual should practice unqualified acceptance of all humans, as a human. This argument fails to recognize practical implications of such a practice, for example safety concerns. Finally, in closing of chapter two, Heimbürger returns to the use of the word alien by calling for solutions to this “American disease, the politicization of all life.”¹⁶ He proposes solutions such as limiting the sway of laws regarding aliens, working within federal law to limit that law’s purview, change the law, or celebrate a common life as humans and not alien or citizen.¹⁷ He questions the solutions to the problems he analyzes by throwing out “altering the law to limit its scope while enjoying life among a new community.”¹⁸ This would, of course, be a phenomenal solution. However, it would have been more substantive and beneficial to discuss concrete options and suggestions of how to do so and what to change, not just suggest change.

II. THE ALIEN AS UNLAWFULLY PRESENT

In Part II, the book dives into the historical development of immigration law, including the sovereign right to exclude aliens and the right to expel aliens for sovereignty, self-preservation, and self-defense. This section concludes that only God can defend territories and that many of the punishments illegal immigrants receive are not commensurate with their crime.

In chapter three Heimbürger finds that government garners a general authority over immigration as a result of nonassimilating Chinese immigrants. Chapter three begins with a look at terminology once again. Here, however, the discussion is incredibly informative and beneficial for the reader. Heimbürger traces through Congressional legislation the meanings of the words unlawful, illegal, and unauthorized, as they describe the word alien.¹⁹ The distinctions between these adjectives are not only enlightening but necessary to understand the broader context of immigration as well as the specific circumstances of individual “aliens”. Society often throws out those qualifiers as if they are all interchangeable when they are not, so providing this background to the reader is crucial. Heimbürger then looks at historical aims of exclusionary laws and concludes they sought to keep out three groups of people: unhealthy, unfree, and healthy.²⁰ This leads to his discussion on the right to exclude and the right to expel aliens using cases from a single period in U.S. history all involving Chinese Immigration. His argument would have been better supported and more thoroughly developed had he

15. HEIMBURGER, *supra* note 1, at 50.

16. HEIMBURGER, *supra* note 1, at 61.

17. HEIMBURGER, *supra* note 1, at 61-62.

18. HEIMBURGER, *supra* note 1, at 62.

19. HEIMBURGER, *supra* note 1, at 66-68.

20. HEIMBURGER, *supra* note 1, at 70-71.

expanded his case selection to various time periods and represented a more diverse group of people. It is an easy route to take to find one flaw in someone or something, and harp on that alone as the grounds for one's argument. That is what Heimbürger does here to reach his finding that immigration authority is established as a matter of sovereignty.²¹ This sovereignty allows the government to turn away immigrants who may not assimilate, who are a threat to the country or its peace and safety, or who threaten the preservation of society.²² While the United States was tightening its borders, it paved the way for proffered rights to grow and strengthen within the borders.²³ Heimbürger concludes that this created a notion of sovereignty disconnected from a moral field.²⁴ It is difficult, however, to fit this argument into modern day. The United States faces far more threats now than it did from 1812-1898, and threats which could be far more catastrophic. Crime and terrorism have skyrocketed, while economies and resources have dwindled. In the context of today, there is fundamentally a greater need for protection of citizens than there ever has been and this must come at a price. That price, unfortunately, are restrictions on entering and remaining in the country.

Chapter four is one of the only places in the book where the author considers harm or threat of harm towards citizens of a sovereign state. While he acknowledges government's ability to implement restrictions and laws in order to protect its people, he continues to discount exclusion and expulsion of aliens, claiming that such authority, "is making a society."²⁵ Heimbürger dangles the implication that the government, in their immigration authority, is bordering on playing God.

Shockingly, the author finds it important to distinguish between actual harm and a threat of harm. Actual harm, which he deems to be individuals who have been convicted of felonies, "form only a small proportion of the cases U.S. authorities deal with."²⁶ That concludes his discussion of serious crimes and serious threats. To him, threats fall into the categories of economic, financial, and spatial. He discounts all three categories of threats as being unimportant and forfeitable.

However, to discount "threats" means to sacrifice the financial stability of this country, sacrifice the greater living conditions by overcrowding, and sacrifice jobs of citizens. It is only a question of when these become realities and no longer simply threats if we were to open our doors as widely and as freely as Heimbürger seems to believe we are called to do. This will ultimately

21. HEIMBURGER, *supra* note 1, at 72.

22. HEIMBURGER, *supra* note 1, at 77; *see* Chae Chan Ping v. U.S., 130 U.S. 581 (1889) (holding the United States has the right to exclude immigrants); *see* Fong Yue Ting v. U.S., 149 U.S. 698 (1893) (holding the United States has the right to expel immigrants).

23. HEIMBURGER, *supra* note 1, at 84; *see* Yick Wo v. Hopkins, 118 U.S. 356 (1886) (holding the city of San Francisco could not deny permits to Chinese-owned laundries while granting permits to laundries owned by those with European heritage).

24. HEIMBURGER, *supra* note 1, at 87.

25. HEIMBURGER, *supra* note 1, at 127.

26. HEIMBURGER, *supra* note 1, at 128.

destroy all that this country stands for and all that these immigrants are coming to the United States for in the first place. Additionally, a discussion on immigration cannot take place with the assumption that all violence would be screened by criminal background and therefore poses no threat. Actual harm also should not be glossed over simply because it is rarer. This is the point where it would have served Heimbürger well to consider and weave current events into the discussion. This discussion must include the growing number of cases involving violence as seen with Kate Steinle in San Francisco, the terrorist attack on a bike path in New York on October 31, 2017, and MS-13 gang violence, to name a few. Heimbürger ends the chapter with a saturated analysis of the punishments associated with illegal immigration by characterizing them as *mala in se* and *mala prohibita*.²⁷ He concludes that when the only wrong is that they are disobeying the law, *mala prohibita*, we have too strict a punishment system. This argument seems to be quite backwards. Not only does it stand for a complete disregard for the law, it discounts it in a way that is only going to exacerbate the problem at hand. As it stands, illegal immigration is a large issue trying to be dealt with and searching for a solution. Even with all the laws and stricter punishments in place today, which Heimbürger denounces, it continues to be a relevant topic to be addressed. Why then, would America lessen its punishment, likely increasing illegal/unlawful/undocumented immigration exponentially? Heimbürger finds a balancing test most suitable as to when he finds breaking the law should actually be punishable and when it should not. As the theme stands throughout this book, Heimbürger disagrees not only with the American immigration system, but now he disagrees with the American legal system. He also fails to consider the perspective from Americans and possible effects and consequences they would face.

III. AN UNLAWFULLY PRESENT ALIEN FROM A NEIGHBORING COUNTRY

In Part III, the book begins a detailed history of modern federal immigration law spanning Mexican migration and a shift towards nondiscrimination laws. This section ends with a religious based call for justice and mercy towards those migrants coming from lands closer in proximity to the U.S. because they are our neighbors.

Chapter Five opens with an educational and chronological explanation of how the U.S. has arrived at its current immigration law regime. The author argues that our failing immigration laws began with the Immigration and Nationality Act of 1965, which sought to end racism and discrimination, as seen in the quota system, and instead shift towards a more equal system across the board by allowing each country the same number of immigrants. According to Heimbürger, this move was such an injustice to the Mexican

27. HEIMBURGER, *supra* note 1, at 135-145.

people who had provided cheap labor under the Bracero Program²⁸ performing the hard work Americans “would rather not do.”²⁹ As a result, Heimbürger believes the American people owed a debt to the Mexican people. This debt stems from their willingness to not only apparently perform “hard work” that “Americans would rather not do,” but also because Americans failed to provide good living and working conditions and regularly paid them less than American citizens.³⁰ The author uses his recount of history to villainize the American people at every turn. He appears to see no benefit in their behavior even as the government worked to create a change for the better in their immigration policies by seeking equalization. The US opened their door to far more countries, expanding in many ways their immigration policies. Instead of recognizing any sort of good that came out of such a move he concludes that “a solution to one problem created another problem.”³¹ Heimbürger states early in the chapter that “under the presidency of Porfirio Diaz in Mexico, 95 percent of households were landless and there was very little work,”³² which created a movement into the U.S. to find work on farms in the South. Yet he manages to find only fault with the American’s acceptance of this increased help. There is no positive perspective stemming from the Americans providing jobs and accommodations to those in need, and an overall insufficient balance of perspective. Lastly, Heimbürger hits extremism in his negative view of federal immigration laws towards Mexicans when he compares the American people’s treatment of Mexican employees to that of slaves. He concludes this chapter with the chilling statement of disdain towards Americans that, “so far as Americans participate in the economy, and so far as they depend on bodies to do the hard work they would rather not do, they are tied to those who work on the black market. Americans do not keep slaves anymore, but they have something close.”³³

Chapter Six approaches American treatment of Mexicans through a religious lens. Though it is unclear where the belief that physical proximity amounts to a greater treatment, this is the approach Heimbürger takes. Since Mexico is close in proximity, we should be even more compelled to treat them neighborly than those who may be more distant. Though, as previously stated in an earlier chapter, we should treat those both near and far as our neighbors. In arguing for mercy and justice towards migrants as a whole, but most notably those from Mexico, the author discusses the biblical parable

28. See Bracero History Archive (2018), <http://braceroarchive.org/about> (describing the program, which was created by Executive Order in 1942 and grew out of agreements between Mexico and the United States that allowed millions of Mexican men to come to the United States to work on short-term labor contracts).

29. HEIMBURGER, *supra* note 1, at 178.

30. HEIMBURGER, *supra* note 1, at 171.

31. HEIMBURGER, *supra* note 1, at 177.

32. HEIMBURGER, *supra* note 1, at 168.

33. HEIMBURGER, *supra* note 1, at 178.

“The Good Samaritan.”³⁴ Heimbürger again finds fault with the American people through this analogy by equating those who believe in illegal residents within the U.S., to the characters in the parable who fail to stop for a person in need on the road. He says, “the over-confident judgment that some U.S. residents are illegal. . .gives Americans an excuse not to recognize the love shown by their neighbors or to return that love.”³⁵ Not only does Heimbürger make a general assumption throughout the book that these migrants would almost always be amicable and non-threatening in any way, but at this point goes on to make the generalization they would in fact affirmatively show love and Americans would not reciprocate. The lesson that comes from the Good Samaritan Parable is to love thy neighbor as thyself. Most human beings with any ounce of compassion would not walk by a helpless person on the side of the road who has clearly been beaten and robbed and left for dead. In a broader sense, the parable is a lesson to help those in the neediest of states and provide basic humane assistance. Heimbürger is trying to call on this mercy and assistance to those in need but he strips down the immigration context to an unrealistically simplistic level. His argument is everyone is our neighbor so help everyone who needs it or comes to this country in need. Unfortunately, while I am hopeful for his overly-optimistic simplicity, the world and most certainly the immigration topic is far more complex. The ending of the chapter involves a deeply cynical view and critique of Americans, through the suggestion that the U.S. can become neighborly by recognizing that they are “indifferent and oppressive to Mexico and should legally reform as a first step to acknowledgement of the mercy it receives by Mexican immigrants.”³⁶

CONCLUSION

Robert W. Heimbürger took a unique and sensitive approach to his analysis and study of U.S. immigration laws. Tackling the topic through a theological perspective is a novel approach, and I applaud his use of the good in religious faiths to call on humanity when dealing with immigration.

However, Heimbürger does not simply call on the good, kind, and compassionate qualities exemplified in religions and the stories found in the Bible, but he goes as far as to exploit the positive facets of religion to reach the political ends of the agenda he is trying to push. The book provides detailed and interesting histories on topics ranging from the terminology used to describe various categories of people coming to the United States, to old English Common Law and Congressional legislation. However, it struggles overall to

34. *Luke* 10:25-37 (where Jesus tells the story of a man beaten, robbed, and left half dead on the side of the road who seeks help from three different people who pass by. The priest and the Levite deny help while the Good Samaritan shows mercy by bandaging his wounds and taking him to shelter).

35. HEIMBURGER, *supra* note 1, at 190.

36. HEIMBURGER, *supra* note 1, at 208.

provide clear connections and make explicit points regarding interpretation of the Bible and religion to current U.S. immigration policy.

Furthermore, the book glosses over or fails to touch on major topics surrounding immigration including the unfortunate reality that not every person comes to our country with an amicable disposition and hope for a better life. This is problematic today, where the threat of terrorism and violence are a very real concern. A discussion on current events regarding the risks associated with violent individuals, gangs, drugs, and terrorism cannot be avoided and are inherently part of the discussion associated with immigration. The book tends to lack a balanced viewpoint, often appearing one-sided. It reflects an empathetic and sympathetic view through a religious lens encompassing the positive characteristics of one's faith and scripture towards those coming into our country as a general group of persons, with little regard and mere indifference to Americans themselves.

It is important to note more favorably than the book does, that although the system may not be perfect, the United States does not close its door to others but rather seeks protection for its citizens while extending an open hand for a better life to others through the legal processes of becoming a citizen. After all, as Heimburger briefly stated, being "alien" can be a temporary classification. The book boldly went out on a limb to tackle a controversial topic through a controversial approach and while the concept is intriguing, it seems to lack any sort of middle ground and reads as a skewed viewpoint.

God and the Illegal Alien is available from Cambridge University Press.