

On the Ontological Nature of the Hidden Legal Gap and Its Methodological Filling Mechanisms

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Abstract: The hidden legal gap, functioning as a highly specific and conceptually complex sub-typology within the broader theoretical framework of legal gaps, fundamentally diverges from the conventional, open legal gap, which is characterized by a strict absence of applicable statutory provisions resulting in a state of absolute legal vacuity. In the context of a hidden legal gap, although an externally applicable legal norm appears to exist and govern the specific factual matrix, its judicial application proves materially inappropriate due to the critical absence of essential restrictive provisions that are intrinsically demanded by the underlying teleological purpose of the norm. It is precisely this structural and morphological characteristic that dictates its jurisprudential nature as a teleological gap rather than a mere legislative oversight or technical drafting error. Preexisting jurisprudential doctrines that reduce this phenomenon to the premise that "the matter should not have been covered according to the legislative intent" inadvertently obscure this core substantive implication. From the perspective of its generative mechanisms, the hidden legal gap does not emerge accidentally; rather, it is the inevitable product of the combined interaction of the inexhaustibility of adjudicative facts, the inevitable violation of the normative plan by rigid legal rules, and the enduring structural tension between legal certainty and individual case justice. Consequently, the critical methodological mechanism for filling this specific category of gap does not lie in the judicial creation of entirely new rules *ex nihilo*. Instead, it necessitates the utilization of teleological reduction as the foundational methodology. This process must strictly adhere to a sequential operational paradigm: determining the precise content of the necessary restriction, rigorously demonstrating and justifying the normative purpose, and significantly fortifying the judicial reasoning. Through this methodological trajectory, the adjudicator can achieve a substantive return to the fundamental purpose of the law while formally deviating from the strict textual constraints of the statute. Only by definitively clarifying the precise legal nature of the hidden legal gap and systematically standardizing its corresponding filling methodologies can judicial practice achieve a demonstrably justifiable equilibrium between unwavering fidelity

to the statutory text and the necessary responsiveness to the demands of justice in individual adjudications.

Keywords: Hidden Legal Gap; Teleological Reduction; Filling of Legal Gaps; Normative Purpose; Legal Methodology

Introduction

The theoretical discourse surrounding legal gaps constitutes an enduring and central proposition within the discipline of legal methodology and the philosophy of law. Historically, the conceptualization of the legal system has undergone a profound paradigm shift regarding its own completeness. Since the definitive historical refutation of the strict "law is gapless" postulate—originally championed by the school of Conceptual Jurisudence which viewed the legal order as a logically closed, seamless web of concepts—by the Jurisprudence of Interests and subsequent sociological movements, the objective existence of legal gaps has been permanently established as a foundational consensus within modern legal academia. It is now universally acknowledged that no legislative body, regardless of its foresight, diligence, or technical proficiency, can produce a statutory text that anticipates and comprehensively regulates the infinite variation and ceaseless evolution of human conduct and social relations.

Furthermore, the procedural prohibition of the denial of justice mandates that adjudicators cannot evade their jurisdictional obligation to render a decision when confronted with a legal gap; they are expressly forbidden from issuing a decision of *non liquet* on the grounds that the statutory law is silent, ambiguous, or incomplete. Rather, the legal order structurally imposes an absolute procedural obligation upon the judiciary to employ systematic legal methodology to identify, evaluate, and fill the identified gap. However, distinct from a monolithic conceptual categorization, the legal gaps encountered within the crucible of judicial adjudication do not constitute a singular, homogenous phenomenon. The generative mechanisms, identification criteria, and methodological filling procedures for various typologies of legal gaps across different branches of substantive law exhibit substantial divergences, thereby necessitating detailed, concrete examinations based on rigorous typological classification. Within the overarching category of statutory gaps, the hidden legal gap presents the most significant theoretical controversies and practical adjudicative complexities. This specific variation of gap is uniquely characterized by an inherent contradiction between its external manifestation—the superficial appearance of "having an applicable law"—and the internal substantive judgment that the concrete application of this norm produces a materially inappropriate, unjust, or absurd result.

While domestic legal academia has accumulated a certain volume of valuable research regarding the hidden legal gap, fundamental conceptual divergences and theoretical ambiguities persist at the foundational level. Certain scholars adopt the classical definitional framework established by continental methodologies, emphasizing that the hidden legal gap constitutes a lack of negative restrictions within the normative plan; conversely, alternative academic perspectives define the hidden legal gap as a scenario wherein, according to the intent of the legislator and quasi-legislator, the specific matter should not have been intrinsically covered by the statutory provision. This latter definitional approach, which can be designated as the "Non-Coverage Theory," manifests a tripartite structural deficiency that severely

compromises its methodological utility: first, by relying loosely on "incompleteness" as the determinative criterion, it fails to effectively demarcate the hidden legal gap from the open legal gap and other distinct typologies of normative deficiencies; second, it systematically risks inducing erroneous evaluative judgments regarding the overall integrity, consistency, and quality of the legislative system; third, by remaining confined strictly to the negative analytical dimension of "should not be covered," it completely fails to prospectively interrogate the positive constructive requirement of "what ought to be retained," thereby failing to comprehensively articulate the substantive connotations and normative force of the hidden legal gap. In direct response to the aforementioned theoretical deficiencies, this treatise aims to execute a systematic and comprehensive investigation centered strictly on the precise ontological nature, the generative socio-legal mechanisms, and the exact methodological filling mechanisms of the hidden legal gap, thereby providing a more standardized and justified framework for judicial practice.

1. Ontological Reflection and Conceptual Clarification of the Hidden Legal Gap

1.1 Conceptual Tracing: A Methodological History

The conceptual genesis and structural articulation of the hidden legal gap originated within the systematic typological classification of statutory gaps found in classical legal methodology. In these foundational taxonomies, statutory gaps are fundamentally bifurcated into two primary, mutually exclusive categories: the "open legal gap" and the "hidden legal gap." ^[1] Among these, the open legal gap is defined as a state of absolute legal vacuity where the statutory framework fails to establish any specific applicable rule for a particular category of events, despite the fact that, according to the intrinsic teleology and internal plan of the statute itself, such an applicable rule ought to have been structurally incorporated. In an open gap, the law says nothing where it should have spoken; the silence of the text is visually and logically obvious.

The phenomenology of the hidden legal gap operates on a fundamentally different structural and epistemological paradigm. Concerning a specific category of events, a statutory provision capable of formal linguistic subsumption does exist; the words of the statute are superficially broad enough to encompass the case at hand. However, this existing rule, in its initial legislative design and evaluative matrix, failed to account for the unique, idiosyncratic characteristics of this specific, extraordinary sub-category of events. Assessed against the fundamental meaning, underlying ratio legis, and overarching teleological purpose of the rule itself, the application of this specific rule to the particular factual matrix is demonstrably inappropriate, manifesting as a severe state of normative unsuitability, systemic dissonance, or manifest injustice. The classic methodology attributes this phenomenon strictly to the absence of a necessary, structurally essential restrictive provision or an exceptional clause within the statutory text. The nomenclature of the "hidden" or "covert" legal gap derives precisely from the fact that, upon a superficial or formalistic textual examination, there is no apparent absence of an applicable legal norm; the law seems perfectly

^[1] See Karl Larenz, *Methodenlehre der Rechtswissenschaft* (translated by Huang Jiazhen, Commercial Press, 2020), pp. 473-474.

complete. The gap exists in a structurally concealed state, hidden beneath the deceptive clarity of the overly broad statutory language, and it only materializes when the adjudicator moves beyond mere literal interpretation to confront the normative purpose of the law.

Operating in close theoretical alignment with this classification framework, subsequent methodologists utilized the "relationship to the statutory text" as the definitive demarcating standard. Based on the breadth or narrowness of the statutory text in relation to its underlying purpose, legal gaps are divided into open and hidden typologies.^[2] Beyond the specific terminological designations of "hidden" or "covert" legal gaps, certain legal theorists rely primarily on the normative purpose as the definitive criterion, classifying the aforementioned adjudicative scenarios as exceptional gaps or teleological gaps. This conceptualization asserts that a specific legal norm failed to establish an exceptional provision for a particular factual behavior in accordance with its normative purpose; consequently, while the statutory text of the norm remains formally clear, the specific case ought not to be subsumed under the specific normative purpose because the values animating the norm do not extend to this exceptional scenario.^[3] Furthermore, complementing the substantive influence of the legal norm's intrinsic purpose, it is widely posited that the identification of a hidden legal gap must also rely on the "negative principle of equality" as its evaluative foundation. This refers to the negative egalitarian principle derived from distributive justice, which requires the "differential treatment of distinctly different circumstances," thereby supplying a robust, axiologically grounded justificatory basis for the judicial identification of the hidden gap.^[4]

Environmental and theoretical developments within global legal discourse have shown that the deployment of the "gap" concept in this specific context is not universally accepted. Certain critical schools of thought have argued that, analyzed strictly from the perspective of the statutory text, the adjudication of the case does not lack an applicable statutory provision; therefore, only when the necessary structural restrictions are discovered does the real gap show up.^[5] From their viewpoint, the gap only materializes conceptually when the necessity for a specific restriction is ideologically or evaluatively identified by the judge. Consequently, the "gap" referenced in this context does not designate a vacuum in the text, but specifically designates the structural absence of a restrictive norm, given that this requisite restrictive norm is situated structurally outside the textual boundaries of the originally applicable rule. This critical inquiry exposes a cardinal ontological dimension of the hidden legal gap concept: the nucleus of the gap does not reside in the absolute absence of an applicable norm, but rather strictly in the absence of an indispensably required restrictive norm that bounds the application of the existing rule.

1.2 Conceptual Clarification: A Critical Refutation of the "Non-Coverage Theory"

Within domestic legal jurisprudence, there has similarly been varying degrees of theoretical discourse regarding the definition and scope of the hidden legal gap. A significant portion of mainstream doctrine posits that the hidden legal gap constitutes a deficiency of the negative restriction inherent in the normative plan, assessed in

^[2] See Claus-Wilhelm Canaris, *Die Feststellung von Luecken im Gesetz* (translated by Yang Xu, Peking University Press, 2023).

^[3] See Bernd Ruethers, *Rechtstheorie* (translated by Ding Xiaochun & Wu Yue, Law Press China, 2013), p. 352.

^[4] See Ernst A. Kramer, *Juristische Methodenlehre* (translated by Zhou Wanli, Law Press China, 2019), p. 166.

^[5] See Brandenburg, *Die teleologische Reduktion* (1983), pp. 60 ff.

strict accordance with the intrinsic purpose of the law. This perspective asserts that the hidden legal gap results from the law's failure to give special consideration to, and consequently enact specific provisions for, extraordinary circumstances within a particular category of social relations or social life, which demonstrates fundamental alignment with mainstream continental legal methodologies. ^[6]

Conversely, certain influential theoretical paradigms risk generating profound misunderstandings and conceptual conflations. By adopting specific localized gap classification theories, some scholars define the implied or hidden legal gap as a scenario wherein "a certain event, according to the standard semantic meaning of the terminology employed by the statute, has been encompassed by the law, but according to the intent of the legislator and quasi-legislator, fundamentally ought not to have been covered by the law." ^[7] Under this definitional framework, the sole determinative criterion for identifying a hidden legal gap is located in the reductive premise that "the present case ought not to be covered by the law." Therefore, when an adjudicator determines during the practical adjudicative process that a specific statutory provision, despite satisfying formal textual requirements, is materially unsuitable or leads to a harsh result, they are permitted to directly conclude the existence of a hidden legal gap.

This treatise asserts that this specific definitional approach (the "Non-Coverage Theory") exhibits systematic defects that undermine the rigor of judicial reasoning. First, this determinative criterion fails to successfully differentiate the hidden legal gap from alternative typologies of legal gaps. "Non-coverage" operates merely as a preliminary, generalized, and highly vague judgment of structural incompleteness. In a universal methodological sense, irrespective of the specific typology of the legal gap, all gaps manifest a fundamental degree of incompleteness and uniformly fail to provide appropriate, just normative guidance for adjudication. Consequently, "non-coverage" is not an exclusive defining characteristic of the hidden legal gap and is wholly insufficient to serve as a rigorous standard for typological differentiation. Second, this determinative criterion systematically induces erroneous evaluations of legislative quality. If the hidden legal gap is reductively attributed to the premise that "according to the intent of the legislator, it ought not to have been covered," it is highly probable to generate the misconception that a specific legal norm suffers from an internal logical contradiction or a severe legislative error. This approach fundamentally ignores the fact that the genuine generative mechanism of the hidden legal gap lies in the objective ontological gap between the profound complexity of the normative subject matter and the inherent limitations of normative expressive capacity, rather than any subjective error or negligence on the part of the legislative body. Third, this determinative criterion fails to comprehensively articulate the substantive connotations and positive duties inherent in the hidden legal gap. The termination of the adjudicative procedure cannot simply conclude with the adjudicator's negative exclusion of the originally applicable legal rule. The procedural prohibition of the denial of justice structurally mandates that, once a case enters the jurisdictional scope of legal regulation, the adjudicator must formulate a positive, affirmative response to secure and maintain the legitimate rights and interests of the involved parties. Therefore, the definitive identification of a hidden legal gap cannot remain arrested at

^[6] See Shu Guoying, Wang Xiaohao, and Lei Lei, *Research on Frontier Issues in Legal Methodology* (China University of Political Science and Law Press, 2020).

^[7] See Liang Huixing, *Hermeneutics of Civil Law* (4th ed., Law Press China, 2015), p. 262.

the negative, exclusionary level of "should not be covered," but must necessarily advance to investigate the affirmative reconstructive requirement of "what ought to be retained," thereby supplying the adjudicator's obligation to fill the legal gap with a definitive, positive normative trajectory.

Based on the preceding critical systematic review, it is imperative to further demarcate the core substantive connotations of the hidden legal gap. Analyzed from a formalistic perspective, the hidden legal gap manifests as a deviation of the individual case application from the explicit statutory text. However, analyzed from a substantive teleological perspective, both the identification and the subsequent filling of the hidden legal gap are fundamentally directed toward ensuring strict alignment between the legal application and the underlying normative purpose. The subject matter implicated by the hidden legal gap is not the generalized statutory provision itself, but specifically the structurally necessary special restriction upon that provision, which ought to have existed within the legal system. In this regard, the conceptual identification and methodological filling of the hidden legal gap fundamentally resolves into the methodological procedure of discovering and rigorously justifying the structural absence of the inherently necessary restrictive norm. Accordingly, this treatise formally defines the hidden legal gap as follows: a specific morphological state of a legal gap wherein, in a specific adjudicative matrix, although the legal framework contains a provision capable of formal subsumption, the absence of a necessary restrictive provision derived from the normative purpose results in the textually mandated scope of application of the norm exceeding the actual scope regulated by its internal normative purpose, thereby rendering the application materially inappropriate.

2. The Generative Mechanism of the Hidden Legal Gap

2.1 The Objective Uncertainty of the Pending Factual Matrix

The fundamental enterprise of judicial adjudication is structurally oriented toward the unwavering pursuit of uniformity and absolute certainty in the application of legal norms. Within this jurisprudential paradigm, the uniformity of legal application conventionally signifies the epistemological capacity of the pending adjudicative facts to be seamlessly subsumed within the predetermined scope of application established by the prevailing legal rules. Conversely, determinacy signifies that the statutory law has prospectively established a clear, unambiguous normative framework for the pending factual matrix, thereby ensuring the strict predictability of legal application; under such conditions, a legal gap will ostensibly not manifest. It is evident that the preceding demonstrative perspective is concentrated predominantly on the dimension of the "legal norm," thereby marginalizing the necessary evaluative consideration of the adjudicative facts. In response, this analysis posits that, evaluated through a pragmatist methodological lens, the teleological objective of legal application is the substantive resolution of the pending case. Consequently, the analytical locus must be firmly positioned upon the case itself, wherein the adjudicative facts within the judicial process can be ultimately reduced to specific, primal human behaviors and social realities.

Academic consensus generally attributes the emergence of the hidden legal gap to the inherent linguistic abstraction of legal norms, the fundamental indeterminacy of legal values, or the intrinsic ambiguity of the normative text. In simplified terms, this

paradigm perceives a structural defect or error within the law. However, circumscribed by the absolute requirement of normative universality, the law must necessarily operate as a generalized formulation. Therefore, the 喇 mentioned legal indeterminacy and textual ambiguity must not be evaluated as errors or defects inherent to the legal system. The locus of the error does not reside within the law itself, nor within the legislative body, but rather within the inherent ontological nature of human behavior and social life. As the ultimate subject of normative regulation, the substantive content of human behavior is intrinsically dynamic, contingent, and incapable of exhaustive and precise *a priori* articulation by even the most enlightened legislator. Concurrently, driven by the continuous evolution of the underlying societal infrastructure, economic relations, and technological capabilities, these behaviors undergo corresponding structural modifications. Consequently, legal norms will inevitably encounter factual exceptions—atypical, highly idiosyncratic scenarios that fit the literal text of the rule but completely subvert its logic ^[8]. This mismatch inexorably leads to the materialization of legal gaps. Ultimately, if the ontological subject requiring measurement (human behavior) possesses inherent indeterminacy and boundless variety, the epistemological metric utilized for that measurement (the statutory text) must similarly reflect that indeterminacy, giving rise to hidden gaps when rigid text meets fluid reality.

2.2 The Statutory Violation of the Normative Plan

Analyzed strictly from the dimension of the legal norm, the manifestation of a hidden legal gap is not generated by the absolute absence of an applicable statutory provision for the specific case, but rather because the application of that formally valid legal rule is materially inappropriate. This necessitates a fundamental methodological shift in the comprehension of legal norms: moving from a superficial reliance on the possible scope of the statutory text toward a profound normative evaluation of the underlying legislative plan embedded behind the statutory framework. Linguistic terminology itself constitutes a complex, fluid amalgamation of significations. The "possible semantic scope" of a statutory provision, acting as a comprehensive synthesis of meaning, does not possess a rigidly defined, unyielding external boundary; rather, it constitutes an elastic semantic zone that harbors substantial variables and permits a designated degree of interpretative expansion and contraction. Therefore, the standard for delineating this precise semantic zone must be anchored in substantive teleological factors—namely, the internal legislative plan—rather than strictly formalistic textual constraints.

It is imperative to emphasize that, on the one hand, the "plan" implicated in the plan-violation nature of the hidden legal gap is neither rigidly static nor exclusively singular; its determination necessitates a comprehensive evaluation deeply integrated with the specific applicatory context of the individual case. As classical methodologists accurately observed, it is precisely during the consideration of the applicability of the norm to a specific, unforeseen category of factual circumstances that the normative text becomes theoretically questionable to the applier of the law ^[9]. The plan represents the rational, purposive design of the statute, and a gap occurs when the literal words violate this very design by over-extending the rule. On the other hand, the functional operation and normative binding force of the legislative

^[8] See Du Yu, "How is the 'Prohibition of Analogy' Possible in Criminal Law? A Methodological Suspense," *Peking University Law Journal*, no. 4 (2006), p. 410.

^[9] See Karl Larenz, *Methodenlehre der Rechtswissenschaft* (translated by Huang Jiazhen, Commercial Press, 2020), p. 393.

plan exhibit marked variations across different substantive branches of law, which conditions the permissibility of identifying a hidden gap. For instance, the fundamental principle of *nullum crimen sine lege* (no crime without law) within criminal jurisprudence enforces an absolute, strict threshold of entry, signifying the absolute normative force that only behaviors explicitly and unambiguously codified as criminal by statutory law can be subject to criminal penalization; here, the literal text acts as an impenetrable shield, and the reduction of a crime's scope via a hidden gap mechanism is heavily restricted. Conversely, examining the principle of autonomy of private rights within civil jurisprudence, the operative maxim that "everything not legally prohibited is freely permitted" establishes a significantly weaker threshold for case entry. Consequently, it remains strictly necessary to execute a comprehensive, holistic evaluation of the potential legislative plan underlying a legal rule in direct relation to specific contextual variables and branch-specific principles.

2.3 The Structural Contradiction Between Legal Certainty and Individual Case Justice

Within the architecture of judicial adjudication, the adjudicator seemingly applies an isolated legal norm; however, in substance, the adjudicator is engaging in a complex structural balancing of the adjudicative conclusion beneath the totality of the overarching normative cluster, thereby achieving a dialectical unity that transcends the isolated statutory text while remaining firmly embedded within the holistic legal system. In the context of a hidden legal gap, because an applicable legal norm formally exists for the case, the adjudicator can theoretically apply the legal rule directly in strict accordance with the statutory text, thereby deriving an adjudicative conclusion. Under such circumstances, this adjudicative conclusion ostensibly satisfies the formal normative requirements of legal certainty, as the adjudicator has structurally achieved "adjudication according to the law" and preserved the predictability of the legal order. However, in judicial practice, profound controversies surrounding landmark cases—such as specific high-profile illegal firearm possession cases where individuals were convicted for possessing toy guns that technically crossed an abstract semantic threshold of kinetic energy, or similar adjudicatory instances—clearly demonstrate that, although the case adjudication adhered to strict textual formalism, the ultimate substantive results severely neglected the intrinsic dialectical relationship between authentic social reality and statutory provisions ^[10]. Such outcomes blatantly violate the universal societal cognition of equity, reasonableness, and justice, fundamentally failing the mandate of individual case justice.

At this critical juncture, the adjudicator is compelled to methodologically reevaluate the precise mechanisms for the proper application of legal norms. Nevertheless, a specific cohort of formalist adjudicators and theorists harbors deep reservations that such a methodological departure constitutes a severe violation of the institutional mandate to adjudicate strictly according to the law. It is crucial to recognize that the adjudicative mandate to apply the law embodies a dual-layered jurisprudential significance: first, in a positive dimension, it mandates that the adjudicator must logically derive the final adjudicative conclusion based on the substantive content of the law through the rigorous application of the judicial syllogism, dictating that the adjudication must be fundamentally anchored in legal authority; second, in a negative

^[10] For the extensive academic discussion on the "Zhao Chunhua Illegal Firearm Possession Case," see Lao Dongyan, "Illegal Firearms and Ambiguous Criminal Law: A Criminal Hermeneutics Analysis of the Zhao Chunhua Case," *Criminal Law Review*, no. 1 (2017).

dimension, it requires that the adjudicator remains strictly constrained by the law and the overarching legal framework, preventing arbitrary judicial activism ^[11]. Observing strictly from the external manifestation of the emergence of a hidden legal gap, the judicial application of an "implicit exception" that resides outside the formal linguistic parameters of the statutory text appears highly susceptible to allegations of the abuse of discretionary power, judicial lawmaking, and *ultra vires* adjudication.

However, the substantive essence of this judicial action is strictly confined to the methodological procedure of gap filling—specifically, the rigorous search for a precise legal rule appropriately tailored to the unique exceptional circumstances of the pending individual case. It constitutes an act of creative application of the law, strictly dictated and constrained by the overarching normative purpose. Throughout this complex methodological process, although the adjudicator formally transcends the possible semantic limits of the statutory text, they are completely prohibited from creating an arbitrary rule *ex nihilo* without binding constraints. Instead, this generative procedure is executed under the strict directional guidance of the underlying legislative purpose. The cognitive processing and operational logic of the adjudicator remain teleologically loyal to the fundamental spirit of the statutory law; consequently, the procedure does not violate the established adjudicative rules embedded within the statutory system .

For example, landmark judicially binding judgments in civil defamation cases involving public figures have structurally established the rule regarding the "necessary restriction of the personality rights of public figures" in relation to public supervision and freedom of the press. While this judicially created rule superficially exceeds or restricts the explicit, unconditioned codified provisions of the general civil statutory text, it remains profoundly anchored in the generalized legal spirit concerning the protection of personality rights, freedom of expression, and systemic balance, aligning harmoniously with the overarching institutional framework and legal order. Therefore, the "implicit exception" inherently constitutes an intrinsic component of the statutory provision's true meaning; it remains unexpressed merely due to limitations in legislative drafting techniques or inherent deficiencies in initial legislative comprehensiveness. In actual application, it remains rigorously contained within the total legal order and the fundamental framework of legal principles upon which that order is established. Ontologically, this methodology does not seek to mutate or modify the foundational purpose of the law; rather, it aims precisely to actualize that purpose through a necessary, justified modification of the semantic text. It categorically constitutes an interpretative maneuver that, while appearing formally disloyal to the strict literal text, fundamentally and obediently actualizes the law at the deep ideological and teleological level ^[12].

3. Methodological Mechanisms for Filling the Hidden Legal Gap

3.1 Jurisprudential Foundations: The Legitimization of Teleological Reduction

Evaluated through both academic theoretical paradigms and empirical judicial

^[11] See Karl Larenz, *Methodenlehre der Rechtswissenschaft* (translated by Huang Jiazhen, Commercial Press, 2020), p. 393.

^[12] See Bernd Ruethers, *Rechtstheorie* (translated by Ding Xiaochun & Wu Yue, Law Press China, 2013), p. 386.

adjudicative practice, the central methodological instrument utilized for filling the hidden legal gap is teleological reduction. The concept of teleological reduction signifies a highly refined methodological procedure whereby, despite the fact that the text of the statutory law is formally clear, unambiguous, and semantically comprehensive, the operational boundaries established by that literal text are excessively broad when evaluated against the internal purpose of the statutory law or when comparatively assessed against the general teleology of the legal system. Consequently, it becomes structurally and methodologically necessary to contract, narrow, and restrict the semantic scope of the text by systematically introducing a necessary restrictive norm or exceptional clause, thereby aligning the functional application of the law securely within the precise domain dictated by the legal purpose. Analyzed from its specific operational manifestations, although teleological reduction formally departs from the strict literal text of the statutory law, it substantively functions as a highly accurate translation of and rigorous adherence to the legal purpose. Its paramount objective is the superior realization of the legal purpose, and it simultaneously fully complies with the strict jurisdictional parameters defining the mandate to adjudicate according to the law, as it prevents the law from defeating its own ends ^[13].

Teleological reduction must be strictly differentiated from restrictive interpretation in the narrow sense. Restrictive interpretation occupies a position squarely within the established boundaries of standard legal interpretation; its operational mechanisms remain strictly confined within the possible semantic limits of the statutory text, picking the narrowest meaning that the words can naturally bear. In sharp contrast, teleological reduction belongs exclusively to the distinct methodological domain of legal gap filling; its operational procedures definitively transcend and break through the possible semantic limits of the text, functioning as a substantive structural modification of the text based entirely upon the overarching normative purpose. While both methodological mechanisms share the common operational trajectory of "reduction" or restriction of a rule's scope, they exhibit fundamental ontological differences regarding their respective normative hierarchies, strict operational boundaries, and justificatory requirements. The accurate theoretical differentiation of these two concepts possesses critical practical significance, enabling adjudicators to execute the precise selection of appropriate methodological instruments and to avoid cloaking a major gap-filling operation in the deceptive guise of standard text interpretation.

3.2 Operational Paradigm: Determination of Restrictive Content and Teleological Justification

Structured firmly upon the foundational logic of teleological reduction, the strict adjudicative trajectory for filling the hidden legal gap can be systematically organized into the following two indispensable, sequential operational stages.

First, the strict determination of the specific content of the restriction. When a standard fact of daily social existence is subjected to rigorous legal evaluation, it crystallizes into a formal adjudicative fact. The adjudicator utilizes this fact to locate a corresponding normative rule possessing a defined legal consequence and proceeds to normally apply the legal norm in strict accordance with the statutory text. At this juncture, although the adjudicative fact can be formally subsumed within the

^[13] See Ernst A. Kramer, *Juristische Methodenlehre* (translated by Zhou Wanli, Law Press China, 2019), pp. 190-191.

established scope of application of the legal norm, the final adjudicative conclusion derived from this subsumption profoundly conflicts with the "legitimate expectation" residing within the adjudicator's internal cognitive framework. This specific expectation is an absolute prerequisite of practical rationality, because during the adjudication of a case, the adjudicator is unavoidably influenced by their inherent "pre-understanding", which generates a definitive degree of presupposition or logical deduction regarding the case based on professional experience and shared legal values. This specific "pre-understanding" may lead the adjudicator to deduce that the pending case likely constitutes a structural exception to the generalized factual scenario codified by the statutory text, thereby necessitating a profound and exhaustive analysis of the intrinsic relationship between the pending case and the formal text of the legal norm. The objective is to definitively ascertain whether the pending case falls within an exceptional circumstance of the norm, or whether the legal norm itself possesses inherent structural exceptions.

Evaluated through the rigorous logical framework of the judicial syllogism, the substantive essence of determining the content of the exception involves applying a restrictive exposition to the deep connotations of the statutory provision via formal textual modification. This process firmly establishes a newly constructed major premise upon which the individual case adjudication can rely, generating the following modified operational logic: "M is P (Major Premise); M1 is not M (Minor Premise); therefore, M1 is not P." Based on the hierarchical priority of legal certainty, systemic purposiveness, or structural utility over the isolated demand for individual case justice, the adjudicator is strictly required to exhaust the application of narrow legal interpretation methods (including literal interpretation, systematic interpretation, teleological interpretation, and restrictive interpretation) prior to confirming the existence of a hidden legal gap, thereby ensuring the correct application of the law and respecting the legislative text to the maximum extent possible. Once the existence of the exceptional circumstance is irrevocably confirmed, the adjudicator must guarantee the structural rationality of deploying the teleological reduction method and must extensively demonstrate and justify its legitimacy within the formal text of the judgment. Furthermore, regarding the formal structural expression of the content of the exception, it is conventionally articulated utilizing restrictive linguistic formulations such as "except for..." appended directly following the original statutory provision. It requires paramount emphasis that, despite the fact that the content of the exception originates from a highly specific individual case, the adjudicator is strictly prohibited from directly elevating the concrete, idiosyncratic facts of the individual case into the formal content of the hidden legal gap. The adjudicator must subject the facts to an appropriate degree of methodological abstraction and precise inductive generalization, thereby forging a generalized restrictive rule possessing universal normative applicative significance for all future similar cases.

Second, the rigorous justification of the legitimacy of the reduction through teleological demonstration. The legal purpose constitutes the absolute logical genesis, the fundamental controlling parameter, and the ultimate evaluative standard of teleological reduction. Consequently, the validity of the foundational premise—that "the pending case structurally diverges from the standard case encompassed by the normative text"—must be exhaustively demonstrated and proven exclusively from the perspective of the legal purpose. Specifically, the following stringent standards and multi-dimensional parameters must be rigorously observed:

The first parameter demands absolute adherence to the objective standard of legislative purpose. The methodological investigation of legislative purpose constitutes an exceptionally complex procedure; within individual case adjudication, it relies heavily upon the adjudicator's professional judgment, epistemological cognition, and value balancing, thereby necessarily implicating multiple subjective variables. The legislative purpose, serving as the foundational bedrock for the application of teleological reduction, must be derived through a comprehensive integration of multiple analytical vectors, including the precise textual content of the statutory provision, its specific regulatory trajectory, the historical legislative background, the preparatory works, and the overarching structural architecture of the legal code within which it resides. This exhaustive analysis is required to accurately ascertain the genuine legislative intent and to precisely conceptualize the legislator's regulatory will or normative purpose^[14]. The objective standard of legislative purpose is conceptualized in direct opposition to the purely subjective judgment or personal ideological preferences of the individual adjudicator. Crucially, a strict theoretical demarcation must be maintained between this specific legislative purpose and highly abstract, purely directional fundamental legal values or generalized judicial policies^[15]. Failing this demarcation, relying on overly broad and amorphous objectives as justification would theoretically permit the validation of arbitrary modifications to the statutory text. Consequently, the teleological investigation required for teleological reduction must be strictly localized to the specific disputed statutory provision, minimizing the hermeneutic distance between the stated purpose and the provision itself to the greatest extent possible, thereby strictly precluding generalized, abstract theoretical discourse.

The second parameter requires strict adherence to the hierarchical logic of teleological investigation. Legislative purpose intrinsically exists across multiple stratified levels, generally encompassing an overarching systemic purpose of the entire legal order, secondary structural purposes of a specific legal institution, and specific textual purposes of an individual provision^[16]. The rigorous demonstration that the filling of the hidden legal gap aligns perfectly with the legislative purpose must strictly follow a defined operational sequence: progressing from "the explicit purpose embedded within the direct textual expression" → "the overarching purpose pursued by the superior legal institution" → "the total systemic purpose prescribed by the comprehensive legal code" → "the macro-level purpose, evaluated under exceptional circumstances, achieved by integrating other relevant statutes and analyzing them within the holistic framework of the entire legal order." Within this structured investigative and demonstrative sequence, any analytical discussion regarding the superior-level purposes of a specific statutory provision must be strictly relegated to the status of a reference parameter and an auxiliary methodological tool for ascertaining the genuine legislative intent. The ultimate purpose utilized to legitimize the teleological reduction must unequivocally return to the specific purpose most directly correlated with, or situated in closest proximity to, the disputed statutory provision. Any deviation from this strict requirement risks precipitating an improper

[14] See Bernd Ruethers, *Rechtstheorie* (translated by Ding Xiaochun & Wu Yue, Law Press China, 2013), pp. 308-309.

[15] See Yu Fei, "The Application of the Corrective Function of the Principle of Good Faith in Individual Cases: An Analysis Focusing on the Supreme People's Court's Judgment in the 'Huacheng Case'," *Chinese Journal of Law*, no. 2 (2022).

[16] See Zong Bo, "Teleological Reduction and Expansion in Filling Gaps of the Criminal Procedure Law," *Journal of National Prosecutors College*, no. 8 (2011).

and systemic recourse to general clauses, thereby jeopardizing legal certainty and leading to an unprincipled flight into generalized abstractions.

The third parameter mandates the strict utilization of substantive and systematic demonstrative methodologies. Grounded firmly upon the objective standard of legislative purpose, the demonstrative process must consistently deploy substantive, systematic, and structural logic. The adjudicator must strictly avoid evaluating the specific purpose of an isolated statutory provision in a vacuum. Instead, the provision must be seamlessly integrated into the comprehensive architecture of the legal normative system for a holistic macroscopic evaluation, absolutely ensuring that the newly reduced rule maintains total logical coherence, axiological harmony, and structural integrity with the overarching systemic purpose of the entire legal order.

3.3 Argumentative Imperatives: The Sufficiency of Judicial Reasoning and Adjudicative Justification

Providing a comprehensive, exhaustive, and rigorously detailed justification for *why* the teleological reduction was executed constitutes the absolute critical juncture in the methodological procedure of filling a hidden legal gap. Diverging fundamentally from the standard evidentiary and interpretive requirements for general legal application, the further the legal applier structurally deviates from the formal text of the law, the exponentially greater their corresponding jurisdictional obligation becomes to exhaustively explain, justify, and defend the precise rationale for that deviation ^[17]. During the operational deployment of the teleological reduction methodology, the adjudicator bears a profound obligation to provide sufficient judicial reasoning detailing precisely *how and why* the specific facts of the individual case structurally constitute a hidden legal gap. The adjudicator must meticulously articulate the exceptional nature of the individual case facts and precisely trace their logical and jurisprudential connection to both the overarching legislative purpose and the newly constructed restrictive rule. Surveying the totality of these argumentative imperatives, the central core of the process lies in rigorously demonstrating exactly why the unconditioned application of the statutory text is materially incompatible with the underlying normative purpose. This specific phase of logical demonstration is of paramount and determinative importance for securing the ultimate legitimacy, institutional acceptability, and authority of the entire adjudicative procedure.

Specifically, the judicial reasoning embedded within the formal adjudicative document must rigorously incorporate the following three hierarchical levels of analysis:

First, a rigorous exposition of the precise rationale dictating why the unique circumstances of the individual case structurally constitute a valid exception. In systematically categorizing and synthesizing the distinct characteristics of the individual case facts, the adjudicator must execute a highly structured, multi-layered exposition detailing exactly why the facts are exceptional and precisely how they constitute a structural exception. This degree of analytical rigor is necessary to ensure that the judicial identification of the exceptional circumstance is fully subjected to objective verification, public scrutiny, and robust jurisprudential debate, rather than appearing as an *ad hoc* exercise in judicial whim.

Second, the establishment of an impenetrable logical connection between the

^[17] See Bernd Ruethers, *Rechtstheorie* (translated by Ding Xiaochun & Wu Yue, Law Press China, 2013), p. 346.

legislative purpose and the identified hidden legal gap. The legislative purpose serves as the unbroken, central analytical axis running through the entire operational procedure of teleological reduction. The judicial reasoning must be developed strictly and exclusively around the gravitational center of the legislative purpose. The adjudicator must subject the specific constitutive elements of the disputed provision to rigorous teleological reduction, rationally and logically filling the hidden gap within the statutory framework. This strict adherence to legislative purpose is absolutely vital to preclude the issuance of judgments that conflict with the legislative intent and consequently incite widespread societal controversy, systemic legal instability, or political backlash.

Third, the deliberate methodological integration of critical socio-legal variables, including the evolutionary development of social relations. The manifestation of a hidden legal gap is, in certain instances, the direct consequence of inherent deficiencies in legislative comprehensiveness strictly dictated by the historical, economic, and socio-technical background conditions prevalent at the precise time of legislative drafting. Under such specific circumstances, the judicial reasoning must actively incorporate structural variables such as the dynamic evolution of underlying social relations, commercial practices, or technological advancements. The adjudicator must explicitly demonstrate and detail the substantive, material discrepancies between the historical social conditions existing at the precise moment of legislation and the current, operative socio-economic context. This comparative analysis provides a significantly more robust, factually grounded, and sociologically informed foundation for executing the teleological reduction, demonstrating that the reduction is a rational adaptation of the law's deep purpose to a mutated social reality.

4. Conclusion

The substantive ontological essence of the hidden legal gap is emphatically not the total absence of a legal norm, but rather the highly specific absence of an indispensably necessary restrictive norm within an overly broad text. This critical jurisprudential realization forces a fundamental, permanent shift in the locus of methodological observation: moving away from the merely negative, exclusionary judgment of "should not be covered," and toward the complex, positive normative inquiry of precisely "how the norm ought to be restricted." This shift definitively clarifies the essential nature of the hidden legal gap as a fundamentally teleological gap. The intrinsic inexhaustibility of adjudicative facts, the inevitable statutory violation of the normative plan by rigid textual rules, and the enduring, structural tension between the mandate for legal certainty and the demand for individual case justice collectively constitute the indispensable generative conditions of the hidden legal gap. These factors conclusively demonstrate that the manifestation of such gaps is not an accidental legislative oversight or an easily avoidable mistake, but rather the inevitable structural consequence of the inherent, permanent dichotomy between the absolute universality of the legal norm and the infinite particularity and fluidity of social facts.

Regarding the methodological mechanisms for filling these gaps, teleological reduction—operating through the sequential, progressive trajectory of determining the precise content of the restriction, rigorously demonstrating the normative purpose, and significantly fortifying the judicial reasoning—enables the adjudicator to achieve a

harmonious, substantive coordination with the ultimate purpose of the law, even whilst formally deviating from its explicit text. The cardinal problematic of legal gap theory does not lie merely in investigating exactly *why* the law possesses inherent limitations, but rather in meticulously examining *how* the judicial adjudicator, when confronted with a legally constrained framework, can systematically seek and secure a demonstrably justifiable equilibrium between unwavering obedience to the statutory law and the necessary responsiveness to the imperative of individual case justice. The rigorous study of the hidden legal gap definitively demonstrates that standard legal interpretation and the methodological filling of legal gaps are not starkly separated, mutually exclusive domains; rather, operating in tandem as complementary phases of legal rationality, they mutually constitute the continuous, unbroken process of the judicial development of law.