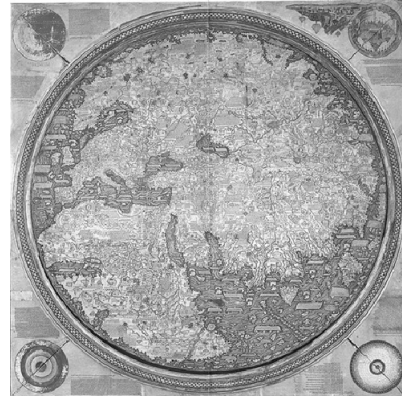


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Indigenous Peoples and International Law



What's Happening in the 1400s?

- People are travelling all over the place
- The end of the Crusades; domination (in Europe) of the Christian church; pre-nation state ... kingdoms, city states
- Portugal and Spain cut off from Europe by Pyrenees
- The “age of exploration” = colonization



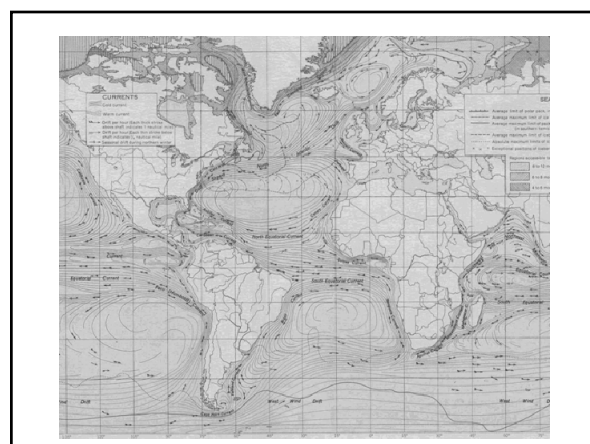
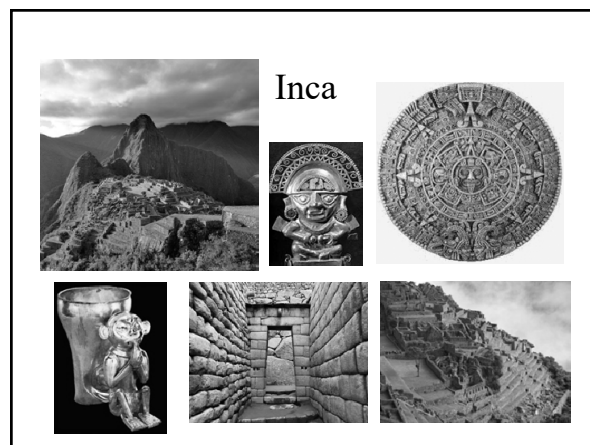
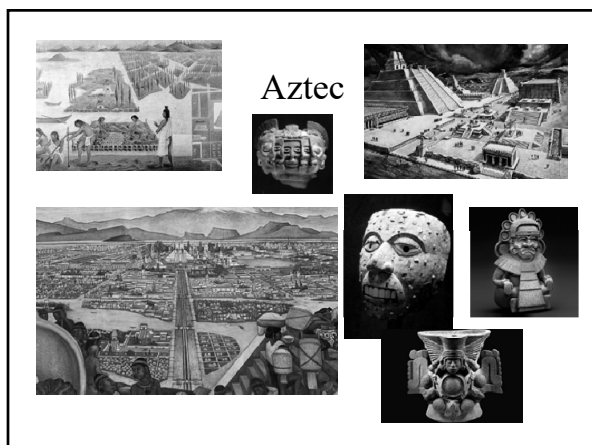
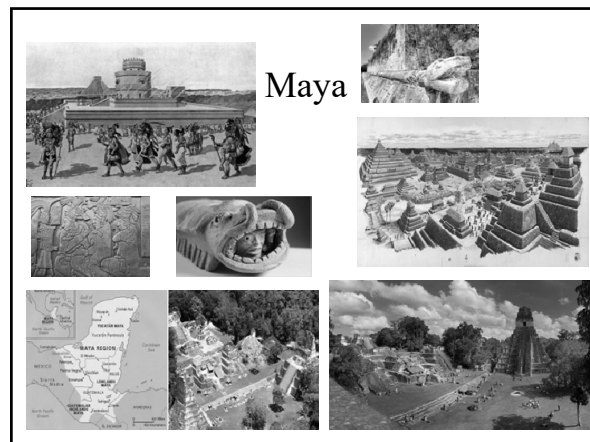
Romanus Pontifex 1455

- The Pope claims the role of spiritual ruler of the world
- The world is divided between Christians and “unbelievers” (heathens, infidels, Saracens)
- Christians have rights; others do not
- The RP “donates” land to the west and south to Portugal for Christianizing, trading



Pre-Columbian Life in North America

- In central and south America there are many nations with populations apparently in the millions
- Some of the main empires were those of the Maya (from several hundred BC to the 1500s), Aztec (1300s to 1500s) and Inca (1400s to 1500s)



Inter Caetera 1493

- Demarcated a line 100 leagues west of the Azores, drawn from the North Pole to the South Pole that differentiated Portugal from Spain's claims to the New World
- Christians can hold Dominion; others cannot
- Would the Indians accept Christian God and the King of Spain?

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

Doctrine of Discovery

- Ed John points out that
 - Doctrine based on racist assumptions
 - Used to enslave, exploit, subjugate and to dispossess Indigenous People/s rights, laws, spirituality, governance, lands & resources
 - Need for redress; recognition of Indigenous sovereignty; repudiation of Doctrine
 - No effective international mechanisms

Requerimiento (1510)

- ... But, if you do not do this, and maliciously make delay in it, I certify to you that, with the help of God, we shall powerfully enter into your country, and shall make war against you in all ways and manners that we can, and shall subject you to the yoke and obedience of the Church and of their Highnesses; we shall take you and your wives and your children, and shall make slaves of them, and as such shall sell and dispose of them as their Highnesses may command; and we shall take away your goods, and shall do you all the mischief and damage that we can, as to vassals who do not obey, and refuse to receive their lord, and resist and contradict him; and we protest that the deaths and losses which shall accrue from this are your fault, and not that of their Highnesses, or ours, nor of these cavaliers who come with us.

Encomienda



de Las Casas



Brief Account of the Devastation of the Indies (1542)

Their reason for killing and destroying such an infinite number of souls is that the Christians have an ultimate aim, which is to acquire gold, and to swell themselves with riches in a very brief time and thus rise to a high estate disproportionate to their merits. It should be kept in mind that their insatiable greed and ambition, the greatest ever seen in the world, is the cause of their villainies. And also, those lands are so rich and felicitous, the native peoples so meek and patient, so easy to subject, that our Spaniards have no more consideration for them than beasts. And I say this from my own knowledge of the acts I witnessed. But I should not say "than beasts" for, thanks be to God, they have treated beasts with some respect; I should say instead like excrement on the public squares.

Brief Account of the Devastation of the Indies (1542)

And the Christians, with their horses and swords and pikes began to carry out massacres and strange cruelties against them. They attacked the towns and spared neither the children nor the aged nor pregnant women nor women in childbed, not only stabbing them and dismembering them but cutting them to pieces as if dealing with sheep in the slaughter house. They laid bets as to who, with one stroke of the sword, could split a man in two or could cut off his head or spill out his entrails with a single stroke of the pike. They took infants from their mothers' breasts, snatching them by the legs and pitching them headfirst against the crags or snatched them by the arms and threw them into the rivers, roaring with laughter and saying as the babies fell into the water, "Boil there, you offspring of the devil!" Other infants they put to the sword along with their mothers and anyone else who happened to be nearby.

Las Casas / Sepulveda



The Council of the Indies at Valladolid (1550-1)

Sepulveda

- Indians not rational beings; barbarians; cites Aristotle that inferior beings are born to slavery
- Indians deviation from Spanish customs/law were violations of natural law and justified war as punishment

Las Casas

- No one is born to slavery; mankind is one; "savage peoples are like uncultivated soil"; peaceful societies
- Punishment requires jurisdiction and neither Emperor nor Pope had jurisdiction over Indians because they were pagans, not heretics

The Council of the Indies at Valladolid (1550-1)

Sepulveda

- Indians oppressed and killed innocents among themselves – human sacrifice; cannibalism
- Force is necessary to Christianize; cites biblical passages seen as justifying use of force to bring within the fold (e.g., using force to bring passers-by into a wedding party)

Las Casas

- Rare, but it existed. Wrong; but War is the greater evil. Indians need to be persuaded/shown, not killed
- Must keep spirit of scripture and not just pick and choose morality as you see it. How could God have commanded us to kill pagans to save them from their ignorance? Not heretics.

The Council of the Indies at Valladolid (1550-1)

- Four important implications for Indigenous Peoples within international law (Venne):
 - It was the earliest attempt by the European mind to deal with the rights of peoples who were not European
 - The debates were engaged in with great seriousness since the issues were considered significant

The Council of the Indies at Valladolid (1550-1)

- Most interesting was that it was not about the biology of Indigenous Peoples – whether they were “human” – but rather “whether the Indians were to be accorded the status of legitimate humans in the eyes of the church and state.”
- Indigenous Peoples were treated as objects of the debate without ever inviting them to be active participants

First Era of International Law

- Emphasis always on “making it legal” (tells you something about “the rule of law”)
- “Legal” and “rights” were defined by “natural law”
- “Natural Law” during this first period was defined exclusively by the Pope, who was “Ruler of the World”
- Bottom line: Only Christians have rights