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### **Could Conflicts of Legal Rules Create Normative Gaps?**

The abstract presents numerous ideas that could be used to distinguish the conflict of legal rules and the normative gap. It is said that gaps in law and conflict of rules present opposing forms of legal indeterminacy. However, the unique point of intersection between legal gaps and conflicts of norms could be uncovered when conflicting legal rules totally block the capacity to apply either one rule or another. Moreover, none of a well-established basic principle for resolving such conflict of norms (*lex superior, lex specialis, lex posterior* criteria) can be used in the above mentioned situation.

Is it correct to describe the situation as a gap in law because of «mutual assured annihilation» of the validity of any legal norm in case of absolute contradiction of legal rules? Some legal philosophers and theorists (e.g. B. Windscheid, P. Heck, Z. Ziembinski, J. Raz) answer the question in the affirmative. On the other hand, different researchers (e.g. L. Fuller, N. Vlasenko) disagree with this point and try to argue the opposite statement: any conflict of norms can not constitute a reason for the emergence of a gap in law because legal conflicts and legal gaps are of heterogeneous nature and origin.

The latter point seems more reasonable. The argumentation in support of this position is threefold.

First, the gap between conflicts of norms and lacunas in law is unbridgeable. The first one results from incompleteness of the normative system; the second one is caused by the redundancy of inconsistent legal rules. Prof. Bulygin claims that each of the conflicting legal rules retains the formal validity in a set of positive law norms until one of them is derogated. It calls for specific ways of resolving such contradictions which help to describe positive law as a system of a non-contradictional set of normative statements.

Second, there is empirical evidence of clear distinction between absolute antinomies of legal rules and legal gaps. There are some cases in the Russian legal practice which are discussed in the doctrine. The analysis shows that argumentation by analogy is not applicable in case of absolute contradiction between legal rules. The research shows that enforcers follow regular pattern of behavior: they are try to solve the conflict of norms but not to fill the gap.

Third, the idea of clear distinction between absolute antinomies of legal rules and legal gaps can be proved via using a logical experiment method. Let's imagine a single legal act that consists of a set of two inconsistent rules relating to the regulation of human behavior in the set of cases *a*. Let's assume that one of them (Norm 1) prohibits activity *A* for persons *p* in *a*, and another (Norm 2) permits activity *A* for persons *p* in *a*. If it is impossible to harmonize the content of Norm 1 and Norm 2, for instance, via restrictive interpretation of one of them in context of another one. It leads to logical impossibility to choose a random Norm 3 with another model of behavior if case *a1* belongs to the set of cases *a* (for instance, the rule that permits activity *B* for persons *p* in case *a1*). The fictive nature of law application in situations of legal gaps filling is more than self-evident if any enforcer tries to apply Norm 3 by using of the argumentation by analogy.