

### *III. From the History of International Legal Thought*

## **VOLODYMYR HRABAR, PETER LOMBARD, JOHN MAIR, AND THE HISTORY OF INTERNATIONAL LAW**



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Among the achievements of Russian legal science and the contributions of Russia and Ukraine to the history of international law is the career and writings of Academician Vladimir Emmanuilovich Grabar (Hrabar) (1865–1956). One of Grabar's particular contributions was a substantial article setting out the glosses of John Mair (c. 1467–1550) on the *Sentences* of Peter Lombard (c. 1100–1160), or Peter of Lombardy (Petrus Lombardus).<sup>1</sup> Although Grabar published a concise summary in the French language of his contribution, the original in Ukrainian has never before been fully available to a non-Ukrainian readership.<sup>2</sup>

We consider each of these remarkable figures in chronological sequence and then turn to Grabar's exposition of John Mair's reading of Lombard.

#### **Peter Lombard**

Peter Lombard is among the most celebrated of mediaeval theologians whose learned writings have been the subject of discussion and commentary almost from the moment they were written. Vladimir Grabar, however, is the only individual who has assessed them, via the glosses of John Mair, against the background of the history of international law.

<sup>1</sup> V. E. Hrabar, «Питання державного й міжнародного права в Коментарях Джона Мера до Сентенцій Петра Ломбарда (До літературної історії міжнародного права середніх віків)» [Questions of State and International Law in the Commentary of John Mair on the *Sentences* of Peter Lombard (On a Literary History of International Law of the Middle Ages)], *Записки соціально-економічного відділу* [Annals of the Socio-Economic Section], V–VI (1927), pp. 292–327 (French summary: pp. 313–318).

<sup>2</sup> A useful abridged version appeared in Russian thanks to two Kharkov scholars. See V. S. Semenov and O. Ya. Trahniuk, «Вопросы государственного и международного права в комментариях Джона Мэра к Сентениями Петра Ломбардского» [Questions of State and International Law in the Commentary of John Mair on the *Sentences* of Peter Lombard], *Московский журнал международного права* [Moscow Journal of International Law], no. 4(32) (1998), pp. 178–185.

The precise date and place of birth of Peter Lombard cannot be identified with certainty. It is believed that he was born between 1095 and 1100 in northwestern Italy, probably near Novara in the Piedmont region, most likely to a family without means. On the balance of probabilities, his schooling commenced in Italy at the cathedral schools of Novara and Lucca, perhaps later at Bologna. He secured the patronage of Odo, Bishop of Lucca, who, as is confirmed by a surviving letter dated between 1138 and 1140, recommended Peter Lombard to St. Bernard of Clairvaux (1090–1153) in Paris.<sup>1</sup> Whatever periods he spent in Reims and Paris, by 1142 he was well ensconced at the cathedral school of Notre Dame and in contact with leading theologians of that era, Peter Abelard (1079–1142) and Hugh of St. Victor (1096–1141). By 1144 he was acknowledged to be a «celebrated theologian» who had made his mark within a community of canons all related to Capetian families from the eastern Loire valley.

He rose in the ecclesiastical hierarchy, becoming a canon of Notre Dame by 1145, subdeacon in 1147, attending the Council of Reims in 1148; being elevated to a deacon after 1150, then an archdeacon, and in 1159 ordained as Bishop of Paris — a post that he held for less than a year before passing away on 21 or 22 July 1160. Although he produced commentaries on the Psalms and on the Pauline epistles and some thirty or so surviving sermons, his fame rests upon the *Sentences*, a work in Four Books. Modern scholars regard the *Sentences* as «...one of the paramount achievements of a theological movement that had lasted for almost a century, and one that would mark all subsequent theological teaching».<sup>2</sup> From the 1220s to the sixteenth century, no work of Christian literature, save the Bible itself, was commented upon more frequently. All the major mediaeval thinkers, from Albert the Great (1193/1206–1280) and Thomas Aquinas (1225–1274) to William of Ockham (1288–1348) and Gabriel Biel (c. 1410–1485), were influenced by it. Martin Luther (1483–1546) wrote glosses on the *Sentences*; John Calvin (1509–1564) quoted from the work more than 100 times in his Institutes.<sup>3</sup> In due course the *Sentences* attracted the attention of John Mair, also influenced in his day by the Parisian school of theology.

Modern Lombardian scholarship has found it instructive to view the *Sentences* not as a work of theology, but as a «legal casebook». The analogy is intriguing in our context. In the American tradition of teaching law since the last third of the nineteenth century, the casebook is compiled as a teaching tool, rather than a treatise addressing substantive law. The argument for the analogy, however, is made not by a jurist, but by an historian, who is worth quoting at length.<sup>4</sup>

«It may be that the attempt to understand Peter and his *Sentences* is hindered, if one regards his work as a theology book ... whether medieval or modern. ... [T]ake a modern legal casebook [to] ... illuminate the nature and purposes of the *Sentences*.

... To understand how the casebook and the modern jurist might be analogous to the *Sentences* and its readers, let us ... turn to a twelfth-century historian named William of Tyre. In the course of writing his *History*, William took the occasion to reflect on his experience as a student in Paris ...

<sup>1</sup> Some believe Peter Lombard arrived in Paris as early as 1134, having spent time in Reims. For biographical data, see *M. L. Colish*, Peter Lombard (1994); *P. Dalhaye*, Pierre Lombard: sa vie, ses oeuvres, sa morale (1961); *P. W. Rosemann*, Peter Lombard (2004); *P. W. Rosemann*, The Story of a Great Medieval Book: Peter Lombard's «*Sentences*» (2007); the introductions by Giulio Silano to P. Lombard, *The Sentences*, transl. G. Silano (2007–2010),

<sup>2</sup> Quoted in Silano, note 3 above, I, p. xiii.

<sup>3</sup> See «*Peter Lombard*», Wikipedia entry.

<sup>4</sup> Quoted in Silano, note 3 above, p. xxi; he in turn for William of Tyre quoted Colish, note 3 above, I, p. 30, ln. 47, who in turn quoted R. B. C. Huygens, «Guillaume de Tyr étudiant: un chapitre (XIX, 12) de son 'histoire' retrouvé», *Latomus*, XXI (1962), p. 823.

In theology, for six consecutive years, we went to hear a man of singular learning in that science, namely master Peter Lombard, who was afterwards bishop of Paris. The company of the *prudentes* embraces his extant works with veneration and studies them with reverence. Because of his sound teaching, he was a man commendable in every way. ...

*Prudens* is not an obvious epithet to use of a theologian. Although the word can bear the meaning of 'expert', its most usual application is to legal experts, hence 'jurisprudence' to designate the discipline practiced by those who are expert in the law. And yet someone who was thoroughly familiar with Peter and his works found it natural to use the term to refer to those who were able to approach these works with veneration and reverence. It will not perhaps now seem unreasonable to suggest that the formation of such *prudentes* was the aim of Peter's *Sentences*.

The very title of Peter's work can be read to confirm such an aim. 'Sentence' is a term which is at least as rich in meanings in Latin as it is in English. These range from units of language to opinion, sense, meaning, the main purpose of an author, and judicial pronouncements. In its juridical sense, 'sentence' is also linked to the function of the *prudens*. ... [Gaius described] ... the function of the jurists; their responses to consultations constitute sentences which are to be regarded as authentic sources of law».

There is little doubt that an analysis of this order would have appealed to Grabar, whose own style of exposition of the law, the logic of the law (international law), was in this tradition.

The structure and aim of the *Sentences* would have appealed to Grabar too. Peter Lombard selected sentences, or extracts, from earlier works and formulated new ones in the course of his own reflections and teaching. These extracts, Silano suggests, bear analogy to the *ratio decidendi* of judicial decisions: the essence, the holding, of what is being adjudged, rather than the extraneous, the *obiter*. The process was open-ended, invited successors to propose other extracts as candidates for inclusion and, in so doing, making the process of teaching a lively and challenging one. Students were expected to learn not merely the extracts themselves, but to comprehend why they had been selected in the first place, how the tradition and practice of identifying appropriate extracts and then discussing or arguing their meaning and relevance would be germane to contemporary problems, whether in ecclesiastical administration or in sermons.

Peter Lombard's views were not without critics. Although he had passed away in 1160, three years later his views on Christ were discussed at assemblies in Tours and a year later in Sens and in 1170 and again in 1177 the subject of letters from Pope Alexander III (c. 1100–1181) to bishops in France. A severe critical assault upon the *Sentences* by Joachim of Fiore (c. 1135–1202) led to the Council Lateran IV formally adjudicating accusations questioning the orthodoxy of Peter Lombard's teachings on the Trinity. The Council in 1215 declared that the same Trinitarian faith as Peter Lombard was believed and confessed by it: «with such a seal of approval, the work was henceforth unassailable ... no further reflection was cast on the orthodoxy of Peter and his work».<sup>1</sup>

Manuscripts of the *Sentences* were produced as early as 1158. By the early 1160s the work was being glossed, commented on, excerpted, abridged, and even versified.

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<sup>1</sup> Silano, note 3 above, I, p. xxix.

By the 1170s the *Sentences* was acknowledged as an authoritative text. Later writers assumed a thorough understanding of Lombard as a prerequisite for tackling their own writings. When printing commenced, no less than nineteen editions appeared as incunables, that is, prior to 1500, with dozens more to follow in the sixteenth century.

### John Mair

John Mair, or Major or Maior (both spellings are used in the literature),<sup>1</sup> was born at Gleghornie, East Lothian, south-east of Edinburgh, in Scotland. His parents seem to have been a farming family and not without social stature. His home was not far from Tantallon Castle, and Mair became close to Gavin Douglas, the Earl of Angus (c. 1474–1522). After a year at Cambridge University (probably 1491–92), Mair followed the example of many of his fellow Scots and in 1493<sup>2</sup> removed to the leading intellectual center of its time, the University of Paris, choosing the College of St. Barbe. He took his M. A. in 1494 and became one of the regents in arts. His teaching was in the arts and scholastic philosophy. His studies of theology commenced under Jan Standonck (1453–1504) at the College of Montaigu. His first book, on logic<sup>3</sup>, appeared in 1499 (reprinted 1503); the degree of D.D. was conferred in 1506 while at the College of Navarre. He shared his teaching between the College of Montaigu and the Sorbonne<sup>4</sup>.

At least thirteen works on logic appeared between 1500 and 1508, when his collected lectures were printed, and 46 in all by 1520<sup>5</sup>. Between 1509 and 1517 he completed his greatest contribution to theology – his Commentary on the Four Sentences of Peter Lombard. Although earlier opportunities had been declined, in 1518 Mair returned to Scotland, «at the height of his reputation»,<sup>6</sup> to accept the post of Principal Regent and a professorship at the University of Glasgow, accompanied by an appointment as vicar of Dunlop, in Ayrshire, and canon of the Chapel Royal in Stirling. Among his students at Glasgow were John Knox (c. 1512–1572) and Patrick Hamilton (1504–1528), the protomartyr (burned at the stake before St. Salvatore's College, St. Andrews) of the Scottish Reformation, to whom he taught logic, canon law, and divinity. At Glasgow, Mair completed his work begun in France on the history of Great Britain (in Latin) and arranged for its publication in 1521 at Paris. In 1522 (or 1523) Mair moved on to the University of St. Andrew and taught logic and theology, probably to follow his friend, Archbishop James Beaton (c. 1473–1539), who had taken a post there.

Mair returned to Paris in 1525, having rejected a handsome offer en route from Cardinal Thomas Wolsey (c. 1473–1530) to join Christ Church College, being newly established at Oxford. In Paris Mair revised his earlier books and completed new editions on physics, ethics, and Aristotle. These were accompanied in 1529 by a commentary on the four gospels and his final version of commentary on Peter

<sup>1</sup> The vernacular spelling is Mair, but the Latin version, Maior or Major, appears on his publications and is widely used in cataloging his books. Herein we generally use the vernacular version unless sources indicated otherwise.

<sup>2</sup> Dates vary. Some say he arrived at Paris in 1491 or 1492; took his Masters in 1496, began to lecture in 1495, and received his D. D. in 1505. See A. Broadie, *The Circle of John Mair: Logic and Logicians in Pre-Reformation Scotland* (1985), p. 2; Broadie, «Mair, John», ODNB (rev. May 2011); Broadie, *The Shadow of Scotus* (1995); J. K. Farge, *Biographical Register of Paris Doctors of Theology, 1500–1536* (1980).

<sup>3</sup> J. Major, *Exponibilia magistri Ioannis Maioris Scoti* (Paris, 1499). See Broadie (1985), note 9 above, p. 267. Exponible terms such as «only», «except», or «in so far as» contribute in logical ways to the validity or invalidity of syllogisms; these were the subject of Mair's early work.

<sup>4</sup> G. W. S., «Major, John», *DNB*, XII, pp. 830–832.

<sup>5</sup> J. Durkan, «The School of John Major: Bibliography», *Innes Review*, no. 1 (1950), pp. 140–157.

<sup>6</sup> Broadie, ODNB, note 9 above.

Lombard, and in 1530 by his last book, a critical edition of Aristotle's *Nicomachean Ethics* dedicated to Cardinal Wolsey. Among his students in Paris were John Calvin (1509–1564), Ignatius of Loyola (1491–1556), François Rabelais (1494–1553), and George Buchanan (1506–1582). In 1531 he returned to St. Andrews, remaining there for the balance of his life and staying aloof from the controversies that attended the Scottish Reformation.

Effectively retired upon his return to Scotland, Mair acted as Provost of St. Salvator's College and as dean of the faculty of theology. He probably tutored John Knox, who is believed to have matriculated at St. Andrews in 1529. One of his former Parisian students, William Manderston (1485–1552), was now Rector of St. Andrews.

Mair's biographer in the DNB saw Mair as a «liberal in politics», but a churchman who «strongly maintained Gallican principles» who held fast «to the doctrinal system of Rome», «was averse to educational reforms» and «hostile to theological change». Grabar viewed Mair as an «iréniste», together with his contemporaries Desiderius Erasmus (1466–1536), John Colet (1467–1519), and Thomas More (1477–1535). But as a convinced Irenicist, Mair kept «his feet on the ground of reality».<sup>1</sup>

### V. E. Grabar

Vladimir Emmanuilovich Grabar was born on 10/22 January 1865 in Vienna, Austria, into a family deeply involved in the nationality politics of the Austro-Hungarian Empire<sup>2</sup>. His father, Emmanuil Ivanovich Grabar (d. 1910), was a graduate in law of the University of Pest, Hungary, who fought in the forces of Louis Kossuth, became a legal practitioner, and served some time in Parliament. In 1871 the Grabars were obliged to emigrate. Grabar's mother, Olga<sup>3</sup>, was the daughter of Adolph von Dobrianski (d. 1903), a prominent figure in the Carpatho-Rusyn independence movement. According to family legend, the Grabars had come to Hungary from Ukraine, where their surname was Konch; the surname Grabar was taken from the wife of Konch in order to prevent the name from being extinguished. The Grabars were, therefore, Ukrainian, and it was natural for them to gravitate back to Ukraine when forced to leave Austria-Hungary.

Vladimir Grabar received most of his schooling at Egor'evsk and then the Galagan College in Kyiv, where he added Russian and Greek to his repertoire of languages. Following the example of his father, Vladimir enrolled at the Law Faculty of Moscow University and attended lectures in the faculty of history and philology. The history of international law attracted him early on. In 1885 he submitted a second-year paper to the Faculty of Law on the «Right to the Throne and the Order of Succession» and later a candidate thesis on the «Status of Aliens among the Ancient Hebrews».

Appointed to an academic post at the University of Tartu in 1893, Grabar combined his interest in the history of international law with the law of war and offered a probationary lecture on «War and International Law» and another, anticipating much of his life's work, on «The Study of International Law in Russia up to the Mid-

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<sup>1</sup> *Grabar*, note 1 above, p. 318.

<sup>2</sup> For biographical details, see *W. E. Butler*, «V. E. Grabar: Profile of a Russian International Legal Historian», in *V. E. Grabar, The History of International Law in Russia, 1647–1917*, transl. & ed., W. E. Butler (Oxford, 1990), pp. xxxv–li. Also see *K. O. Savchuk*, Міжнародно-правові погляди академіка В. Е. Грабаря [International Legal Views of Academician V. E. Grabar] (Kyiv, 2003), pp. 5–30.

<sup>3</sup> See *N. M. Pashaeva*, Очерки истории русского движения в Галичине XIX–XX вв. [Survey of the History of the Russian Movement in Galicia XIX–XX Centuries] (2007), pp. 61, 69, 78, 82, 84, 159; *A. V. Wendland*, Die Russophilen in Galizien: Ukrainische Konservative zwischen Österreich und Russland 1848–1915 (Vienna, 2001).

Nineteenth Century». His magister degree, conferred in 1901, was devoted to Roman law in the history of international legal doctrine and his doctoral degree, conferred in 1918, addressed the history of international legal doctrine in England.

Grabar's research on the history of international law brought him to England on several occasions. Archival records indicated that he worked in London during the summer of 1896, with further visits in 1898, 1899, 1908–09, 1911, and 1913.<sup>1</sup> Side trips were made to Oxford and Cambridge. Although there is no firm evidence yet to support this, it is likely that he knew and visited Sir Paul Vinogradoff (1854–1925) at Oxford University<sup>2</sup>.

Vladimir Grabar found early sixteenth-century versions of Peter Lombard in his various visits to England at The British Museum where he occupied seat no. 8. One must assume that Grabar considered his «discovery» of international legal elements in the commentaries of John Mair to be quite remarkable. Although his achievement is not quite in the league of Vinogradoff's identification of a Bracton manuscript<sup>3</sup>, the fact is that no one before or after Grabar has been aware that Mair elaborated in his glosses upon Peter Lombard views on the law of war and the status of indigenous peoples not long after Columbus voyaged to the Americas and the Spanish Dominicans were beginning to consider analogous issues. It remains to be pursued whether Mair was aware of the Spanish contributions.

Grabar assuredly knew that no British international lawyer had preceded him in his discovery of John Mair. Nys mentioned Mair in passing<sup>4</sup>, and that may have been sufficient to encourage Grabar's interest in Mair. Nys, it should be added, also frequented The British Museum and cites manuscripts consulted there in his footnotes. Given the considerable attention that Nys gave to English and Scottish writers of the medieval era, it is possible that Nys' work was partly responsible for Grabar concentrating his attention, as no one else before or since has done, on the «English School» of international law in the medieval era.

For his Ukrainian article, which was doubtless a chapter from his doctoral dissertation<sup>5</sup>, Grabar used the Paris editions of Mair's Commentary of 1509<sup>6</sup>, 1516, and, his preferred edition, 1519 (469. c. 10)<sup>7</sup>. On which of his several visits to London he consulted Mair's works is unclear; quite possibly all of them. His article indicates that he had access to Mair's history of Great Britain (which included an extensive biography of the author, but said nothing about international law)<sup>8</sup> and the DNB<sup>9</sup>.

Grabar credited Mair with creating a «whole system of concepts of international law».<sup>10</sup> Just as most of his contemporary canonists and theologians, Mair was espe-

<sup>1</sup> For details, see *Butler*, note 13 above, p. xl.

<sup>2</sup> *Grabar* could have attended Vinogradoff's seminars at Moscow University, but this has not been established. Given Vinogradoff's anti-Bolshevik views after 1917 and his decision to remain in England, any references or allusions to Vinogradoff during Grabar's Soviet lifetime could have been risky.

<sup>3</sup> See *W. E. Butler* and *V. A. Tomsinov*, «Sir Paul Vinogradoff: A Biographical Sketch», in *W. E. Butler* (ed.), *On the History of International Law and International Organization: Collected Papers of Sir Paul Vinogradoff* (2009), p. 19.

<sup>4</sup> *E. Nys*, *Les origines du droit international* (Paris, 1894), p. 121. Nys dedicated his book to James Lorimer, a Scot, and abridged and translated Lorimer's *The Institutes of Law* (Paris, 1890). See *D. M. Walker*, *The Scottish Jurists* (1985), p. 366. Walker did not include Mair amongst the early Scottish jurists.

<sup>5</sup> See *Semenov* and *Traghiuk*, note 2 above, pp. 178–179.

<sup>6</sup> *J. Major*, *Quartus sententiarum Johannis Maioris* (Paris, Ponceto le Preux, [1509]).

<sup>7</sup> *J. Major*, *In quartum Sententiarum quaestiones utilissimae supreme ipsius lucubratione enucleatae* (Paris, Iodoco Badio, 1519). Major published no less than five books in 1519, including other versions of Lombard.

<sup>8</sup> *J. Major*, *A History of Greater Britain as well England as Scotland*, transl. Archibald Constable (Edinburgh, 1892), with a biography of the author by Aeneas J. G. Mackay (pp. xxix–cxxx).

<sup>9</sup> *G. W. S.*, «Major, John», *DNB*, XII, pp. 830–832.

<sup>10</sup> *All references* are to the Ukrainian version of the Grabar article, Grabar's French summary, and the Semenov/Traghiuk Russian abridgement.

cially concerned about the law of war, although he also addressed some issues of the law of peace in passing when he considered what is characterized in modern legal categories as «State law». Issues of peacetime included the occupation of newly-discovered lands, shared use of the seas, airspace, and other waters, and international disputes over succession to the throne.

Mair shared Lombard's view that in his natural state Man did not have the concept of ownership or property. Ownership was a human creation, and not one of divine natural law.

*Territory.* The ownership of land emanated from Noah dividing the world among his sons. Europe could be allocated because not authority had yet been established in that territory, and those lands possessed by no one could be appropriated by those who settled there. Adjacent unoccupied lands may be taken into possession by agreement with neighbors, as Abraham and Lot did.

New lands or islands unoccupied might be taken into possession – a reference which some regard as a reference to the newly-discovered Americas, news of which was known when Mair was writing his Commentaries<sup>1</sup>.

Grabar observed that Mair distinguished, pursuant to natural law, between public or State things, and social things belonging to corporations or societies. The former are to be used freely by all the people. As regards «flowing waters», Mair would permit limitations, but he understood by this term «water falling from the sky» and not river waters, as they term in his times normally connoted. This enabled Mair to argue that rivers were in the ownership of the State. Mair, Grabar believed, was the first to make this distinction, which his successors may have drawn upon in distinguishing rights of ownership in rivers as a whole as opposed to the waters flowing past.

*Succession to Throne.* A frequent sources of controversy in medieval times, in Mair's view these disputes were easily resolved. Drawing upon political theory, Mair believed there were no legal grounds for these disagreements since the people had the right to assign the throne to whomsoever they wished to occupy it.

*Reprisals.* Mair shared the view of other medieval writers that reprisals were part of the law of war. There were two types: private reprisals and general reprisals. Hugo Grotius (1583–1645) later shared this view.

Mair drew an example of reprisals from the history of Franco-Spanish relations. A Spaniard captured a ship on the ocean loaded with various goods which belonged to a French citizen. Appeal was made to the Spanish crown without success. The French merchant, having had no response from the Spanish authorities, sought a patent from the King of France giving him the right to take from the first Spaniard encountered property equal to that which was captured from him. If the Frenchman took more from the Spaniard than he himself had lost, in honor he must return the excess. Reprisals should not extend to Spaniards who lived outside Spain.

Grabar observed with regard to the above example that Mair's attempt to territorially limit the application of reprisals was not consistent with international legal practice of those times. Reprisals then might be also at sea or within the country where the patent to take reprisals was issued.

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<sup>1</sup> Broadie believes that «... Mair was the first writer to see the need to place discussions of the appropriate treatment of the American Indians within a moral theological framework, and he went on to provide such a framework in his own *In secundum sententiarum* (1510)». This volume is Mair's first installment of his Commentary on Lombard's *Sentences*. One cannot fail to wonder whether Mair was familiar with the early writings of the Spanish School of international law. He had a number of Spanish students attending his lectures in Paris.

*Law of War.* Mair was primarily concerned with the law of war. He formulated the question thus: «Is it permitted to kill and rob during war?» In responding, Mair first addressed the nature of war and then the law of war. War, Mair said, «is a hostile disagreement which entails an armed invasion and encompasses the entire time during which people are on the march».

Mair condemned wars of conquest. Those who unlawfully seize another's country and destroy it deserve not praise, but condemnation. These people are senseless, murders, wild beasts. Why praise Alexander the Great for the fact that he conquered the world. The pirate Diomedes answered Alexander: I am a plunderer, and you are the most inveterate brigand. Mair leveled the same reproach to Julius Caesar.

For Mair, the greatest treasure was peace. One may engage in war solely to restore peace. Defensive war was permissible and just according to natural and divine law. Who attacks first commits the gravest crime. Mair, accordingly, divided wars into just and unjust. For a war to be just, Mair believed that four conditions must be complied with:

(1) the status of the person who declared war may not be that of a private individual seeking revenge. Only a ruler may declare war. Private feudal wars Mair considered to be a serious disturbance and were inadmissible. The king as the legal repository of sovereign powers within his realm may, just as an emperor, declare war. The clergy may not take part in military actions; only secular persons may do so;

(2) there must be a just cause for the war. Mair cited twelve just causes of war, each illustrated from the Old and New Testaments: these included a divine instruction; worshipping other gods; uprising of subjects; demand to return something taken by force; repelling an armed attack; refusing to grant a right of passage to an army; assistance to an enemy; assisting an ally; tyranny of the ruler;

(3) the intention of the person who is waging the war — which must be to achieve and respect peace;

(4) war must be waged with proper restraint, without killing and imprisoning children, dishonoring women, raping maidens, and so on.

Mair then turned to the use of particular means of inflicting harm upon an enemy, considering them to be exceptions from the general norms of the law of war. Clergy, monks, and churches were inviolate, but if these take up arms or organize defense in the bell tower, all may be destroyed. The unintentional destruction of a church when burning a city or by reason of the wind was not considered to be a crime. Those who surrender should not be killed unless they are fierce butchers who deserved punishment.

Military cunning and ruse is permitted, including remaining silent about the truth. However, a person who gives a promise is obliged to perform it, even to an enemy.

Mair dwelt, in the medieval tradition, upon the respective consequences of a just or unjust war. It was, first, permissible and worthy for a person to take part in a just war. As just wars Mair named a number of examples, including those waged by Ferdinand of Spain, who expelled the Muslims from Grenada. Second, in a just war he who has taken another's property is not obliged to return it provided that the property taken is consistent with the guilt of the owner. Only a just war gives rise to a right to booty; everything taken in an unjust war should be returned to its owner.

An enemy captured in war becomes the property of he who made him prisoner, that is, becomes a slave. The *jus gentium*, in Mair's view, had established slavery on the basis of the law of war.



The third consequence is that those who wage an unjust war commit a sin. This required no further elaboration on the part of Mair.

The fourth consequence relates to those ordinary subjects of the ruler who wage war in doubt as to whether it is just as opposed to those who knowingly take part in an unjust war. The former do not commit a sin, whereas the last do.

Mair then turned to wars waged between Christians who sought the assistance of infidels. Mair took the view that Christians might turn to infidels for assistance and found support for this position in examples from the Bible.

Mair's irenicism Grabar saw in Mair's statements that all war is an evil. During a war, people are killed, women are raped, children suffer, the wealthy are impoverished, and so on. Peace, said Mair, is the objective of a just war. Without peace there is no justice.