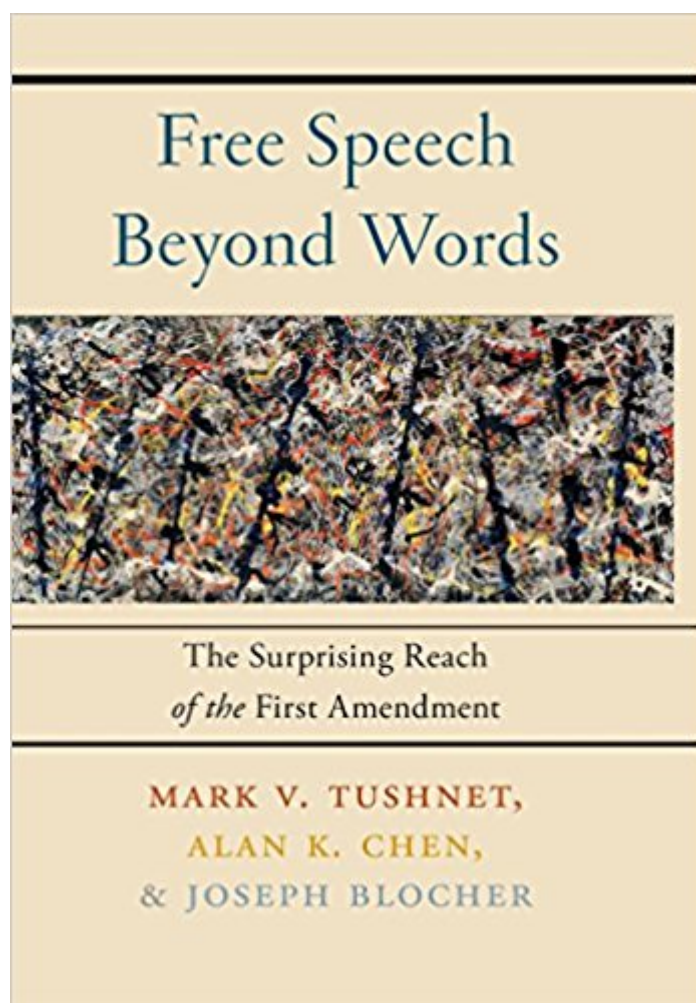




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# Free Speech Beyond Words: The Surprising Reach Of The First Amendment



## Synopsis

A look at First Amendment coverage of music, non-representational art, and nonsense. The Supreme Court has unanimously held that Jackson Pollock's paintings, Arnold Schoenberg's music, and Lewis Carroll's poem "Jabberwocky" are "unquestionably shielded" by the First Amendment. Nonrepresentational art, instrumental music, and nonsense: all receive constitutional coverage under an amendment protecting "the freedom of speech," even though none involves what we typically think of as speech—the use of words to convey meaning. As a legal matter, the Court's conclusion is clearly correct, but its premises are murky, and they raise difficult questions about the possibilities and limitations of law and expression. Nonrepresentational art, instrumental music, and nonsense do not employ language in any traditional sense, and sometimes do not even involve the transmission of articulable ideas. How, then, can they be treated as "speech" for constitutional purposes? What does the difficulty of that question suggest for First Amendment law and theory? And can law resolve such inquiries without relying on aesthetics, ethics, and philosophy? Comprehensive and compelling, this book represents a sustained effort to account, constitutionally, for these modes of "speech." While it is firmly centered in debates about First Amendment issues, it addresses them in a novel way, using subject matter that is uniquely well suited to the task, and whose constitutional salience has been under-explored. Drawing on existing legal doctrine, aesthetics, and analytical philosophy, three celebrated law scholars show us how and why speech beyond words should be fundamental to our understanding of the First Amendment.

## Book Information

Hardcover: 272 pages

Publisher: NYU Press (February 14, 2017)

Language: English

ISBN-10: 1479880280

ISBN-13: 978-1479880287

Product Dimensions: 6.3 x 1.1 x 9.7 inches

Shipping Weight: 1 pounds (View shipping rates and policies)

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Best Sellers Rank: #554,350 in Books (See Top 100 in Books) #41 in Books > Law >

Intellectual Property > Patent, Trademark & Copyright > Copyright #244 in [Books > Law > Philosophy](#) #923 in [Books > Law > Constitutional Law > General](#)

## Customer Reviews

"This is a valuable introduction to a field that will become only more significant with the development of new media, such as virtual reality and digital mapping, that could merit First Amendment protection."-Publishers Weekly

"This thoughtful book takes on the topic of First Amendment coverage of three under-theorized kinds of content: music, non-representational art and nonsense. Even though most everyone assumes these kinds of content are covered by the First Amendment, why should that be so? The book's authors, in the course of addressing many interesting examples, persuasively articulate their doctrinal, philosophical, aesthetic and linguistic approaches to justify such coverage. They thus make important contributions to First Amendment jurisprudence. I confess I am personally very interested in their important project: it has been thirty years since my Wisconsin Law Review article--which they are kind enough to cite--explored the First Amendment and aesthetic justifications for covering non-representational art. I recommend this well-written book not only to First Amendment scholars but to everyone interested in the First Amendment."-Sheldon Nahmod, University Distinguished Professor, IIT Chicago-Kent College of Law

"Free Speech Beyond Words is a genuine intellectual feast. By its serious consideration of topics at the periphery of most analyses of the First Amendment, such as abstract art or "nonsensical" speech, it provides deeply illuminating analyses of the wherefores and whys of protecting expression against governmental regulation. In addition, perhaps because of the topics, the essays are simply fun to read as well."-Sanford Levinson, author of *An Argument Open to All: Reading the Federalist in the 21st Century*

"Most people assume that the First Amendment protects art and music even when they have nothing to do with politics or public issues, and even when they don't use words. Explaining why is another matter. This gem of a book takes us deep into theories of free expression to answer a question that is far more difficult than it first appears."-Jack Balkin, Yale Law School

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