



Volume 69:3-4

July/October 2005

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## Changing Definitions: The Law in Formula VI

James A. Nestingen

There are a couple of key theological issues percolating through the dispute over the third use of the law. When they are isolated, they illustrate some of the key historical differences between Luther and Melanchthon, and beyond them, between Luther and the theologians who drafted Article VI of the Formula of Concord.

The first issue is the end of the law, an assertion that emerged early in the Reformation out of Luther and Melanchthon's consideration of Roman 10:4, where Paul states that "Christ is the end [τέλος] of the law, that all who believe may be justified." Luther and Melanchthon both picked up what had generally been either passed over or minimized by the tradition, the sense of termination that is also included in τέλος. In fact, from 1520 to 1530, this became a theme of the Lutheran reformers to the point that in the later Galatians commentary "the end of the law" in the sense of termination became a virtual christological title. Christ is the end of the law just as he is Savior and Lord.

For Luther the original force of the argument is as much theological as it is exegetical, very much along the lines of Paul's argument in Galatians 2:21, ". . . if justification comes through the law, then Christ died for nothing." The logic is devastatingly simple. Christ Jesus' justification of the godless is the first and therefore the controlling premise in the theological argument. So if Christ saves, the law cannot. If Christ is "the way, the truth, and the life," the law cannot be; if Christ has the last word, the law must fall silent before him. Christ's death and resurrection are, in effect, the first premises in every theological argument.

Characteristically, once the logic of the gospel has set this theme, Luther expands on it voluminously. So, for example, in one of his great sermons, *How Christians Should Regard Moses*, Luther personifies the law in Moses'

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name to declare, "Moses is dead."<sup>1</sup> Not one iota of Moses concerns us. "We would rather not preach again for the rest of our life than to let Moses return and have Christ be torn out of our hearts. We will not have Moses as ruler or lawgiver any longer."<sup>2</sup> Similarly, in the great Galatians commentary he can argue that the whole goal of the Christian life is to become ignorant of the law.

But for all of his expansiveness on this pole of the dialectic, Luther at the same time carefully set out the other pole: as Christ ends the law, he also establishes it. Christ Jesus stops the law by bringing to an end its characteristic functions in this age, besieged as the fallen world is by the powers of sin, death, and the devil. By the absolution, the oral or sacramental declaration of the forgiveness of sin, Christ silences the law's badgering and accusing. Then, freed from the relentless hounding of the law, the believer has a new sense of self in relation to God, the neighbor, and the earth—a free and merry conscience.

At this point, then, on the other pole of the dialectic, the law is reduced to terms. While it has lost its ultimate standing, it nevertheless retains its penultimate value. While it cannot justify, bestow life, or "contribute anything to righteousness," the law can clear some order in the chaos and, however tenuously, point the way toward justice and peace; it can also, when the Holy Spirit takes hold of it through the gospel, become useful in driving a person to the repentance that accompanies faith.

Thus for Luther, the way from law to gospel is marked by breach, a fundamental discontinuity, death, and resurrection. Left to itself, the law can only kill, showing the self to its end in death. But as the Holy Spirit takes hold of the law under the power of the gospel, joining the believer to Christ in a death like his, the faith which he creates shares in a resurrection like his. The gospel can never be confined to mere knowledge or a bit of assistance for the continuous self: it is the power of the resurrection itself breaking out where it always does, tearing open graves.

One of the most powerful statements of the end of the law in the early Reformation was set out by Melancthon in the 1521 *Loci Communes*. The bulk of one whole chapter is devoted to what he calls "the Abrogation of the Law," the argument proceeding along the same lines as Luther's. So Melancthon explicitly states that ". . . that part of the law called the

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<sup>1</sup> Martin Luther, "How Christians Should Regard Moses," in *Luthers Works*, Vol. 35: *Word and Sacrament I*, American Edition, ed. Jaroslav Jan Pelikan, Hilton C. Oswald, and Helmut T. Lehmann (Philadelphia: Fortress Press, 1960), 165; hereafter LW 35:165.

<sup>2</sup> LW 35:164.

Decalogue has been abrogated by the New Testament" and then follows with further explanation: "But our freedom consists in this, that every right of accusing and condemning us has been taken away from the law" and "Christ took away the curse of the law and the right it had so that even though you have sinned, even though you now have sin . . . yet you are saved. Our Samson has shattered the power of death, the power of sin, the gates of hell."<sup>3</sup> What was later termed "the new obedience" properly follows: "Those who have been renewed by the Spirit of Christ now conform voluntarily even without the law to what the law used to command."<sup>4</sup>

Against this background, developments later in the Lutheran Reformation stand out in bold relief. Antinomianism, the argument that the law had ended temporally and was therefore of no further significance to Christians, surfaced for the first time in 1527 and again between 1536 and 1539. Both times, the source was Johann Agricola. Though the initial conflict was between Agricola and Melanchthon, Luther took responsibility for dealing with the matter. While Luther was confronting Agricola, Melanchthon, on the other hand, began to move off in other directions.

Though he dismissed the 1527 conflict as a *pugnam verborum*, a "war of words," in the 1530s, Luther recognized that the situation had changed. As he once said, "The world is like a drunken peasant. If you lift him into the saddle on one side, he will fall off on the other side."<sup>5</sup> In his analysis early on, the problem was that the conscience was oppressed by the law. But now he said, writing in the early 1530s, "they have mastered the fine art of abusing their liberty," having moved from legalism to license.<sup>6</sup> Thus, without compromising the assertion of the termination of the law, Luther took even greater care in spelling out the law's establishment. This concern appears already in the careful exposition of the Ten Commandments in the Small and Large Catechisms but in a fully developed theological form in the Antinomian Disputations.

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<sup>3</sup> Philip Melanchthon, *Loci Communes*, tr. J. A. O. Preus (St. Louis: Concordia Publishing House, 1992), 15, 120, 122.

<sup>4</sup> Melanchthon, *Loci Communes*, 123.

<sup>5</sup> Martin Luther, *Luther's Works*, Vol. 54: *Table Talk*, American Edition, ed. Jaroslav Jan Pelikan, Hilton C. Oswald, and Helmut T. Lehmann (Philadelphia: Fortress Press, 1967), 111, n. 630; hereafter *LW* 54:111.

<sup>6</sup> Theodore G. Tappert, ed., *The Book of Concord: The Confessions of the Evangelical Lutheran Church* (Philadelphia: Fortress Press, 1959), 338.

Asserting the end of the law in the Disputations, Luther argues that it can only happen when in faith the sinner dies with Christ. "Indeed, in Christ the law is fulfilled, sin abolished and death destroyed. That is, when through faith we are crucified and have died in Christ, such things are also true in us" and "To one raised in Christ there is certainly no more sin, no death, no law – things to which he was subject while living" and finally, "Now in so far as Christ is raised in us, so far are we without law, sin, and death."<sup>7</sup>

The correlation of the law with sin and death as the powers of this age makes it impossible simply to write the law off conceptually or theologically, exposing such an effort as a play put on in an empty theater.

Necessarily, therefore, in so far as they are under death, they are still under the law and sin. They are altogether ignorant and deceivers of souls who endeavor to abolish the law from the church. For that is not only stupid and impious, but absolutely impossible. For if you want to remove the law, it is necessary at the same time to remove sin and death.<sup>8</sup>

But with this, there is an important difference in Luther's argument in the Antinomian Disputations. While he still says, as earlier in the Reformation, that the law terminates in the conscience of the believer when it no longer accuses, now he also asserts that the law remains for all eternity.

For the law as it was before Christ did indeed accuse us; but under Christ it is placated through the forgiveness of sin and thereafter it is to be fulfilled in the Spirit. Accordingly after Christ, in the future [the law] will remain, having been fulfilled, and then the new creature himself will be what [the law] in the meantime demanded. Therefore the law will never in all eternity be abolished, but will remain either to be fulfilled by the damned, or already fulfilled in the blessed.<sup>9</sup>

Thus, even though in this age the law is defined by its essential functions or offices, it cannot be reduced to the function. It points beyond itself, signifying what is to come eschatologically when Christ has put all of his enemies under his feet.

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<sup>7</sup> Martin Luther, *Luthers Werke: Kritische Gesamtausgabe*, Vol. 39, Part I (Weimar: H. Böhlau, 1926), 354-356, Numbers 10-11, 36, 40; hereafter WA 35.1:354-356, 10-11, 36, 40.

<sup>8</sup> WA 35.1:354, 14-17.

<sup>9</sup> WA 35.1:356, 45-47.

This eschatological sense is rooted in the original Hebrew, in which the Commandments are set out in the future tense. Now, in a world under the siege of sin, death, and the devil, the future turns to imperative and so to indictment. But as Christ reclaims both creature and creation, there is coming a time when the Commandments will be fulfilled in the believer. It happens now proleptically, in bits and snatches. Then, when Christ has finally overcome all of his enemies, what we can only anticipate in hope will be the reality: the faithful will have no other gods before him, will exalt in his name, and enter into the final Sabbath rest of eternity with every human relationship restored in the forgiveness of sins. In this way, the gospel turns the law itself into promise, where the law signifies the shape of the life to come. On the other hand, to those stuck in their own self absorption, the gates of hell have already opened—the law's accusation continues relentlessly and for all eternity.

While Luther confronted the antinomian strife by further clarifying the dialectic, Melancthon set off in another direction. His changes can be measured fairly closely by comparing the various editions of the *Loci Communes*. He put this volume through a whole series of revisions, substantially between 1525 and 1535 and even more dramatically, between 1535 and 1555.<sup>10</sup> In the 1533 edition, the chapter on “the Abrogation of the Law,” which claimed such prominence in 1521, has been reformulated as a chapter on Christian freedom with the language of abrogation carefully qualified to pertain only to the curse of the law.<sup>11</sup> In the 1555 edition, Melancthon limits abrogation to “freedom from two parts of the law of Moses, ceremonial and civil law” and then asks why the same term could not be used for the Decalogue. He answers that the Christian is free from the Ten Commandments “. . . so far as the meriting of forgiveness and of sins and justification by God are concerned . . .” but that, “. . . the law, which is called the Ten Commandments, or *legam moralem*, is the eternal unchangeable wisdom and righteousness in God, which he has imparted to us. As he created us to be like him in eternity, the law cannot be effaced, as writing on the wall, for the order that the rational creatures should be obedient to God stands forever.”<sup>12</sup>

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<sup>10</sup> See Hans Engelland, “Introduction,” in *Melancthon on Christian Doctrine: Loci Communes, 1555*, ed and tr. Clyde L. Manschreck (New York: Oxford University Press, 1965), xxiii.

<sup>11</sup> *Corpus Reformatorum: Philippi Melanthonis Opera Quae Supersunt Omnia*, Vol. 21 (Halle and Brunswick: C. A. Schwetschke, ), 458ff; hereafter CR 21:458ff.

<sup>12</sup> CR 21:198.

The form of Melancthon's later argument retains familiar characteristics, but the proportions have changed. The end of the law as termination remains in a strictly qualified form, but the emphasis has shifted to qualities of the law that place it beyond any real end—it is “the eternal, unchangeable wisdom and righteousness of God.” With this, two other differences become evident. The term *eternal* is not used eschatologically, as with Luther, but structurally and ontologically to describe God's will in creation. Reduced to the penultimate by the gospel in the earlier argument as a provisional necessity in a fallen world, its true significance is to be found only in Christ's fulfillment of it, the law has in the later argument once again emerged to claim ultimate status. It is “eternal” in and of itself. At the same time, there has been a change of method. In Melancthon's later work, the gospel is no longer the first premise in the theological argument, with the law defined accordingly; rather, the law as God's eternal and unchangeable righteousness has taken the theological priority and the gospel is defined accordingly.

These changes—the qualification of termination, the redefinition of the law's eternal character, and the methodological shift—are reflected in a couple of other contemporaneous developments in Melancthon's overall treatment of the law. One appeared in the 1535 edition of the *Loci Communes*. This is the explicit introduction of the third use. There are earlier instances where Melancthon uses the imperative to describe the good works that follow faith, even in Article VI of the Augustana. Now, however, the third use follows the developing redefinition: since the law is eternal, there must by the very term be a use specifically directed to the believer. The third use did not generate controversy until the 1550s, when it came under the attack of a group of parish pastors, among them Andreas Poach of Erfurt and Agricola's brother-in-law, Andreas Musculus.

The other development followed in 1536. It was a proposal, originally floated through Casper Cruciger, to describe obedience to the law as necessary to salvation. The language was carefully qualified to indicate that good works were not a cause of salvation but effectively a catalyst. Yet the impact of Melancthon's developing redefinition of the law is manifest: when the law takes priority over the gospel as the all-cohesive structure of God's will in creation—“the eternal” and “unchangeable wisdom and righteousness of God”—it is impossible to conceive of salvation apart from obedience to the law.

Not surprisingly, given the differences emerging between Luther and Melancthon, the new proposal came under direct attack. When he took up the ensuing conflict, Luther called the proposed phrase “the very

theology of Erasmus" and said "nothing could be more contrary to our doctrine."<sup>13</sup> By this time, it had become evident that Melanchthon was behind Cruciger's experiment. The two of them agreed to withdraw the phrase – Melanchthon after several conversations at Luther's table. But the force of the revised definition of the law remained unabated. With Luther gone, however, Melanchthon brought the argument for the law's necessity to salvation back once more in the Majoristic strife of the 1550s.

Luther's comment suggests one possible source of Melanchthon's movement on the doctrine of law. When Erasmus was dying in 1536, Melanchthon wrote him a letter saying that he "had attempted to follow him [Erasmus] in all that he had taught." In another comment, which Wilhelm Pauck took as programmatic, Melanchthon, toward the end of his own life, told his first biographer that he had striven, in everything that he had done, to contribute to the actual improvement of public life. The increased emphasis on the significance and value of the law may then reflect Melanchthon's humanism.

But there is an additional possibility. In the later 1530s and early 1540s, just as the most dramatic changes in the *Loci Communes* were underway, Melanchthon had undertaken a sweeping reappraisal of Aristotle. That by itself could account for the shift to a more structural understanding of the law, putting a premium on its eternal and all-cohesive qualities.

With this consideration of the end of the law, there is a second theological issue that bears on the dispute over the third use: the *simul*. Again there is a strategic difference, especially between Luther and Formula VI. Luther's concept of *simul iustus et peccator* is worked out, like all of his theology, christologically. His goal, as the Apostle Paul put it, was literally to "take every thought captive to serve Christ" (2 Cor 10:5). So as Luther proclaims him, Christ Jesus is not an idea or an ideologue but the living presence at work in his word to justify the godless and raise the dead.

The Small Catechism provides one of the best examples. Christ's work is not a distant abstraction but a concrete, accomplished reality: "he has saved me, a lost and condemned person, bought and freed me . . ." (SC II,ii,4). In the same way, the verbs that give the explanation of the third article of the Creed such movement are all cast in the present perfect: the Holy Spirit "has called . . . has enlightened . . . has sanctified . . . and has

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<sup>13</sup> Friedrich Bente, *Historical Introductions to the Lutheran Confessions* (St. Louis: Concordia Publishing House, 1965), 113.



kept me in the true faith" (SC II,iii,6). Since all of this is the work of the triune God who justifies his enemies, the work is complete in itself even as it is now continuing.

Yet at the same time, what is now realized goes on into the future. So the explanation of the second article concludes with the words, "All this he has done that I may be his own" (SC II,ii,4). And the use of the present perfect in the third article explanation indicates that what has begun continues in a way that as justified the believer remains a sinner who confesses: "I believe that I cannot by my own understanding or effort believe in Jesus Christ my Lord or come to him" and who therefore depends on the ministry of the church, in which "day after day, he fully forgives all my sins" until the last day, "when he will raise me and all the dead" (SC II,iii,6).

Thus, for Luther the *simul* is both totally complete (*totius, totius*) and partial and awaiting completion (*partim, partim*). But the incompleteness does not, therefore, devolve to us, as though sanctification were something to be sought and achieved. Rather, as in the statement on the eternal character of the law in the Antinomian Disputations, what is now begun will be completed eschatologically by the work of the Holy Spirit. Thus, in the Large Catechism, Luther writes: "Now we are only halfway pure or holy. The Holy Spirit must continue to work in us through the Word, daily granting forgiveness until we attain to that life where there will be no more forgiveness. In that life we are only perfectly pure and holy people, full of goodness and righteousness, completely freed, from sin, death and all evil, living new, immortal and glorified bodies" (LC II,iii,58).<sup>14</sup>

In the Antinomian Disputations, Luther summarizes the whole christological argument in a pair of theses: "Insofar as Christ is now raised in us, so far are we without the law, sin and death. Insofar as he truly is not yet raised in us, so far are we under the law, sin and death."<sup>15</sup> Here is the *simul* in a nutshell. The argument is worked out of Christ's justifying work, not from the law or observations about the current state of human sinfulness. Christ Jesus at one and the same time establishes the totality and exposes the partiality, taking responsibility through his Spirit for both.

Against this background, the differences in Article VI of the Formula of Concord are striking. As the work of a committee, the article reflects a number of hands. Jakob Andreae with the Swabian Concord provided the first fourteen paragraphs of the Solid Declaration, Andreas Musculus who

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<sup>14</sup> Tappert, *The Book of Concord*, 418.

<sup>15</sup> WA 35.I:356,40-41.

had been involved in the later antinomian conflict provided the substance of paragraphs fifteen to nineteen, and David Chytraeus the last paragraphs, twenty to twenty-five. Though the hands are individual, there is nevertheless a clear consensus among them concerning the law that reflects the shaping influence of Melanchthon. As Willard Dow Allbeck observed long ago, while the Formula attempts to recover Luther's theological conclusions, the method employed is Melanchthon's. This is nowhere more evident than in Article VI.

So the language of the end or abrogation of the law, so important to Luther and the earlier Melanchthon, is conspicuously absent. The law has claimed priority as the controlling assumption in the argument and so cannot be spoken of as having been abrogated. Thus Andreae, in paragraph four, acknowledges the justifying work of Christ but immediately sets it in the context of the law: ". . . although Christians who believe faithfully have been truly converted to God, and have been justified are indeed freed and liberated from the curse of the law, they should daily practice the law of the Lord as it is written in Psalms 1 and 119, 'Blessed are those . . . whose delight is in the law of the Lord, and on his law they meditate day and night.' For the law is a mirror that accurately depicts the will of God and what pleases him" (SD VI,4). Musculus uses similar terms in paragraph fifteen, ". . . the word 'law' has one single meaning, namely, the unchanging will of God, according to which human beings are to conduct themselves in this life" (SD VI,15). Chytraeus brings this back in paragraph twenty-one: "the law of God prescribes good works for believers, so that it may at the same time show and indicate, as if in a mirror, that they are still imperfect and impure in this life" (SD VI,21).

These references to the law as a mirror of God's will bring forward into Article VI the definition of law provided in Article V, which closely parallels Melanchthon's later definition: "We therefore unanimously believe, teach and confess that in its strict sense the law is a divine teaching in which the righteous, unchanging will of God revealed how human beings were created in their nature, thoughts, words and deeds to be pleasing and acceptable to God" (SD V,17). The law is no longer defined functionally in light of the gospel but structurally and cohesively as the definitive expression of God's will.

In effect, law and gospel have traded places. Whereas in the earlier Lutheran argument, the gospel as the ultimate word rendered the law penultimate, now in the Formula, the law is set forward as the ultimate

expression of God's will and the gospel becomes effectively penultimate in that context—it provides what the law demanded but could not affect. Just as in Melancthon's later work, an eternal law, by the very definition ascribed to it, cannot end but must necessarily continue in its claims. The third use follows as a necessary consequence of the way the law has been redefined.

A similar shift occurs with the *simul*. Of the three authors, Musculus comes the closest to Luther's original language of an accomplished reality in paragraph seventeen: "However, when people are born again through the Spirit of God and set free from the law (that is, liberated from its driving powers and driven by the Spirit of Christ), they live according to the unchanging will of God, as comprehended in the law, and do everything, insofar as they are reborn from a free and merry spirit" (SD VI, 17). This, however, is really, as Robert Kolb notes in the new edition of the Book of Concord, Musculus' interpolation of his own theology into the text.<sup>16</sup>

For in fact, the *totius, totious* of Luther's *simul isutus et peccator* has, in the overall argument of Article VI, for all practical purposes dissolved into the *partim, partim*. Thus, in paragraph six, Andreae treats the totality as a hypothetical possibility: "indeed, if the faithful and elect children of God were perfectly renewed in this life . . . they would need no law . . ." and then continues to state emphatically the partiality, in paragraph seven: "Since, however, believers in this life are not perfectly, wholly *completitive vel consummative* [completely or entirely] renewed—even though their sin is completely covered by the perfect obedience of Christ so that this sin is not reckoned to them as damning, and even though the killing of the old creature and the renewal of their minds has begun—nonetheless, the old creature continues to hang on their nature and all of its inward and outward powers" (SD VI,6–7).

Of the other two, Musculus preserves a little more tension in the dialectic, as in paragraph eighteen. Since the Spirit and the flesh continue to battle it out, believers live in contention: ". . . they are never without the law, but at the same time they are not under the law but in the law; they live and walk in the law of the Lord and yet do nothing because of the compulsion of the law" (SD VI,18). Chytraeus resolves the tension

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<sup>16</sup> Robert Kolb and Timothy J. Wengert, eds., *The Book of Concord: The Confessions of the Evangelical Lutheran Church*, tr. Charles Arand, Eric Gritsch, Robert Kolb, William Russell, James Schaaf, Jane Strohl, and Timothy J. Wengert (Minneapolis: Fortress Press, 2000), 590, n. 169.

completely: "For the old creature, like a stubborn, recalcitrant donkey, is also still a part of them, and it needs to be forced into obedience to Christ not only through the law's teaching, admonition, compulsion and threat but also often with the cudgel of punishments and tribulations until the sinful flesh is stripped away and people are perfectly renewed in the resurrection" (SD VI,24).

Not surprisingly, as the totality dissolves into partiality in the *simul*, the verbs shift accordingly. In the older Lutheran argument, as in the Small Catechism's explanation, God is the subject of every verb. Both Andreae and Musculus take some pains to maintain this priority. Acknowledging the law cannot create what it requires, Andreae describes the Spirit's use of law and gospel to effect the new life in paragraphs ten and eleven. Similarly, Musculus repeatedly comes back to the work of the Spirit of God (SD VI,17). With that said, the purpose of the law in its third use is to instruct and to engage the self in the process.

In fact, the sequences of uses, from the external discipline of the political use to the accusation and exposure of the second use and then from the gospel to the third use has the character of a process of moral rehabilitation, from the partial toward the complete, or to pick up Gerhard Forde's colorful phrase, an exodus from vice to virtue. Consequently, the whole argument requires the kind of distinction Musculus makes when he speaks of "the difference between two different kinds of people," those who are not reborn who remain under the law alone and "the people who are born again" (SD VI,16-17) and who are therefore on the way.

A couple of conclusions can be drawn from this analysis. First, the changes in Melancthon's definition of the law, whether they are attributed to Erasmus or to his developing Aristotelianism, result in a decisive recasting of the dialectic of law and gospel. Christ's termination of the law, so central to the earlier Lutheran witness, has been reduced to a theoretical end in which the law continues as unrequited demand. Second, the totality of Luther's *simul* resolves into a partiality in which the believer strives, with the assistance of the Spirit to achieve further what has been begun. The discontinuity of law and gospel has been ironed out into a continuous process of moral rehabilitation.

These conclusions call for a careful reconsideration of Article VI of the Formula. There can be no doubt about the necessity of continued faithful proclamation of both law and gospel to all and sundry. The contemporary experience of the church, whether in the antinomian reduction of the law to mere relative value or in the church growth movement's unease with

the absolution, manifests the aimless drift that sets in when the law's voice is silenced. Article VI can under no circumstance be simply set aside. At the same time, however, the faithful proclamation of the law calls for the continuing critical theological reflection on the distinction of law and gospel in our own time and situation. This is the enterprise the Formula began, carefully reassessing Melancthon's later conclusions. Faithful subscription to the Formula now involves continuing the project, extending it to Melancthon's theological method, and then moving in the same direction as the authors of the Formula, going back to Luther and, with him, to the biblical text.

Luther himself points the way in a thesis from the Antinomian Disputations quoted in the Formula: "Therefore the law (and likewise the gospel) is to be taught without distinction to the pious just as to the wicked."<sup>17</sup> Instead of sorting the congregation out into those who require first, second, or third use, the preacher is called to declare the biblical text and to proclaim both law and gospel in their fullness: the law in its requirements and accusations as the text demands; the gospel in its power to actually forgive and raise to newness of life. In such proclamation, under the power of the Holy Spirit, the law comes to its one, true, and only end: Christ Jesus himself.

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<sup>17</sup> WA 35.I:356,42.