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Thomas Skidmore's Critique of John Locke's *Second Treatise*:
A Novel Theory of Express Consent and Early American Discourse on Intergenerational
Equality

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ABSTRACT:

Thomas Skidmore in *The Rights of Man to Property!* adopts John Locke's presumption that humans have natural rights to life, liberty and property. Straying from Locke, Skidmore believes humans now have the artificial right to private property in a world that consists of civilized societies where most property in common no longer exists. Skidmore outlines a radical plan to equalize property ownership once per generation among the people of New York and eventually the United States, if the people of both consent to his plan. This paper argues that in his seminal work, Thomas Skidmore creates a novel way of justifying the institution of private property and its distribution by implicitly responding to John Locke's *Second Treatise of Government*. This justification is based in the express consent of the people of a current generation, and only when government, which protects natural rights to life and liberty and the artificial right to private property, is founded in the express consent of its people can private property and its distribution be just. Skidmore's theory of just private property and its distribution owes and speaks to a common thread of concern for intergenerational equality that existed in revolutionary and pre-industrial America and found in voices like Thomas Jefferson, Thomas Paine, and Daniel Raymond.

Keywords: express consent, tacit consent, labor-mixing, private property, natural rights, artificial rights, justice, distribution, intergenerational equality, virtue, liberty, Locke, Paine, Jefferson, Raymond

INTRODUCTION:

Property rights have been a widely disputed and discussed topic, especially in modern Western liberal democracies. Philosophers have justified private property through various methods. John Locke in the *Second Treatise of Government* justifies private property by a combination of labor-mixing and first occupation.¹ Murray Rothbard in *The Anatomy of the State* and *Justice and Property Rights* justifies private property on first occupation and the maximum liberty of property owners.² Andrew Carnegie justifies private property by labor-mixing but also believes in a virtuous and entrepreneurial wealthy class that gives back to the community what they earned in life before death.³ These philosophers, though not meant to be inclusive of all views on private property, describe some of the most fundamental and well-known ways private property has been justified in the United States. Lawrence C. Becker, in *Property Rights: Philosophic Foundations*, synthesizes the justifications of private property, yet there exists a lack of discussion on express consent as a justification for private property and its distribution.⁴

Thomas Skidmore in *The Rights of Man to Property!*, in contrast, argues that the most important tool to evaluate whether private property regimes are just is express consent.⁵ Richard Ellis is attune to the fact that Skidmore believed rights to life, liberty, and property could not be denied without consent.⁶ Thomas Horne develops this briefly, claiming that to “maintain that consent alone could give title required that Skidmore confront the arguments that derived property from labor, possession, or occupancy.”⁷ However, scholars have yet to develop this

¹ Locke, 1980. *Second Treatise*, 20.

² Rothbard, *Egalitarianism as a Revolt Against Nature*, 96, 116.

³ Carnegie, “The Gospel of Wealth,” 4, 15.

⁴ Becker, *Property Rights*.

⁵ Skidmore, *The Rights of Man to Property!*

⁶ Ellis, “Radical Lockeanism,” 832.

⁷ Horne, *Property Rights and Poverty*, 224-5.

theory of consent and have mischaracterized the justification of property rights by Skidmore in *The Rights of Man to Property!* Robert Dahl claimed Skidmore believed the right to self-government was more important than rights to property.⁸ He also falsely claims that Skidmore wanted equal property rights in order to establish equal political rights.⁹ Richard Ellis considers Skidmore to be a radical disciple of Locke, yet Skidmore breaks from Lockean justifications of private property.¹⁰ He also falsely characterizes Skidmore as being against inheritance of property purely because it is unequal in its distribution.¹¹ Sean Monahan makes the mistake of considering Skidmore's conception of just private property rights socialist, even though socialism by definition requires the abolishment of private ownership of the means of production.¹²

Western countries face an aging population born post-World War Two that will leave large amounts of property and wealth behind as they pass away. Thus, the age-old debate over private property and its distribution is as salient as ever. This debate is centered on centuries worth of Western theories on private property and political consent beginning with John Locke and continued by others like Thomas Skidmore of the New York Working Men's Party in 1820s America. In this essay, I argue that Thomas Skidmore's novel theory on private property and its distribution in *The Rights of Man to Property!* rests upon a foundation of express consent, which existing literature has failed to recognize as juxtaposed to John Locke's theory of just private property founded in labor mixing and tacit consent. Skidmore's conception of express consent serves as a theoretical foundation for his goal of equalized property rights at the beginning of

⁸ Dahl, "Political Equality and Political Rights," 565.

⁹ Dahl, 566.

¹⁰ Ellis, "Radical Lockeanism," 832.

¹¹ Ellis, 833.

¹² Monahan, "The American Workingmen's Parties," 384.

each generation, highlighting the importance of intergenerational equality rooted in an early American ethic explored by Thomas Jefferson, Thomas Paine, and Daniel Raymond.

The structure of this paper is as follows. First, I will delve into the implicit dialogue Thomas Skidmore engages in with John Locke to show the inadequacies of tacit consent as a justification for private property distribution. Secondly, I will compare the two authors, contrasting the faults of Lockean labor-mixing justifications and the emergence of an express consent theory of just private property theorized by Skidmore. Thirdly, I will discuss Thomas Skidmore's plan to implement just government and a system of communal inheritance, and I will offer a critique of Skidmore's conception of majoritarianism as a way to give consent. Fourthly, I will insert Skidmore's vision of just government into an ethic of concern for generational equality, which can be found in such American visionaries as Thomas Jefferson, Thomas Paine, and Daniel Raymond. Fifthly, I will examine the misconceptions about Skidmore and the mischaracterizations of his positions in *The Rights of Man to Property!* Finally, I will place the implications of Skidmore's theory of just private property and its distribution in the context of contemporary political theory.

THE BEST GOVERNMENT VERSUS JUST GOVERNMENT:

It is not a task of this essay to analyze the merits or shortcomings of Skidmore's plan for the best government as detailed in his "System of the Rights of Property."¹³ Instead, the goal is to analyze Skidmore's moral theory of justification for such best government to exist. When compared with John Locke's theory of just property and its distribution, one can see that Skidmore is in constant conversation with John Locke's *Second Treatise of Government*. It is important to know, however, how Skidmore in his plan for the best government best thought the

¹³ Skidmore, *The Rights of Man to Property!*, 150.

express consent of a majority of people could be used to eliminate inequality in property rights among generations and provide a way for individuals to maintain their basic means of subsistence outside of the scope of employment.

Skidmore's mission, through a theory of justice, is ultimately to equalize property among individuals only *once* at the beginning of each generation but not to equalize property among individuals within a generation over time. This theory of just private property rights and its distribution has great value, but his plan may have less value today in a world vastly different from Skidmore's. *The Rights of Man to Property!* was written in 1820s agrarian America where industry was only just beginning to bud, but now America and most of the industrialized world has exited the agrarian economy. The importance of express consent as a justification for private property, its distribution, and equality among generations, however, still proves relevant today.

Unlike John Locke, Thomas Skidmore is a little-known author in political theory literature concerning private property and political consent. He authored the 1829 book *The Rights of Man to Property!* and founded the Working Men's Party of New York. Existing scholarship on Skidmore focuses on his historical role in proto-socialist union politics or as a radical disciple of Locke.¹⁴ However, Skidmore exits from Locke's justifications of private property and its distribution and maintains a strikingly unique defense of free enterprise and

¹⁴ Ellis, "Radical Lockeanism," 832. Ellis gives a summary of Skidmore's plan for the best government and his belief in property as a natural right. This is part of Ellis's goal to frame Skidmore, among various other thinkers, as a radical with Lockean roots. Skidmore, however, is only briefly touched upon to describe a broader trend in the Jacksonian era of the United States of challenging Locke's justifications of private property; Pessen, "The Workingmen's Movement of the Jacksonian Era." Pessen discusses Skidmore's role, among others, in the working-class movement in the Jacksonian era. There is no analysis of Skidmore or the inspiration Skidmore had from Locke; Monahan, "The American Workingmen's Parties." Monahan discusses the connotations of the term "agrarian," Skidmore's role in the Workingmen's Party of New York, the criticisms of Skidmore by Thomas Cooper in 1830, and Skidmore as inspiration for Karl Marx. However, there is a lack of critical analysis of Skidmore and Locke. Skidmore is instead discussed to show how the working-class people of 1820s America served as inspiration for Karl Marx; Carlton, "The Workingmen's Party of New York City." Carlton only describes Skidmore's plan for best government and his historical role in the Workingmen's Party of New York.

individualism.¹⁵ Skidmore repeatedly disagrees with seminal and greatly influential thinkers of his time who adopt Lockean justifications. Yet, he adopts their views on the importance of intergenerational equality, a theme permeating through revolutionary and pre-industrial America and lightly explored.¹⁶

As an express consent theorist on property rights, Skidmore stands alone in a vast historical debate on the justifications of private property.¹⁷ Various theories on just property, which Skidmore is both explicitly and implicitly arguing against in *The Rights of Man to Property!*, fail to structure justifications of private property on the foundation of express consent.¹⁸ Skidmore's vision of the best government relies on this theory of just property and its distribution. Natural rights to property are re-envisioned through a ban on traditional inheritance, where the collection of inheritable property enters a distributable pool yearly to be divided equally to all individuals reaching the age of 18.¹⁹ For Skidmore, restoring nature to its original state, where property is a natural right and unappropriated by any private individual, is impossible, so he advocates for a theory of private property founded in the express consent of the majority instead to distribute man's artificially created right to property.²⁰

Skidmore advocated for what John Locke wrote about in his *Second Treatise of Government* and what Thomas Jefferson failed to include in the Declaration of Independence of

¹⁵ Skidmore, *The Rights of Man to Property!*, 80.

¹⁶ Jefferson, *The Papers of Thomas Jefferson*; Paine, *Agrarian Justice*; Raymond, *The Elements of Political Economy*.

¹⁷ Becker, *Property Rights*. Becker's synthesis of property justifications excludes Skidmore's justification for private property. Thomas Skidmore's justification could fall into the broad "argument from political liberty" section of his text, but there still exists a lack of discussion on express consent specifically as the justification for private property and its distribution within that category; Carter, Alan B. *The Philosophical Foundations of Property Rights*.

¹⁸ Jefferson, *The Papers of Thomas Jefferson*; Paine, *Agrarian Justice*; Raymond, *The Elements of Political Economy*.

¹⁹ Skidmore, *The Rights of Man to Property!*, 137-8.

²⁰ Skidmore, 42.

the United States: the right of individuals to property. With rights to property, inequalities in power are potentially alleviated. Returning to the propertyless their natural right to property allows them to maintain their basic means of subsistence without having to be employed, strengthening their bargaining power in negotiations in employment contracts and restoring to them rightful ownership of scarce territory and resources appropriated by the first come, first served. Individuals have the liberty to own and do what they wish their property, and the same individuals are afforded an equal point of opportunity to showcase their own potential and create their own destiny.

SKIDMORE VS. LOCKE:

To first understand the differences between Locke and Skidmore, one must understand the difference between natural rights and artificial rights. Property, for Skidmore, falls under the category of natural rights. He explains, “man’s natural right to *life or liberty*, is not more sacred or unalienable, than his right to property.”²¹ Natural rights are those rights intrinsic in every human given to them by a Supreme Being that government and society cannot take away. They are the “title which each of the inhabitants of this Globe, has to partake of and enjoy equally.”²² The notion of property being a natural right stems from John Locke. He coined the three natural rights of man as being those to life, liberty, and property, which American author of the Declaration of Independence Thomas Jefferson later adapted to life, liberty, and the pursuit of happiness.

Artificial rights are endowed upon humans not by a Supreme Being but rather by a legal system created by their government. For instance, the right to a trial by a jury of one’s peers may

²¹ Skidmore, 59.

²² Skidmore, 32.

be considered an artificial right created by the United States' Constitution. Even though Skidmore views property as a natural right of humans, he realizes that, given how far humanity has strayed from nature, it is impossible to go back to the state of nature. The state of society and civilization cannot be reversed. Humanity now has the "artificial substitute which he has taken in lieu of such original right."²³ Nonetheless, humans still have a right property, whether it be naturally in the commons or artificially under the auspice of private property. Skidmore believes "man's *natural* right to an equal portion of property... is indisputable. His artificial right, or right in society, is not less so."²⁴ Artificial rights to property are the new reality, as the property found in the state of nature is unattainable.

Skidmore, in his preface, adopts the Lockean position that one's labor is their property. He says, "the personal exertions of each individual of the human race, are exclusively and unalienably his own."²⁵ For Skidmore, labor is property, but labor is not what justifies property rights. The expropriated labor of slaves and of women in 1820s America proves that Lockean labor-mixing justifications did not give title to property. The economic system entwined in Locke's labor theory of property failed to make true of its promises for Skidmore. The value of one's labor, instead of being retained by the individual who exerted the labor, was taken in large part by those the laborer worked for. Skidmore believes, "as long as property is unequal... those who possess it, *will* live on the labor of others... [and] they have no *just* right to preserve or retain that existence."²⁶ From here emerges the beginnings of an express consent theory of property, where the rationale behind private property rights for Skidmore is to maintain one's rights to their labor and maintain the ability to meet one's basic means of subsistence.

²³ Skidmore, 276.

²⁴ Skidmore, 127.

²⁵ Skidmore, 3.

²⁶ Skidmore, 3-4.

Alleviating the plight of the wage laborer in 1820s America is essential to Skidmore. He believes that “men have no right to their property... when they use it, for the purpose of converting their fellow beings into slaves to labor for their use.”²⁷ This is Skidmore’s attempt to show how Locke’s labor-mixing justification has not only resulted in those labor-mixers not retaining rights to property they mix their labor with but the danger a “wage slavery” society presents to the realization of rights to life, liberty, and property. It appears Skidmore believes justified private property cannot exist when a private property regime requires the use of non-owner labor tacitly consented to. In sum, private property for Skidmore cannot be just if it creates a system where wage laborers, in order to survive, are exploited because they have tacitly consented to their conditions. Labor must be a contractual enterprise where wage laborers have at least the option to walk away from employment.

It is difficult to ascertain what Skidmore exactly meant and what this proposition on wage labor means for Skidmore’s theory of just private property. Obviously, the condition of the wage laborer in budding industrial America was pertinent on Skidmore’s mind. However, it appears Skidmore would still be in favor of wage labor as long as every individual had the option to engage in wage labor or to provide for themselves the means of subsistence without going through an employer. Widerquist and McCall explain the position, claiming “[e]ffectively forced service is exactly what happens when the legal system closes the commons without compensating the propertyless sufficiently to make the choice to accept a job unforced.”²⁸ This attack on wage labor seems more to be an attack on how the Lockean labor-mixing justification has created a dependent employee relationship with their employer rather than on wage labor itself. If every wage laborer has the ability to not engage in wage labor, their relationship with a

²⁷ Skidmore, 5.

²⁸ Widerquist and McCall, *The Prehistory of Private Property*, 84.

potential employer is no longer dependent. There must be that viable exit option to provide for oneself and not have to perform wage labor to survive. Skidmore's issue, then, is when wage laborers effectively have no option but to be wage laborers.

The differences between the Lockean labor-mixing justification and Skidmore's express consent justification can be easily identified in Skidmore's appropriation of Locke's depiction of the Native American. Locke imagines a Native American hunting and slaughtering a deer in the wild. Locke explains, "for being a beast that is still looked upon as common, and no man's private possession; whoever has employed so much *labour*... has thereby removed her from the state of Nature, wherein she was common, and hath begun a property."²⁹ For Locke, the act of hunting the deer and slaughtering the deer is enough to provide the hunter sole rights to the deer as their property. It does not matter that the deer was once common property, since that in the commons, the deer was worthless and had no value derived from it. No consent is required to obtain the deer, but rather the act of adding value to it by hunting it for its meat gives the hunter claim to the deer.³⁰

Skidmore uses the same example of Locke's in order to frame a theory of just private property founded in consent. He once again employs the Native American hunter and the deer. He writes, "if an Indian kill a deer, it is not, therefore, his? Most certainly it is not."³¹ It does not matter that the hunter somehow derived added value from the deer by making use of its body for sustenance. Instead, consent is the necessary condition for property to be privatized and taken from the common, not value-added labor. Just because the hunter expended their own energy to kill the deer does not allow the hunter to solely claim it as their own. Skidmore continues, "*the*

²⁹ Locke, *Second Treatise*, 20.

³⁰ Mayhood, "Thomas Skidmore: Breaking from Lockean Principles," 8-9.

³¹ Skidmore, *The Rights of Man to Property!*, 34.

animal is the property of the whole, and if consent have not been given, it still remains their property.”³² For both Locke and Skidmore, deer in the wild is the common property of all.

However, for Skidmore, if the hunter had killed the deer without the consent of the majority, the deer was wrongfully taken from common possession. If permission was granted by consent, the hunter has the authority to hunt the deer and reap its benefits as their sole property.³³

Skidmore attacks first appropriation justifications of private property in Locke’s theory, as occupation of property is required for one to mix labor with property. He argues, “The right, then, of the possessor to make exclusive use of these objects of property, *would rest on that consent* [derived from a majority], and not on the act of his taking possession.”³⁴ Locke’s justification of labor mixing inherently relies on possession of property. If someone mixes their labor with unappropriated land, for instance, they earn just possession of that land. Justifications of first possession of property outside Lockean justifications, however, don’t necessarily rely on labor-mixing to give title. Scholar Peter Vallentyne describes first occupation justification, explaining, “The first person to stake a claim in the appropriate manner (e.g., with labor mixing) on specified natural resources fully owns them.”³⁵ First occupation property rights give the first to occupy an unappropriated piece of property rights of ownership, regardless if the property has labor applied to it. Skidmore claims, “possession, occupancy, or *value* added to property thus in possession, does not give a right to the possessor, to *continue* his possession.”³⁶ Thus, neither first appropriation justifications or labor-mixing justifications of property in John Locke’s theory of just property are, according to Skidmore, satisfactory.

³² Skidmore, 35.

³³ Mayhood, “Thomas Skidmore: Breaking from Lockean Principles,” 9.

³⁴ Skidmore, *The Rights of Man to Property!*, 45.

³⁵ Vallentyne, “Libertarianism and the Justice of a Basic Income,” 4.

³⁶ Skidmore, *The Rights of Man to Property!*, 45.

Skidmore continues his attack on Lockean justifications for the acquisition of private property. Locke's theory of just property acquisition is stipulated on the "enough and as good" clause.³⁷ This proviso is a vague attempt by Locke to restrict how much an individual is allowed to appropriate, yet he never clarifies how much "enough and as good" is. Skidmore challenges the principle as an ineffective stipulation of labor mixing justifications, but Skidmore's challenge may be somewhat unappealing in a theoretical world of abundant resources. He hypothesizes, "It will be said that the Indian, for example, who has appropriated to himself, without the public consent, the material for a bow, may justly have done so, upon the supposition that he has left, for each and every of his fellow beings, materials for bows, for their use, in every respect as good as his own." The scenario depicts a Native American who makes a bow and claims they have just right to that bow as their private property because they have mixed their labor with the wood. The Native American, in a world of abundant resources and territory, created the bow considering the need for other Native Americans to appropriate property for themselves.

The Native American depicted also is aware of a forest where the material for their bow came from. Skidmore claims the Native American should not object to having to give away their bow upon demand of the community if there exists a world of abundant forests and resources to be able to leave "enough and as good" for other prospective bowmakers. Skidmore suggests, "[If] still he [the Native American] is pertinacious and prefers, *arbitrarily*, retaining his own, to that of receiving another; then... one's right to be pertinacious, arbitrary, and unaccommodating, is as good as another's."³⁸ If the abundance of forests and resources is true, the Native American should have no problem engaging in labor once more to make themselves a new bow if the

³⁷ Locke, *Second Treatise*, 20.

³⁸ Skidmore, *The Rights of Man to Property!*, 47-8.

community demands it. If an individual comes forth and does not consent to such labor-mixing of the Native American, by majority consent, the Native American must revert ownership back to the community.

Skidmore's argues that express consent would still be necessary in a world of abundant resources and territory. If there are enough resources for everyone to maintain their basic means of subsistence and everyone has access to the same exact resources, consent to a particular resource or territory should not matter. Skidmore's theory of just private property may apply better when only assuming a world of scarce resources and territory. Without this assumption, which is how the world actually exists, individuals have a right to express their non-consent on a matter of *pettiness*. In a world where resources and territory are abundant and unlimited, Locke's labor-mixing justification may be better than Skidmore's express consent theory of just private property.

LOCKEAN LABOR-MIXING JUSTIFICATIONS ARE A VITAL MISTAKE:

Natural right justifications to property presume knowledge about what the world looked like before societies emerged. Beginning in the state of nature, the pre-societal and pre-government people had no notion of private property. An omnipotent figure, the Christian God, had given the Earth to the people in common with which to nourish themselves and to live the life He had granted them. The people who inhabited the Earth had property only in themselves and their bodies that were not part of common ownership. To nourish themselves, humans had to labor. It is through this labor that Locke describes the beginning of private property. Locke says, "Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined it to something that is his own, and thereby makes it his

property.”³⁹ For Locke, the laborer’s value-added labor to common property takes it out of common ownership among the people and solely gives ownership to the individual under private property.

At first, it theoretically appears that an individual could apply as much labor as they could to as much unappropriated property as possible to accumulate for themselves an unequal share of private property. This is based on the assumption that land is already unappropriated, as Locke drew on “Pufendorf and More’s assertion that unimproved resources are nearly useless with most or all of the value of property coming from the appropriator who invests [in it].”⁴⁰ Locke adds certain conditions to his labor-mixing theory of property as an attempt to curb excess private property ownership. He says, “As much as any one can make use of to any advantage of life before it spoils, so much he may by his labour fix a Property in.”⁴¹ Labor-mixing individuals may mix their labor with as much property as they want and claim just ownership of that property so long as none of the property that they acquire isn’t put to use or perishes before it is used. As long as a property owner makes, in vague terms, “good use” of their property, they may acquire and appropriate as much of it as they want.

The second condition Locke imposes on the ability to appropriate property based on labor-mixing justifications attempts to tackle the issue of unequal appropriation. Locke says that there must be “enough, and as good” property left that can be appropriated by others.⁴² This vague principle may be an attempt by Locke to democratize property ownership among a society. At the same time, it leaves room for appropriators to justify private property accumulation according to their own judgment of “enough.” There is no description of who the

³⁹ Locke, *Second Treatise*, 19-20.

⁴⁰ Widerquist and McCall, *The Prehistory of Private Property*, 148.

⁴¹ Locke, *Second Treatise*, 21.

⁴² Locke, 19-20.

“others” are, how much property ownership is “enough” for an individual, or what “good” property constitutes. Distribution of property therefore must have a different mechanism to be justified than just labor-mixing. Tacit consent plays this role in Locke’s theory of just private property distributions.

Tacit consent, in part, is the necessary yet insufficient tool in Locke’s theory on property in order to establish a just definition of “enough.” It is best to define express consent before defining tacit consent. Express consent is “a ‘declaration of a man’s consent to make [himself]... subject to the laws of any government’ *by means of words or language*, either written or spoken.”⁴³ For Locke, when an individual appropriator of property removes it from the state of nature through labor, taking the property “does not depend on the express consent of all the commoners.”⁴⁴ This non-dependence exists for Locke for practical purposes, as obtaining the express consent of the commoners would result, for instance, in the starvation of the people.⁴⁵ This is because the most simple and required tasks of daily life, such as hunting the food the primitive individual would need, would require permission from society. Collecting water from a river in order to wash one’s face could only be done through the consensus of the people.

Express consent plays no role in Locke’s theory on property, yet consent appears to be necessary in the justification of the distribution of private property. This required consent is tacit consent. Locke says, “Men have agreed to disproportionate and unequal possession of the Earth, they having by a tacit and voluntary consent found a way.”⁴⁶ Locke determines that implied consent, rather than express consent, created the birth of an unequal property-owning people. The distribution of the artificial right to property occurred because of an implied consent to

⁴³ Russell, “Locke on Express and Tacit Consent,” 292.

⁴⁴ Locke, *Second Treatise*, 20.

⁴⁵ Locke, 20.

⁴⁶ Locke, 27.

labor-mixing appropriation among members of society. Tacit consent is not what has justified private property. Labor mixing has justified private property, and tacit consent has justified the distribution of that property. Locke does not clarify whether this requirement for tacit consent extends beyond claims of first appropriation. There is no answer to whether those who purchase previously appropriated property have to once again gain the tacit consent of their fellow members of society to purchase such property. It appears that, at first, tacit consent is a requisite for the distribution of property, but this is not true.

Tacit consent in Locke's theory is not a necessary condition to determine the share of private property, but it is only through tacit consent that *governments* have authority to determine the share and distribution of private property. Locke explains that those who own private property under a government "doth thereby give his tacit consent, and is as far forth obliged to obedience to the laws of that government."⁴⁷ The people by proxy use the government to determine the share and distribution of property as they see fit. This is because a just government for Locke is one like that during his life, where King William III of England made "good his title, in the consent of the people," which is the only way just government can exist.⁴⁸

Clearly, consent, at least tacit, plays a clear role in Locke's theory on property. Express consent is an unnecessary and unhelpful barrier to the diverse and busy lives of the everyday individual. Tacit consent is not even a requirement for the appropriation of private property. Tacit consent is only necessary for the distribution and share of private property, but it is not in the everyday interactions and motions of the individual in society that creates this tacit consent to property distribution. It is the swearing of fealty to one's government and consenting to the laws

⁴⁷ Locke, 56.

⁴⁸ Locke, 4.

of the government that implies consent to the distribution of property. If one has tacitly consented to a government's laws and rules, they have tacitly consented to its laws and rules that determine the structure and distribution of private property.

SKIDMORE'S ATTACK ON THE INSUFFICIENCY OF TACIT CONSENT:

Skidmore vehemently disagrees with justifications of the distribution of property being founded in tacit consent. Locke claims, "Men have agreed to disproportionate and unequal possession of the Earth, they having by a tacit and voluntary consent found a way."⁴⁹ Skidmore counters, "for if it be a fact, that they *have* tacitly consented; still the origin of this consent, *such as it is*, is founded in ignorance... [and] no man is to be injured, by any concessions, expressed or implied, growing out of his ignorance."⁵⁰ Skidmore believes claims that consent has been formed between people on rights to private property is unfounded. Those disadvantaged by Lockean labor-mixing and first appropriation justifications would never consent to their miserable and poor condition. In fact, their miserable standard of living and miserable perspective on life is attributed to their status or condition as the propertyless or property-poor.

Tacit consent, often occurring because of ignorance, acquiescence, or coercion, is not alone a just foundation for a just system of private property rights or its distribution. Skidmore says, "In the history of the human race, we know that... [consent] has, necessarily been, of a character very informal. It has not been possible, at all, to assemble the entire species, and thus to obtain their consent, in a direct and formal manner."⁵¹ This tacit consent has occurred over time in part for various reasons, from convenience, coercion, the absence of government, power imbalances, or the appearance of an abundance of resources that, when individually

⁴⁹ Locke, 27.

⁵⁰ Skidmore, *The Rights of Man to Property!*, 376.

⁵¹ Skidmore, 41.

appropriated, did not seem controversial. However, these are not just excuses for the absence of express consent in appropriation of property for Skidmore. Express consent, a principle that is “unchangeable and eternal,” exists whether or not “men happen to see them or know them, or acknowledge them, or not.”⁵² Justice cannot be circumvented as a result of these excuses, purposeful or not.

For Skidmore, the foundations of private property were created as a result of a history of evils. Individuals in society have been taken advantage of by those who have “profited by them” because these individuals have been caught up with the tasks and burdens of their daily lives.⁵³ These profiteers have a history of “resisting any change which would go deprive them of their dishonest nutriment,” and society has progressed in a way where profiteers claim that “it [is]... impossible to eradicate [these changes]... and that therefore it was best to submit to it without complaining or repining.”⁵⁴ The people had not voluntarily and tacitly consented to existing private property distributions like Locke had claimed. The people had “rest[ed] content in continuing to suffer from those evils, with which they have been familiar... rather than to take the necessary measures to eradicate them.”⁵⁵ In other words, many people had “tacitly consented” to their poor and miserable conditions because of desperation, struggle, and a will to survive. They faced the option of either meeting their basic means of subsistence or challenging a wealthy, property-owning people with an abundance of resources to challenge the current private property regime.

For all of Skidmore’s attacks on tacit consent, it can still play a role in granting private to individuals under one certain condition, but this extreme version of tacit consent is practically

⁵² Skidmore, 41.

⁵³ Skidmore, 10.

⁵⁴ Skidmore, 10.

⁵⁵ Skidmore, 14.

express consent. Skidmore explains that if a “majority became apprized, of the intention or wish of the proposed occupant or possessor, *and there was still no objection manifested*, then the same consent is to be inferred.”⁵⁶ This seems contradictory to his held position that consent can only be established through the expression of a majority consensus. However, consent has still been expressed, but this time it is without government’s mechanisms, like legislative action by a majority. Silence, in tandem with a majority informed of possession being taken of property by a private person or persons, constitutes the expression of consent. Express consent has been established because nobody has objected. If one out of all of a community had objected, a decision would have to be made. If the majority consented, the person or person could lay just claim to their property. If the majority had not consented, the person or persons cannot claim the private property as it would be unjust to do so without the express consent of their fellow community.

In order for what above seems like tacit consent but is rather express consent to be established, not just the majority but everyone must consent. Skidmore says, “If it be not disputed, then are we to infer that there is no objection; and that consent is given [for the appropriation of private property].”⁵⁷ The majority must be informed that an action that could cause a dispute where one out of all may not consent actually took place. If the people are unaware that an appropriation has taken place, then no form of consent can take place. In addition, not one person in a community must fail to give their consent to that action. If one person does not consent to such an appropriation when made informed of it, the majority must make a decision on whether or not such appropriation of private property can take place.

MAJORITARIAN INSTITUTIONS AS A WAY TO EXPRESS CONSENT:

⁵⁶ Skidmore, 45-6.

⁵⁷ Skidmore, 46.

To justly allocate humanity's now artificial, or quasi-natural, rights to property, consent of society must be established for Skidmore. Like Locke, Skidmore believes consent is "not necessary for the purpose of granting rights... [but] to *define and locate* his share; to say *how much, what and where it shall be*."⁵⁸ He also believes private property granted to an individual can only be established if "the majority of the community... shall have consented that I shall be the exclusive owner of any particular section, *during life*..."⁵⁹ Exclusive use of property can only be justified for Skidmore when the will of a majority allows appropriation of a property for a lifetime. No single individual can mix their labor with property and claim it as their own without the consent of their fellow citizens.

Majoritarianism is Skidmore's solution to establish express consent. Skidmore explains, "No one of us has power in this capacity, of making a law over his fellow citizens, in opposition to his consent... [and a] majority of our aggregate number is, alone, capable of fully consummating a Legislative act."⁶⁰ Skidmore believes consent is first established through the expression of the majority will, even if one vote over 50 percent of the majority. He even says that if there were "a number as to amount to a majority, *and these did not object*; it would amount to nothing less than consent."⁶¹ Majority decision is the expression of consent for Skidmore. Only through simple majority consensus can private property rights be established, distributed, and justified. There appears to be no protections for minority opinion if outnumbered by majority consensus. Consent is realized through a legislative act by a government body, and majority opinion, rather than individual or minority opinion, constitutes consent.

⁵⁸ Skidmore, 42.

⁵⁹ Skidmore, 114.

⁶⁰ Skidmore, 8.

⁶¹ Skidmore, 45.

Skidmore clarifies an important question about how express consent is established with majoritarian institutions. Can the people of a government use representation as a form of express consent? Skidmore suggests, “it is perfectly competent for them to signify, either, as said before, in their own proper persons, or by an agent or agents selected by them for such purpose.”⁶² Individuals can express their consent in two ways. They can either do so directly, by participating in government and making decisions themselves. They can also elect to have agents, or representatives, conduct the duty of expressing their consent for them. The majoritarian-mechanized government Skidmore has crafted can either be ran by the people directly or through representatives elected by the people.

Majoritarianism as a way to determine private property rights certainly can have flaws. James Madison wisely explains in the Federalist Papers No. 10 that “the same passion or interest in a majority at the same time must be prevented, or the majority... must be rendered, by their number and local situation, unable to... carry into effect schemes of oppression.”⁶³ If express consent via majoritarianism is the mechanism by which private property rights are to be distributed, the minority must be protected from a situation where their property rights are less equal or nonexistent as a result of their status as a minority. Majorities should not have, by virtue of number, the ability to create a propertyless or property-poor class. Skidmore’s vision of just government would need to ensure that natural rights to life, liberty, and property are protected for all and that a majority could not circumvent natural rights.

Factions wanting to implement policy by majority perpetually have existed on the basis of property and its distribution. Madison admits, “the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those

⁶² Skidmore, 76.

⁶³ Madison, *The Federalist Papers*, No. 10.

who are without property have ever formed distinct interest in society.”⁶⁴ He defines a faction as “a number of citizens... who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.”⁶⁵ Clearly, the Founding Fathers of the United States were aware both of the common causes of factions, amounting to a majority or minority in number, and of the dangers they posed to the Union. Yet, in the Republic there still emerged a division between those that own property and those that do not.

It is of importance to note Madison’s wise discovery of the main cause of factions, namely the vying interests between those that own property and the propertyless or property-poor that Skidmore is concerned about. When the tools to perform collective action in government are given to the propertyless and they constitute a majority, they may want to appropriate property from the wealthy in order to rid themselves of the burdens of poverty. In the other case, when the wealthy and property-owning people of a society constitute a majority, they may want to appropriate property from the poor in order to maximize their profits. Even in the case of a truly virtuous majority, “neither moral nor religious motives can be relied on as an adequate control.”⁶⁶

However, Madison and the Founding Fathers, well aware of the historical conflict between resource owners and the resourceless, created conditions for this division to still exist. Madison knew when adopting the United States Constitution that his majoritarian institutions he signed his name to would be tested by factions battling over distribution of property. Rather than assigning merit to the propertyless and property-poor, he gave to the wealthy and property-

⁶⁴ Madison, *The Federalist Papers*, No. 10.

⁶⁵ Madison, *The Federalist Papers*, No. 10.

⁶⁶ Madison, *The Federalist Papers*, No. 10.

owning class multiple checks on the political power of the common American. Property rights were not made a guarantee but rather something to potentially obtain. Individuals would have to work for resource owners for years just for the *chance* to be able to be resource owners themselves. For many, only through laboring under the command of an employer could the basic means for survival be met.

These governments that exist that fail to establish natural rights to life, liberty, and *property* and cannot stand legitimately as governments according to Skidmore. He explains that if a government had the ability to “make life and liberty equal, and could not make property equal... it would go the full length of proving that government, was an unauthorized institution, alienating the ‘unalienable rights,’ with which the Creator has endowed all men.”⁶⁷ For a government to be able to legitimate according to Skidmore, there are conditions it must satisfy. First, the government must be founded in the express consent of the people it represents. Next, government must accept that life and liberty are natural rights and property now an artificial right. Finally, the government must have a simple majority institution in place where the people hold the power to determine property distribution.

Skidmore was prepared for criticisms of majoritarianism as a vessel for consent to be expressed to property rights. The majority must obey the natural rights of all people to life, liberty, and property in order for the tyranny of the majority to not exist. Skidmore says, “it is not to be allowed, even to a majority, to contravene equality.”⁶⁸ This is because “it is not to be said that any power has any right to make our artificial rights unequal, any more than it has to make our *natural rights* unequal.”⁶⁹ This is Skidmore’s response to Madison’s concern about the

⁶⁷ Skidmore, *The Rights of Man to Property!*, 61.

⁶⁸ Skidmore, 128.

⁶⁹ Skidmore, 127.

tyranny of the majority. A majority would not have the authority to create an unequal distribution of property, but they could decide which property goes to whom at the beginning of each generation. A minority would never be a propertyless minority or an unequal property-owning minority. They only have a say in how it is distributed equally and to whom it is distributed. This response to Madison works only if the right to property is enshrined in a founding document of a government and protected vehemently. This has quite narrowed down the power of the majority in private property distribution. They cannot decide how much each individual gets but rather which property in equal amount goes to whom at the beginning of each generation.

Therefore, for natural rights to life, liberty, and property to be protected, they cannot be fluid or arbitrary. Skidmore explains, “There is, then, something palpably wrong in a government, which is thus obliged to destroy rights of one kind which it recognizes, in order to preserve others.”⁷⁰ Rights are not rights if they can be interpreted differently for one class of people over another. Skidmore is in particular referencing the conditions of existence between the poor and rich. If we accept life, liberty, and property as equal natural rights to be abided by and that serve as the basis of all political and moral activity, the extent of property ownership cannot determine the extent of rights to life and liberty. For instance, a rich individual’s right to property is not stronger than that of a poor individual. Each had rights to property, and the rights to property of a poor individual cannot be damaged in order to preserve the rights of a rich individual to unlimited and excessive property accumulation.

This appears to be problematic, especially in the case of the equal right to liberty, but when equal liberty is viewed as the equal absence or application of coercion, one’s perspective might change. Typically, liberty is thought of as the “right to live your life as you choose so long

⁷⁰ Skidmore, 56.

as you don't infringe on the equal rights of others."⁷¹ Consider the nonaggression principle popular in libertarian literary circles, as explained by Murray Rothbard. He explains, "The fundamental axiom of libertarian theory is that no one may threaten or commit violence ("aggress") against another man's person or property. Violence may be employed only against the man who commits such violence."⁷² Using coercion to change property distributions would be an act of aggression against the freedom of property-owning class under this definition, and this would be an attack on one's right to liberty. However, property-owning individuals actually aggress on the ability of others to use resources.

The propertyless are being coerced to not interfere with current private property regimes. Widerquist and McCall illustrate, "Redistribution of property means more red lights (more interference) for property owners but it also means more green lights (less interference) for the propertyless. The banal version of the market economy ignores the empirical trade-off inherent in the maintenance of the property rights system."⁷³ Allowing the property-owning class to be free of interference from non-property owners increases property owners' liberties. However, this at the same time also decreases the liberty of the propertyless since government "coercively grant[s]... the "owner" that control and by interfering with everyone else who might want to use those resources."⁷⁴ They continue, "a propertyless person's request for access to resources is just as much a demand for negative liberty – for a "liberty right" – as the property owner's request to be left alone to use the resources they claim to 'own.'"⁷⁵ Therefore, if a right to liberty is to be established equally, everyone must be equally absent from coercion or coerced in a just manner.

⁷¹ Widerquist and McCall, *The Prehistory of Private Property*, 79.

⁷² Rothbard, *Egalitarianism as a Revolt Against Nature*, 116.

⁷³ Widerquist and McCall, *The Prehistory of Private Property*, 83.

⁷⁴ Widerquist and McCall, 83.

⁷⁵ Widerquist and McCall, 83.

Thus far, Skidmore may appear to be a proto-socialist because he believes in the equality of property at the first instance of each generation, but this is far from the case. Skidmore is a staunch individualist who strives for equality of opportunity, rather than equality of outcome. He says, “the best application of the industry of man... [is] an application, that looks for his own individual welfare, almost exclusively.”⁷⁶ The individual in Skidmorean society should have their highest interests in themselves, rather than in society. When the individual acts in their own interest, they benefit and society benefits. He continues, “nor does it allow, in any theory of my own, that the government should take its management under their control.”⁷⁷ Government has no role in the dictating of individual careers and everyday decisions. Individuals are best left to their own devices, and they should be the ones left responsible for what decisions suit them best. He adds, “each individual knows better how to apply his own industry, his own faculties, advantages, opportunities, property... than government can possibly do.”⁷⁸ Skidmore just wants a private property regime where every individual within each generation has an equal starting point. The property claims of the dead must not restrict the lives of the living. The living must be able to express their consent to their conditions resulting from who does and who doesn’t own property.

ADMIRATION YET DISAPPOINTMENT FOR THE FLAWED JEFFERSON:

So far, Skidmore’s concern for intergenerational equality has not been fully developed. Skidmore’s theory of just private property founded in express consent holds that private property rights must be equalized at the coming of each successive generation. Every year, those who turn 18 years old will receive equal amounts of the property of the deceased for that year.⁷⁹ Yet, his

⁷⁶ Skidmore, *The Rights of Man to Property!*, 80.

⁷⁷ Skidmore, 80.

⁷⁸ Skidmore, 80.

⁷⁹ Skidmore, 137-8.

theory of express consent does not stipulate that property should be equalized at any other point in time. Individuals are free to accumulate property over their lifetime, so long as everyone had at one point in time the same equality of opportunity to accumulate property.

Skidmore's concern for intergenerational equality most certainly has its roots partially in Jeffersonian ideals. Jefferson's origin was as a member of the House of Burgesses in colonial America.⁸⁰ From there, he authored the *Summary View* and the Declaration of Independence, helped forge the Constitution, and eventually reached the office of the President. A radical of his time, Jefferson embodied republican virtues and agrarian sympathies. However, for Skidmore, Thomas Jefferson was not radical enough in his effort to reform intergenerational wealth and legislation. Jefferson, in his letter to James Madison dated September 6, 1789, commented, “*that the earth belongs in usufruct to the living*”: that the dead have neither powers nor rights over it. The portion occupied by any individual ceases to be his when himself ceases to be, and reverts to the society.”⁸¹ Jefferson believed that a current generation of Americans should not be held responsible to the laws and distribution of property that the previous generation of Americans had prescribed to. Individuals under a democratic government have not expressly consented to decisions made by prior generations, from the distribution of private property, the laws passed by legislators, or the constitutional framework they must work in. He even subscribes to Skidmore's eventual 1829 proposition that property should go back to society upon death.

Jefferson explains how a healthy and proper democratic process requires an independent and impartial generation free from obligations thrown upon them from past generations. He says, “the power of repeal is not an equivalent [to the principle of sunset clauses]. It might be indeed if every form of government were so perfectly contrived that the will of the majority could always

⁸⁰ Meacham, *Thomas Jefferson: The Art of Power*, 76.

⁸¹ Jefferson, “Thomas Jefferson to James Madison.”

be obtained fairly and without impediment. But this is true of no form.”⁸² Swearing loyalty to governments and their constitutions, following the laws derived from those constitutional powers, and maintaining oneself in the current private property regime built on the consent of prior generations removes the ability of current generations to adequately express their consent and exercise their will.

Therefore, merely having the power to repeal decisions by former generations would not work. This is because “factions get possession of the public councils. Bribery corrupts them. Personal interests lead them astray from the general interests of their constituents.”⁸³ These are the headaches majoritarian democracies grapple with still today. Property rights, laws, and constitutions that exist in perpetuity allow the negative aspects embedded in the results of the democratic process spawned from unruly factions, periodic whims and wants, and monetary interest groups to exist across generations. I don’t claim to know whether Jefferson realized the importance for equality among generations too late or purposely didn’t adopt these principles in the government he helped found. However, Jefferson’s take on equality among generations translates very well with Skidmore’s vision of a just private property regime founded in express consent. Jefferson just failed to enshrine property as a natural right.

Generational inequality is an important subject to Skidmore and is served well by his advocacy for decisions to be made only by the express consent of a people. Decisions and conditions of existence through time fluctuate and are ever-changing. Government and its power-limiting documents, like the people who make up that government, must change with each generation. Skidmore explains, “if principles of government are derived from *periods of time* and *conditions of things*... we are in danger of incorporating false principles into the political edifice,

⁸² Jefferson, “Thomas Jefferson to James Madison.”

⁸³ Jefferson, “Thomas Jefferson to James Madison.”

and of endangering its utility and duration.”⁸⁴ When the will of one generation dictates the conditions of existence of another generation, the latter generation had no opportunity to express its consent to its current conditions. Skidmore believes that decisions made in one generation cannot bind another generation. Consent to current conditions of existence cannot exist if the current generation is bound to an existence it did not consent to. Majoritarianism cannot function properly in a Skidmorean democracy if the people must work within the framework of old government, old laws, and old private property distributions.

Skidmore, for all his praise and adoption of Jefferson’s ideas on intergenerational inequality, does believe Jefferson has his flaws. He quotes Jefferson’s well-known line in the Declaration of Independence that “all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and *the pursuit of happiness*.”⁸⁵ Skidmore would have agreed with Jefferson had he used “property” in the place of “the pursuit of happiness.”⁸⁶ Jefferson’s mistake was that he didn’t realize that life, liberty, and happiness cannot be realized unless an individual has access to property. Property is a necessary condition for life, liberty, and happiness. The pursuit of happiness is often the pursuit of property in order to bring good health for one’s life and to secure their liberty from the arbitrary whims of an employer who has control over whether they will have food on the table. Without property, one may have to sacrifice their health in order to get property. Without property, one has already sacrificed the liberty of providing for oneself through their own means. Instead, they must sell their freedom to an employer who pays them for their time spent building wealth for the employer.

⁸⁴ Skidmore, *The Rights of Man to Property!*, 72.

⁸⁵ Skidmore, 58-9.

⁸⁶ Skidmore, 59.

Skidmore continues to criticize Jefferson. He cites the 1812 District of Virginia Circuit Court case of Edward Livingston versus Thomas Jefferson. Jefferson claims, “A right of property, in moveable things, is admitted before the establishment of government. A separate property, in lands, not till after that establishment.”⁸⁷ Here, Jefferson claims that private property in movables, like a pitchfork or book for instance, can be established without consent expressed through government mechanisms. However, for land to established as private property, government is a necessity. Government for Jefferson, then, begins when land is made private property. Skidmore, however, has claimed that government begins when a public will is created through express consent. This express consent is established in order to determine whether the appropriation of private property, be it land *or* “movables,” is justified or not. Skidmore owes his ideas on intergenerational inequality to Thomas Jefferson, yet Jefferson had not considered the role of government in determining private property rights of non-landed property.

Skidmore’s express consent theory of just property rights translates very well with and relies on a foundation of intergenerational equality. An individual has the natural right to property “in virtue of his existence.”⁸⁸ Existence does not extend upon death. Governments have falsely justified claims to private property by authorizing “a man to consider himself the owner of property longer than he lives, even to the remotest generation.”⁸⁹ Natural rights to life, liberty, and property fail to exist once an individual dies. Their right to life ends as expected, as death ends life. Their right to liberty ends upon death, as they no longer have control over their destiny. Their right to property, however, also ends for Skidmore upon death. Skidmore explains, “Dust cannot be the owner of dust. It is being, endowed with intelligence, that is capable of owning or

⁸⁷ Skidmore, 72.

⁸⁸ Skidmore, 42.

⁸⁹ Skidmore, 60.

possessing.”⁹⁰ The right of property ends when existence ends. A dead individual who is “but a tenant at time... must resign all pretensions to interfere with, or control his successor.”⁹¹ For Skidmore, all natural rights end with death. This means individuals cannot create wills to determine how their property they leave when they die is treated. The community, by majoritarian express consent, is the only authority on such matters.

Skidmore attempts to justify his position that rights to property end upon death. He explains that if the individual had the authority to determine how their property is treated when they die, it “would be to say that he had power over the destiny of his fellow-being.”⁹² Allowing rights to property to extend after death damages intergenerational equality. The dictates of a dead man, who can no longer give consent, are interfering with the ability of the current and future generations from realizing their rights to property and being able to consent to its distribution. The dead have lost their voice both literally and metaphorically. They have lost their ability to participate in the expression of consent. Rights belong to those who exist, and the dead have lost their existence. Rights can no longer be conferred by existence to those who no longer exist.

PAINE’S FAILURE TO ESCAPE INEQUALITY AND LOCKEANISM:

Skidmore’s concern for restoring man’s natural right to property in the commons certainly was also influenced by Thomas Paine, author of *Agrarian Justice*. Skidmore’s concern for generational inequality was influenced by Paine as well. However, Skidmore’s respect for Paine was not as great as that for Jefferson. Whereas Jefferson was described as one of the “distinguished men” who was the “standard of the age” and established the United States on “principles of original right”, Paine was less lucky.⁹³ Skidmore describes Paine and Locke as

⁹⁰ Skidmore, 83.

⁹¹ Skidmore, 84.

⁹² Skidmore, 85.

⁹³ Skidmore, 57-8.

“singular instances of errors, which the greatest of men may be led to adopt.”⁹⁴ This was because Paine’s absurdity was “as great, in a man, who contends to preserve *inequality already existing*, as he who proposes to create it for the first time.”⁹⁵ Yet, Skidmore had clearly borrowed from Paine a valuable lesson that the American individual ought to have access to property given to them by birthright and that generational inequality was a tyranny. It was in the execution to correct this misfortune that Skidmore attempted to resolve the “misconceptions [Paine]... partially [left] unexplored by his investigations.”⁹⁶

Paine had made mistakes in his mission to create the perfect government, starting in its foundation. In Paine’s *Dissertations on Government*, written in 1786, Paine imagines the scenario of the formation of a republican government. Paine says, “When a people agree to form themselves into a Republic... it is to be understood, that they mutually resolve and pledge themselves to each other, *rich and poor alike*, to support and maintain this rule of equal justice among them.”⁹⁷ Paine presupposes that before individuals strive to create a just government, poor and rich work together to achieve this cause. Instead of working together to reduce the inequality between the rich and the poor or eliminate the wealth discrepancy entirely, Paine’s founding of a just government seek to preserve this inequality. Skidmore questions the logic behind Paine’s conception of justice. He quips that Paine has “committed such a blunder, as that of attempting to erect an equal government, upon a foundation where inequality had already found an existence.”⁹⁸ Skidmore finds it absurd that founders of a “just” government would preserve what he perceives as an injustice, namely Paine’s acceptance of a propertyless people in

⁹⁴ Skidmore, 68.

⁹⁵ Skidmore, 67.

⁹⁶ Skidmore, 63.

⁹⁷ Skidmore, 64.

⁹⁸ Skidmore, 67.

society who never expressly consented to a propertyless condition that failed to exist prior to government.

Paine in *Agrarian Justice* implemented this error of inequality as a foundation of his “just” government. His mission was to ensure that “the condition of every person born into the world, after a state of civilization commences, ought not to be worse than if he had been born before that period.”⁹⁹ Yet, according to Skidmore’s vision of a just government, the propertyless could not be in a *more* miserable condition as owners of property rather than as nonowners of property. His criticism of Jefferson shows one that the pursuit of happiness is a pursuit of property, and it is with property that the poor can rise from their miserable existence. Lockean labor-mixing justifications had created conditions where individuals in the state of society no longer had access to the means of subsistence available in the state of nature.

Paine commits another blunder, establishing Lockean principles as a justification for founding government in inequality. He says, “it is the value of the improvement only, and not the earth itself, that is individual property.”¹⁰⁰ Paine has adopted Locke’s proposition that private property is established by value-added labor, but Paine has strayed from Locke and revokes ownership of landed property from those Lockean laborers. Paine’s adoption of Lockean principles stems from the fact that, “for though every man, as an inhabitant of the earth, is a joint proprietor of it in its natural state, it does not follow that he is a joint proprietor of cultivated earth.”¹⁰¹ Cultivation of the earth privatized property, and government was needed to enforce private property rights to that land. The community in entirety had not established consent to such privatization, and Paine recognizes this injustice. Yet, rather than using tools of express

⁹⁹ Paine, *Agrarian Justice*, 8.

¹⁰⁰ Paine, 8.

¹⁰¹ Paine, 9.

consent like Skidmore to establish a just private property regime based in natural right, Paine foregoes natural rights to property in the state of civilization, opting for an indemnification funded by a tax on landed property.

It is from this statement that Paine suggests “every proprietor therefore of cultivated land, owes to the community a *ground-rent*.”¹⁰² Paine concedes that at one point in the past, everyone held property in common as is their natural right, yet instead of reverting to a government founded in express consent like Skidmore, Paine proposes a ground rent to alleviate the injustice of common property taken without the express consent of a community. This ground rent will be distributed to every citizen of a community as payment for common access to land not being available to each individual, irrespective if they are owners of cultivated land or not. Paine does not explain why natural rights to property cannot translate to artificial rights to property as Skidmore argues for. Paine’s ground rent indemnification only *partially* compensates for the injustice of natural rights to property being taken away without the express consent of a community.

Paine believes that through Lockean labor mixing, the natural right to property has been split in two. He explains, “the common right of all became confounded into the cultivated right of the individual. But there are, nevertheless, distinct species of rights, and will continue to be so as long as the earth endures.”¹⁰³ Lockean labor-mixing on common property has caused property to divulge into rights to the value-added on landed property and rights to the landed property itself. Rights to value-added labor on landed property is retained to the owner of the landed property, while rights to the landed property must be qualified with a mandatory tax for its use. The revenue of this ground-rent, however, is paid to both the property-owning people of society

¹⁰² Paine, 8.

¹⁰³ Paine, 9.

and the propertyless.¹⁰⁴ This means that those who have retained rights to property are being indemnified for their possession of such private property equally as much as the propertyless are being indemnified for their non-possession of property. It seems that only those who have lost their natural right to property should be compensated, and it seems Paine should have conceded at least this in this theory of a just private property regime. The property-owning class should not be restored to realize their natural rights to property at the same rate as the propertyless.

Paine, however, explains the importance of combatting generational inequality such that Skidmore “cannot use language or argument more appropriate” than Paine’s.¹⁰⁵ Paine says in the *Rights of Man*, “Every age and generation must be as free to act for itself, in *all cases*, as the ages and generations which preceded it... Man has no property in man; neither has any generation a property in the generation which are to follow.”¹⁰⁶ While Skidmore may disagree with Paine’s Lockean justifications of private property and government foundations of inequality in property, Skidmore accepts Paine’s recommendation of the importance of preserving equality between generations. Jefferson’s belief in the equality between generations may have its foundations in Thomas Paine’s writings, and Skidmore’s approval of equality between generations must have its foundations with Paine as well.

APPROPRIATING THE IDEAS OF DANIEL RAYMOND:

Skidmore, early in *The Rights of Man to Property!*, engages in an intellectual debate with Daniel Raymond, prominent economist in early America and author of *Thoughts on Political Economy*. Raymond differentiates that there are three classes of rights, two found in nature and one found in society. One class of natural rights is “exclusive and absolute” and includes the

¹⁰⁴ Paine, 16.

¹⁰⁵ Skidmore, *The Rights of Man to Property!*, 165.

¹⁰⁶ Skidmore, 166.

“right to life, liberty, and the free use of his faculties in the pursuits of happiness... of which he cannot be rightfully deprived.”¹⁰⁷ The other class of natural rights are rights possessed “in common with his fellow men” and include the “right to the light of the sun – to the air he breathes – to such a portion of the earth, or rather to the use of such a portion of the earth for the time being that he occupies it, as is necessary to obtain, by his labour, his food and covering.”¹⁰⁸ The final class of rights, found in “the social state”, are called conventional rights. They are “modifications of the natural rights” to life, liberty, and “the exclusive right of individuals to property in the earth.”¹⁰⁹

Like Skidmore, Raymond believes that humans have natural rights to life, liberty, and property. He also believes that humans have modified natural rights, or artificial rights in society, to private property. Yet, Skidmore engages in debate with Raymond in the first chapter of *The Rights of Man to Property!* over a disagreement on the merits of equalizing property ownership. Skidmore cites Raymond’s claim that “an equal division of property is not to be desired, in any country, *because it is not a dictate of nature.*”¹¹⁰ Raymond continues, “an agrarian law... is as unnatural, as it would be, to reduce all men to the same stature, by stretching them on the bed of Procrustes.”¹¹¹ Raymond is arguing that inequality is natural, and attempts to equalize property through something like an agrarian law would be counter to nature.

However, Raymond contends in *The Elements of Political Economy* that “[t]he laws of nature, in regard to man, in his natural state, are to be preserved, as far as practicable, in the social state.”¹¹² Raymond believes that equal property rights is undesirable because equal

¹⁰⁷ Raymond, *The Elements of Political Economy*, 7.

¹⁰⁸ Raymond, 7-8.

¹⁰⁹ Raymond, 8.

¹¹⁰ Skidmore, *The Rights of Man to Property!*, 26.

¹¹¹ Skidmore, 26.

¹¹² Raymond, *The Elements of Political Economy*, 7.

property rights did not exist in a state of nature. The state of nature should be preserved as much as possible in the state of society. This is because there is “in a state of nature, such a perfect equality of *rights*, yet there is not... a perfect equality of *power*.”¹¹³ This seems to contradict Raymond’s former position that an equal natural right to property did not exist in the state of nature. In the social state, there is still inequality of power like that in nature. There is still a power imbalance that exists in social, physical, economic, and political realms of life, owing largely in part to the inequality of property rights. Raymond may have romanticized that good government has removed from the political process natural inequalities in power. However, individuals face different types of power in society than was present in the state of nature. Intellectual power, economic power, and political power, rather than brute physical power, exist in the state of society.

Power for Raymond is both physical power and what we would call virtue. Raymond claims systems that attempt to create equality of property “place strength in subjection to weakness... [and] talents in subjection to imbecility.”¹¹⁴ This is an argument that humans are all physically and intellectually unequal, and as a result, private property regimes should not strive for equality of property because of these natural inequalities. However, the acquisition of property is what has allowed many to become virtuous or powerful. It could be argued that virtuosity and power is cultivated through the ownership of property. Those with property and wealth can send their children to the best schools, they can eat the best diets, and they can indulge in all the pleasures of life that foster imagination and creativity. Without property or the ability to meet basic needs of subsistence, many individuals cannot become economically, physically, politically, or socially powerful. Property is a tool that can enhance this power and

¹¹³ Raymond, 9.

¹¹⁴ Raymond, 9.

virtuosity. Regarding intergenerational equality, the virtuous and powerful will be able to cultivate virtuosity in their offspring, creating a permanent class of virtuous citizens who also permanently maintain property ownership and power from generation to generation.

Thus, in order to preserve individual virtuosity and “power” differences, Raymond’s ideal political system is one where equal natural rights are respected as well as individual virtuosity. He claims, “This natural equality of rights, and inequality of power, are to be preserved as far as practicable in every true system of political economy.”¹¹⁵ He furthers, “equality of rights should be preserved as far as practicable, consistently with the exclusive right of property. This will preserve as equal a division of property, as is beneficial to society...”¹¹⁶ Yet, how can Raymond still believe that an “equal division of property is not a thing to be desired in any country, because it is not a dictate of nature?”¹¹⁷ If he claims government’s role is to preserve as equal of natural rights as possible, including rights to property, how is an equal division of property not a “dictate of nature?” Raymond’s theory on property is further tested by his ideas on intergenerational equality.

Raymond interestingly pivots, where he still claims that equality of property should not exist between a current generation but that equality of property should exist at the first instance of the coming of a new generation. Raymond says, “It is necessary to civil government, that men should have exclusive property in the earth, and it is perhaps, expedient, that a man should transmit his possessions to his posterity; but not that he should have any power or control over the earth, after he has become a part of it.”¹¹⁸ Now, we are entering the language of Jefferson, Paine, and Skidmore. He furthers, “It is natural law, and the best interests of society require, that

¹¹⁵ Raymond, 10.

¹¹⁶ Raymond, 11.

¹¹⁷ Raymond, 12.

¹¹⁸ Raymond, 14.

all the private wealth of a community, should be resolved into the general mass, at least once in every generation.”¹¹⁹ This is because man “has a right to use the earth, while he lives upon it, but when he descends to the grave, it belongs to someone else.”¹²⁰ This position is the exact same position Skidmore takes in his theory of just private property and distribution. Skidmore seems to have adopted this conception of intergenerational equality from Raymond and addressed some of the flaws in Raymond’s conception of the right of property.

Skidmore, while adopting much of Raymond’s positions on intergenerational equality, criticizes those like Raymond who cite virtue as a justification of unequal property. Skidmore asserts, “And *all* the rich, we certainly know, cannot pretend to be proportionally *more* virtuous... [due to] knowing how to take advantage of the situation of all the particulars in any way concerned in the operation of extracting such wealth from its former proprietor.”¹²¹ He believes “virtuosity” for many of the wealthy is the result of deceit, lies, and cunning. This isn’t necessarily true in every case, as many successful individuals are deserving of their financial success owing to virtuosity, such as when they create an invention or are genuinely better at using capital resources than the average person. “Virtuosity” as claimed by wealth can also merely be a collection of chance, circumstance, and luck. Virtuosity for Skidmore is not a just excuse to take away from every individual in society their right to survive off property.

Perhaps Skidmore used *The Rights of Man to Property!* as a way to correct some of the inconsistencies in Raymond’s text. Skidmore attempted to resolve many of Raymond’s ideas about equal natural and artificial rights to property, as well as intergenerational equality, with a just theory of private property and its distribution relying on express consent. If property is only

¹¹⁹ Raymond, 14-5.

¹²⁰ Raymond, 128.

¹²¹ Skidmore, *The Rights of Man to Property!*, 135.

equalized once per generation, virtuosity and individuality can still be cultivated. Individuals can use their intellectual superiority, gifts of communication, or pure luck to build wealth over their adult lifetimes with a seed fund coming from communal inheritance. Daniel Raymond, in an attempt to criticize attempts at equalizing property, actually advocated for the very such thing he denounced. However, this is only the case if equality of property only exists at fixed points of time, like at the beginning of each generation. Skidmore advocates for equality of private property, but he only advocates for it once per generation. Individual excellence and unequal wealth acquisition can still exist and is even encouraged.

MISCHARACTERIZATION OF SKIDMORE IN THE LITERATURE:

Skidmore's theory of just private property rights and its distribution has been mischaracterized in the existing literature. Even the esteemed Robert Dahl mischaracterizes Skidmore's position. Dahl claims that the radical democrat Thomas Skidmore believed "property rights were subordinate to the fundamental right of self government."¹²² Skidmore, however, was most concerned about the ability of every member of society to be able to free themselves from the appropriation of their labor owing to Lockean labor-mixing justifications of property. However, self-government is not needed for Skidmore's belief in natural rights to property. It is only when property is privatized that self-government, where express consent can be captured, is necessary for the realization of property. Had Dahl said "private property rights" rather than "property rights," this may have been more agreeable. However, this still bears concern. If anything, the artificial right to private property and the requirement of express consent to that privatization work hand-in-hand and are of equal importance. Private property cannot be realized

¹²² Dahl, "Political Equality and Political Rights," 565.

without express consent. But if property is never privatized, self-government isn't a necessary part of human life. Private property rights and self-government work together for Skidmore.

Dahl once again mischaracterizes Skidmore's position, claiming that Skidmore's vision of government would "deliberately regulate the distribution of wealth in order to insure political equality."¹²³ Political equality is a prerequisite for Skidmore's attempt to equalize private property once per generation. Skidmore's mission is not to distribute property in a manner meant to ensure political equality. Government for Skidmore is the vehicle through which the expression of consent can take place. Government is only necessary when property has been privatized, as express consent is necessary to confer just title. An equalized property distribution once per generation does not guarantee political equality.

Property distribution for Skidmore is the main function of government. The distribution of property does not ensure good government. Rather, good government ensures distribution of property based in the expression of consent. The distribution of property is regulated because government has as one of its main functions the job to ensure that the rights to life, liberty, and property are protected and exercised. Government does not regulate private property distribution in order to ensure that every individual has the same political power as their neighbor. Distribution is regulated because artificial rights to property must be equal once per generation for Skidmore. Those equal rights to private property can only be guaranteed in a government where the people have an equal voice politically to express their consent. Political equality ensures that the distribution of property is equal. The regulation of the distribution of property does not ensure that the political power of the people is equal. This is not Skidmore's goal. Dahl has erred in believing that the regulation of private property is to ensure equal political voices.

¹²³ Dahl, 566.

The opposite is in fact true. Political equality is a prerequisite for Skidmore's goal of equal private property ownership once per generation.

Dahl also claims that equal opportunity to own landed property cannot exist when government oversees its distribution. He claims, "The idea of equal opportunity to acquire land was also consistent with the right to property; in contrast, as Skidmore himself made clear, to regulate distribution by limiting ownership challenged the sanctity of that right."¹²⁴ As Skidmore has shown, the right to property can be equally consistent with efforts to equalize property ownership among the public. There are limits on transmissibility of property, just like in most modern countries. Estates are federally taxed in the United States. Modern countries have shown that limits on transmissibility and hence distribution of property can exist. Skidmore is just proposing a 100% inheritance tax on all property with the maximum dollar threshold of property able to be transferred without a tax at zero.

In addition, Skidmore's theory of just property, where government has the role of protecting rights to life, liberty, and property, and where the simple majority of people have the power to express their consent to property distributions, does not limit ownership of property of individuals during their lifetime. Individuals reaching the age of 18 are given equal amounts of property, and from there, they can accumulate as much property as they wish as long as there is no fraud involved. Distribution of property is only limited in the sense that property upon death is given back to the community. Individuals are not mandated to only have property in what they received at the age of 18. They may lose property in a bad business move, or they may gain property by their ingenuity in inventing a new device useful to the public. Property ownership is only limited when government is first established, as all individuals reaching the age of 18 must

¹²⁴ Dahl, 567.

own equal property at the beginning of each generation. But, from there on, these individuals can accumulate or lose as much property as they wish, as long as the public inherits every individual's property in common upon their death.

Author Richard J. Ellis in "Radical Lockeanism in American Political Culture" considers Thomas Skidmore to be a radical Lockean. He says, "The potential radicalism of Lockean natural rights doctrines is perhaps nowhere more fully realized than in Thomas Skidmore's *The Rights of Man to Property!*"¹²⁵ But, as we have seen from their many disagreements, it appears the only agreement they have come to is that property is a natural right humans are endowed with. Skidmore fails to maintain a Lockean premise for the natural right to property because he believes in a system of property founded in express consent, where value-added properties of labor do not instill title to property and consent is required to instill property in anything that belongs in common to all. The mere fact that both believe in the rights to life, liberty, and property should not categorize Skidmore as a Lockean in any sense. Consent, rather than value-added labor, constitutes the right to private property. Skidmore justifies private property and its distribution in a much different way than Locke.

He once again confuses Skidmore's position on private property, considering him a radical Jacksonian steeped in foundations of Lockeanism. Ellis claims, "For Skidmore's argument is not Andrew Carnegie's argument that inheritance dulls the spirit of enterprise (the individualist rationale for inheritance taxes) but that inheritance is unjust because it gives more to some than to others (the egalitarian argument)."¹²⁶ Inheritance for Skidmore is unjust because the current foundation of private property, from the first transaction to the most current transaction in present time, was founded without the express consent of the majority. Skidmore believes

¹²⁵ Ellis, "Radical Lockeanism," 832.

¹²⁶ Ellis, 833.

express consent by the people would inevitably lead to the equalization of property, as no one would wish to give one neighbor less than another neighbor if they had the choice. It is through express consent that equalization occurs. It is not purely on the basis of equality of property rights that inheritance is unjust. The property that was privatized at the first transaction without the express consent of those at the time and the future generations that come after is what makes inheritance unjust. There is more nuance to his argument than this claim by Ellis admits.

What Ellis describes correctly is the historical mischaracterization of Skidmore and other critics of Locke like Henry George and Thomas Paine as supporters of either “European-style state socialism” or “competitive individualism.”¹²⁷ Just because Skidmore believes in the ability of the individual to participate in market activities does not make him a competitive individualist, nor does his espousal for generational egalitarian property allocation based on the express consent of the majority make him a socialist. His belief in the express consent of the majority as the foundation of private property allocation, in conjunction with an artificial endowment of what was originally a natural right to property at the age of 18, is an espousal of equality of opportunity, not inequality of opportunity in a world of pure competitive individualism or equality of outcome in a world of pure state-sponsored socialism.

Sean Monahan makes the mistake of characterizing Skidmore as socialist. Monahan skillfully shows how Karl Marx believed socialism had its origin in the United States in the northeastern workingman’s parties like Skidmore’s in New York. Monahan argues that through the aid of universal suffrage, of which Skidmore prescribed to, the majority could vote away the property of the rich and expropriate it to themselves.¹²⁸ He explains that this “was the first

¹²⁷ Ellis, 843.

¹²⁸ Monahan, “The American Workingmen’s Parties,” 384.

articulation of the idea that socialism would involve a working-class majority exercising constituent power to expropriate the rich and reorganize property.”¹²⁹ What Monahan gets wrong is that basic socialism requires the social ownership of the means of production rather than the private ownership of the means of production. Skidmore, in his scheme to expropriate property from all, not just the rich, uses the consent of the majority to do so. However, this property is not to be socially owned or owned in a state socialism manner. Individuals will still maintain private ownership of property, just in an egalitarian manner as decided by the consent of the majority at one point in time per generation.

Monahan responds to this criticism, as he had anticipated such a criticism. He says, “It is sometimes alleged that the Workies [the people of a Workingman’s Party] were not socialists, since they did not propose abolishing private ownership. But by that criterion, Saint-Simon, Fourier, and Proudhon were not socialists either.”¹³⁰ Socialism would still be the incorrect term to describe Skidmore’s advocated policies, just like agrarianism was the incorrect term in the 1820s to describe Skidmore’s policy proposals. Monahan says that “the terms ‘socialism’ and ‘communism’ were not yet in use in the 1820s; instead, Skidmore and Ming’s proposal was dubbed ‘agrarianism.’”¹³¹ Skidmore believed in expropriating property from all through the consent of the majority once per generation, a tactic that Marx believed the socialist revolution would use to their advantage. However, there remains private ownership of all property.

PLACING SKIDMORE INTO CONTEMPORARY POLITICAL THEORY:

Contemporary political theory continues to share the concern Skidmore had for the ability of all individuals to be able to meet their basic means of subsistence outside of wage labor. This

¹²⁹ Monahan, 385.

¹³⁰ Monahan, 385.

¹³¹ Monahan, 384.

is best seen in the debate over universal basic income and in certain libertarian circles. Peter Vallentyne synthesizes libertarian thought, claiming many “forms of libertarianism hold that those who appropriate more than their fair share of natural resources owe a payment to others for their excess share.”¹³² In fact, Skidmore’s vision of equal property rights at the beginning of each generation appears to be very similar to what Vallentyne calls equal share left-libertarianism. This is a libertarian circle that “interprets the Lockean proviso as requiring that one leave an equally valuable per capita share of the value of natural resources for others.”¹³³ However, unlike Skidmore, equal share left-libertarianism still justifies private property ownership based on Lockean labor-mixing and interprets the “enough and as good” clause as meaning equal shares of ownership for each individual. Justifying private property and its distribution through express consent may be of interest for left-libertarians.

Belgian philosopher Philippe Van Parijs, a major proponent of universal basic income, challenges the inequalities apparent in the labor market. He claims the foundation of society’s existing freedoms consists in “very unequal combinations of gifts we have received throughout our existences.”¹³⁴ Skidmore attempts to rectify this by equalizing property at the beginning of each generation, but universal basic income offers a potential modern-day solution to inequalities in property ownership and the inability of individuals to own their own means of production. A universal basic income would address the “joint challenge of poverty and unemployment” by providing not only a “right to an income but also access to (paid and unpaid) activity.”¹³⁵

However, some advocates of *universal* basic income like Van Parijs make the same mistake Thomas Paine made in *Agrarian Justice*. The “universal” in universal basic income means all are

¹³² Vallentyne, “Libertarianism and the Justice of a Basic Income,” 4.

¹³³ Vallentyne, 7.

¹³⁴ Van Parijs, “Basic Income,” 18.

¹³⁵ Van Parijs, 17.

paid a basic income. If a basic income is the proposed solution to indemnify individuals for their inability to access the resources necessary for their survival, those who own the resources should not receive a basic income as well.

Stanford University professor of philosophy and political science Juliana Bidanure studies both distributional equality and intergenerational equality, both main concerns of Skidmore in *The Rights of Man to Property!*¹³⁶ This concern is most visible in the United States where the current generations are leaving large amounts of debt for new generations to deal with.¹³⁷ Bidanure believes institutions should guarantee equality of opportunity between generations or what she calls cohorts.¹³⁸ She also claims that if “one really values freedom for all, they therefore should oppose conditions that force individuals to choose between survival and a life they do not want for themselves.”¹³⁹ Skidmore addresses both the inability of the wage laborer to maintain their own means of subsistence and the inequality between generations that Bidanure has spent much time studying. Skidmore’s theory of justice founded in express consent could provide a new avenue for scholars like Bidanure to examine inequality among generations and the importance of everyone in society being able to meet their basic life needs.

Contemporary political theory also shares the concern for the inadequacy of tacit consent as a way to express one’s acceptance with conditions of existence and government activity. Karl Widerquist and Grant McCall in *The Prehistory of Private Property* embody this concern. Skidmore shows how the first instance of property distribution has caused generational economic effects not expressly consented to by the people of the current generation, and these generational effects can leave more and more propertyless as property concentrates into the hands of the few

¹³⁶ Bidanure, “Making Sense of Age-Group Justice,” 234.

¹³⁷ Bidanure, 247.

¹³⁸ Bidanure, 254.

¹³⁹ Bidanure, “The Political Theory of Universal Basic Income,” 487.

each generation. Widerquist and McCall express the concern that the powerful and those who are set to benefit by the current private property regime are highly invested in its success.”¹⁴⁰ Under Skidmorean distributive justice, private property regimes require the express consent of a current generation of people. However, decades of existing law and established property rights are difficult to overturn. This is even more clear when one observing the barriers poverty impart on challenging the current private property regime. Collective action is harder for the poor and propertyless, as most of their time is most likely used to meet basic subsistence needs.

Tacit consent may work in a world where there are options for individuals to be free from government interference or there is the ability to live off commonly-owned property. Today, there is an abundance of options for the miserable and propertyless to leave their home country or area and move abroad. However, there are few places or territories, if any, where individuals can establish self-government where there is no government already in place. In addition, “The more difficult for a person to move... the more difficult it is for that individual to move or refuse cooperation with the people who impose a hierarchy over them, and therefore, the easier it is to maintain a stratified state society.”¹⁴¹ There are few, if any, options for people who don’t want to consent to their laws and institutions besides tacitly consenting. Tacit consent might be better described as obligatory consent.

Under the current private property regime, there is the large inability to provide for one’s basic needs without working for another and tacitly consenting to a government which protects the ability of those that employ others. In other words, “except for the independently wealthy, people today do not have the relevant kind of freedom to quit. They can quit any *one* job, but... [they] cannot quit all jobs or all landlords or all public officials... [P]eople living in industrial

¹⁴⁰ Widerquist and McCall, *The Prehistory of Private Property*, 21.

¹⁴¹ Widerquist and McCall, 73.

capitalist societies do not [have direct access to their means of production].”¹⁴² Not everyone can be employers or self-proprietors in a private property system that requires employed labor. It is very difficult for those who are poor and propertyless to do anything but tacitly consent. There are not any available exit options to escape government you don’t expressly consent to besides other governments, and there are very little exit options to escape employment from some place besides other employers. Employers with vast resources will defend their ability to employ, and the propertyless must tacitly consent to this condition or face enormous obstacles to change their conditions.

CONCLUSION:

Skidmore’s just theory of private property and its distribution in *The Rights of Man to Property!* relies on natural rights to life, liberty, and property, majoritarian institutions with frameworks to express consent, and enshrined protections for minorities so that every member of society, down to the individual, has rights to life, liberty, and property protected equally. In conversation with Locke, Skidmore elucidates the inherent flaws of a property rights regime that justifies property based on first appropriation and labor-mixing claims. In addition, Skidmore claims tacit consent as discussed in the *Second Treatise of Government* does not constitute true consent. An early American debate on intergenerational equality is revealed when comparing Skidmore to valiant advocates of intergenerational equality such as Thomas Jefferson, Thomas Paine, and Daniel Raymond. Particularly, Skidmore adopts the language of these theorists to challenge inconsistencies in their arguments and show how they hadn’t gone far enough in their advocacy of rights to property and concerns for equality among generations.

¹⁴² Widerquist and McCall, 110.

Currently, life begins on an uneven playing field economically, causing lasting effects in the political and social lives of all individuals. The accumulation of wealth and property by a semi-fixed property-owning people through modern inheritance conventions results in an imbalance between liberty and equality right from birth. This makes it harder for those without inherited wealth to maintain their basic means of subsistence and to recognize their human rights to life and liberty, which depend on property. Propertyless individuals in today's world have three choices: work for an employer to maintain their means of subsistence, garner enough capital to become a self-proprietor, which usually involves years of working as an employee and isn't a guaranteed success, or starve as beggars on the street.

The transformation of the individual of Skidmore's society is in stark contrast with today's society. The common existence of an individual as a self-proprietor no longer exists. The propertyless, now subject to hired employment, face a power imbalance with employers. The only way employees can maintain their basic means of subsistence is to follow the orders of the employers who control the resources they need to survive. Free speech inside and outside of the workplace is limited. Voluntary and noncoercive exchanges of labor fails to exist when employees have no choice but to employed, live on the streets as a beggar, or starve. Those who metaphorically arrive at the dinner table last, the propertyless, must answer to the rules and conditions of those who have already begun to feast, the property owners.¹⁴³ As a result, employers, rather than a true competitive employment market, have a visible hand in determining employee compensation.¹⁴⁴ Without an exit option to maintain their basic means of

¹⁴³ Skidmore, *The Rights of Man to Property!*, 355-6.

¹⁴⁴ Economic Policy Institute, "Unequal Power."

subsistence, the negotiating power of the employed suffers. The plight of the wage worker and common individual continues.

Inequality in power between employees and employers does not only cause inequality in economic conditions. Political power of the employee is severely hampered, putting our long-standing republic in serious danger. The owners of the means of production are highly invested in securing a private property regime from which they benefit from greatly.¹⁴⁵ Therefore, labor power inequality translates into inequality in political power, as property owners and employers attempt to use the tools of government to secure for themselves favorable policies to the detriment of workers and society.¹⁴⁶ Wage confidentiality rules allow firms to benefit from asymmetry in knowledge on what constitutes a fair wage, and employers in rural areas benefit from monopsony power over labor.¹⁴⁷ Employees, living paycheck to paycheck, face enormous barriers when deciding whether to quit their job to find better employment, making jobs in a “voluntary,” “noncoercive,” and “competitive” labor market hardly substitutable.¹⁴⁸

The theory of just private property rights and its distribution as espoused by Thomas Skidmore offers a valuable moral framework. Tackling the inequality of power the typical resourceless individual in today’s world faces may require a conversation about what constitutes true consent to conditions. Promoting intergenerational equality can serve as a reminder that the decisions made in government by today’s leaders create consequences felt by distant generations. If society acknowledges rights to life and liberty, these rights are difficult to protect unless everyone has the ability to maintain their means of subsistence outside of the realm of hired employment. The resourceless today, by tacitly consenting to the negative duty to not aggress on

¹⁴⁵ Widerquist and McCall, *The Prehistory of Private Property*, 21.

¹⁴⁶ Harris, Benjamin H. and Block, Sharon. *Inequality and the Labor Market*, 2.

¹⁴⁷ Harris, Benjamin H. and Block, Sharon. 3-5.

¹⁴⁸ Harris, Benjamin H. and Block, Sharon. 2.

existing private property rights, thereby creating a system where many individuals lack the necessary resources for survival, must be indemnified.¹⁴⁹

¹⁴⁹ Widerquist and McCall, *The Prehistory of Private Property*, 83.

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