

sons and their weights are just being discovered. This volume is essential reading for anyone interested in careful thinking about reasons, because it serves as both a report on what we've learned so far and an agenda for where we should look next.

JUSTIN SNEDEGAR
University of St Andrews

Mancilla, Alejandra. *The Right of Necessity: Moral Cosmopolitanism and Global Poverty*. London: Rowman & Littlefield, 2016. Pp. 140. \$90.00 (cloth); \$29.95 (paper).

Alejandra Mancilla's aim in this concise book is to inject an old idea into contemporary cosmopolitan thinking about global justice. This is the idea of the right of necessity—a right of the needy to take the material resources they need for subsistence, from those who are not similarly needy. Two of the book's seven chapters are devoted to tracing this idea back to its medieval and early modern roots. From its sources in medieval canon law (including but predating Aquinas), the right of necessity receives prominent attention in Grotius and especially Pufendorf, who see it as part of the content of natural law, on which positive human laws are dependent for their legitimacy. Grotius sees us all as possessing a natural privilege right to the means of subsistence; Pufendorf extends this further, recognizing also a claim to the resources that are required to meet one's most basic needs—a claim which correlates to an enforceable duty of the well-off to provide needed aid. According to Pufendorf, minimal duties of humanity should be enforced by law, but when they are not, a right of necessity may justly be exercised, and should be recognized by judges as creating exceptions in the application of laws concerning the use of others' property.

Mancilla's treatment of these thinkers is presented as a background for her own treatment of the right of necessity in connection with current poverty and deprivation. In the book's central chapters, she presents a view that she sees as continuous with Pufendorf's. The right of necessity she advocates is both a privilege (the absence of a duty not to take others' possessions to provide for one's own subsistence) and a claim (correlating with a duty you have not to prevent the destitute from taking your possessions). Like Pufendorf, she holds that this is consistent with accepting the legitimacy of the institution of private property—arguing that the recognition of the right of necessity is one of the internal limitations that must be included in any such legitimate institution. And on her reading of Pufendorf, the right of necessity is not restricted to episodic emergencies—cases of the type represented by Joel Feinberg's hiker, caught in a storm, who breaks into an unoccupied cabin to survive—but extends to cover circumstances of ongoing severe deprivation. Accordingly, Mancilla sees this right as having been exercised by Chilean *callamperos* who settled on unoccupied private land on the urban fringes of Santiago, by landless rural workers in Brazil cultivating privately owned agricultural land, by poor Bolivians collecting water after the privatization of water services made it illegal, and by hungry shoplifters. In each case, her claim is not only that those from whom these resources were taken were not wronged, but also that they had a duty to allow those resources to be taken.

The broader theme of the book is a criticism of the terms in which cosmopolitan thinking about global poverty is standardly conducted. Too often, the questions being asked concern what we in the rich world should be doing to rectify the deprivations and injustices suffered by the poor. This conceives of the world's poor primarily as patients to be acted on by us. Mancilla sees an emphasis on the right of necessity as a corrective to this, insisting on the moral agency of those who are subject to injustice, and focusing on the actions they may rightly take in resisting it.

In developing this view, Mancilla emphasizes that she is not offering it as a prescription for rectifying structural injustice. She does offer as one of her arguments for the recognition of this right that recognizing it could serve to encourage the privileged to support a more universal right to subsistence. But her main concern is to defend the legitimacy of actions of self-preservation under prevailing conditions of structural injustice. The defense is Pufendorf's: no system of property entitlements that could reasonably command the acceptance of all who are subject to it could include a requirement that someone starve as the cost of respecting the proprietorial rights of others over what one needs to survive. What she wants to add is that, in the same way, it is unreasonable to restrict the right of necessity to emergency cases like hikers in storms, when the global economic order is structured in a way that maintains millions in a precarious state. However, consistently with Pufendorf's rationale for the right of necessity, Mancilla does accept three conditions he attaches to it. The need protected by the right must be basic, covering the resources necessary for survival or self-preservation; there must be no violation of others' equally important interests; and it must be exercised as a last resort. (She adds here that the last resort condition precludes requiring the poor to subject themselves to abusive working conditions.) Conceiving of this right as including not just a privilege but also a claim invites the question, how is the bearer of the correlative duty determined? Mancilla's answer is that the right holder allocates these duties, when he identifies the goods he needs. When a destitute person tries to take your goods to sustain himself, you thereby acquire a duty to let him have them. If a destitute person hacks into your bank account, you have a duty not to stop him; indeed, you have a duty not to protect your bank account from being hacked into by anyone who needs to do so to subsist.

The last two chapters discuss objections. The main objections she considers are the following four: that neither the putative right holder nor the putative duty bearer can be in a good epistemic position to determine that the conditions required for the exercise of this right are satisfied; that recognizing a right of this kind would impose an unjust burden on those whose goods are most accessible and who are least able to protect them; that this would tend to exacerbate insecurity, class division, and disrespect for law, impeding the establishment of a just social and economic order; and that a right of this kind is of little practical use if those against whom it is claimed have the power to prevent it from being exercised. These objections are dealt with swiftly, the main responses being to reemphasize that this is not a prescription for rectifying injustice but a description of the entitlements possessed by those subjected to it; that it needs to be supplemented by more organized and larger-scale responses to global injustice, which the recognition of this right could help to support; and that it should be accom-

panied by efforts to establish a protocol between claimants and duty bearers to mitigate the dangers of conflict and mistrust.

The challenge emphasized by the book needs to be taken seriously. Given the strength of the case for thinking that any system of property entitlements that can reasonably command our compliance must recognize exceptions in emergency situations (like the hiker in the storm), what good grounds are there against extending that case to recognize a more comprehensive right of necessity, applying to circumstances of ongoing deprivation? The brevity of the book works to focus this challenge, reminding us of its historical roots while encumbering it with relatively little further theoretical baggage. However, inevitably this leaves gaps. As I see it, the main ones fall under three headings.

First, questions can be raised about the justificational grounding for the claimed right of necessity. In Pufendorf, this is anchored in an argument from hypothetical consent: given that the point of instituting a system of property entitlements is to provide us with material security, the original legislators would have recognized exceptions to those entitlements that apply in circumstances of necessity. This argument is echoed by Mancilla, but it is problematic: it is hard to see how we could now be obligated by what other people (if they existed) would have agreed to. However, although this problem is worth noting, it does not undermine the project. Surely, a system of property entitlements that denied hikers in a storm the opportunity to shelter themselves would be outrageous, and when we reflect on what would be outrageous about it, it is compelling to point out that any system of property entitlements that all (including both hikers and cabin owners) could reasonably be required to recognize as legitimate would include an exception in this kind of case. It may be problematic to seek to ground that thought further in an appeal to hypothetical consent, but the forcefulness of that thought is enough to generate Mancilla's challenge. Why doesn't the same thought apply not just to leisured hikers but also to the propertyless?

A second set of problems is more important. The content of Mancilla's proposal is not entirely clear. In advocating a right of necessity, is she making a claim about the content of morality only, or a claim about the proper content or application of the law? Pufendorf's view is apparently the latter: the natural right of necessity generates a class of exceptions that should be recognized by judges in applying the law of property, amounting to a "correction of that in which the law, by reason of its general comprehension, was deficient" (Samuel von Pufendorf, *The Whole Duty of Man According to the Law of Nature* [1673], ed. I. Hunter and D. Saunders, trans. B. Tooke [Indianapolis: Liberty Fund, 2003], bk. 1, chap. 2, sec. 10). His idea is not that the law should attempt to define explicitly the class of cases in which exceptions of necessity apply, but that judges have a duty to interpret it as allowing such exceptions. The best reading of Mancilla's view seems to be as a proposal of this sort: not as a set of legal rights and duties that should be incorporated into the content of property law itself, but as a set of moral rights and duties that govern its proper application. However, this raises pressing questions about the principles of equity by which judges should be guided in recognizing these exceptions, given the impact this has on those whose legal property rights are not enforced, as well as questions about the consequences of administering the law in this way, and the extent to which those consequences should affect the bound-

aries of the discretion permitted to judges. To answer such questions, a more fully developed proposal is needed.

The other question that arises here concerns the jurisdiction over which the right is to apply. One way to read Pufendorf is that the points he makes about justice in connection with property apply to any political community in which a subsistence-guaranteeing safety net is not already sustained through legislation. But that is consistent with thinking that those of us lucky enough to live in such communities thereby enjoy an immunity from having rights of necessity exercised against us by the poor. Mancilla evidently disagrees, pointing to the way in which the global economic order connects us across national boundaries. But this raises broader issues about how her proposal could be realized without advocating a world legislature and judiciary in which claims of the poor citizens of one state against the better-off citizens of another could be recognized. If so, a much broader justification for this is required—a justification not only for the broad moral cosmopolitanism that Mancilla begins by assuming but also for an ambitious, world-government—presupposing political cosmopolitanism. If not, it needs to be explained just how claims and duties should be applied across political boundaries as she envisages, and just what their legal implications should be.

Beyond these questions, there is a further, third set of issues on which more needs to be said. These concern the stability of the proposal. What kind of institution of property is consistent with a liability to be put under a duty by someone else to surrender your property to them, which then guides judges in their application of the law of property? The standard view of emergency cases like the hiker is that while a needy person has a privilege to use the resources necessary for self-preservation, she then incurs an obligation to make good any loss imposed on the property owner. This preserves a robust sense in which the owner's property right is retained. Mancilla's proposed right of necessity removes this requirement of redress. It therefore raises a pressing question for her project. She sees herself, like Pufendorf, as advocating the possession of a right that is consistent with accepting the social value of the institution of property itself. But this feature of her view, together with the accompanying idea of a power possessed by the needy to allocate duties of aid, creates a pressure to provide a much fuller account of how these ideas cohere—of how the institution of property can function in a way that retains its social value when property ownership is qualified by the kind of liability she envisages. That is not to say that this cannot be done, nor that, if it cannot, we should uphold the institution of property rather than discarding it. But here again, there is a significant gap.

Finally, there is a set of pressing concerns about whether Mancilla's proposal is itself a recipe for further forms of injustice. It apparently tells us to regard it as legitimate for the property of the poor-but-not-destitute to be appropriated by those with nothing—perhaps repeatedly so. Mancilla does acknowledge this issue, but she claims that to raise this as an objection to her view puts "the burden on the wrong shoulders": it amounts to leveling an accusation of injustice against the destitute rather than against those of us who are complacent enough to accept a system of entitlements that leaves them without the means of subsistence. However, much more needs to be said in order to make this line of reply adequate to the force of the worry here. Among those who agree that the deprivation of the

absolutely poor is unjust, the question still arises how legal institutions should treat them in the circumstances we currently face. The proposal that they should be recognized as possessors of a claim right against their poor but not destitute neighbors raises concerns about the potential for additional injustice that this response does not silence.

In these ways, Mancilla's book falls short of a comprehensive treatment of the issues. But it does not claim to provide that, and the scope of the project she does take on is well judged. The aim of the book is to draw attention to a set of under-discussed questions and to provoke theorists of global justice into asking whether their own framework for thinking about deprivation and inequality is itself complacent. She is right to draw attention to the force of the case for recognizing a right of necessity, to remind us of its history and its relevance to the scandal of global poverty today, and to insist on the importance of working out an account of exactly what could be a just conception of rights to personal property in a world in which many people have nothing. The result is a valuable and thought-provoking book. The points at which her own account lacks detail are not indications that her questions should be rejected: they underline the further work and broader attention that they deserve.

GARRETT CULLITY
University of Adelaide

Mayerfeld, Jamie. *The Promise of Human Rights: Constitutional Government, Democratic Legitimacy, and International Law*.

Philadelphia: University of Pennsylvania Press, 2016. Pp. 320. \$65.00 (cloth).

Jamie Mayerfeld's new book is an important contribution to both scholarly and popular debates about the legitimacy of international human rights law. His central thesis is that state-level democratic political institutions need to rely on the institutions of international human rights law in order to reliably protect their citizens' basic rights. International checks and balances can keep domestic institutions from going astray, and over time they can bolster their capacities to resist political pressure to erode protections for basic rights in wartime or other emergency circumstances. As Mayerfeld argues, "A democratic state mindful of its constitutional mission should therefore welcome the oversight and assistance that international human rights institutions provide. When a state refuses international checks on its human rights practices, it negates our right to the reliable protection of our rights. The international protection of human rights is the logical completion of the human rights idea" (46).

While many of the standard views in the literature tend to be much more cautious about both the grounds and scope of the legitimacy of international human rights law, Mayerfeld's instrumentalist justification of democracy enables him to minimize many of the usual sources of skepticism. He defines justice as the protection of basic (human) rights and treats the value of democratic political procedures as an essential but merely instrumental means to achieving this end (51). This theoretical orientation presumptively legitimizes any institutional