

Boston College Law School

## Digital Commons @ Boston College Law School

---

Boston College Law School Faculty Papers

---

2021

**Review of M.C. Mirow and Howard M. Wasserman (eds.), *Painting Constitutional Law: Xavier Cortada's Images of Constitutional Law***

Mary Sarah Bilder

Follow this and additional works at: <https://lawdigitalcommons.bc.edu/lfsp>



Part of the [Constitutional Law Commons](#), and the [Fine Arts Commons](#)

---

**M.C. Mirow and Howard M. Wasserman (eds.), *Painting Constitutional Law: Xavier Cortada's Images of Constitutional Law*, Leiden: Brill, 2020, 252 pp. [ISBN: 978-90-04-36430-1], DOI: <https://doi.org/10.1163/9789004445598>**

Art expands our vision and helps us see our world in a new way. This delightful and imaginative book of essays will alter the way in which one writes about cases and constitutional rights. The book should inspire future collaborations among artists, legal scholars, courts, and local communities. It deserves to be widely read.

Artist Xavier Cortada created ten paintings in a series called *May It Please the Court*, each painting representing his response to a particular United States Supreme Court case. Cortada is a Cuban-American law-trained artist who resides in Miami. The paintings currently are on display at Florida International University College of Law. Seven of the paintings were exhibited in 2004 at the Supreme Court of Florida; three new paintings were created for the book project. All ten paintings are included in the book in full-page color images. A good starting point is to look at the paintings first simply as art—that is without any of the written context. There is a striking use of color and shape, in marked contrast from the white and black print of the text page. The paintings overwhelm with emotion and feeling. They are mysterious and filled with questions: what does this symbol mean? They emphasize that Supreme Court cases affect people and land, that cases cannot be confined to the written word.

Cortada's cases are unified by their relationship to the southern state of Florida. They range from *Gideon v. Wainwright*, the well-known case affirming a right to counsel, to *Stop the Beach*, a rather existential case involving a controversial concept called judicial takings. Professors Mirow and Wasserman asked scholars to write essays in conversation with the paintings. The scholars embrace their task in diverse ways. All seem liberated by the assignment. The reader feels a freshness of interpretation and liveliness of prose from authors freed from the rigid restrictions of law review conventions. Cortada also provides a brief artist's statement about each painting. The scholars are in conversation with Cortada and their own interpretations of Cortada. The reader too is drawn into the conversation, sometimes agreeing with the authors or the artist—and sometimes, seeing in the painting a different connection or interpretation. The book is impossible to read passively.

The editors begin the volume with two excellent essays. Howard M. Wasserman illuminates the meaning “of Florida” in the cases, the ways in which the cases arise from and are of the unique characteristics of the state. M.C. Mirow helpfully surveys the limited ways in which art and law (legal iconography) have received previous scholarly attention; the informative essay would be useful reading for an art and law course. Renée D. Ater thoughtfully introduces the reader to Xavier Cortada as a socially engaged activist artist and places these paintings within his commitment to community action. Paul Marcus and Mary Sue Backus discuss the hope and disappointments of the right to counsel in *Gideon v. Wainwright* (1963), emphasizing nonetheless the startling and disruptive power of Gideon's successful petition. Jenny E. Carroll actively incorporates Cortada's painting as she thoughtfully expands on the tension between jury function and jury numbers arising from *Williams v. Florida* (1970), in which the Court abandoned the historical twelve-person jury. Leslie C. Kendrick interweaves the fascinating history of Pat Tornillo of *Miami Herald Publishing Company v. Tornillo* (1974) with a thoughtful discussion of

freedom of the press in the internet era. Corinna Barrett Lain emphasizes the grotesque distortions created by so-called guided discretion statutes in death-penalty cases, upheld as constitutional in *Proffitt v. Florida* (1976). Linda C. McClain illuminates the tragic aftermath that complicates the lesson of *Palmore v. Sidoti* (1984), a case disapproving of the relevance in child custody decisions of ‘private biases’ of racism. Kathleen A. Brady sensitively traces the Court’s long struggle over the relationship of religious practices and secular interests as seen through *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah* (1993), a case about the clash of local and animal rights groups and the practice of animal sacrifice in the religious tradition of Santería as religiously institutionalized by Ernesto Pichardo. James E. Pfander explains and critiques with admirable clarity the Court’s projection of state sovereignty on the Constitution (Eleventh Amendment), revealing the Court’s avoidance of claims of jural equality based in tribal sovereignty. Erwin Chemerinsky intriguingly interprets *Bush v. Gore* (2000) with an eye to the false construction of time pressure. Laura S. Underkuffler reflects with insight on the disjuncture between the inevitable changes of the natural world and human-development-centered takings jurisprudence in *Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection* (2010). Andrew Guthrie Ferguson carefully teases apart two theories of the home that animate the Justices in *Florida v. Jardines* (2013): intrusion of private property and intrusion of personal privacy. Each essay concludes with a useful short bibliography for further reading.

Read collectively, the essays and paintings urge legal scholars to stretch beyond the traditional ways in which we engage with legal cases. In Cortada’s comment on *Gideon*, he states that his painting “speaks volumes for what we as individuals in a society can do.” Scholars do not always imagine the power they have by writing, even in writing scholarly articles. Cortada’s paintings remind us that in writing on law, we are all in our own ways activists, advancing some unique interpretation of the legal world. *Painting Constitutional Law* liberates us to reimagine our own engagement with constitutional cases and doctrines, forcing us to see and confront the cases as emotions, colors, and shapes and to recognize their inherent disruption. May this book be the first of a new genre.

Mary Sarah Bilder  
Boston College Law School