

These truths being clearly settled, where shall we find the difference between the right of a subject who has lost his property by a cession of territory *unconquered*, and that of a subject whose property has been lost through a want of the protection due by law, and afterwards ceded to the conqueror? There is none such to be found in any book on politic law whatever. They all speak in general terms of the property of subjects "ceded or given up," and declare compensation to be due for it, without intimating that such a distinction ever existed. "*Ubi lex non distinguitur, ibi nos non distinguimur*," is an established maxim in the construction of all laws. If such a difference was ever before thought of, it is strange it does not appear. Besides, the words "cede and give up" are the express words of the books, and the true and radical meaning of them is, with much more propriety, applied to territory *conquered*, than to that which is in the *possession* of the sovereign ceding it. For the common and true sense of the terms is to "release, to resign, and to quit claim" to a *right* to something not in our possession, and therefore they are used in a transfer of the *right*, and not of the *possession*. But in the conveyance of property in our possession, it is usual to define it in terms

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much more significant of the true meaning of our intention. Here we use the words "*grant, convey, surrender, deliver*," the possession of the property intended to be conveyed. Such a cession therefore never has been construed to extend to a transfer of the private possessions and properties of the people in the territory; for, say the authors on politic law, "the sovereign power, however *absolute*, is not invested of itself with the right of property, nor consequently with the power of alienation."

The law is the same in respect to a cession of a territory in the hands of the conqueror. The state to whom it before belonged, may cede its right to the dominion and sovereign power over the territory; but it cannot lawfully transfer a right over the people without *their consent*; and it is for this reason that every State, when it has ceded a part of its territory to the conqueror, has endeavoured to avoid or lessen the burthen of this compensation by stipulations in the treaty on the behalf of its faithful subjects, whom it has not been able to protect; which bind the conqueror to give up his right over the persons and private fortunes acquired by his conquest, and either to adopt them as subjects with their

consent,