

## **Crim429/FNST429**

# **Indigenous Peoples and International Law**

## **Making it “Legal”**

- The Pope defines “natural law”
  - Doctrine of Discovery
- Two primary legal instruments:
  - *Requerimiento*
    - There must be an opportunity for choice
  - *Encomienda*
    - The Christian objective must not be forgotten

## 1500s

- Considerable shift in legal/theological discourse
  - Rejection of Papal claims to secular jurisdiction; and
  - Application of “natural law” principles to all human relationships, including relations between nations

## Franciscus de Vitoria

late 1400s-1546



- Dominican scholar
- U of Salamanca
- First Spanish thinker to apply humanist natural law to Spain’s treatment of Indians in the New World

## Franciscus de Vitoria



- Influenced by St. Thomas Aquinas; rooted in egalitarianism
- *De Indis noviter inventis* (*On the Indians Recently Discovered*) 1532

### *De Indis noviter inventis* 1532

1. Inhabitants of the Americas possessed natural legal rights as free and rational people
2. The Pope's donation to Spain of title in the Americas was "baseless" and could not affect the inherent rights of the Indian inhabitants

## ***De Indis noviter inventis 1532***

3. “Just War”: To defend, or if the universally binding Law of Nations are violated
  - a. natural society and fellowship, travel
  - b. free and open commerce
  - c. anything common to both citizens and strangers
- But are the Indians rational “equals”?
  - Posited a sort of cultural evolution
  - Benign guardianship is okay.