Did law matter in Spain’s transatlantic empire? The picture drawn by historians depicts colonial Spanish America as a society with little respect for legal rules. Spanish settlers, in pursuit of gold and glory, defied royal laws enacted to protect the Indians. Government officials proclaimed their obedience to the king but refused to enforce his orders. The court system was slow, erratic, and tilted towards the rich and powerful. Law, at best, just camouflaged the brutal domination of a privileged white elite over people of indigenous, African, and mixed-race descent. This colonial disdain for law supposedly set the stage for the weak rule of law today in Latin America. But does this story of legal dysfunction reflect more the unshakeable Black Legend of Spanish iniquity than the historical reality of colonial Spanish America? Could it not be reading into the past the undeniable failures of the administration of justice today?

The career of Francisco Xavier Gamboa, a Mexican jurist of the eighteenth century, tells a much different story, in which law appears at the center of colonial processes. Born in Guadalajara in 1717 to a Basque immigrant family, Gamboa served as a lawyer for Mexico’s elite merchants and silver miners. His most important patrons came from within the powerful Basque community in Mexico. They sent him to Madrid in 1755 as the representative of Mexico’s consulado, or merchant guild. There he wrote a detailed analysis of the legal and technical aspects of silver mining in

---

Mexico, the *Comentarios a las Ordenanzas de Minas*. This text, published in 1761, brought him acclaim throughout the Spanish world and was translated into English in 1830 as a guide for British miners in early republican Mexico. In recognition of his accomplishments, the crown appointed Gamboa in 1764 to the Audiencia of Mexico, the viceroyalty’s high court of royal justice. This was an exceedingly rare achievement for a creole lawyer at the time. Without the assistance of his Basque benefactors, he would not have received the opportunity.

Gamboa’s three decades on the bench coincided with what historians have called the Bourbon reforms, an ambitious effort by Spain to bolster its authority in America. After the Seven Years War, Spain needed to increase tax revenues, especially from silver-rich Mexico, to cover the mounting military expenditures necessary to compete with Britain. To make America more secure, productive, and above all profitable, the Bourbon crown targeted colonial institutions and practices considered corrupt, inefficient, or obsolete. One such institution was the independent judiciary, seen as a bastion of obstructionism. Gamboa emerged as the judiciary’s most determined champion, defending the broad jurisdiction of the ordinary courts, the autonomy of the Audiencia from political control, and the legal pluralism that fostered judicial discretion. Against the Bourbon attempt to legislate from above, Gamboa argued that local customs, rooted in the particular circumstances of America, deserved recognition as valid law. Admittedly, Gamboa expressed his views with a notable lack of moderation, incurring the wrath of viceroys and powerful ministers of the crown. Twice the crown removed him from Mexico for his insubordination, sending him first to Spain in 1769 and then to Santo Domingo in 1783. Yet in 1787, as the reform winds abated, he returned to Mexico as the regent, or chief justice, of the Audiencia of Mexico, the first creole to hold this office. He remained dedicated to the end to protecting the power of the court against political interference. That his advocacy for judicial power clearly served his own professional interests should not obscure the fact that this fight was ultimately about the future of the rule of law in Mexico. Without an assertive and independent judiciary, there was little chance that arbitrary power could be checked. A Mexican patriot, a transatlantic Basque, and a loyal subject of the Spanish monarchy,

---

2 Francisco Xavier de Gamboa, *Comentarios a las Ordenanzas de Minas* (Madrid: Joachin Ibarra, 1761).