

## Introduction

### **Niels Hemmingsen (1513–1600) and the Development of Lutheran Natural-Law Teaching**

Because the Danish Protestant theologian and philosopher Niels Hemmingsen (1513–1600) is today little known outside his homeland, some of the claims made for his initial importance and continuing impact can appear rather extravagant. He is described, for example, not only as having “dominated” the theology of his own country for half a century<sup>1</sup> but more broadly as having been “the greatest builder of systems in his generation.”<sup>2</sup> In the light of this indefatigable system building, he has further been credited with (or blamed for) initiating modern trends in critical biblical scholarship,<sup>3</sup> as well as for being “one of the founders

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<sup>1</sup> Lief Grane, “Teaching the People—The Education of the Clergy and the Instruction of the People in the Danish Reformation Church,” in *The Danish Reformation against Its International Background*, ed. Leif Grane and Kai Hørby (Göttingen: Vandenhoeck & Ruprecht, 1990), 167.

<sup>2</sup> F. J. Billeskov Janson, “From the Reformation to the Baroque,” in *A History of Danish Literature*, ed. Sven Hakon Rossel (Lincoln: University of Nebraska Press, 1993), 79.

<sup>3</sup> Kenneth Hagen, “*De Exegetica Methodo*: Niels Hemmingsen’s *De Methodis* (1555),” in *The Bible in the Sixteenth Century*, ed. David C. Steinmetz (Durham: Duke University Press, 1990), 196.

of modern jurisprudence.<sup>74</sup> Illuminating this last claim especially are the more specific claims for Hemmingsen as having been “an important forerunner for more recent founders of natural law,”<sup>75</sup> most specifically Hugo Grotius, often deemed the “father” of modern natural law.<sup>76</sup> Such attributions rest primarily on the content and influence of Hemmingsen’s *De Lege Naturae Apodictica Methodus* (“On the Law of Nature: A Demonstrative Method,” 1562), which was read widely throughout early modern Europe.<sup>77</sup> The narrative in which the natural law jurisprudence of Grotius and the Enlightenment emanated from that of Hemmingsen is, however, not quite so tidy, as others have also emphasized the great differences between Hemmingsen and Grotius.<sup>78</sup> This confusion with respect to the relationship among Hemmingsen, Grotius, and modernity is perhaps entirely understandable, though, in view of Francis Oakley’s droll observation that, among commentators, “there appears to be little agreement about the precise nature of the novelty, or ‘modernity,’ or break with scholastic thought patterns they so persistently (if somewhat mystifyingly) ascribe to Grotius.”<sup>79</sup>

Those who do find in Hemmingsen an important precursor to the modern natural law theories of the Enlightenment will point to the conclusion of *De Lege Naturae*, where Hemmingsen explains the intention of his work as an attempt to see “how far reason is able to progress without the prophetic and apostolic word.”<sup>80</sup> Thus, it is claimed, the result is an ethics that “no longer depend on supernatural

<sup>4</sup> John Danstrup, *History of Denmark* (Copenhagen: Wivel, 1949), 58.

<sup>5</sup> Janson, “From the Reformation to the Baroque,” 78.

<sup>6</sup> Harold Dexter Hazeltine, “Introduction,” in *The Medieval Idea of Law*, by Walter Ullmann (London: Methuen, 1969), xxx, n2, and, more expansively, Carl von Kaltenborn, *Die Vorläufer des Hugo Grotius* (Leipzig: Gustav Mayer, 1848).

<sup>7</sup> Lester B. Orfield, *The Growth of Scandinavian Law* (Philadelphia: University of Pennsylvania Press, 1953), 63.

<sup>8</sup> Sebastian Olden-Jørgensen, “Scandinavia,” in *European Political Thought, 1450–1700: Religion, Law and Philosophy*, ed. Howell A. Lloyd, Glenn Burgess, and Simon Hodson (New Haven: Yale University Press, 2007), 321.

<sup>9</sup> Francis Oakley, *Natural Law, Laws of Nature, Natural Rights: Continuity and Discontinuity in the History of Ideas* (New York: Continuum, 2005), 65.

<sup>10</sup> Niels Hemmingsen, *De Lege Naturae Apodictica Methodus* (Wittenberg: Rhaw, 1562), sig. Q7r.

authority”;<sup>11</sup> similarly, therefore, with Hemmingsen “the emancipation of law from theology is complete.”<sup>12</sup> Again, however, other commentators have reached the contrary conclusion that Hemmingsen actually finds in the text of divine revelation—most especially in the Decalogue—not only a concise summary of natural law but even its “source.”<sup>13</sup> In this view, he is understood simply to be representative of contemporary Protestant reformers, who “saw the natural law exclusively in the words of Scripture.”<sup>14</sup>

## Natural Law and the Lutheran Reformation

Undoubtedly, one source of such confusion about Hemmingsen’s place in the history of natural law is what continues to be a broader confusion concerning natural law in the thought of the Lutheran reformers, of whom Hemmingsen was indeed a most significant representative throughout the second half of the sixteenth century. Born on the Danish isle of Lolland and receiving his early humanist education at Roskilde and Lund, Hemmingsen departed for university studies at Wittenberg in the very year that Denmark officially adopted the Lutheran reformation. Matriculating in 1537, he lodged with Philip Melanchthon, the architect of Lutheranism’s primary confessional document, the *Augsburg Confession*, and the individual whose thought would most profoundly influence that of Hemmingsen and the broader Danish church. By the time Hemmingsen returned to Denmark in 1542, the University of Copenhagen—at which he would teach until 1579—had been reestablished along the curricular model of Wittenberg. The university was assigning Melanchthon’s own textbooks whenever possible and would for a generation staff its theology and philosophy faculties with professors who had

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<sup>11</sup> Harold Høffding, *A History of Modern Philosophy*, vol. 1 (London: Macmillan, 1908), 43.

<sup>12</sup> Roscoe Pound, *The Ideal Element in Law* (Indianapolis: Liberty Fund, 2002), 169.

<sup>13</sup> John Witte Jr., *Law and Protestantism: The Legal Teachings of the Lutheran Reformation* (Cambridge: Cambridge University Press, 2002), 140.

<sup>14</sup> Heinrich A. Rommen, *The Natural Law: A Study in Legal and Social History and Philosophy* (Indianapolis: Liberty Fund, 1998), 58.

been trained by Melanchthon.<sup>15</sup> Unsurprisingly, those decades encompassing the “Danish Renaissance,” and inaugurating Denmark’s “golden age,”<sup>16</sup> have also been dubbed its “Melanchthonian era.”<sup>17</sup>

It is firmly situated within this Melanchthonian context that Hemmingsen is best interpreted, and it is certainly how he was understood by his contemporaries. As works such as his *Enchiridion Theologicum* (1557), *Evangeliepostil* (1561), and *Pastor* (1562) were taken up throughout Protestant Europe as popular textbooks (of doctrine and ethics, homiletics, and pastoral theology, respectively), he came to be known as the *Praeceptor Daniae* (Teacher of Denmark)—a conscious echo by his contemporaries of Melanchthon’s own *Praeceptor Germaniae* honorific. His *De Methodis Libri Duo* (1555), an influential work on philosophical and theological method, has similarly been described as a treatise on “Melanchthonian epistemology.”<sup>18</sup> Nor were such associations with Melanchthon discouraged by Hemmingsen himself, who urged readers, for example, to understand his own *Enchiridion* as an introduction to Melanchthon’s more famous theological handbook, the *Loci Communes*.<sup>19</sup>

For purposes of clarifying some of the confusion respecting Hemmingsen’s natural-law philosophy, it will thus be much more fruitful to understand him first and foremost as an inheritor and promoter of Melanchthonian Lutheranism, rather than as an ostensible precursor to Grotius and the Enlightenment. This will be the case, though, only if certain common confusions respecting Melanchthon and Reformation Lutheranism themselves are first addressed. Some degree of misunderstanding—both in particular details and in more general assessments—is most obviously evident where entirely contradictory interpretations are on offer. Beginning most generally, for example, very different conclusions have been put forward in attempts to explain the place of the Reformation in the broader history of law itself. John Witte and Harold Berman speak of its having been a

<sup>15</sup> Grane, “Teaching the People,” 165.

<sup>16</sup> Paul Douglas Lockhart, *Frederick II and the Protestant Cause: Denmark’s Role in the Wars of Religion, 1559–1596* (Leiden: Brill, 2004), 13, 17.

<sup>17</sup> Eric Lund, “Nordic and Baltic Lutheranism,” in *Lutheran Ecclesiastical Culture, 1550–1675*, ed. Robert Kolb (Boston: Brill, 2008), 418.

<sup>18</sup> Witte, *Law and Protestantism*, 139.

<sup>19</sup> Niels Hemmingsen, *Enchiridion Theologicum* (Wittenberg, 1557), sig. \*vv.

“watershed,”<sup>20</sup> and of its inaugurating a “revolution,” ultimately giving birth to the modern nation-state.<sup>21</sup> Paolo Prodi, on the other hand, argues that the legal transformations of the sixteenth century were hardly unique to Protestantism and its territories and goes so far as to suggest that it was actually within Rome that the foundations of the modern state were initially laid.<sup>22</sup> Jan Schröder compares both Protestant and Catholic jurists and theologians of the early modern era and reaches the conclusion that, before the seventeenth century, there remained a “uniformity of the concept of the law.”<sup>23</sup> Merio Scattola, while recognizing some sixteenth-century differences in the explication of natural law especially, suggests that these differences are best understood not as the result of a confessional divide in religion but of the disciplinary divides—especially between law, philosophy, and theology—in Protestant and Catholic universities alike.<sup>24</sup>

In addition to the confusions introduced by such disparate assessments, others are the result of factors ranging from overlooked context to unwarranted exaggeration and outright caricature. Claims that the Reformation inevitably produced the modern state, for example, are partially predicated on the proposition that Lutheran legal philosophy not only gave rise to “modern” theories of natural law, but also that it was also a fundamental source of legal positivism.<sup>25</sup> An example of this view stated most starkly is Roscoe Pound’s understanding of Reformation legal theory: “The legal order was to rest on the authority of the

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<sup>20</sup> Witte, *Law and Protestantism*, 9.

<sup>21</sup> Harold J. Berman, *Law and Revolution II: The Impact of the Protestant Reformations on the Western Legal Tradition* (Cambridge: Harvard University Press, 2006), 97.

<sup>22</sup> Cf. Paolo Prodi, *The Papal Prince: One Body and Two Souls: The Papal Monarchy in Early Modern Europe* (Cambridge: Cambridge University Press, 1987), and Paolo Prodi, *Eine Geschichte der Gerechtigkeit: Vom Recht Gottes zum modernen Rechtsstaat* (Munich: Beck, 2003).

<sup>23</sup> Jan Schröder, “The Concept of (Natural) Law in the Doctrine of Law and Natural Law of the Early Modern Era,” in *Natural Law and the Laws of Nature in Early Modern Europe: Jurisprudence, Theology, Moral and Natural Philosophy*, ed. Lorraine Daston and Michael Stolleis (Abingdon: Ashgate, 2009), 63.

<sup>24</sup> Merio Scattola, “Models in History of Natural Law,” in *Ius Commune: Zeitschrift für Europäische Rechtsgeschichte* 28 (2001): 96–99.

<sup>25</sup> Berman, *Law and Revolution II*, 97–99.

divinely ordained state[,] not on an authoritative universal law.”<sup>26</sup> Moreover, just as the modern state is believed to be the consequence of the reformers’ nascent positivism, this positivism itself is further traced to what is widely understood to be early Protestantism’s inherently nominalist and voluntarist philosophical commitments. James St. Leger, for example, describes the nominalism associated with William of Ockham as “the intellectual framework of Protestant thought.”<sup>27</sup> More pointedly, Heinrich Rommen asserts, with reference to natural law, that “the so-called Reformers had drawn the ultimate conclusions from Occamism with respect to theology. Contemptuous of reason, they had arrived at a pregnant voluntarism.... Thereby the traditional natural law became speculatively impossible.”<sup>28</sup> Even the far more cautious Scattola places the Lutheran reformers, Melancthon included, within this “voluntaristic” tradition.<sup>29</sup>

The criterion by which this voluntarism is regularly identified is the reformers’ supposed rejection of eternal law.<sup>30</sup> If Thomas Aquinas is accepted as representative, even definitive, of the “traditional” view, natural law is to be understood as the “participation in the eternal law by rational creatures.”<sup>31</sup> This eternal law, in turn, is understood to be that law existing in and proceeding from the immutable nature and intellect of God himself.<sup>32</sup> This “realist” or “intellectualist” account stands in contrast, then, to nominalist or voluntarist accounts, which locate the source of natural law not in the divine nature or intellect but in the divine will

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<sup>26</sup> Pound, *The Ideal Element in Law*, 166–67.

<sup>27</sup> James St. Leger, *The “Etiamsi Daremus” of Hugo Grotius: A Study in the Origins of International Law* (Rome: Pontificum Athenaeum Internationale “Angelicum,” 1962), 35.

<sup>28</sup> Rommen, *The Natural Law*, 54.

<sup>29</sup> Scattola, “Models in History of Natural Law,” 108, 111, 115.

<sup>30</sup> Berman, *Law and Revolution II*, 89; Scattola, “Models in History of Natural Law,” 115; and the literature reviewed in Antti Raunio, “Divine and Natural Law in Luther and Melancthon,” in *Lutheran Reformation and the Law*, ed. Virpi Mäkinen (Leiden: Brill, 2006), 23–24.

<sup>31</sup> Thomas Aquinas, *Summa Theologica*, I-II, Q. 91, A.2

<sup>32</sup> Cf., for example, Aquinas, *Summa Theologica*, I-II, Q. 91, A. 1; Q. 93, A. 1 and A.4; Q. 97, A. 3.

alone. Because God, being radically free, *could have* willed and so promulgated a moral law other than that which he did in fact promulgate, this law cannot be understood to reflect an eternal law congruent with God's own unchanging nature and wisdom. Quite obviously, then, if the reformers did indeed reject the reality of eternal law they would simultaneously have been rejecting natural law as traditionally understood.

In point of fact, however, the early Lutherans—Melanchthon most relevantly—did not reject the concept of eternal law or embrace the idea that the source of natural law is to be located in the divine will rather than the divine nature or intellect.<sup>33</sup> Melanchthon, for example, confesses the natural law's congruence with "the eternal and immutable rule of the divine mind,"<sup>34</sup> and speaks of that law which "is the eternal and immutable wisdom and justice of God."<sup>35</sup> Similarly, he speaks of the wisdom, justice, and truth eternally existing "in the divine mind," and subsequently "implanted in human minds" by the God who desires men's actions to "conform to the standard of his own mind."<sup>36</sup>

Clarification on this fundamental point allows further clarification respecting the reformers' understanding of the relationship between natural law and divine revelation. It was on the assumption that they admitted only a voluntarist concept of law that Rommen, for example, asserts that they "saw the natural law exclusively in the words of Scripture." The same assumption, perhaps, informs Witte's and Berman's conclusion that, even for Melanchthon, the Ten Commandments

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<sup>33</sup> It is sometimes allowed that this is true of Melanchthon but not of Luther himself. See, for example, the brief survey in Raunio, "Divine and Natural Law in Luther and Melanchthon," 22–25. Even Luther can refer to the reality of eternal law, and speak of natural law being an expression of the divine nature or essence rather than the divine will alone. See Raunio, "Divine and Natural Law in Luther and Melanchthon," 24–25, 40, 59.

<sup>34</sup> Philip Melanchthon, *Ethicae Doctrinae Elementorum Libri Duo*, in *Corpus Reformatorum, Philippi Melanthonis Opera* [hereinafter CR], 28 vols, ed. C. G. Bretschneider and H. E. Bindseil (Halle and Brunswick: Schwetschke, 1834–1860), 16:228; Philip Melanchthon, *Ennaratio Symboli Niceni*, CR 23:294.

<sup>35</sup> Philip Melanchthon, *Oratio de Legibus*, CR 11:909.

<sup>36</sup> Philip Melanchthon, *Oratio de Legum Fontibus et Causis*, CR 11:918–19.

were regarded as “the ultimate source” of natural law.<sup>37</sup> That is, if natural law is not the rational creature’s participation in an unchanging eternal law but is only the expression of God’s contingent (even arbitrary) will, then its content must be derived from the only unambiguous expression of the divine will—that found in the revelation of Scripture.

Again, though, this conclusion is precisely what one does not find in the Lutheran reformers. Indeed, even Luther, often understood to lean more toward voluntarism than Melancthon, could be so emphatic as to exclaim, with reference to Moses, “Where he gives the commandments, we are not to follow him except so far as he agrees with the natural law.”<sup>38</sup> Yet this does not mean that Luther or his coreligionists were engaged in an attempt to “throw over the authority of the church,”<sup>39</sup> to “emancipate jurisprudence from theology,”<sup>40</sup> or (*a la* Grotius) even to defend the possibility of natural law without the necessity of positing God’s existence.<sup>41</sup> Given the previously noted criticism of the reformers for purportedly making natural law wholly dependent on Scripture, it is in fact rather strange that they should also be criticized for allegedly divorcing the two entirely. They do neither, however. Instead, in the same treatise in which Luther gives natural law priority to Moses, he emphasizes that “Moses agrees exactly with nature.”<sup>42</sup> Elsewhere, he similarly states that “the natural laws were never so orderly and well written as by Moses.”<sup>43</sup> The very same conclusion is reached by Melancthon, who, like Luther, understands the Ten Commandments to be a summary of natural law, a republication made necessary on account of the noetic effects of sin militating against a clear and consistent recognition of the

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<sup>37</sup> Witte, *Law and Protestantism*, 127; Berman, *Law and Revolution II*, 80.

<sup>38</sup> Martin Luther, *How Christians Should Regard Moses*, in *Luther’s Works* [hereinafter *LW*], 75 vols, ed. Jaroslav Pelikan, Helmut Lehman, and Christopher Brown (Philadelphia and St. Louis: Fortress and Concordia, 1955–), 35:173.

<sup>39</sup> Pound, *The Ideal Element in Law*, 166.

<sup>40</sup> Hazeltine, “Introduction,” xxx, n2.

<sup>41</sup> See Hugo Grotius, “Prolegomena to the First Edition,” in *The Rights of War and Peace*, 3 vols, ed. Richard Tuck (Indianapolis: Liberty Fund, 2005), 3:1748.

<sup>42</sup> Luther, *How Christians Should Regard Moses*, in *LW* 35:168.

<sup>43</sup> Luther, *Against the Heavenly Prophets*, in *LW* 40:98.

law divinely “implanted in human minds.”<sup>44</sup> That is to say, the Decalogue is not the source of natural law; natural law is the source of the Decalogue.

Especially worth emphasizing at this point is, again, the continuity here evident between the “traditional” understanding and that of the Wittenberg reformers. This emphasis is needed on account of misunderstandings such as that expressed by Johann Erdmann, who judges Melanchthon’s association of natural law with the Decalogue to be a novel departure from tradition.<sup>45</sup> In fact, it is precisely the same association—and explanation—that one finds in Aquinas. He, too, equates the content of the Decalogue with that of natural law, stating that “[t]he Old Law showed forth the precepts of the natural law,”<sup>46</sup> and that “such precepts belong to the natural law absolutely.”<sup>47</sup> At the same time, Aquinas also gives logical and chronological priority to the natural law, explaining that, “as to those precepts of the natural law contained in the Old Law, all were bound to observe the Old Law; not because they belonged to the Old Law, but because they belonged to the natural law.”<sup>48</sup> Despite this priority, however, Aquinas also recognizes the necessity of natural law’s summary and republication in Scripture. This was required on account of “the uncertainty of human judgment,”<sup>49</sup> and because the effects of sin have made man “subject to the impulses of his sense appetites” and deprived him of the “full force of reason.”<sup>50</sup>

## Date and Context of *De Lege Naturae*

Having briefly clarified some common misconceptions concerning the natural law philosophy of those most immediately and influentially informing Hemmingsen’s own thought, we are now better situated to understand the date and context of

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<sup>44</sup> See, for example, Philip Melanchthon, *Loci Theologici Germanice*, CR 22:257.

<sup>45</sup> Johann Eduard Erdmann, *A History of Philosophy*, vol. 1 (New York: Macmillan, 1890), 686.

<sup>46</sup> Aquinas, *Summa Theologica*, I-II, Q. 98, A. 5.

<sup>47</sup> Aquinas, *Summa Theologica*, I-II, Q. 100, A. 1.

<sup>48</sup> Aquinas, *Summa Theologica*, I-II, Q. 98, A. 5.

<sup>49</sup> Aquinas, *Summa Theologica*, I-II, Q. 91, A. 4.

<sup>50</sup> Aquinas, *Summa Theologica*, I-II, Q. 91, A. 6.

*De Lege Naturae*, what Hemmingsen was and was not attempting to do in the text, and its method and structure.

Hemmingsen's *De Lege Naturae* was first published in Wittenberg in 1562 and subsequently went through several more printings. Hemmingsen himself tells us, in his dedicatory epistle to Lord Erik Krabbe, where the genesis of this work is to be found. The idea occurred to him "last year" (and so presumably in 1560 or 1561)<sup>51</sup> when he was giving lectures on the apostle Paul's letter to the Romans. After noting that he might need to defend himself for venturing across disciplinary boundaries and thus giving offense to specialized gatekeepers, he writes:

Furthermore, lest anyone accuse me of being a man who, according to the proverb, puts his own scythe into another's harvest, this is my defense. Last year I had to expound Paul's Letter to the Romans, in which, because the Apostle declares that the law of nature [*legem naturae*] is the truth and that the law of God [*ius Dei*] is known to the Gentiles, which they themselves display by their works together with their conscience bearing witness—[because of this, I say,] I thought that it was worth the trouble to explain just what the force of that law [*legis*] is; and, in order not to interrupt my lecturing on Paul with an extended disquisition, I began to put together this method concerning the law of nature in a separate place—with, I hope, as much fruit as there has been toil.<sup>52</sup>

Let us follow Hemmingsen's train of thought here: Paul affirms the existence of the law of God among the Gentiles (that is, among all non-Jews); this "law of God" for them is called the "law of nature"; Paul indicates *that* this law exists, but he is brief and does not explain *what* this law is in any detail; Hemmingsen therefore wishes to do so, clarifying what its "force" is, but he wishes to accomplish this task without interrupting his lectures on Scripture. Hence the need for a separate treatise.

If the Gentiles are subject to the law of God, their law must be the same in substance as the law revealed specially to God's chosen people in the Old Testament. For if there is only one God and he is a God of truth, there can be only one law in substance; God cannot contradict himself. Therefore, Hemmingsen argues, the law of nature is, and must be, harmonious with the Decalogue. Hemmingsen

<sup>51</sup> The dedicatory epistle to the treatise is dated May 1562 indicating that he had finished the work by that point.

<sup>52</sup> Hemmingsen, *De Lege Naturae*, sig. B1v.

explains that he will demonstrate this harmony once he has given a definition of the law of nature and analyzed it:

I shall undertake an analysis of [the] ... members ... of the definition; in this analysis, we shall observe the force of nature, and ... just what the end of man is, [and] what are the first principles [*principia*] and hypotheses of the law of nature.... In addition to these things, I shall set forth what the rewards of the preservation of the norm of nature are, and the penalties for its violation. *When these things have been set forth, I shall add how those Ten Laws<sup>53</sup> can be constructed and inferred from practical principles, and to what extent the law of nature is harmonious with the divine law, and to what extent it is discordant from it.*<sup>54</sup>

Hemmingen, then, will demonstrate (that is, prove by syllogism) that the precepts of the Decalogue are necessarily true from the principles of practical reason. Incidentally, from this it follows that there is in fact no discord between the law of nature and the Ten Commandments. As he writes elsewhere, “the law of nature ... is also the law of God.”<sup>55</sup>

These Ten Commandments can be further summarized in the Two Great Commandments regarding love of God and love of neighbor; both of these are, for Hemmingen, “natural.” But love of one’s neighbor necessarily takes place in a social context. Hemmingen is happy to put this point in classical philosophical terms, referring to man as a “social animal” (*animal sociale*),<sup>56</sup> such that he can discuss what Scripture calls love of neighbor in terms of the classical discussion of “virtue” (*virtus*)—for “it is proper to virtue to unite the minds of men with one

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<sup>53</sup> That is, the Ten Commandments.

<sup>54</sup> Hemmingen here uses a metaphor drawn from music (*congruat, discrepet*). See Hemmingen, *De Lege Naturae*, sigs. B6v–B7r.

<sup>55</sup> Hemmingen, *De Lege Naturae*, sig. A6v. Compare this to John Calvin’s comment: “[I]t is evident that the law of God which we call moral, is nothing else than the testimony of natural law, and of that conscience which God has engraven on the minds of men.... Hence it alone ought to be the aim, the rule, and the end of all laws” (*Institutes of the Christian Religion*, trans. H. Beveridge [Edinburgh: Calvin Translation Society, 1845], 4.20.16).

<sup>56</sup> Hemmingen, *De Lege Naturae*, sig. K4v (p. 645 below).

another and to join them in friendship for their mutual uses.”<sup>57</sup> This conclusion leads naturally to a discussion of the four cardinal virtues (prudence, justice, fortitude, and temperance). For Hemmingsen, then, there is ultimate harmony between God’s law revealed in the Ten Commandments, the law of nature, the Two Great Commandments, and the classical virtues.

Of course, it is true that, from the Christian standpoint, a problem enters here in the apprehension and application of the law of nature: sin. If sin has corrupted our understanding and made a life lived perfectly in accord with the law of nature impossible, then what is the point of a project like Hemmingsen’s? Hemmingsen is aware of this difficulty and deals with it in more than one passage. In general, Hemmingsen distinguishes between the ability to discern the principles of the law of nature, on the one hand, and the ability to arrive at the goal or end of this law (a blessed life) with nature alone as guide, on the other. The former is common to man, even to fallen man, while the latter is impossible for fallen man, whom only the saving action of God can bring to blessedness.<sup>58</sup>

The former, though insufficient for the blessed life, is still important for a variety of reasons. Hemmingsen writes,

But since nature is now corrupted and no one is able come to true wisdom and blessedness with nature as his guide, it seems that discussion about this matter is undertaken in vain; to this point I thus wish to make a reply. First, it is worthy of a studious man to see just what that thing is that Paul calls now the truth of God, now the *δικαίωμα τοῦ θεοῦ* [the ordinance of God],<sup>59</sup> which he declares to be known to the Gentiles, and [to see] how one might understand how far reason [*ratio*] is able to progress. Next, it is a thing most beautiful to observe from what principles [*principia*] and what demonstrations moral teaching and the laws of a polity are constructed, which human society can no more be without than fire and air. For whatever is handed down in ethics and laws, this must be judged by the norm of the law of nature. For, as Cicero correctly says, “Good law is separated from bad by the norm of nature [*naturali norma*].”<sup>60</sup>

<sup>57</sup> Hemmingsen, *De Lege Naturae*, sig. K4v (p. 645 below).

<sup>58</sup> In other words, Hemmingsen argues for the truth of what the apostle Paul says *both* in Romans 2 *and* in Romans 1. For more on this, see E. J. Hutchinson, “Nature and the Wound of Nature: A Pauline View of the Testimony of the Ancients in Niels Hemmingsen’s *De Lege Naturae*” (forthcoming).

<sup>59</sup> Romans 1:32.

<sup>60</sup> Hemmingsen, *De Lege Naturae*, B5v–B6r; See Cicero, *De legibus* 1.44: *Atqui nos legem bonam a mala nulla alia nisi naturae norma diuidere possumus.*

These abiding uses are, then, both theoretical and practical. First, the knowledge of nature is a good in itself: it enables us to understand God more fully, and at the same time maps out the terrain in which reason (*ratio*) is effective. This use corresponds to the contemplative life. Second, the knowledge of nature shows us the principles that ought to be used to frame the laws of any given polity, for only laws so framed will be worthy of the name. This use corresponds to the practical life, such that the law of nature is beneficial, even necessary, for civic life.

The law of nature is so practical, in fact, that Hemmingsen believes his own project to be relevant to the project of legal reform that his dedicatee, Lord Erik Krabbe, was undertaking contemporaneously with Hemmingsen's treatise. Thus he writes to Krabbe:

[A]s to the fact that I wanted to publish this method of the law of nature to the public under your name, most illustrious man, I have two reasons that are most just, at least as it seems to me. One of these is that I desire to declare by some token the gratitude of my mind toward you: just as you desire to be most well deserving from all and to be of benefit to all and to harm none (a thing that Cicero says is proper to the good man), so you have embraced me for many years with unparalleled good-will. The other reason is that you have been occupied now for a long time with a generally similar task. For you are trying to refer our Danish laws (which belong to the law of nature, from which we draw out our policies [*hypotheses*]), as though they are body-parts thrown apart and, as it were, scattered (a thing that has come about not at all because of the vice of the legislators, some of whom have passed laws for other nations, but on account of the variety of the peoples for whom now these laws, now others, have had to be passed) to a just body [*ad iustum corpus*], in order that all of the individual parts may be united by a fitting bond.<sup>61</sup>

Krabbe undertakes his task "in order that we may have one system<sup>62</sup> of Danish law, when the individual parts have been referred to the laws' source and proper

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<sup>61</sup> Hemmingsen, *De Lege Naturae*, B1v–B2r.

<sup>62</sup> *systema*: the word refers to "a whole consisting of several parts." See E. A. Andrews, W. Freund, C. T. Lewis, and C. Short, *A Latin Dictionary* (Oxford: Oxford University Press, 2002), s.v. *systema* I. Hereafter *LS*.

end, which alone sacred laws<sup>63</sup> look toward and wish for,” and Hemmingsen hopes that his treatise will make a useful contribution to that endeavor.<sup>64</sup> Though the theoretical and the practical aspects of the law of nature are distinguishable, in other words, the first informs the second, and the practice of legislation and jurisprudence cannot be carried out correctly without a proper understanding of the law that both underwrites and sits over all positive law.<sup>65</sup>

## Hemmingsen’s Purpose in *De Lege Naturae*

Hemmingsen’s purpose in writing *De Lege Naturae* cannot be understood without a consideration of his use of sources, and so a few remarks on this matter are necessary. Deserving of first mention, simply on account of its ubiquity, is Hemmingsen’s constant reference to and quotation of the authors of pagan antiquity. As a good pupil of Philip Melanchthon, Hemmingsen makes copious use of classical sources in *De Lege Naturae*.<sup>66</sup> These range from the obvious (for example, Cicero and Aristotle) to the more surprising (for example, the poets Lucan and Claudian). Hemmingsen cites poets not only ornamentally but as substantive authorities who bear witness to the truth of what he argues.<sup>67</sup> It is likely that some of these are drawn from collections of *Sentences*, though it is also probable that a good many come from his own reading; there undoubtedly would have been overlap between the two. In the translation, brief biographical

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<sup>63</sup> The phrase he uses is *sanctae leges*. The semantic range of *sanctus* includes “venerable, morally pure, inviolable, pious, holy,” and the like; see *LS*, s.v. *sancio* II.

<sup>64</sup> Hemmingsen, *De Lege Naturae*, sig. B2v.

<sup>65</sup> Ralph Keen, “The Moral World of Philip Melanchthon” (PhD diss., University of Chicago, 1990), 40, notes a similar attempt made by Maximilian I: “The only way around the multifarious conflicts of laws and interests was to go over them—by appeal to that authority to which Roman law itself looked for its legitimation, the semi-Stoic theory of natural law.”

<sup>66</sup> For a very brief overview of Melanchthon and the classics, see John Edwin Sandys, *A History of Classical Scholarship*, vol. 2 (Cambridge: Cambridge University Press, 1908), 265–66; and on two of his other students, 268–69.

<sup>67</sup> Sophocles’ *Antigone* and the collection of maxims attributed to Menander are especially important in this regard.

notices for all authors cited and references to the original sources of quotations have been provided.<sup>68</sup>

Hemmingsen's use of Scripture in this work is much more sparing, aside from the obvious instance of the Decalogue. Nevertheless, as suggested above the scriptural narrative of sin and salvation provides the framework for Hemmingsen's understanding of the knowability and applicability of the law of nature. Thus, while individual quotations from Scripture are rare, his adherence to it underpins and guides his philosophical stance. When we view his scriptural principles in concert with his classical reading, we can see that his (much more frequent) citations of the ancients serve an important purpose in his stated attempt to demonstrate "how far reason is able to progress without the prophetic and apostolic word." If even those who "do not have the law" of Moses (Rom. 2:14) are able to articulate and embrace the precepts expressed in that law, it becomes evident that the Decalogue cannot be understood as the "ultimate" or "exclusive" source of the natural law; yet, as we shall see, these same ancients stumbled when they came to the matter of practice. Reason can advance a good distance, then, with respect to *knowledge*, but it has its limits, and Scripture announces the remedy for man's inability to *follow* the law of nature with only nature as his guide.

However, while Hemmingsen's facility with the sources of classical antiquity serves to highlight his embrace of the humanism he had not only imbibed in his early education but of which his mentor Melancthon was Protestant Europe's foremost exemplar, an acknowledgement of his humanist predilections ought not to obscure the manner in which he also maintains continuity with medieval and contemporary Scholasticism. This is evident, for example, in his penchant for the syllogism and his clearly teleological presuppositions.<sup>69</sup> Less obvious, but also worthy of note, is that a line of argument he introduces against polygamy is

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<sup>68</sup> Hemmingsen himself almost never gives a reference for his citations, though he normally at least gives the author.

<sup>69</sup> Contra Brad S. Gregory, *The Unintended Reformation: How a Religious Revolution Secularized Society* (Cambridge: Belknap Press, 2012), 207. Gregory suggests that the Protestant reformers rejected traditional "teleological Christian morality."

the very same subsequently taken up by the contemporary Spanish Neo-Thomist Domingo de Soto.<sup>70</sup>

Hemmingsen's indebtedness to the categories of Wittenberg Lutheranism are also clear, however, being revealed, for instance, in his text's organization around what the Reformers typically referred to as the three "estates" or "orders of creation": the domestic, the political, and the ecclesiastical (though Hemmingsen refers to the third "type of life" as "spiritual" rather than "ecclesiastical").<sup>71</sup> More substantially, it is evident in his distinction between philosophy and theology, as well as the scope of each.<sup>72</sup> Again, though, the overwhelmingly traditional nature of Hemmingsen's Lutheranism, at least with respect to natural law, also becomes obvious. Like that of Luther and Melancthon, Hemmingsen's association of natural law precepts with those of the Decalogue—evident especially in his "demonstrations" of its two tables—is entirely traditional. So, too, is his giving priority to natural law. With respect to biblical law, this priority becomes clear in his comments on monogamy, which he understands to be a precept of natural law, despite the Old Testament example of the patriarchs; "one must judge not by examples," he writes, "but by the law of nature."<sup>73</sup> At the same time, however, he

<sup>70</sup> That is, one may not make impossible vows, which one would be doing by promising to love more than one spouse equally. Hemmingsen's congruence with De Soto on this point is noted by Andreas Roth, "Crimen contra naturam," in *Natural Law and the Laws of Nature in Early Modern Europe: Jurisprudence, Theology, Moral and Natural Philosophy*, ed. Lorraine Daston and Michael Stolte (Abingdon: Ashgate, 2009), 95.

<sup>71</sup> Hemmingsen, *De Lege Naturae*, sig. G6v (p. 621 below).

<sup>72</sup> This is the implication of Hemmingsen's argument that "right reason" progresses so far as a knowledge that God must rightly be worshiped, but that unaided by revelation even Socrates "wanders away from the true God." See Hemmingsen, *De Lege Naturae*, sigs. H7v–H8r (p. 630 below). This distinction between philosophy and theology, entirely typical of the reformers, is also obscured by Gregory, *The Unintended Reformation*, 207, when he writes that the reformers "denied the free, rational exercise of the virtues in pursuit of the good any place in disciplining the passions and redirecting untutored human desires." In fact, as is especially evident in Hemmingsen's treatise, the exercise of virtue is extolled for precisely these reasons; it is merely denied any contributory role in salvation.

<sup>73</sup> Hemmingsen, *De Lege Naturae*, sig. I7v (p. 640 below).

also recognizes that Scripture “repeats” the natural law (in prohibiting incest, for instance) as a condescension to man’s postlapsarian weakness and perversity.<sup>74</sup> With respect to human law, he is equally clear that its “source” is to be found in natural law.<sup>75</sup> Thus, rather than sanctioning the development of legal positivism, he reiterates the traditional doctrine that one cannot obey a ruler who legislates in contradiction to natural law.<sup>76</sup> Not only does Hemmingsen’s grounding of legitimate human law in natural law serve as a check on the potentially arbitrary rule of princes, but also his clear reference to divine commands being rooted in “the will *and nature* of God” prevents one from reading him as a voluntarist for whom the natural law itself derives from the potentially arbitrary will of God.<sup>77</sup>

In sum, rather than anticipating or even precipitating modernity, Hemmingsen’s explication of natural law is entirely consistent with that of the Lutheran reformer Philip Melanchthon. Recognition of this fact is significant not only because it lends some small support to Wilhelm Dilthey’s suggestion that Melanchthon was “*the ethicist of the Reformation*,”<sup>78</sup> but especially because, in that capacity, Melanchthon himself largely remained within and reiterated the received natural-law tradition.<sup>79</sup> Thus, even if the frequent republication and wide dissemination of Hemmingsen’s *De Lege Naturae* testify to its early modern importance and influence, these cannot be attributed to any novelty of content or conclusion. *If* any novelty is to be found in Hemmingsen’s treatise, then it is to be sought not in its conclusions but perhaps—and only—in the method by which such conclusions are demonstrated.

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<sup>74</sup> Hemmingsen, *De Lege Naturae*, sig. I7r–v (p. 638 below). Cf. also sig. I2v (p. 633 below), where the Decalogue is described as “a summary of the law of nature.”

<sup>75</sup> Hemmingsen, *De Lege Naturae*, sig. A7r–v.

<sup>76</sup> Hemmingsen, *De Lege Naturae*, sig. H6r (p. 629 below).

<sup>77</sup> Hemmingsen, *De Lege Naturae*, sig. K3r (p. 644 below), emphasis added. Cf. also sig. B8v, where Hemmingsen associates natural law with eternal law.

<sup>78</sup> Quoted in Witte, *Law and Protestantism*, 121 (emphasis added).

<sup>79</sup> Again, contra Gregory, *The Unintended Reformation*, 208, who claims that the Protestant reformers rejected “morality’s natural law as traditionally conceived.”

## Method and Structure of *De Lege Naturae*

Hemmingsen desires to prove the validity and necessity of the law of nature by what he believes to be a “universal method.” All disciplines must be understood by method, whether implicitly or explicitly, but they grow in our estimation when the proper method of treatment has been made explicit. He is, moreover, happy to borrow a method that has been used in other disciplines. He writes:

A most worthy admiration of this matter drove me to write some things concerning the source [*fonte*] of the laws, which we are accustomed to call the law of nature [*legem naturae*], and to do so by a sure and philosophical method [*methodo*],<sup>80</sup> by means of which the starting-line, the course out, turning-points, and the course back may be clearly perceived.<sup>81</sup> We see that all the disciplines [*artes*] are understood by their own methods—such as grammar, dialectic, geometry, arithmetic, music, and the others; and as any discipline is clearer when its method has been written out, so also it gains greater admiration. Although doctors borrow their axioms [*axiomata*] from physical science, nevertheless they deserve not the lowest praise on account of the method of their discipline. Civil laws too, for which moral philosophy supplies the axioms, have their own method.<sup>82</sup>

While each discipline has a method appropriate to it, Hemmingsen notes that often the axioms must be borrowed from elsewhere. For law, the axioms come from moral philosophy. If Erik Krabbe, for instance, wishes to reform civil law, he will have to make use of moral philosophy.

Hemmingsen, then, intends to make these axioms clear and to subject them to a kind of Euclidean method of demonstration, for he believes that ethics is just as open to this kind of analysis as are geometrical figures—in spite of the fact that “certain men falsely maintain” that geometry is the only discipline susceptible of this sort of proof.<sup>83</sup>

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<sup>80</sup> A *methodus* is a mode or system for conducting an inquiry or investigation.

<sup>81</sup> Hemmingsen uses a metaphor from the Roman circus track.

<sup>82</sup> Hemmingsen, *De Lege Naturae*, sig. A7r–v.

<sup>83</sup> Hemmingsen, *De Lege Naturae*, sig. B1v.

Moreover, although one must admit that there are clear demonstrations in Euclid, according to all the ways of making a demonstration—for Euclid uses a threefold method for making a demonstration, composing some hypotheses by synthesis, referring others by analysis to their first principles [*principia*], [and] making use, by no means rarely, of ἀπαγωγή εἰς ἀδύνατον [*reductio ad absurdum*], in order to produce the truth from what is absurd—nevertheless I justly contend that there are ways of making a demonstration in this branch of knowledge [*scientia*] of ours (that is, the knowledge of nature) that are not less ἐναργεῖς [manifest] and clear than in Euclid or in other noble and distinguished branches of knowledge. I attempt in this book to lay these ways open and to refer the law of nature to the method proper to this kind of knowledge [*ad artis methodum*], and I do so with the following purpose: so that this part of philosophy, which ought to be very well known to all men, may in some way be rendered illustrious.<sup>84</sup>

There are numerous examples of this method in the selection excerpted below. Because of its brevity, we include here his demonstration of the fifth commandment (in Hemmingsen’s numbering), “You shall not murder,” as an illustration.

Whatever disturbs human society, whether in the domestic or the political state, is forbidden by the law of nature.

Hatreds, reviling, quarrels, [and] murders disturb human society. Therefore, hatreds, reviling, and murders are forbidden by natural justice [*iure naturali*]. And, on the contrary: since mutual love, friendly conversations, kindness, concord, [and] the pursuit of the preservation and defense of one another preserve human society, they are therefore required by nature.<sup>85</sup>

Indeed, what Hemmingsen believes to be novel about his project is the fact that he uses this type of method in the realm of moral philosophy. While many others, including Greeks and Romans, poets and philosophers, and even his own

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<sup>84</sup> Or “illuminated.” It is not impossible that there is an intentional ambiguity here: He seeks to “illuminate” the proper method of approaching the law of nature so that, in so doing, it may receive its proper due of fame and notoriety. See Hemmingsen, *De Lege Naturae*, sig. B1r–v.

<sup>85</sup> Hemmingsen, *De Lege Naturae*, sig. I5r–v.

teacher, Philip Melanchthon, have given the “principles of morals,”<sup>86</sup> no one has yet subjected them to the kind of investigation Hemmingsen proposes to undertake. Thus he writes:

Moreover, although many—both poets (such as Pythagoras, Theognis, Phocilides, Cato, and several others) and philosophers (such as Plato, Aristotle, Plutarch, [and] Cicero) have handed down the commandments of morals, and in our own day Philip Melanchthon (and neither the serpentine ingratitude of many, nor the secret treachery of the spiteful, nor the open misrepresentation of his enemies will ever obscure the glory of this most holy man) most wisely and usefully has written about moral philosophy: nevertheless no one yet, as far as I know, has handed down these elements and shown the way of demonstrative progress in this most noble art, so to speak, of nature, a task which really would have been by no means easy for the best men [*summis illis viris*], if they had proposed to treat the principles [*principia*] of nature, and from there the construction of what follows [from these principles], by the method which we are following.<sup>87</sup>

But although Hemmingsen identifies his purpose in writing *De Lege Naturae* and the method he will use as outlined above, in fact an enormous amount of the treatise is devoted to an issue apparently altogether different from the proof of the law of nature, and that is the theory of knowledge and its acquisition. This may seem odd, but we can see why Hemmingsen dedicates so much of his discussion to this issue through a brief overview of the way in which the work fits together.

Hemmingsen begins with two prefatory documents, from which much of the previously cited material is drawn. The first is an epistle whose dedicatee has already been noted, Lord Erik Krabbe. Krabbe was a jurist and diplomatist who served the Danish crown on eighteen embassies to foreign states and was also himself the author of treatises on Danish law.<sup>88</sup> He had intended to write “a lawbook valid for all of Denmark” with the support of King Christian III—the

<sup>86</sup> In connection with Hemmingsen’s teacher Melanchthon, Ralph Keen remarks that, for him, “philosophy” does not mean “metaphysics,” but *moral* philosophy. See Keen, “Moral World,” 13.

<sup>87</sup> There is perhaps an architectural image at work in Hemming’s Latin: *principia*, which has been translated as “principles,” can also mean “foundations”; something else is then erected (*extrucciones*, which has been translated as “constructions”), like a building, on top of them. See Hemmingsen, *De Lege Naturae*, sigs. A7v–A8r.

<sup>88</sup> See O. Garstein, *Jesuit Educational Strategy, 1553–1622*, vol. 3, *Rome and the Counter-Reformation in Scandinavia* (Leiden: Brill, 1992), 34–35.

project to which Hemmingsen seems to refer in passages from the letter cited above—but it was never brought to final form.<sup>89</sup>

The second is the “Preface to the Reader,” in which he explains the connection of his project with the Delphic Oracle (“Know yourself”) as interpreted through the Christian narrative of sin and salvation. Pure nature can no longer guide man effectually to blessedness, but it can point out the goal toward which our actions should be directed and can cause the welling-up of doxology to the true God who has made and restored nature.

Hemmingsen there claims that he will follow Galen’s “analytical” method; he will begin with a definition of the law of nature, which he will then unpack.<sup>90</sup> But, as he begins the treatise proper, that is not quite what he does. He first gives a “rational account” of the words *law* and *nature*, for which he cites a number of Greek and Roman writers. Only then, after citing Cicero’s definition, does he give his own “just and complete definition”:

[T]he law of nature is a sure knowledge, imprinted on the minds of men by God [*divinitus*], of the principles of knowledge and action, and of the conclusions proved from these principles that<sup>91</sup> are in agreement with the proper end of man—reason constructs these conclusions from the principles, by necessary consequence, for the government of human life, so that man may recognize, want, choose, [and] do the things that are right, and avoid their opposites; and as the witness and judge of all these things the conscience [*conscientia*] has been bestowed on man by God [*divinitus*].<sup>92</sup>

Hemmingsen states in the “Preface to the Reader” that, after defining the law of nature, he will undertake an analysis of each part of the definition, as noted above. Now, because the first element of his definition is that the law of nature is a “sure knowledge [*noticia certa*],” he must include a discussion of epistemology—of how we know in general. Thus, he next discusses the “knowledge that pertains

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<sup>89</sup> J. L. Larson, *Reforming the North: The Kingdoms and Churches of Scandinavia, 1520–1545* (New York: Cambridge University Press, 2010), 450.

<sup>90</sup> This metaphor is drawn from Hemmingsen’s own: he claims that he will first give the definition “rolled up in a small bundle.”

<sup>91</sup> The antecedent of the pronoun is “conclusions,” not “principles.”

<sup>92</sup> Hemmingsen, *De Lege Naturae*, sig. C2r–v.

to the senses [*cognitio sensitiva*] and the knowledge that pertains to the intellect [*cognitio intellectiva*], and the relation of knowledge to appetite, as these two are the “principles of action.”

After a brief treatment of the justification for putting faith in first principles, he moves on to the end of man, which should be referred to the true God, about whom Hemmingsen cites several *testimonia* from the heathen ancients. In fact, man’s domestic, political, and spiritual life all must be referred to the true God. This God is the same one who authored the Decalogue, which “is said to be a summary [*epitome*]” of the law of nature. To prove the truth of that claim, Hemmingsen provides a series of syllogistic demonstrations of the Commandments that shows how they cohere with what he has defined as the law of nature discernible outside of Scripture.

To show further consistency between general and special revelation, Hemmingsen then gives a catalogue of the classical cardinal virtues (prudence, justice, fortitude, and temperance), in which he offers numerous citations of classical authors. The ethics of the ancient Greeks and Romans, then, as well as the ethics of ancient Israel, have their source in the law of nature. Lastly, he discusses conscience, the final part of his definition.

## Translator's Note

Hemmingsen's work first appeared in Wittenberg in 1562. Thereafter it went through several printings, though none that I have found are expanded or revised editions. Some do, however, contain typographical errors not present in other printings, such that several of them can be used in concert to establish a reliable text and occasionally to clarify difficulties of interpretation. On the whole, however, each printing I have consulted has been sound. The base text referred to in this introduction and translation is that of 1562 (Wittenberg).

In my translation, I have attempted to keep as closely as possible to Hemmingsen's own style and syntax while retaining readability. The translation is intended to be a window into the Latin text rather than a door standing between the reader and the original. If a Greek term is followed by a translation in brackets, this indicates that Hemmingsen himself did not translate the term, but I have; if a nonbracketed translation follows, it is an indication that Hemmingsen translated the term into Latin for his readers and that I have rendered Hemmingsen's Latin translation into English.

—E. J. Hutchinson