One's theory of law matters. The approach one takes to how that language should be applied influences both the permissible content of legislation and its interpretation by the judiciary. In *No Law: Intellectual Property in the Image of an Absolute First Amendment*, Duke Law School professors David Lange and Jefferson Powell make the case for interpreting the First Amendment's language in absolute terms, so that the phrase "Congress shall make no law... abridging the freedom of speech or of the press" should, in their view, be interpreted to mean exactly what it says. The authors bolster their absolutist perspective not by resort to originalism (124, 188-89), but rather by reliance on "text, structure, and [elegantly presented constitutional] history" (260).

The authors' absolutist perspective influences their views not only on what types of laws Congress can enact without running afoul of the First Amendment's language, but also on the appropriate theory of legal interpretation to be invoked in determining a given law's validity. In this regard, the authors are attracted to the interpretative framework of Justice Black, who advocated a fidelity to the text and a corresponding circumscription of the judiciary's power (247). The authors lament the reality that, in lieu of Justice Black's approach, the law in the United States has been far more influenced by the perspective of Justice Holmes, whose balancing-oriented ideology has shaped the course of First Amendment law since the early twentieth century. In the authors' view, an approach that calls for balancing the First Amendment's language against individual or society's modern sensibilities is a grave mistake.
No Law gives the reader an opportunity to contemplate how life and law would unfold if the current balancing-oriented First Amendment theory of law was replaced with the authors' absolutist perspective. They rely on legal history—wonderfully rich legal history—to substantiate their overall point that an absolutist approach comports with the history of the Amendment’s constitutional interpretation. The fact that we are now at a "crisis point" in the application of intellectual property law necessitates a reversal of our current interpretative mode of thought. History provides the justification for the return to an absolutist perspective under these circumstances.

**Recommended Citation**