



## NOTABLE LACUNAE

*Christopher Beauchamp*

IT IS A COMMON PRACTICE among law review editors to demand that authors support every claim with a citation.<sup>1</sup> On occasion, an author may wish to declare that a particular topic or argument has been entirely neglected by earlier commentary. In that circumstance, an editor's request for citation can cause two distinct problems.

One unfortunate scenario unfolds when the author, having been forced to check, finds that the point in question has been abundantly and clearly made elsewhere – for example, in the work of an unfashionable discipline, or in a publication that has the ill grace not to reside on an easily-searchable database. Preemption of this kind is a constant hazard because, after all, there is not much new under the sun.<sup>2</sup>

A second possibility, less common but still inconvenient, is that the topic truly is neglected, in which case an affirmative citation is metaphysically challenging.

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<sup>1</sup> Orin S. Kerr, *A Theory of Law*, 16 GREEN BAG 2D 111 (2012) (“It is a common practice among law review editors to demand that authors support every claim with a citation”).

<sup>2</sup> Cf. *Ecclesiastes* 1:9 (English Standard Version) (“there is nothing new under the sun”), abrogated in part by Abraham Lincoln, Address Delivered at the Dedication of the Cemetery at Gettysburg (1863) (“Four score and seven years ago our fathers brought forth on this continent, a new nation”) (emphasis added). See also Susan W. Brenner, PRECEDENT INFLATION 279 (1992) (partially pre-empting the present article by identifying the phenomenon of “negative citations” offered to show the absence of authority on a given point).

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This article addresses the latter problem by neglecting almost all topics. Your correspondent is conscious – vertiginously so – of the vast terrain as yet unmapped by human inquiry, not to mention the startling insights that lurk unseen beneath our noses. Yet no worthwhile inquiries are attempted here. This page can therefore serve as exemplary citation for the unjustified lack of attention paid to literally countless subjects. If indeed you have been directed here by a footnote, then you may rest assured that its author has identified just the sort of lacuna that is so frequently and deplorably<sup>3</sup> overlooked.

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<sup>3</sup> See, e.g., Christopher Beauchamp, *Notable Lacunae*, 20 GREEN BAG 2D 313 (2017).