

MIND THE GAP: RECONCEPTUALIZING GAP-FILLING IN THE LAW REVIEW LITERATURE

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INTRODUCTION

Even a casual read of the introductory sections of law review articles reveals that those articles often fill gaps in the literature. Indeed, the conventional wisdom is that gap-filling is one of the most important functions of law review articles. Although the filling of gaps has given rise to a rich scholarly literature, we still lack a theoretical framework for the filling of gaps. Ironically, the many articles seeking to fill gaps have *themselves* given rise to a gap in the literature.

The reason for this “gap of gaps” or “meta-gap” is that scholars have accepted uncritically the *concept* of gap-filling, while failing to converge on a *conception* thereof. What gaps are law review articles filling? Where do these gaps come from? Do law review articles merely “seek” to fill gaps, or do they actually succeed in filling gaps? Are they filling “important” gaps? Do they merely “begin” to fill gaps or they complete the gap-filling process within a single article? Indeed, do gaps have any ontological status, or are they purely epistemic?

Despite over a century of sustained scholarly effort in law reviews, these questions have remained almost completely unexamined by scholars. There has been no systematic attempt to provide an account of gap-filling in the law review literature. This Article fills that gap.

Part I of this Article is the first systematic empirical investigation of how law review articles fill gaps in the literature. It sheds new light on gap-filling and uncovers important new evidence on the mystery of gaps. Part II of this Article follows Part I. The Conclusion concludes.

I. GAP-FILLING

This Part presents the results of a convenience sample of 504 references to gap-filling in law review articles that purport to “fill” one or more “gaps.”

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Table I, below, contains the results for those references that appeared at least three times.

TABLE I. TYPES OF GAP-FILLING.

Type of Gap-Filling	Number
this article fills that gap	50
this article attempts to fill that gap	22
this article fills this gap	22
this article begins to fill that gap	20
this article seeks to fill that gap	20
this article seeks to fill this gap	17
this article fills a gap	13
this article seeks to fill the gap	12
this article aims to fill that gap	11
this article fills the gap	10
this article attempts to fill this gap	8
this article attempts to fill the gap	5
this article begins to fill the gap	5
this article begins to fill this gap	5
this article fills an important gap	4
this article is to begin to fill this gap	4
this article aims to fill a gap	3
this article aims to fill this gap	3
this article aims to fill those gaps	3
this article attempts to fill a significant gap	3
this article begins to fill those gaps	3
this article is a first cut at filling this gap	3
this article is devoted to filling in the gap	3
this article is intended to fill the gap	3
this article seeks to fill that important gap	3
this article tries to fill that gap	3

Table I reveals that the rhetoric of gap-filling is not a rote incantation, but rather a complex, multidimensional phenomenon. Some articles “fill a gap,” while others “seek” or “attempt” to fill a gap. Yet another category of articles “begins” to fill a gap. Some articles fill “this” gap while others fill “that” gap, “the” gap, or even simply “a” gap.

The most common verbal formulation of gap filling, however, is when “This Article fills that gap,” presumably referring to an antecedent gap identified at some point *supra*. Yet even this formulation is present in only about 10% of the gap-filling samples, suggesting that gap-filling is a diverse phenomenon that defies simple—or at least simplistic—description.

The types of gaps being filled also vary. Although most articles merely filled a gap, a handful filled an “important” or a “significant” gap. Only two articles were “the first” to fill gaps.

It should be clear from this analysis that each of these dimensions can be mixed and matched, resulting in variegated patterns of gap-filling. However, that does not mean there is not an underlying structure to gap-filling. Indeed, “attempting,” “trying,” or “seeking” to fill a gap is more commonly associated with filling “that” gap than filling “this” gap. Table II presents a 2x2 table of “this” gap versus “that” gap by “attempting”/ “trying”/ “seeking” to fill a gap versus filling a gap.

TABLE II. THE STRUCTURE OF GAPS.

	ATTEMPTING/ TRYING/SEEKING TO FILL A GAP	ACTUALLY FILLING A GAP	TOTAL
“THIS” GAP	32	71	103
“THAT” GAP	52	107	159
TOTAL	84	178	262

A one-tailed Chi-square test of the contingency table gave a p-value of 0.3908, which is significant at the 60% confidence level. Clearly, there is much more to learn about gaps, as more fully developed in Part II, *infra*.

II. PART II

This Part II attempts to fill an important gap between Part I and the Conclusion.

CONCLUSION

The literature on gap filling is in its infancy, and much work remains to be done on understanding gaps in the literature and the filling thereof. But this Article takes a crucial first step toward the understanding of gaps and their broader significance within the scholarly literature.