

Enough Is as Good as a Feast

Noah C. Chauvin*

ABSTRACT

Ipse Dixit, the podcast on legal scholarship, provides a valuable service to the legal community and particularly to the legal academy. The podcast’s hosts skillfully interview guests about their legal and law-related scholarship, helping those guests communicate their ideas clearly and concisely. In this review essay, I argue that *Ipse Dixit* has made a major contribution to legal scholarship by demonstrating in its interview episodes that law review articles are neither the only nor the best way of communicating scholarly ideas. This contribution should be considered “scholarship,” because one of the primary goals of scholarship is to communicate new ideas.

CONTENTS

INTRODUCTION	1
I. THE SHOW	2
II. THE FEAST: <i>IPSE DIXIT</i> ’S ROLE IN LEGAL SCHOLARSHIP	6
CONCLUSION.....	16

INTRODUCTION

This essay is a “book” review of *Ipse Dixit*, a podcast on legal scholarship. At first blush, a review of a podcast might seem strange. Book reviews, at least the sort that are published in law reviews and journals, are meant to summarize a substantial work of legal scholarship, situate it within the universe of other relevant scholarship, and critically evaluate its

* William & Mary Law School, J.D., 2019; SUNY Geneseo, B.A., 2016. This paper benefitted from careful editing by Mychal Goode, Katherine Wecker, F. Chase Bonwell, and Hannah Hamley. In writing this paper, I was particularly inspired by Professor Brian L. Frye’s article *Plagiarize This Paper*, 60 IDEA: THE IP L. REV. 294 (2020). All errors—and all views—are strictly my own.

contributions.¹ Podcasts about the law—even thoughtful, carefully researched ones—usually do not qualify for a review because they are not substantial works of legal scholarship.²

In the typical *Iipse Dixit* episode, a host interviews a scholar about their recent work, usually a law review article. In this respect, *Iipse Dixit*, too, would seem unworthy of a review because it is the guests who are producing scholarship, not the hosts or the podcast as an institution. However, the ultimate goal of scholarship is not just to generate new knowledge, but also to share it with the world. In this regard, *Iipse Dixit* is worthy of review—and a glowing one at that—because of the creative and effective way it connects listeners to new ideas.

This review essay proceeds in three parts. In Part I, I provide background information on *Iipse Dixit*. I then describe the show’s origins, detail how each episode works, and explore the wide variety of subjects the show has covered. In Part II, I explain that *Iipse Dixit*’s contribution to legal scholarship is the way that it clearly and concisely conveys its guests’ ideas to listeners. I argue that legal scholars should note the means *Iipse Dixit* uses to achieve this end and apply them to their own scholarship. Lastly, Part III is a brief conclusion, which mirrors the codas of *Iipse Dixit* episodes.

I. THE SHOW

Iipse Dixit is the brainchild of Professor Brian L. Frye, who teaches at the University of Kentucky College of Law. Its episodes vary in structure, but they are most commonly interviews of various legal scholars.³ The interviews typically range in length from thirty to forty-five minutes, during which scholars discuss their recent work with one of the hosts. The episodes are hosted by Frye and a cast of co-hosts, including Professor Benjamin Edwards, Luce Nguyen, and Professor Maybell

1. See generally Sanford Levinson, *The Vanishing Book Review in Student-Edited Law Reviews and Potential Responses*, 87 TEX. L. REV. 1205, 1211–13 (2009).

2. Such reviews are not unheard of, though. See generally Jonathan D. Glater, *When a Reporter Enters a Bamboo Grove: Reflections on Serial*, 13 OHIO ST. J. CRIM. L. 503 (2016) (reviewing the podcast *Serial*).

3. There are three principal other types of episodes.

“From the Archives” consists of historical recordings potentially of interest to legal scholars and lawyers. . . . “The Homicide Squad” consists of investigations of the true stories behind different murder ballads, as well as examples of how different musicians have interpreted the song over time. . . . “The Day Antitrust Died?” is co-hosted with Ramsi Woodcock, Assistant Professor of Law at the University of Kentucky College of Law, and consists of oral histories of the 1974 Airlie House Conference on antitrust law, a pivotal moment in the history of antitrust theory and policy.

Iipse Dixit, ACAST (Apr. 17, 2020), <https://shows.acast.com/ipse-dixit/about> [https://perma.cc/56S7-BAQT].

Romero, as well as by occasional guest hosts.⁴ There is no doubt, though, that it is Frye's show: of the 396 interview episodes available at the time of writing, Frye has hosted 319 of them.

Regardless of who the host is, though, the effort that goes into creating each episode is apparent. The episodes start with the host asking the guest to provide background information about the general subject matter of the scholarly work being discussed. The hosts almost always ask narrow background questions that provide the listeners with enough context to understand the guest's thesis but not with more information than the listeners need. This is a difficult feat to pull off; it requires both ensuring that those who know nothing about the subject will be able to follow what the scholar's contribution to the literature is and that those with a background in that area are not bored with a prolonged discussion that adds nothing to their understanding. Fortunately for the listener, it is a balance that the hosts are consistently able to strike.

With the background material out of the way, the host turns the guest toward their thesis. Some guests work through their argument, taking few questions; others need to be led more firmly. Either way, the host gets them there in the end. After the guest has fully explained their contribution to the literature, the host typically asks about the implications of their work on other related scholarship and on how the law does or should work as a practical matter. It is at this point in the interview that the hosts really shine. They consistently display a broad knowledge of legal and law-related scholarship that allows them to ask thought-provoking questions. What is particularly impressive about this is that the hosts can do it across an incredibly broad range of subject matters.

And make no mistake, *Ipse Dixit* covers a broad range of subject matters. The show welcomes scholars to talk about their research on any law-related subject. Past episodes have explored scholarship on reforming the tax code,⁵ trademark law and the First Amendment,⁶ judicial evaluation of statistical evidence,⁷ the relationship between executive nonenforcement of the Logan Act and the Take Care Clause,⁸ intellectual

4. *See id.*

5. *Akram Faizer on Reforming the Tax Code*, IPSE DIXIT (June 30, 2019) (downloaded using iTunes).

6. *Lisa Ramsey on Trademark Law & the First Amendment*, IPSE DIXIT (July 1, 2019) (downloaded using iTunes).

7. *Jonah Gelbach on Judicial Evaluation of Statistical Evidence*, IPSE DIXIT (July 2, 2019) (downloaded using iTunes).

8. *Daniel Rice on the Logan Act & the Take Care Clause*, IPSE DIXIT (July 3, 2019) (downloaded using iTunes).

property law and the right to repair,⁹ private law alternatives to the Affordable Care Act's individual mandate,¹⁰ emojis and the law,¹¹ trust law and conflicts of interest of virtual representatives,¹² data privacy and information fiduciaries,¹³ Alan Turing's "halting problem" and the automation of legal practice,¹⁴ the craft beer industry,¹⁵ the *Lochner*-era Supreme Court and the Trump administration,¹⁶ how attitudes on deservingness and scarcity should inform disability policy,¹⁷ Canadian aboriginal rights and religious freedom,¹⁸ the trademark registration process,¹⁹ high-wealth family constitutions,²⁰ copyright law and collective authorship,²¹ tax law and religion,²² how frequently judges cite cases that parties cite in their briefs,²³ prescription drug policing,²⁴ unicorn company stock options,²⁵ trademark genericide,²⁶ Canadian constitutional

9. Leah Chan Grinvald and Ofer Tur-Sinai on the Right to Repair, IPSE DIXIT (July 6, 2019) (downloaded using iTunes).

10. Wendy Netter Epstein on Private Alternatives to the Individual Mandate, IPSE DIXIT (July 8, 2019) (downloaded using iTunes).

11. Eric Goldman on Emojis & the Law, IPSE DIXIT (July 9, 2019) (downloaded using iTunes).

12. Tom Simmons on Conflicts of Interest and Virtual Representatives, IPSE DIXIT (July 9, 2019) (downloaded using iTunes).

13. Lindsey Barrett on Data Privacy & Information Fiduciaries, IPSE DIXIT (July 10, 2019) (downloaded using iTunes).

14. Jeffrey Lipshaw on Turing, the Halting Problem, AI & Lawyering, IPSE DIXIT (July 11, 2019) (downloaded using iTunes).

15. Zahr Said on the Craft Beer Industry, IPSE DIXIT (July 12, 2019) (downloaded using iTunes).

16. Mila Sohoni on the *Lochner* Era & the Trump Administration, IPSE DIXIT (July 16, 2019) (downloaded using iTunes).

17. Doron Dorfman on Deservingness, Scarcity, and Disability Rights, IPSE DIXIT (July 16, 2019) (downloaded using iTunes).

18. Howard Kislowicz on Canadian Aboriginal Rights and Religious Freedom, IPSE DIXIT (July 17, 2019) (downloaded using iTunes).

19. Ed Timberlake on Trademarks in the #Twitterverse, IPSE DIXIT (July 18, 2019) (downloaded using iTunes).

20. Allison Anna Tait on the Law of High-Wealth Families, IPSE DIXIT (July 18, 2019) (downloaded using iTunes).

21. Daniela Simone on Collective Authorship, IPSE DIXIT (July 19, 2019) (downloaded using iTunes).

22. Samuel Brunson on Taxing Religion, IPSE DIXIT (July 19, 2019) (downloaded using iTunes).

23. Alexa Chew & Kevin Bennardo on Citation Stickiness, IPSE DIXIT (July 22, 2019) (downloaded using iTunes).

24. Jennifer Oliva on Prescription Drug Policing, IPSE DIXIT (July 22, 2019) (downloaded using iTunes).

25. Anat Alon-Beck on Unicorn Stock Options, IPSE DIXIT (July 24, 2019) (downloaded using iTunes).

26. Jorge Contreras on "Sui-Genericide," IPSE DIXIT (July 24, 2019) (downloaded using iTunes).

originalism,²⁷ the Artists' Contract,²⁸ and how aesthetic aversion to disability encourages discrimination.²⁹ And that was in just one month!

The sheer variety of topics covered by the different episodes means *Iipse Dixit's* listeners do not get the prolonged, in-depth look at a single topic they would get from a more focused podcast. *Iipse Dixit's* coverage is a mile wide and is thus naturally somewhat shallow (though it goes much more than an inch deep!); because each episode is focused on a different scholarly work, time constraints limit how granular a focus each episode can have. *Iipse Dixit's* format simply precludes it from being able to provide listeners with in-depth coverage of any single subject matter.

As I discuss below in Part II, though, this format is hardly a weakness. There are other podcasts out there—an enormous variety of them—that provide in-depth coverage of a particular area. For instance, those primarily interested in the United States Supreme Court and the legal culture surrounding it would be wise to listen to *Strict Scrutiny*,³⁰ and those interested in young lawyers' NBA basketball takes should stick to *ShotTakes*.³¹ *Iipse Dixit* is simply doing something different. It is shallow out of a conscious effort to be broad: the hosts intentionally interview guests with a wide variety of academic focuses and backgrounds, aiming to expose listeners to a range of ideas that they likely have not previously considered. This is a goal they achieve with virtually every episode.

In this vein, *Iipse Dixit* is to be commended for the voices that it has elevated in addition to its consistently high quality. The show's hosts have done a remarkable job of highlighting the scholarship of those who have traditionally been underrepresented in the legal academy: women, persons of color, and LGBTQ+ individuals, to name just a few. Similarly, the show's episodes have featured students, practicing attorneys, teaching fellows, untenured faculty, and those affiliated with non-elite institutions—groups whose views and scholarship are often accorded too

27. Léonid Sirota on *Canadian Originalism*, IPSE DIXIT (July 25, 2019) (downloaded using iTunes).

28. Lauren van Haften-Schick on *the Artists' Contract*, IPSE DIXIT (July 30, 2019) (downloaded using iTunes).

29. Jasmine Harris on *the Aesthetics of Disability*, IPSE DIXIT (July 31, 2019) (downloaded using iTunes).

30. *Strict Scrutiny*, STITCHER, <https://www.stitcher.com/podcast/cheeky-amici/strict-scrutiny> [<https://perma.cc/45KW-7SXB>].

31. *ShotTakes*, STITCHER, <https://www.stitcher.com/podcast/shottakes> [<https://perma.cc/UW6V-VT7H>]. *ShotTakes*, incidentally, could greatly benefit from inviting Elizabeth Fouhey on to discuss NBA rule changes.

little weight by the academy. This has not occurred by happenstance; the showrunners have put in a concerted effort to make it so.³²

The American legal academy is still struggling to diversify.³³ Both its membership and its most prominent members are still comprised primarily of white men from privileged backgrounds; the academy is not representative of the diversity of the country or of the growing diversity of the legal profession.³⁴ Listening to *Iipse Dixit*, though, you would never know it.

II. THE FEAST: *IPSE DIXIT*'S ROLE IN LEGAL SCHOLARSHIP

An old saying counsels that “enough is as good as a feast.” The implication is that once you have had your fill of something, you will not get any use out of having more of it. In terms of what a person can use—what a person needs—there is no meaningful distinction between “just enough” and “more than enough.” While the precise origin of this saying is unclear,³⁵ we can be sure of one thing: its originators were not talking about legal scholarship.

While legal scholarship can take many forms, it most quintessentially is the law review article. Law review articles, on the whole, tend to be boring, sesquipedalian, and far longer than they need to be. They are usually feasts in the worst sense: wasteful in their excesses. This is hardly a new observation. In 1936, Professor Fred Rodell wrote *Goodbye to Law Reviews*, in which he criticized “the antediluvian or mock-heroic style in which most law review material is written.”³⁶ Professor Rodell observed that he was not the first person to criticize the stylistic excesses of law review articles and predicted that his criticism, too, would have no effect.³⁷

32. See, e.g., Brian L. Frye (@brianfrye), TWITTER (Nov. 7, 2018, 7:49 PM), <https://twitter.com/brianfrye/status/1060333469648257024> [<https://perma.cc/ADK3-8D9Y>].

33. See Jill Lynch Cruz, *Latina Lawyers—Still Too Few and Far Between: The Hispanic National Bar Association Latina Commission’s Efforts to Chart a More Open Path*, in IILP REVIEW 2017: THE STATE OF DIVERSITY AND INCLUSION IN THE LEGAL PROFESSION 219, 219–20 (2017), http://www.theiilp.com/resources/Pictures/IILP_2016_Final_LowRes.pdf [<https://perma.cc/G92H-VRAT>]; Lawprofblawg & Darren Bush, *Law Reviews, Citation Counts, and Twitter (Oh My!): Behind the Curtains of the Law Professor’s Search for Meaning*, 50 LOY. U. CHI. L.J. 327, 342–46 (2018).

34. See Cruz, *supra* note 33, at 219–20.

35. See *The Meaning and Origin of the Expression: Enough Is Enough*, PHRASE FINDER, <https://www.phrases.org.uk/meanings/enough-is-enough.html> [<https://perma.cc/573K-4394>].

36. Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38, 38 (1936).

37. *Id.* Despite his strong feelings about law review articles, and his prediction that he would write no more of them, Professor Rodell went on to write many more articles. See, e.g., Fred Rodell, *For Every Justice, Judicial Deference Is a Sometime Thing*, 50 GEO. L.J. 700 (1962). In his defense, though, the lengthiest of these papers was a whopping eleven pages. See Fred Rodell, *As Justice Bill Douglas Completes His First Thirty Years on the Court: Herewith a Random Anniversary Sample, Complete with Casual Commentary, of Divers Scraps, Shreds, and Shards Gleaned from a Forty-Year Friendship*, 16 UCLA L. REV. 704 (1969).

Professor Rodell's prediction was prescient. Eighty-four years later, many law review articles are still written in an antediluvian, mock-heroic style. The biggest criticism of them, though, is that they are just too long. To be sure, things are better now than they were. In the early aughts, the typical law review article was between seventy and one hundred pages long, and it was not unheard of for a journal to publish a 200-pager.³⁸ Thanks to a joint effort by eleven prominent law reviews, article length is significantly shorter now. Those law reviews, responding to a survey conducted by *Harvard Law Review* of nearly 800 professors, determined to "rethink[] and modify [their] policies as necessary" to discourage excessively long articles.³⁹ The journals indicated in a joint statement their belief that "[t]he vast majority of law review articles can effectively convey their arguments within the range of 40–70 law review pages."⁴⁰ Most law journals followed this lead, endorsing the joint statement and establishing policies designed to curb article length.

The most common of these policies is a word limit on the length of article submissions. *Harvard Law Review*'s policy is typical. It says that "[t]he *Review* strongly prefers articles under 25,000 words in length including text, footnotes, and appendices. Length in excess of 30,000 words will weigh significantly against selection. Only in rare cases will we unconditionally accept articles over 37,500 words."⁴¹ These word restrictions certainly help cut down article page count, although I am skeptical that they are as effective as the journals claim. The *Yale Law Journal*, for instance, estimates that a 25,000-word article is approximately fifty journal pages.⁴² In my own experience, a 25,000-word paper is much closer to seventy pages than it is to fifty.

Regardless, articles have overall become shorter in length, but there still remains the question as to whether shorter articles are actually better.⁴³ Some arguments simply need more space in order to be fully developed;

38. Michael C. Dorf, *Thanks to a Joint Statement by Top Law Journals, Law Review Articles Will Get Shorter, but Will They Get Better?*, FINDLAW (Feb. 28, 2005), <https://supreme.findlaw.com/legal-commentary/thanks-to-a-joint-statement-by-top-law-journals-law-review-articles-will-get-shorter-but-will-they-get-better.html> [<https://perma.cc/685B-V4DL>].

39. *Joint Statement Regarding Articles Length*, HARV. L. REV., https://harvardlawreview.org/wp-content/uploads/2014/03/articles_length_policy.pdf [<https://perma.cc/BL6H-5KWV>].

40. *Id.*

41. *Submissions*, HARV. L. REV., <https://harvardlawreview.org/submissions/> [<https://perma.cc/7NSZ-D2CS>].

42. *Volume 130 Submission Guidelines*, YALE L.J., https://www.yalelawjournal.org/files/GeneralSubmissionsGuidelines_zrc27u8k.pdf [<https://perma.cc/77ZJ-JTZL>].

43. See Carissa Byrne Hessick, *In Defense of Law Review Articles*, PRAWFSBLAWG (Apr. 9, 2018), <https://prawfsblawg.blogs.com/prawfsblawg/2018/04/in-defense-of-law-review-articles.html> [<https://perma.cc/H6M2-KQN8>].

it would be foolish to completely deny scholars the opportunity to use law review articles as a forum for these arguments.⁴⁴ As Professor Michael Dorf commented after the release of the joint law review statement, article selection is run by students who do not themselves have enough experience to evaluate an article's contribution to the literature.⁴⁵ This is still true today, fifteen years later, and so Professor Dorf's concern that authors writing on highly technical topics would likely cut down their argument in favor of providing extensive background material (in order to make them accessible to non-specialists) continues to be valid.⁴⁶ This means that shorter articles may actually be worse than longer ones, with authors sacrificing original argument in favor of additional background.

There is also anecdotal evidence that some professors have resorted to devious means to sidestep length restrictions. I had two experiences as a law journal editor that illustrate this point. The first was with a symposium author. The journal had informed the symposium participants that we expected short articles of no more than 12,000 words. Most authors complied, but one submitted a paper that was 40,000 words long. When the journal told the author that he would have to cut it down, he protested and implied that he might withdraw the article. The journal also received emails from some of his fellow symposium participants, encouraging the journal to accept the paper as originally submitted. The second experience was with one of my professors. She asked how journal was going, and I told her about my frustration at having to add citations to authors' work. It was my opinion that some of the articles we were editing would, if written by a student for a law school course, clearly violate our school's disciplinary policies against plagiarism. The professor told me that she would often finish writing an article and then go back through it and delete citations in order to make sure that she got it under the 25,000-word mark.

But while shorter articles are not automatically better, and professors have found strategies that allow them to continue to pump out longer articles, there is a legitimate question as to why the legal scholarship norm should be articles that are over fifty pages long. In other words, fifty-page articles are better than 100-page articles—or the dreaded 200-pager (on this point even defenders of longer articles agree⁴⁷)—but are they enough of a change? Yes and no, I think. The problem with one hundred page articles was not that they were never warranted but that they became the norm.⁴⁸ Similarly, the problem with fifty page, 25,000-word articles is not

44. *See id.*

45. Dorf, *supra* note 38.

46. *See id.*

47. *See* Hessick, *supra* note 43.

48. *See id.*; *see also* Dorf, *supra* note 38.

that they are necessarily too long; some arguments benefit from a 25,000-word exposition.⁴⁹ Rather, the trouble is that the 25,000-word article is the default form of legal scholarship. And the lengthy law review article *is* the default. It has become “the gold standard of legal scholarship.”⁵⁰

However, this is not to say that law professors only convey their ideas in articles; they also write newspaper op-eds, do media interviews, write blog posts, write articles for mainstream media outlets, pen books and online law review papers, tweet, and, yes, create podcasts.⁵¹ As Professor Carissa Byrne Hessick has written:

There are . . . many (perhaps too many) incentives for law professors to write non-scholarly pieces. Our reputations and egos benefit from publishing an op ed in a national newspaper, appearing on television, and other activities that are aimed at the general public. We feel good about those publications, other law professors appear to covet them, and our schools’ communications departments are delighted every time we engage in such behavior.⁵²

Despite these incentives for scholars to direct their efforts elsewhere, they continue to churn out lengthy law review articles by the thousands.⁵³ Why?

The answer is that there are incentives to write long-form articles, too. Unlike benefits such as swollen egos and delighting a school’s communications department that Professor Hessick describes as incentivizing scholars to produce informal types of work, many of these incentives are a matter of law school policy. These incentives begin before a scholar even lands a job as a law professor. Gone are the days when a person could become a law professor on the strength of a résumé that included membership on the *Harvard Law Review* and a Supreme Court clerkship. Today, to become a law professor, a candidate typically has to

49. See Hessick, *supra* note 43.

50. Cf. Orly Lobel, *The Goldilocks Path of Legal Scholarship in a Digital Networked World*, 50 LOY. U. CHI. L.J. 403, 405 (2018).

51. See *id.*; see also Lawprofblawg, *Are Law Review Articles a Waste of Time?*, ABOVE THE L. (Apr. 17, 2018), <https://abovethelaw.com/2018/04/are-law-review-articles-a-waste-of-time/> [https://perma.cc/53TU-GTQ8]; Eric Segall, *The Future of Lengthy Law Review Scholarship*, DORF ON LAW (Apr. 9, 2018), <http://www.dorfonlaw.org/2018/04/the-future-of-lengthy-law-review.html> [https://perma.cc/8V7X-77K8].

52. Hessick, *supra* note 43.

53. See Segall, *supra* note 51.

be published at least once in a law journal; at most schools they will be expected to have been published multiple times.⁵⁴

To facilitate the writing of these articles, dozens of law teaching fellowships and visiting assistant professorships have cropped up around the country.⁵⁵ These fellowships allow would-be scholars to spend two to three years as junior varsity members of a law school faculty, developing their teaching ability and a research agenda, and writing the article(s) they will need to have in order to be competitive on the tenure-track teaching market.⁵⁶ No longer is a willingness to do the work and some ideas about potential articles enough to even obtain one of these fellowships; the host schools now expect that fellowship candidates will have, at minimum, “a substantial paper in production . . . and many have much more.”⁵⁷ The standards are even higher for those without the traditional law professor pedigree, who, consequently, are expected to show “a lot more” ability than those who come from an elite background.⁵⁸

Once a person has a tenure-track law teaching job, the incentives to produce long-form articles do not stop. This is because pre-tenure law professors “are expected to write 3-5 50-60 page articles in 5 or 6 years” to qualify for tenure.⁵⁹ And even with tenure, the pressure to continue publishing articles is not alleviated because professors who hope to earn further promotions must continue to write law review articles or risk the wrath of promotion committees.⁶⁰ For these reasons, junior faculty are warned to think hard about whether it is a good idea to publish such things as book reviews and essays for online law review supplements.⁶¹

Even senior scholars feel these pressures. When I was a journal editor, I asked a chaired professor at my school how our journal could go about getting more scholars to publish in our online supplement. He explained that none of his peers wanted to publish in the online

54. See Jessica Erickson, *Interview with Jeanne Merino on the Thomas C. Grey Fellowship Program at Stanford Law School*, PRAWFSBLAWG (July 5, 2019), <https://prawfsblawg.blogs.com/prawfsblawg/2019/07/interview-with-jeanne-merino-on-the-thomas-c-grey-fellowship-program-at-stanford-law-school.html> [https://perma.cc/NT6T-ESNL].

55. *See id.*

56. *See id.*

57. *Id.*

58. *Id.*

59. Segall, *supra* note 51.

60. *See id.*

61. See Chris Walker, *How Do I Make Sense of Online Law Reviews?* (*Jr. Law Prawfs FAQ*), PRAWFSBLAWG (Apr. 8, 2016), <https://prawfsblawg.blogs.com/prawfsblawg/2016/04/how-do-i-make-sense-of-online-law-reviews.html> [https://perma.cc/6MW3-BWPA]; Chris Walker, *Is Publishing a Book Review in a Law Review Still a Worthwhile Pretenure Endeavor?* (*Jr. Law Prawfs FAQ*), PRAWFSBLAWG (Apr. 6, 2016), <https://prawfsblawg.blogs.com/prawfsblawg/2016/04/is-publishing-a-book-review-in-a-law-review-still-a-worthwhile-pretenure-endeavor.html> [https://perma.cc/7S7T-MQJG].

supplements—at least outside of the supplements to the top law reviews—because they did not think that anybody read them. (I refrained from retorting that perhaps nobody read the supplements because nobody would write for them, but only barely.)

In addition to the formal incentives such as career opportunities, there are informal incentives for producing 25,000-word articles. While a professor's peers may well covet informal publications in the manner in which Professor Hessick describes, it is also true that professors look down on those of their number who do not produce traditional law review articles. Indeed, those who “effectively g[i]ve up on legal scholarship entirely, concentrating on their teaching and other endeavors” have been described as “hardly deserv[ing] the name scholars.”⁶² Endeavors such as blog posts, op-eds, and essays written for mainstream media outlets are considered “non-scholarly.”⁶³ A professor who devotes time to them at the expense of writing law review articles risks being “no different than a pundit.”⁶⁴

Even those who are supportive of law professors using less formal means to communicate their ideas do not go so far as to consider those means “scholarship.” For instance, Professor Orly Lobel, in an essay that spoke positively of law professors spending time on blogs, social media posts, and op-eds, still referred to such activity as “*supplementing* traditional publication of research with other modes of writing and online exchanges” rather than being scholarship itself.⁶⁵ *Ipse Dixit* has been described as “scholarly activity” in the vein of writing an editorial or reviewing a colleague's draft articles but “not scholarship.”⁶⁶

Although I disagree with these assessments of what qualifies as scholarship, I want to make clear that I do think they raise valid concerns. The essence of scholarship is extensive research and deep thinking; it is using one's expertise to identify and solve new problems and to provide fresh perspectives on old ones. In an age when everyone and his brother (and here I use male pronouns deliberately) has a podcast, the simple act of picking up a microphone and telling the internet about something you think you know a little bit about clearly does not qualify as scholarship. But that is not the same thing as saying that a podcast or an op-ed or a blog can never be scholarship. They can.

62. Dorf, *supra* note 38.

63. Hessick, *supra* note 43.

64. *Id.*

65. Lobel, *supra* note 50, at 405 (emphasis added).

66. Lyrisa Lidsky (@LidskyLidsky), TWITTER (Dec. 5, 2019, 4:55 AM), <https://twitter.com/LidskyLidsky/status/1202572102873710595> [<https://perma.cc/5R99-KGXL>].

Enter *Iipse Dixit*. I noted in the introduction that it might seem strange to write a “book” review about a podcast. To begin, book reviews are meant to be reviews of, well, books. Beyond that, though, the review essays that appear in law reviews are supposed to summarize a work of substantial (usually legal) scholarship, situate it within the universe of related scholarship, and perhaps explain how some of the author’s own ideas interact with the ideas in the book being reviewed.⁶⁷ By that measure then, *Iipse Dixit* would seem unworthy of this sort of formal review. Measured against the standard I outlined in the previous paragraph, *Iipse Dixit* would not even be considered a work of scholarship at all, let alone a substantial one. Rather than developing new ideas itself, *Iipse Dixit* provides a forum in which others can share ideas that they have developed elsewhere. However, the problem with the description I provided of the “essence of legal scholarship” is that the description is incomplete.

Scholarship of any kind is not just about using expertise to develop new ideas. That is only half the battle, and the less important half, at that. Scholarship is also about *communicating* those ideas.⁶⁸ Without communication, the ideas are worthless. A person who discovers new knowledge and ruminates on it without sharing it with the world is not a scholar; they are a monk. Monks strike me as largely good and honorable people doing important work. The world probably needs them. It does not need them on law school faculties—indeed, it would be a great disservice to have them there.⁶⁹

If the goal of legal scholarship is not just to generate new ideas but also to effectively communicate them, then one has to wonder at the ubiquity of the law review article. Is it really the best way to communicate new legal ideas? To be sure, 25,000-word articles have some advantages. They invariably provide the reader with enough context to situate the author’s thesis within the broader universe of relevant law and scholarship.⁷⁰ This context (in theory) allows the reader to evaluate the relative strength of the author’s argument. Too, some nuanced arguments need more space in which to be developed; they could not be made effectively in less than fifty to sixty pages.⁷¹ The *Iipse Dixit* podcast helps demonstrate why neither of these arguments persuasively explains why law review articles are the “gold standard” of legal scholarship.

67. See Levinson, *supra* note 1.

68. See Lobel, *supra* note 50, at 405-06.

69. I mean no disrespect to monks. Some of the world’s great scholars have in fact been monks, which makes my rhetoric here a little over the top. Thankfully, one of the characteristics of the monastic enterprise is that its practitioners tend to be forgiving people.

70. See Dorf, *supra* note 38.

71. See Hessick, *supra* note 43.

First, law review articles are a poor means of giving a reader sufficient background material to allow them to critically evaluate the article's thesis. To begin with, in most fields it will be impossible to fully catalogue the relevant legal materials and scholarly works; there will simply be too much material to cover. That means that an author must necessarily make choices about what background material they give their reader. There will be a natural tendency to provide the reader only with background material that supports the author's position. Intellectually honest scholars recognize that most issues worth writing about are not black and white, and they will likely include some contextual material that undercuts their thesis. However, a scholar is steeped in their particular area and still believes in their thesis. If they include material that runs counter to that thesis, it is because they believe that their argument or the sources they have to support it outweigh any counterarguments.⁷²

In this way, while the background materials in a law review article provide some context for the article's argument, these materials are not particularly useful in helping the reader objectively assess the argument. Indeed, one wonders what the purpose of the extensive background sections of law review articles is. Those who wish to gain an understanding of the article's subject matter would be better served by going to other sources—textbooks, treatises, and Wikipedia articles, to name just a few—which will at least in theory provide a more balanced overview. Most people that read law review articles, though, will not need to do this. An article's primary audience will typically be scholars who study the same subject.⁷³ These scholars do not need the extensive background a law review article typically provides because they are already familiar with the subject matter.

Instead, it seems clear that the extensive background sections typical of law review articles are a function of “the need to write [articles] in a way that non-specialists can appreciate,” as Professor Dorf has observed.⁷⁴ This need flows from the fact that second- or third-year law students are the people who typically choose articles for publication, and they will usually not have an extensive knowledge (or, perhaps, any knowledge at all) of an article's subject matter.⁷⁵ And because the goal of providing the background will be to show these students why an article is worthy of publication, there will be even more pressure on authors to ensure that the materials tilt in favor of the thesis and in favor of the thesis's importance.

72. See, for example, this and the following paragraphs.

73. See Lobel, *supra* note 50.

74. Dorf, *supra* note 38.

75. See *id.*

So, the background materials do serve a purpose, but they are not particularly useful to the article as a work of scholarship. Instead, they work primarily to ensure that an article is published.

While some background material is usually necessary to understand an argument, its scope is limited to just enough context for the reader to know what the argument is, not to critically evaluate it. As described in Part I, this is a delicate balance but one that *Ipse Dixit* consistently strikes. Each interview episode begins with the guest providing background material that may be helpful to the listener, which is followed by very tailored questions from the host. The focus of each episode is on the issue the guest's scholarship seeks to address, not on background principles of law or policy or (usually) on other scholarly approaches to the problem. That information might come later, but it is not the focus. Indeed, questions asking the guest to situate their argument within the universe of related scholarship are often among the last that the host will ask. This allows the focus of each episode to be on exploring the nuances of the guest's argument, undiluted by unnecessary or unhelpful information.

Ipse Dixit's hosts do not engage in peer review. The show's philosophy is to take all comers, and besides, knowledgeable as the hosts are about the law and expert as they are in certain areas of it, the show's subject matter is too generalized for the hosts to effectively review more than a small fraction of the scholarship they discuss. This is, however, not a weakness. Subject-matter experts are still able to assess the strengths and weaknesses of a guest's arguments because they already have the background knowledge to do so. While non-expert listeners do not have that same background, the show fills in the gaps. Non-expert listeners are in much the same position they would have been had they read a 25,000-word law review article making the same arguments, except here, their ability to judge the merits of an argument is often better for having heard it on the show since the hosts frequently ask questions that probe the limits of their guest's arguments.

On now to the notion that 25,000-word law review articles are an effective means of conveying particularly complex or nuanced ideas that need more space to be fully developed. While it is true that some arguments are complicated and do require more explanation in order to be fully understood, it does not follow that 25,000-word law review articles are necessary to convey these abstract ideas or are even the best way to do so. Many *Ipse Dixit* episodes cover material that is complex, technical, and otherwise difficult for people unfamiliar with that area to understand. The back-and-forth method of the interviews, though, makes difficult material digestible in two ways.

First, the host is able to ask questions about particular nuances of the guest's argument that they find difficult to understand. The guest can then explain these nuances and get real-time feedback on whether their explanation has landed before moving on. Second, perceptive guests will be able to tell from a host's questions or comments whether there are aspects of the argument that the host—perhaps without realizing—does not understand. This allows the guest to give unprompted explanations that may be helpful to both the host and, ultimately, the listener.

Of course, no system is perfect. Even skillful interviewers and interviewees will have difficulty communicating complex ideas in granular detail by podcast. (Indeed, virtually every *Ipse Dixit* episode ends with the host urging listeners to read the full work of scholarship that was discussed, to get the full benefit of material not discussed during the interview.) A 25,000-word law review article, though, can be as granular as its author wants it to be. Moreover, there are ways to simulate the benefits of a back-and-forth interview in the article drafting process, such as asking people to review drafts of the article and to provide feedback on portions that do not make sense. The point is not that 25,000-word law review articles have no place in legal scholarship, it is rather that they are not the only, or necessarily most, effective means of effectively communicating complex arguments. As hundreds of *Ipse Dixit* episodes have demonstrated, these ideas can usually also be communicated in a thirty- to forty-five-minute interview.

On both scores, then, *Ipse Dixit* demonstrates that non-traditional forms of scholarship can be just as effective a means of communicating new ideas as the “gold standard” long-form law review article. These other forms of scholarship can help ensure that the consumer has only the background information she needs to understand the argument and is not swamped with superfluous material. They can also allow the scholar to assess whether the audience fully understands the nuances of their argument and adjust their explanation of it accordingly. Both features help the scholar to achieve the second core goal of scholarship: sharing the new knowledge she has generated with the world.

This is *Ipse Dixit*'s great contribution to legal scholarship, and why it is worthy of review even though it itself does not generate new knowledge. The show allows scholars to share their work in a new way—a way that is more effective and easier to consume than most traditional legal scholarship. It demonstrates that law review articles are not the best or the only means of effectively communicating new ideas about the law. For this, we should all be grateful. We should also think hard about how

we can incorporate the lessons *Iipse Dixit* teaches into our own scholarship, traditional or not.

There is reason to hope that legal scholars are beginning to see non-traditional means of communicating their ideas as valid, even possibly as scholarship. In the three years I have been aware of the online law journal supplements, professors seem increasingly willing to publish in them. Jacob Mchangama's *Clear and Present Danger* podcast gave what can only be described as a scholarly review of the global history of freedom of speech.⁷⁶ One of the small blessings of the COVID-19 pandemic is that it has caused scholars to spend time developing new ways of communicating their knowledge and expertise. Professor Scott Shapiro's *Legality* podcast, an introductory course on jurisprudence complete with a syllabus and assigned readings, is an excellent example of this.⁷⁷ It seems quite possible that the general shift towards more creative forms of scholarship could be pushed forward as COVID-19 forces scholars to adapt to a new teaching and research environment.

It is my hope and belief that *Iipse Dixit* will continue to contribute to this process, whether it goes through a COVID-19-facilitated leap forward or not. Each interview episode of the podcast demonstrates that it is possible for scholars to convey nuanced ideas clearly and concisely. This process is not easy. It requires thinking carefully about what context is critical to understand an argument. It further requires drilling down to the core of an argument, understanding its nuances, and finding a way to communicate them. All of this takes a lot of work. Professor Frye, for instance, estimates that he spends four to five hours preparing for each *Iipse Dixit* interview.⁷⁸ Done right, this work leaves the consumer with enough information to understand a scholar's ideas, but limits unnecessary information the consumer does not need. And enough, after all, is as good as a feast.

Iipse Dixit gives the listener the best of both worlds. With its sheer volume and variety of episodes, it is no doubt a feast. The best part of the podcast, though, is that each episode is unquestionably enough.

CONCLUSION

If *Iipse Dixit*'s interviews are as good as a feast, the archival recordings that conclude each episode are the dessert. The recordings are

76. See *Clear and Present Danger*, FREE SPEECH HIST., <http://www.freespeechhistory.com/> [<https://perma.cc/V3Q2-F6ST>].

77. See Scott Shapiro, *Jurisprudence Course*, ANCHOR, <https://anchor.fm/scott-shapiro> [<https://perma.cc/8PEQ-H73W>].

78. Brian L. Frye (@brianlfrye), TWITTER (Sept. 2, 2019, 7:29 PM), <https://twitter.com/brianlfrye/status/1168667351149154304>.

typically songs but have also been old commercials, speeches, or news broadcasts. Each recording is related in some way to the work that was discussed during the body of the episode, though some recordings seem more tangentially related than others.⁷⁹ It therefore seems appropriate to end this review of *Ipse Dixit* in the spirit of these codas, with some tangentially related musings on another aspect of legal academia:

Plagiarism is not a crime or even a cause of action.⁸⁰ But it is the “academic equivalent of the mark of Cain,” a curse that cannot be undone.⁸¹ Even an unsubstantiated accusation leaves an indelible stain, and a credible complaint cannot be countered. A plagiarist is an academic pariah, a transgressor of the highest law of the profession, the embodiment of the “great deceiver,” who leads everyone astray. Anything else can be forgiven, for the sake of the scholarship. Plagiarism tarnishes the scholarship itself and leaves it forever suspect. If the purpose of scholarship is dowsing for truth, then the plagiarist is a liar who poisons the well from which everyone draws.

I disagree. Plagiarism norms are primarily an extra-legal, inefficient, and illegitimate way for academics to claim property rights in the public domain. Copyright cannot and should not protect ideas, and plagiarism norms are simply copyright by other means. Attributing ideas should be voluntary, not mandatory. Academics should provide citations because they are helpful to readers, not because they are an obligatory form of obeisance. We should encourage people to attribute ideas whenever helpful and appropriate, but we should refuse to recognize the self-interested and unreasonable claims of those who seek to enforce plagiarism norms for their own sake and in their own interests.

I think there is a great series of papers to be written in this vein. Perhaps one day I will write it.

79. To be clear, this is not a criticism. I cannot imagine that I would be able to find an archival recording that was even *tangentially* related to an episode about, say, emoji law. See *Eric Goldman on Emojis & the Law*, *supra* note 11.

80. Brian L. Frye, *Plagiarism Is Not a Crime*, 54 DUQ. L. REV. 133 (2016).

81. K.R. ST. ONGE, *THE MELANCHOLY ANATOMY OF PLAGIARISM* 61 (1988).