

**Sons of Something:  
Taxes, Lawsuits and Local Political Control in Sixteenth Century Castile\***

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Abstract:

The widespread ennoblement of the Spanish bourgeoisie in the sixteenth century has been traditionally considered one of the main causes of Iberian decline. I document and quantify the surge in ennoblement through a new time series of nobility cases preserved in the Archive of the Royal Chancery Court of Valladolid and use the insights provided by lawsuits from several localities to model the rent seeking mechanisms at work in a game theoretical framework. I then validate the game against the data and use it to draw inferences about the unobserved redistributive activity in local politics. Contrary to established scholarship, I find that: 1) the tax exemptions granted to nobles cannot alone explain the flight to privilege, since ennoblement was more costly than the present value of the future tax benefits; 2) the central motivation behind ennoblement was to gain control of local governments and acquire decision-making power over common resources; 3) while ennoblement reflected a high level of redistributive activity, there is no evidence in the archival record linking it to the stagnation and decline of Spain.

JEL Classification: N43, H71, K4, P46

Keywords: rent seeking, nobility, local government, litigation, redistribution, institutions, institutional analysis, empirical method, game theory, Castile, Spain.

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## 1. Introduction.

The stagnation and decline of Spain during the late sixteenth and seventeenth centuries remains one of the quintessential topics in the economic history of Modern Europe.<sup>1</sup> While the literature has gradually moved to emphasize the role played by institutions, it has mostly stopped short of a detailed primary-source based analysis of the institutional structures that are normally identified as the main hold-ups on Spanish economic growth, such as the monarchy, the nobility, the trade, craft and shepherd guilds, and the Catholic Church. The improved access and cataloguing of the vast archival resources on Early Modern Spain offer now a unique opportunity to apply what Greif (2005) terms “the empirical method of institutional analysis” to this timeless problem.

As part of a wider research agenda on the institutional foundations of Early Modern Spain, this paper takes a close look at the Castilian lower nobility, the *hidalgos* of Don Quixote fame, on whom scholars of the calibre of Carlo Cipolla, Fernand Braudel, J. H. Elliott, and David Landes among others have squarely placed the blame of spreading a mentality of idleness and a disdain for manual labour.<sup>2</sup> The number of petty nobles, who were exempt from royal taxes and enjoyed several legal and social privileges, is widely believed to have rapidly grown during the sixteenth century in response to the increasing fiscal pressure of the Habsburg monarchs and to a general aspiration to live a “noble life.” Since *hidalgos* were technically impeded from engaging in trade and industry, and since all their legitimate male sons inherited the title in perpetuity, the foregone conclusion is that such a social migration resulted in a large misallocation of talent. Braudel saw

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<sup>1</sup> Major works on Early Modern Spain have continued to appear at a sustained rate in the last decade. For just three very recent influential examples, see Marcos Martín (2000), Kamen (2003) and Yun (2004). For an institutionalist treatment of the Spanish case within a wider European context, see North and Thomas (1973) and Acemoglu et al. (2004).

<sup>2</sup> The references to *hidalgos* and the “*hidalgo* mentality” can be found in Elliott (1963), p.115-117; Braudel (1972), p. 520-523; Cipolla (1980), p. 237-241; and Landes (1999), p. 172-173.

in the flight to nobility the failure to fulfil a historical duty to nurse the seeds of capitalism to full maturity, and scornfully christened it “the treason of the bourgeoisie.”<sup>3</sup> This traditional interpretation suggests obvious links with the literature on the allocation of talent in the style of Baumol (1990) and Murphy et al. (1991), which argues that the inefficient allocation of human capital in rent seeking environments might have a stifling effect on economic growth. The archival record is nonetheless silent on the degree of compliance of *hidalgos* with the legal restrictions on their economic activity; what little indirect evidence there is suggests that violations were generalized, while no attempts to enforce compliance are present in the data.

Contrary to the widespread belief that large numbers of *hidalguías* were sold by the Crown, the almost exclusive gateway into the lower nobility in the sixteenth century was litigation in one of the two Royal Chancery Courts of the kingdom. The holdings of the Archivo de la Real Chancillería de Valladolid, well known to genealogists but barely exploited by social scientists, are a treasure trove for the study of *hidalguía*. In a first attempt to characterize the temporal evolution of the institution, I have compiled a time series of the surviving 42,313 cases filed with the Valladolid Chancery Court, which had jurisdiction over the northern half of Castile. The series, which extends between 1490 and 1834, shows a large increase in legal activity in the mid-sixteenth century, thus confirming the impression that the pace of ennoblement was fastest during that period.

While cold to the treason of the bourgeoisie argument, a careful examination of the archival record points to a different and more compelling rent-seeking scenario. I start by challenging the conventional wisdom that placed tax exemptions at the centre for of the quest for nobility while ignoring or summarily treating the remaining entitlements of *hidalgos*. By matching lawsuit

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<sup>3</sup> Braudel (1972), p. 517.

costs to tax data I show that the fiscal benefits of ennoblement could not have justified its cost. The evidence points instead to the acquisition of municipal offices and the control over common resources that came with them as the main reason – the “central transaction” in Greif’s terms – behind the quest for nobility.<sup>4</sup> Such a finding frames the *hidalgo* problem as an eminently local issue and places it firmly into the rent seeking literature, which has made surprisingly little foray into the study of Spanish institutions.<sup>5</sup>

I then trace a distinction between nobility lawsuits, which commoners used to attain noble status, and distributive lawsuits, which existing *hidalgos* used to wrestle control of municipal offices from incumbent commoners. Following Greif’s interactive empirical approach, I model the redistribution and ennoblement mechanisms in a game theoretical setting, using the information from legal documents to characterize players, actions and payoffs, and I validate it by testing its implications for the temporal pattern of litigation against the series of distributive and ennoblement lawsuits. I finally consider the efficiency costs of redistributive and ennoblement activities identified by archival documents. In the towns that experienced high levels of litigation the deadweight losses generated by conflict itself were large enough to cripple local economies and forestall their possibilities of growth.<sup>6</sup> The model suggests that most of the time, however, litigation was an off-the-equilibrium-path action, as players learnt from the experiences of neighboring towns, updating their beliefs about the functioning of the courts and avoiding strategies that would have resulted in expensive legal battles.<sup>7</sup> This finding suggests that the data

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<sup>4</sup> Greif (2005). Only a manuscript was available to me at the time of writing, and hence pagination is not cited.

<sup>5</sup> See Ekelund and Tollison (1997) for an example mostly focused on the Mesta.

<sup>6</sup> A substantial literature exists on the relationship between rent seeking and economic growth; see Murphy et al. (1993), DeLong and Shleifer (1993), Tornell and Lane (1999).

<sup>7</sup> For a similar model where rent seeking can occur while open conflict remains off the equilibrium path see González (2005).

presented here reflect just the tip of the large iceberg of redistribution from commoners towards the petty nobility in Early Modern Castile. Such redistributive activity would nonetheless have taken place while mostly avoiding costly litigation, leaving no solid case linking it to supposed inefficiencies in the allocation of resources and human capital. *Hidalgos* may have been resented by the commoners they displaced from town governments and loathed by eighteenth and nineteenth century liberal reformers; they are, however, unlikely culprits in the puzzle of the decline of Spain.

## **2. The nature and evolution of *hidalguía*.**

*Hidalgos: the Sons of Something.*

The very word *hidalgo* embodies the nature of those who wore the title with pride; while even its origin has been unable to escape dispute, the most commonly accepted etymology is *hijo de algo*, literally “son of something” (where “something” means “someone of value”). The oldest *hidalgo* families claimed to be able to trace their origins to the Visigothic lineages of the days before the Muslim invasion of the peninsula in 711 A.D., and to have achieved their status through distinguished military service to the monarchs of the northern kingdoms in the course of the *Reconquista*. During the Middle Ages, *hidalgos* were in fact expected to maintain weapons and a horse, and to join the king’s army whenever called to war; in return, they were granted special privileges, foremost among which the exemption from royal and municipal taxes.<sup>8</sup>

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<sup>8</sup> *Hidalguía*, in its most open meaning, is synonym with nobility; all Spanish nobles, including grandees and *títulos* (dukes, marquises, counts and viscounts), were technically *hidalgos*. I am not concerned with those upper echelons, and will therefore use the word in its narrow sense, designating the lower nobility that, while always striving to climb the ranks of society, was just one step above the plain commoner. For a thorough discussion of the structure of the Spanish nobility see Domínguez Ortiz (1985). For an excellent historical survey on the several social strata that gradually converged into Early Modern *hidalgos*, see Díaz de la Guardia (2005), chapters 1-4.

While tax exemptions were the most transparent and visible attribute of *hidalgo* status, they were not always the most valuable one.<sup>9</sup> Direct taxes were no longer a significant burden in the first half of the sixteenth century, and in many towns they were even assessed on a capitation basis, making them virtually negligible for the rich. *Hidalgos*, however, also enjoyed preferential access to municipal offices under the system called *mitad de los oficios*, which reserved half of the top positions in the local government for them.<sup>10</sup> Their privileges under criminal law were paramount: they could not be tortured, flogged or exposed to public shame; if jailed, they had to be kept separate from the commoners; they could not be sent to the galleys, and, if sentenced to death, they had the right to be beheaded rather than hanged. Perhaps their most valuable immunity on a practical basis was the exemption from prison by reason of debt. That *hidalgos* were entitled by law to enjoy all these privileges, however, does not mean that local authorities always bowed to them. I shall return to this important point later on.

A much debated attribute of *hidalguía* is its theoretical incompatibility with the so-called “mechanical” and “vile” professions, virtually any occupation that involved manual work, together with tax collection (but not tax farming) and a few other outcast activities.<sup>11</sup> The increase in the number of *hidalgos* in the sixteenth century has been repeatedly singled out as one of the reasons behind the decline of Castile, as more and more successful merchants and traders supposedly abandoned their activities to live off the rents of the land or of tax farms.

Clearly such a prohibition was not universally enforced, as it would have been a practical

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<sup>9</sup> So indissoluble were *hidalgo* status and the exemption from royal and municipal *pechos* that someone who did not pay them and remained unchallenged would in time be recognized as an *hidalgo*, while paying them at any point without protest would jeopardize any chances of affirming an *hidalguía*. Such identity is again etched into the language: the Spanish word for a commoner is *pechero*, someone who pays direct taxes. See Thompson (1987) for a discussion on the language of class distinction in Spain.

<sup>10</sup> While the system of *mitad de los oficios* has normally received very little attention in the scholarly literature, the recent doctoral dissertation by Díaz de la Guardia (2005) is now a mandatory reference for its study.

<sup>11</sup> Two insightful pieces on “mechanical and vile” occupations are Díez (1990) and Domínguez Ortiz (1945).

impossibility for everyone to abstain from manual work in areas that enjoyed universal *hidalguía*.<sup>12</sup> The concern still remains that those who attained *hidalgo* status during the sixteenth century could have been more zealous in keeping to the legal requirements of nobility in a bid to affirm their newly achieved social rank.<sup>13</sup>

It has long been contended that the number of *hidalgos* swelled in the sixteenth century, but the dynamics, magnitude and significance of this phenomenon have not been the subject of a thorough scholarly discussion so far. A very common misconception is that the increase in the *hidalgo* ranks was the result of massive sales of letters of privilege on the part of the Crown during the reigns of Charles V and Philip II; the myth has continued to surface every now and then, even in the face of Thompson's categorical refutation.<sup>14</sup> Sales of *hidalguías* were indeed an extremely rare occurrence as a result of the nature of the privilege itself. The archetypical *hidalgo* was someone who could trace his lineage to the medieval noble families of old, whose first noble ancestor was lost in time immemorial, and whom people would recognize and repute as a noble person without the need of an intervening authority. Paying for the privilege was the ultimate admission that one did not deserve it. While patents of *hidalguía* remained available for sale, the Crown understood that they would only be bought by the most desperate persons, and set accordingly exorbitant prices for them. Thompson's exhaustive analysis of the sales of *hidalguías* uncovered an utterly insignificant grand total of 72 royal letters of privilege for the whole kingdom of Castile in the sixteenth century.<sup>15</sup>

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<sup>12</sup> The natives of Biscay, for example, were all considered *hidalgos*. See Marcos Martín (2000), p. 301.

<sup>13</sup> We know, for example, that the father and uncles of Saint Theresa of Avila closed down their silk trade operation after obtaining a judgment of *hidalguía* in their favor in 1522, but retained their tax farms. See Egido (1986), pp. 18-20.

<sup>14</sup> Thompson (1979). For two notable examples where the incorrect view receives attention see Elliott (1963), p. 116 and Nadal (2001), p. 40.

<sup>15</sup> Thompson (1979), p. 357.

*The lawsuit of hidalguía.*

When an *hidalguía* was challenged, usually by a town council that tried to collect direct taxes from its holder, the individual claiming to be an *hidalgo* could only affirm his status by suing the town in one of the two Royal Chancery Courts of Castile, which resided at Valladolid and Granada. The Chancery Courts (*chancillerías*) were the highest tribunals in the kingdom short of the Royal Council, and, from the fifteenth century onwards, had exclusive jurisdiction in all cases concerning the dispute of an *hidalguía*, which were heard by a special chamber called the *Sala de Hijosdalgo*.<sup>16</sup> To distinguish them from the “distributive lawsuits” described in the next section, I shall refer to lawsuits of *hidalguía* “nobility” or “ennoblement” lawsuits.

To win a lawsuit, a claimant of *hidalguía* would have to prove, at a minimum, that his father and grandfather had been *hidalgos*, widely reputed as such in the places where they had lived. He had therefore to produce witnesses that had known (or claimed to have known) his father and grandfather, and could confirm their status. The town council, together with the king’s prosecutor (who intervened *ex-officio* in all lawsuits of *hidalguía*), would try to show that the claimant or his ancestors were not *hidalgos*, presenting evidence that they had paid direct taxes or had not enjoyed certain criminal or legal privileges. Alternatively, they could try to find one or more impediments to their *hidalguía*, such as being illegitimate sons or having Jewish ancestry.<sup>17</sup>

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<sup>16</sup> The mandatory source for the structure and operation of the *Sala de Hijosdalgo* is Martín Postigo and Domínguez Rodríguez (1990), on which virtually all my references on the functioning of the chamber are based. A thorough historical and juridical treatment of the lawsuit of *hidalguía* can be found in Díaz de la Guardia (2005), chapter 3.2.

<sup>17</sup> As a result, the prosecution often presented very colorful stories. The lawsuit of St. Theresa’s father contains a copy of the Inquisition proceedings that documented how his grandfather had converted from Judaism and had been forced to wear the shameful robe of the *conversos* for two months [Ejido (1986)]. In the lawsuit of Benito de Caldas in 1544 witnesses for the prosecution testified that his grandfather had been held in a common jail and sentenced to lashes for petty theft (SHP 68.3). In the lawsuit of Alonso de Melgar in 1556, in a standard contention, the prosecutor alleged that he was the son of “plain commoners, converted Jews, adulterous and incestuous” (SHP 871.8). Similarly, in the lawsuit of the brothers Gaspar and Francisco de Villodas in 1554, the town produced witnesses who testified that their grandfather had been a clergyman, and hence their father was an illegitimate child



If the claimant won the case, upon receiving a favourable final sentence (which might not come until after one or two appeals) he could ask the court to issue a final writ, called a *carta ejecutoria*, which summarized the lawsuit and ordered all authorities in the kingdom to recognize its holder as an *hidalgo*.

Lawsuits were not cheap; a claimant had to retain attorneys in Valladolid or Granada, pay a number of court and secretarial fees, pay for the travel, room and board of witnesses called to testify on his behalf from remote locations and, if successful, pay the fee for the issuance of the *carta ejecutoria*. In addition, more or less overt bribes and gifts to several court officials were essential to ensure that the proceedings would move forward at a reasonable pace.

Two cheaper legal devices, albeit of lower standing than a lawsuit, were available to claimants of *hidalguía*. An *hidalgo* that anticipated a legal challenge or feared that the only witnesses capable of supporting his claim could die or relocate could register the depositions of those witnesses with the court in a document called *probanza ad perpetuam rei memoriam* (which, for lack of a better term, I shall hereafter call “deposition”). The town and the king’s prosecutor normally did not intervene in the process and the document was not enforceable by itself; it could, however, be used as evidence in lawsuits, and therefore its existence could conceivably deter future legal challenges. Another possibility was to request a *royal provision* from the court, which certified the “known status” of its holder. The town and the king’s prosecutor normally opposed the claim of *hidalguía* in the legal proceedings (called *expedientes provisionales*, translated here as “provisional files”), which, although reminiscent of lawsuits, were simpler, faster and cheaper. They did not result in a *carta ejecutoria*, though, which remained the only enforceable

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(SHP 351.3). Melgar lost his case, but all the others were able to have their *hidalguías* confirmed despite the obvious impediments.

document. Royal provisions became mandatory in the eighteenth century for *hidalgos* moving to another jurisdiction to become registered as such, causing a large increase in their numbers.<sup>18</sup>

The Archive of the Royal Chancery Court of Valladolid is an invaluable source of information on the judicial route to nobility.<sup>19</sup> With the exception of short interruptions forced by the plague or the presence of the king's entourage in town, the court resided in the same Valladolid palace throughout its entire existence. Its archive opened in the early years of the seventeenth century as a venal office, and gradually acquired the records from the court secretaries, who had until then treated the files as their personal property. Since the holder of the records could charge for access to them, there was a continuous interest in preserving their integrity; while some files must have certainly gone missing, the holdings of the archive can be reasonably trusted to provide broad and representative coverage of the universe of cases heard by the court. In a 100% hand check of one of the eight inventory books describing the transfer of lawsuit files from the secretaries to the archive since the seventeenth century, I found that over 93% of the files originally entrusted to the archive have survived to the present, and that the missing ones are evenly spread out over the life of the court, indicating no systematic loss of information.<sup>20</sup> In contrast, the Archive of the Royal Chancery Court of Granada did not open until forty years after the court was closed in 1834; as a result, a large number of cases have been lost, and the surviving holdings number less than a quarter than their Valladolid counterparts. This study is limited to cases from the

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<sup>18</sup> Díaz de la Guardia (2005), p. 449.

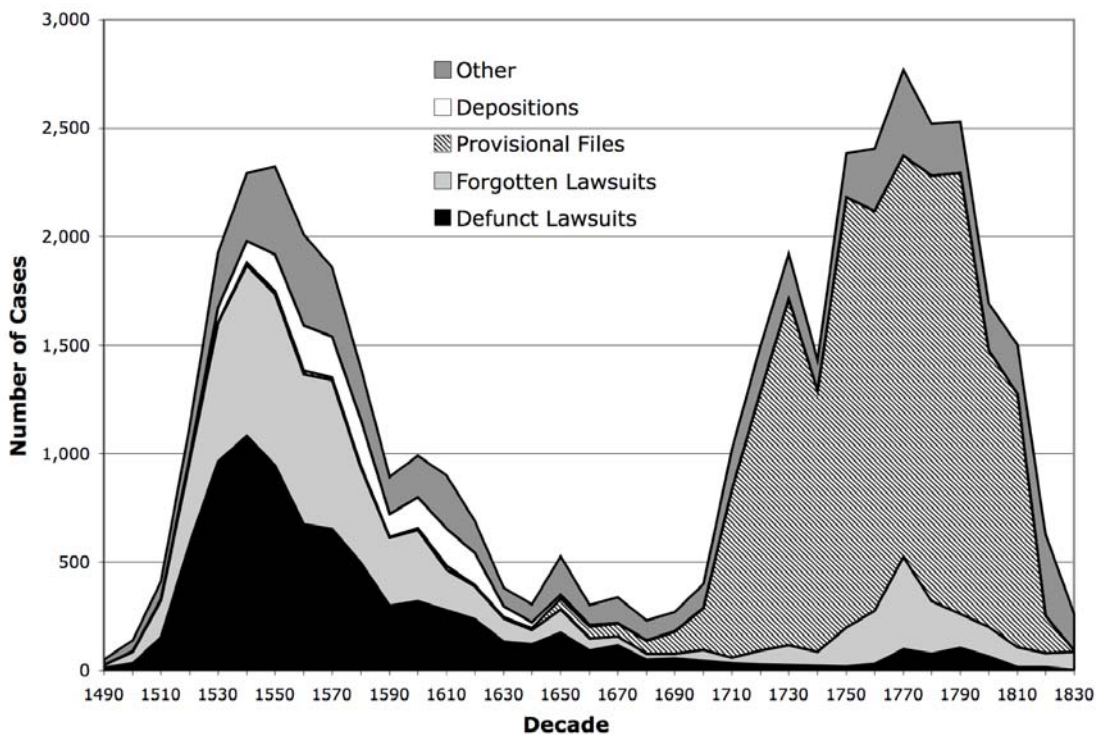
<sup>19</sup> The main reference on the history of the Archive of the Royal Chancery Court of Valladolid, on which this account relies, is Martín Postigo (1979).

<sup>20</sup> The checked inventory book was Sala de Hijosdalgo, Libro 81. This is the only book that is cross-referenced to the current catalogue in a systematic way, and hence allowed for the check to be conducted. It contains all the defunct lawsuits from one of the two secretary offices serving the Sala de Hijosdalgo; since cases were randomly assigned to the secretary offices upon being filed, this inventory book constitutes a 50% random sample of all defunct lawsuits. The assistance of Clara Ortego, who worked on the mapping of the inventory books to the electronic catalogue, was instrumental in designing this check.

Valladolid court, and hence to its geographical jurisdiction north of the river Tagus (roughly the northern half of Spain).

Figure 1 shows the temporal distribution of the 42,313 cases preserved in the section *Sala de Hijosdalgo* of the Archive of the Royal Chancery Court of Valladolid. Lawsuits proper are classified according to whether a *carta ejecutoria* was issued in the case or not; if a *carta ejecutoria* exists (and hence the *hidalguía* was confirmed), the lawsuit is said to be “defunct” (*fenecido*).<sup>21</sup> Otherwise, the lawsuit is called “forgotten” (*olvidado*). Depositions, provisional files and unclassified papers are also shown.

Figure 1: Cases by type, 1490-1834



Compiled from the catalogue of the Archivo de la Real Chancillería de Valladolid and an unpublished classification table by Eduardo Pedruelo Martín.

<sup>21</sup> If the *hidalguía* was denied, the town could always tax the claimant or seize his goods without the need of a royal writ; it is hence safe to assume that all *fenecido* lawsuits did confirm an *hidalguía*. In an extremely rare exception, the town of Medina de Pomar requested a *carta ejecutoria* on the lawsuit it had won against Juan del Campo, its second wealthiest taxpayer, in 1555. The town might have sought additional assurances in view of the wealth, and perhaps power, of its opponent. See SHP 424.4, RE 845.2, PP 68.6.

Figure 1 reveals that the activity in the *Sala de Hijosdalgo* had two peaks, in the sixteenth and eighteenth centuries, with a prolonged slump in the seventeenth. Lawsuits proper, however, are concentrated only in the sixteenth century, peaking in the decade of 1550, which had a yearly average of almost 200 cases filed, with over half of them resulting in a confirmation of the *hidalguía*. The second peak is a result of the administrative requirement, enacted in 1703, of obtaining a royal provision before an *hidalgo* could be registered as such in his new place of residence, and hence it does not reflect new ennoblement.<sup>22</sup>

The number of defunct lawsuits is not an exact reflection of the increase in the number of *hidalgo* families. A substantial number of forgotten lawsuits also confirm the *hidalguía*; it is possible that the claimant, having settled his position within the town, did not request a *carta ejecutoria* to avoid further expenses. On the other hand, some lawsuits were filed by legitimate claimants whose rights were being infringed; favourable sentences in such cases did not increase the number of *hidalgos* (although unfavourable ones might have reduced it). Finally, it is important to keep in mind that legal proceedings only capture situations of conflict; if someone declared himself an *hidalgo* and no one challenged him, after a few years he would most likely be reputed as such without the need of a lawsuit. As a speaker in the Cortes of 1624 put it:

*The officials of the towns and villages will not dare list anyone in the tax tolls who is prepared to go to litigation, however well known a commoner he is. Thus he is left exempted as if he were an hidalgo, and so becomes one. Contrariwise, if they list an hidalgo who is poor, he cannot litigate and loses his hidalguía.*<sup>23</sup>

The shape of the distribution is nonetheless consistent with contemporary and historiographical accounts of the swelling of the ranks of *hidalgos* in the sixteenth century.

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<sup>22</sup> See Díaz de la Guardia (2005), pp. 449-450.

<sup>23</sup> Quoted in Thompson (1987), p. 26.

*A glimpse on the composition of Northern Castilian society.*

The only relatively firm observation on the number of *hidalgos* in sixteenth-century Spain is the census of households taken in 1542, which revealed that 108,358 out of 897,130 households in the Crown of Castile, about 12% of the total, enjoyed noble status.<sup>24</sup> The global figure, however, yields little information about the regional variation in the distribution of *hidalgos*, as well as no insight into the finer distinctions within the noble and commoner ranks.

A rare 1530 tax roll from the town of Briones, in modern-day La Rioja, can provide some additional insight into the matter. This document lists the individual assessments of a direct royal tax (*moneda forera*), which the village paid to the Crown every six years. Unlike most rolls that only list commoners (called “*pecheros*” after the name of the taxes they paid, the *pechos*), this particular one lists *hidalgos* as well, further breaking down their status into “notable” *hidalgos* (i.e. those whose status no one would dare question), those who had obtained the title by royal privilege, and those who were in possession of a *carta ejecutoria*, all of them duly entered with a zero tax liability. It also identifies “dubious” *hidalgos*, who were assessed taxes as plain taxpayers, but by being listed as such preserved the right to litigate in the future. Table 1 reports the breakdown of this tax roll by the status of the head of household.<sup>25</sup>

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<sup>24</sup> Nadal (2001), p. 41. A household corresponded to roughly 5 inhabitants, which puts the population of Castile in 1542 at about four and half million. Excluded from this are the roughly 100,000 households of the Crown of Aragon, which had a different nobility structure. See Artola (1993), vol. 6, p. 589.

<sup>25</sup> As discussed later in the paper, my attention was drawn to Briones because of the elevated number of “distributive” lawsuits emanating from this town. That this peculiar tax roll was compiled might well be a result of such litigation. However, in the over 350 individual cases I have manually examined, I have not come across another tax roll that provides a similar breakdown of the population by social standing.

Table 1: Heads of households by status (Briones, 1530)

<b>Status of the head of household</b>	<b>Number</b>	<b>% of Total</b>
<i>Hidalgo households</i>		
Notable hidalgo	125	25.46%
Hidalgo by privilege	3	0.61%
Hidalgo by ejecutoria	1	0.20%
Widow of an hidalgo	32	6.52%
Orphaned son of an hidalgo	7	1.43%
Orphaned daughter of an hidalgo	1	0.20%
<b>Total hidalgo households</b>	<b>169</b>	<b>34.42%</b>
<i>Taxpayer households</i>		
Dubious hidalgo	67	13.65%
Widow of a dubious hidalgo	3	0.61%
Pechero	189	38.49%
Widow of a pechero	25	5.09%
Orphaned son of a pechero	11	2.24%
Pechero woman	6	1.22%
<b>Total taxpayer households</b>	<b>301</b>	<b>61.30%</b>
<b>Clergy</b>	<b>21</b>	<b>4.28%</b>
<b>Total</b>	<b>491</b>	<b>100.00%</b>

Compiled from the tax roll for 1530 contained in PP 137.6

Even at the early date of 1530, this northern community of approximately 2,500 inhabitants already had 34.42% of *hidalgo* households, with 13.65% more claiming to be such while still paying taxes. Of the 169 *hidalgo* households, only one had won its status in the courts, while three had attained it by royal privilege, either bought or conferred. *Hidalgos* were twice as likely as *pecheros* to leave behind widows and orphans; this might possibly reflect the disincentive of *hidalgo* widows to marry to anyone but another *hidalgo*, as they would have otherwise lost their noble status. Finally, 28 taxpayer households were exempted from taxes by reason of extreme poverty; their breakdown was 20 *pecheros*, 2 dubious *hidalgos*, 3 widows of *pecheros* and 3 *pechero* women. These figures imply a 9.3% poverty rate among taxpayer households. Since the tax was assessed on a capitation basis, it is not possible to use these data to draw further inference about the wealth distribution of the town.

The nobility lawsuits described in this section all reflect individual bids for *hidalguía*, and constitute only the first piece of the rent-seeking puzzle in Early Modern Castile. The next section studies a different kind of legal proceeding which *hidalgos* and *pecheros* used to jostle for the control of towns and the distribution of the fiscal burden.

### 3. Distributive conflict

During the Middle Ages, towns and cities enjoyed an extraordinary degree of autonomy that, together with specific prerogatives and tailor-made legal codes (*fueros*), had been granted by the Crown as way of securing widespread support in the war against the Arab kingdoms. Town councils were usually dominated by a commoner elite, which freely ignored the privileges of *hidalgos*, blocking them from access to public office, taxing them, and even banning them from living in their jurisdiction altogether. While such actions were contrary to noble privilege, the concerns of *hidalgos* were normally shrugged off by the *pechero*-dominated councils, and any royal rulings favourable to *hidalgos* were dutifully acknowledged and promptly ignored.<sup>26</sup> After the unification of Spain in 1492, with the Arab threat gone and the larger demands of Early Modern European policy and warfare pressing on its coffers, the monarchy moved to impose a stronger grip on towns, projecting its power through tribunals, marshals and, as in the case of the revolt of the *Comunidades*, full armies if needed.<sup>27</sup> *Hidalgos* soon took advantage of the newly found strength of royal courts to reclaim their long ignored privileges, demanding access to the government of their towns and trying to shift the tax burden towards commoners.

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<sup>26</sup> The Spanish legal jargon even contains the expression “*obedezco pero no cumplo*” – I obey but I do not comply – to describe the flagrant flouting of orders from a higher authority. It is most often associated with the administration of Spanish America, where the monarchy could do little to prevent distant viceroys and lower officials from acting as they pleased. For a treatment of the weak position of *hidalgos* within the *pechero*-dominated councils in the late Middle Ages, see Díaz de la Guardia (2005), chapter 3.

<sup>27</sup> See Lynch (1991) for an account of the consolidation of absolutist power in early sixteenth century Spain.

Two perennial issues of contention between *hidalgos* and *pecheros* were the allocation of local government posts and the use of town revenues. An old unwritten custom, often toyed with by the *Cortes* and respected by the courts but never written into hard law, established that *hidalgos* and *pecheros* should split evenly the available positions in local government; since *pecheros* were normally much more numerous, the system, known as *mitad de los oficios* (literally “half the offices”), gave enormous influence to *hidalgos*, although it was rarely enforced before the sixteenth century.<sup>28</sup>

Castilian cities were also richly endowed with a particular kind of communal goods called *propios*; unlike proper commons, a local government could enclose or otherwise grant the exclusive use of *propios* to a private party in exchange for a monetary payment. Just as they had bestowed a large degree of autonomy on Castilian towns during the Reconquista, Medieval monarchs had also generously granted them *propios* as way of attracting settlers to the newly recovered lands.<sup>29</sup> *Pecheros* in the city government usually tried to use the revenue generated by *propios* to pay the royal taxes allocated to the city and to defray the cost of lawsuits of *hidalguía*. These moves were vigorously contested by *hidalgos*, legitimate ones and self-avowed alike. Established *hidalgos* didn't want to see their share in the common revenues used to pay for a tax they were exempt from; claimants of *hidalguía* naturally opposed the use of communal revenue in which they had a stake to fight lawsuits against them.

The key document to the analysis of distributive conflict is a particular kind of lawsuit in which *hidalgos* and *pecheros* took part as collective units (*estados*). For lack of a better word, I use the

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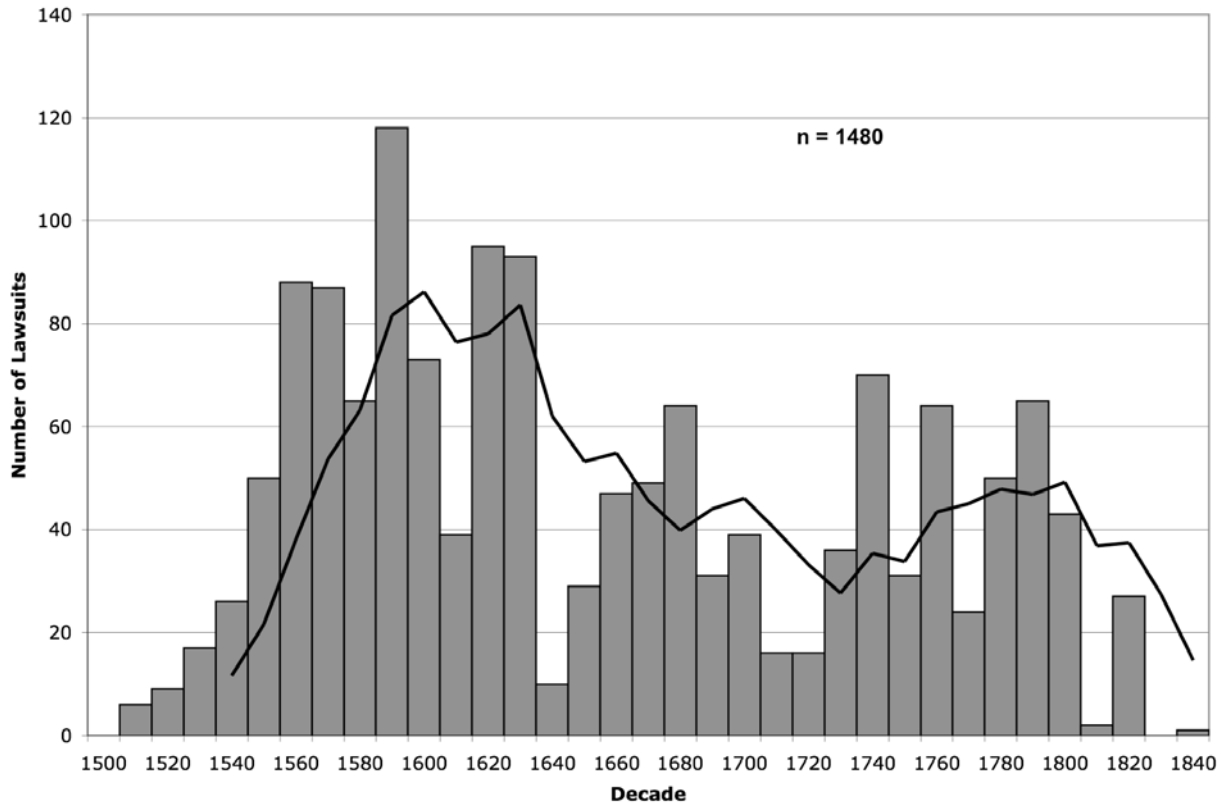
<sup>28</sup> On the system of *mitad de los oficios* see Díaz de la Guardia (2005) and Domínguez Ortiz (1985), p. 129.

<sup>29</sup> On *propios* see Artola (1993), vol. 5, pp. 981-83.



term “distributive” to refer to these lawsuits (as opposed to the individual “nobility” lawsuits described in the previous section). Figure 2 shows their temporal distribution.<sup>30</sup>

Figure 2: Estimate of distributive lawsuits and 5-period moving average<sup>31</sup>



Compiled from the Catalogue of the Archivo de la Real Chancillería de Valladolid.

Distributive lawsuits follow a similar progression to that of lawsuits proper during the life of the Chancery Court, peaking in the late sixteenth century and then declining to about half their peak

<sup>30</sup> I define distributive lawsuits as those in which one of the parties is formed by *hidalgos* as a collective, and the other by *pecheros*. I also allow either *hidalgos* or *pecheros* to be replaced by village authorities, such as *alcaldes*, *regidores* or *justicia*. The search strings used on the database of the archive were: the *hidalgos*, the state of the *hijosdalgo*, those who call themselves *hidalgos*, *hidalgo* neighbors, the officers of the *hijosdalgo*, the *pecheros*, the state of the *pecheros*, *pechero* neighbours, the mayor, the council, the justice.

<sup>31</sup> These lawsuits were heard by both the Sala de Hijosdalgo and the four civil chambers of the Royal Chancery Courts. The civil chambers were served by twelve secretaries (*escribanos*), but only the lawsuits held by two of them were fully catalogued by the archive at the time of writing (Fernando Alonso and Pérez Alonso). However, since cases were assigned on a strictly random basis to the different secretaries, the catalogued ones can be safely taken to be a one-sixth random sample of the population. To estimate the total number, I multiplied the catalogued cases from the civil chambers by six, and added the cases from the Sala de Hijosdalgo (which is fully catalogued). For a description of the random assignment mechanism to the secretaries, see Aulestia (1667), pp. 36-41.

level. Most towns in my sample were only involved in distributive litigation once or twice, with a record 9 cases registered by Briones between 1529 and 1570. The remainder of this section uses three examples to illustrate the workings of distributive lawsuits and their impact on the finances of towns.

The *hidalgos* of Medina de Pomar, a medium-sized town in the jurisdiction of Burgos, won a ruling in 1553 preventing the council from paying royal taxes out of *propios* revenue, and granting them half of the town's offices.<sup>32</sup> The commoners fought back, arguing that in the city there had never been a distinction between *hidalgos* and *pecheros* (which should be taken to mean that *pecheros* never respected the privileges of the few *hidalgos*) and denouncing that many commoners were taking advantage of the situation to call themselves *hidalgos*, thus producing a sharp increase in nobility lawsuits filed against the town. The court nonetheless sided with the nobles, confirming their right to half of the town's positions and ruling that legal expenses had to be paid out of direct taxes assessed on commoners.

Distributive litigation was often followed by a flurry of ennoblement lawsuits, as commoners that had formerly been excluded from the town government tried to jump into the *hidalgo* camp to gain political access, or as incumbents tried to hold onto their control over the town by seeking ennoblement themselves. The commoners of Medina de Pomar, for example, bitterly complained that soon after the first distributive lawsuit was filed

*"[...] those who were then holding public office pretended to be hidalgos and tried to hold on to their offices, saying that they held them as hidalgos, appointing to office others that pretend the same, and excluding those who don't hide the fact that they have paid taxes in the past."*<sup>33</sup>

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<sup>32</sup> SHP 828.2.

<sup>33</sup> SHP 828.2.

The combination of nobility and distributive litigation was a heavy burden on the town's finances, and by the end of the 1550s Medina de Pomar found itself effectively unable to continue defending the massive amount of lawsuits it faced; its common resources were depleted, and its social and political structure was radically altered as well.<sup>34</sup>

In Briones the distributive conflict dragged on longer and, in a significant difference, the town was allowed to cover legal expenses out of *propios* revenue at least until 1571, despite vigorous opposition from the *hidalgos*.<sup>35</sup> The protracted battle was taking its toll, though, and by 1570 the town already owed over 50,000 *maravedíes* in legal expenses and had resorted to authorizing the logging of an entire woodland, a precious resource in barren Castile, to raise an additional 15,000. Attorneys for the town also reported that many lawsuits had to be dropped for lack of funds.<sup>36</sup> From a 1572 filing, we learn that the town had incurred large debts with private residents to keep the wheels of the Chancery Court spinning.<sup>37</sup> The document also reports that, in the rush to raise money, many *propios* had been leased for less than half the amount they would have normally fetched (although malfeasance on the part of town officials was also suggested).

The *pecheros* of Briones made one last stand in 1589, trying to keep *hidalgos* out of positions of power by interpreting in a peculiar way the requirement of reserving for them at least half of the public offices. Town officials manoeuvred to place *hidalgos* in those offices that would be regarded as incompatible with nobility, such as innkeeper and tax collector. Such a move had no chance of success, and after a swift intervention by the Chancery Court *hidalgos* firmly

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<sup>34</sup> See section 5 for a detailed discussion of the economics of nobility litigation in Medina de Pomar.

<sup>35</sup> Several lawsuits result in or refer to royal provisions authorizing the town council to use *propios* to cover legal expenses. See SHP 675.9 (1529), SHP 1546.6 (1554), SHP 70.17 (1563), SHP 162.3 (1571).

<sup>36</sup> SHP 641.3.

<sup>37</sup> SHP 50.11. This lawsuit also gives a detailed account of the town's budget. Its total annual income was slightly over 50,000 *maravedíes*, all of which were committed to the payment of salaries and repairs. Except for an attorney on its regular payroll, all legal expenses needed to be funded out of extraordinary income.

established their right to hold at least half of the honourable positions in the town, and with them a sufficient amount of power to control its resources. After that date, no further distributive lawsuits were filed by residents of Briones.<sup>38</sup>

Very similar situations are evident from the lawsuits originating from the group of towns known as the Hermandad de Montes de Oca, near Burgos. Like Medina de Pomar, the *hermandad* (brotherhood) experienced a flurry of litigation after the first distributive lawsuits resulted in the introduction of direct taxes and shared power around 1535, with over 60 commoners claiming *hidalguía* between 1540 and 1550; as Briones, it eventually ran out of money to defend its lawsuits, but not before selling or leasing its communal assets and incurring large debts.<sup>39</sup>

Medina de Pomar, Briones and Montes de Oca were not isolated cases; the archival record shows that many other towns found themselves in similar situations, while Díaz de la Guardia (2005) documents a similar pattern for Southern Spain as well.

#### **4. The subjects, motives and timing of ennoblement.**

I now return to the questions of who sought ennoblement, why did they seek it, and what motivated their timing, and address them using the records of the abundant nobility litigation of Medina de Pomar. The choice of this town was entirely dictated by the availability of quality data; in order to identify the socio-economic extraction of litigants and their success rates, I need

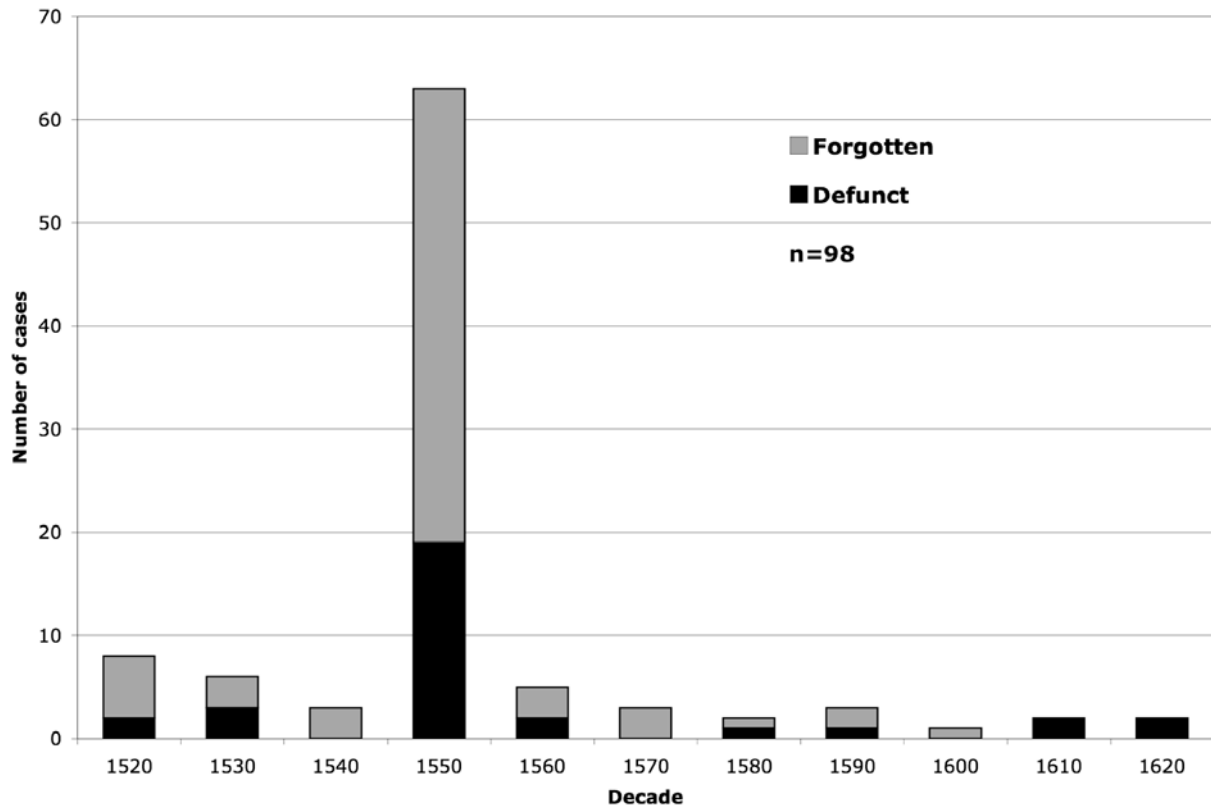
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<sup>38</sup> SHP 1632.1. Since in many places appointments to public office could not be refused under penalty of prison, commoners hoped to place *hidalgos* in the dilemma of declining to serve, thus breaking the law, or accepting offices incompatible with nobility. The mandatory character of public service was often used to punish one's enemies; in 1654, for example, Luis de Vega was appointed by the mayor of the town of Valderas, in the jurisdiction of León, as a collector of the excise on wine. Being illiterate, de Vega could not hope to discharge his duty in any meaningful way, but he was nonetheless imprisoned for refusing it. He then appealed to the Royal Chancery Court, claiming that, being an *hidalgo*, he was nonetheless exempt from acting as a tax collector. See SHP 1982.9.

<sup>39</sup> The distributive conflict in the Hermandad de Montes de Oca is documented in SHP 685.6, SHP 100.13, SHP 656.15, PP 200.1 and PP 200.2. In SHP 656.15 the King's prosecutor denounced that most claimants of *hidalguía* were acting as each other's witnesses and attorneys, and that witnesses brought to Valladolid to testify in favor of the claimants were regularly treated to luxurious accommodations and meals right before their court hearings.

to match them to at least two different tax rolls several years apart. Portions of tax rolls were sometimes filed by towns to show that a claimant of *hidalguía* had paid taxes in the past; complete tax rolls, though, are a rarity, and only for Medina de Pomar was I able to find two of them within a meaningful period. In all other respects, however, Medina de Pomar is an average Castilian town, and its pattern of litigation is found repeatedly throughout Castile. The distribution of nobility lawsuits involving its residents is shown in Figure 3.

Figure 3: Lawsuits of *hidalguía* in Medina de Pomar, 1490-1630



Compiled from the catalogue of the Archivo de la Real Chancillería de Valladolid.

The legal activity emanating from Medina de Pomar would clearly not be worthy of mention if it were not for the 1550s. A closer look at the 63 lawsuits filed between 1550 and 1559 further reveals that fully 41 of them were filed in 1554 alone. The key to the flurry of litigation is found in a 1553 distributive lawsuit in which hidalgos won half the offices of the town:

*In this town there has never been a difference between hidalgos and pecheros because all the pechos (direct royal taxes paid by the town to the Crown) were always paid from the common bourse until one and a half years ago, when it was ordered that they should not be paid from that bourse.*<sup>40</sup>

In another document related to the same dispute, several witnesses were asked how many households were there in the town, and how many of them were headed by *hidalgos*. All but one of them reported that the town counted about 300 households (roughly 1500 inhabitants), of which no more than 3 or 4 were from *hidalgo* lineages; the last witness put the numbers at 350 households and 6 or 7 *hidalgo* ones.<sup>41</sup> Immediately after the distributive lawsuit allocated half the offices to nobles and reinstated direct taxation about 20% of the population of Medina de Pomar claimed *hidalguía*, and the town found itself in the uncomfortable position of having to defend over sixty lawsuits with limited resources. As it will become clear, the ex-post optimal decision might well have been not to fight back; at the time, those in power decided to do otherwise.

#### *Matching litigants to tax rolls.*

The opening salvo in the battle of Medina de Pomar was a request filed in 1554, asking the Royal Chancery Court to authorize a special contribution of 15,000 *maravedíes* to pay for the several lawsuits it had to fight. Despite the vigorous opposition of those claiming to be *hidalgos*, the Chancery Court granted the request, with the added provision that all those who were not in firm possession of an *hidalguía* should be included in the assessment.<sup>42</sup> Since by the time of the special contribution of 1554 no lawsuit filed that year had yet come to a close, and since

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<sup>40</sup> SHP 828.2. In a similar case, we learn that the small town of Villalobos, in the jurisdiction of Montes de Oca, was also free of direct taxes until 1540. See SHP 679.1.

<sup>41</sup> SHP 707.2. Most of the witnesses were former town officials, including a former mayor, which lends some credibility to their estimates.

<sup>42</sup> SHP 653.107.

individual contributions were determined in rough proportion to individual wealth, the tax roll that was drawn as a result is an excellent tool to determine the socio-economic extraction of those who filed for *hidalguía*.<sup>43</sup>

I started by looking for the name of everyone who filed a lawsuit between 1550 and 1559 in the 1554 tax roll. Unlike the list from Briones, this one was compiled with the utmost care to identify each taxpayer, fully spelling out first and last names. Common names were supplemented with the neighbourhood in which the person lived, and sometimes with their profession as well. As a result, I have been able to uniquely match 50 of the 63 claimants to the tax roll, almost an 80% success rate; the missed matches are spread in almost exact proportion to the cases filed each year and hence do not pose any bias concerns.

I then used a 1562 tax roll corresponding to the regular royal tax (the first extant one after 1554) to determine whether the people in my matched sample were still paying taxes eight years later. I defined a litigant as “unsuccessful” if, despite having filed a lawsuit, he or she was still being assessed direct taxes by 1562. Conversely, if the litigant was no longer in the tax roll, I called him or her “successful.” Unlike the 1530 document from Briones, the tax rolls of Medina de Pomar did not list neighbours without any tax liability, and so the meaning of “success” needs to be qualified; while winning an *ejecutoria* would certainly make someone a successful litigant by this measure, so would dying, becoming poor or relocating to a different town (as well as being missed in the matching exercise). Unsuccessful litigants, on the other hand, are a sharp lower bound on the ability of the town to keep claimants of *hidalguía* within its tax rolls.

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<sup>43</sup> The 1554 tax roll is found in PP 68.5. While the general rule was that richer people should receive a higher assessment, the tax assessor, who was appointed by the town council, had a large degree of discretion in determining individual tax bills. Since the situation was being closely monitored and there were no cries of outrage over unfair assessments, it does not seem unreasonable to assume that the rule was largely observed.

For the purposes of the 1554 extraordinary tax, the population of the town was divided into 8 brackets; at the lower end, people were taxed in increments of half a *real* (1 *real* = 34 *maravedies*). After the 2 *reales* bracket, tax liability was assessed in increments of one *real*, with a maximum of six *reales*. A total of 257 households were assessed; the remaining ones would have been *hidalgo*, poor, or might have been exempted for other reasons. If the poverty rate had been similar to the 9.3% observed in Briones, these numbers would be strongly consistent with the witness accounts that put the population of the town at about 300 households, of which between 3 and 7 would have been *hidalgo*. Overall, slightly over 16,000 *maravedies* of tax liability were assessed; while this exceeded the 15,000 authorized by the court, the extra amount was probably meant to compensate for potential non-payers.

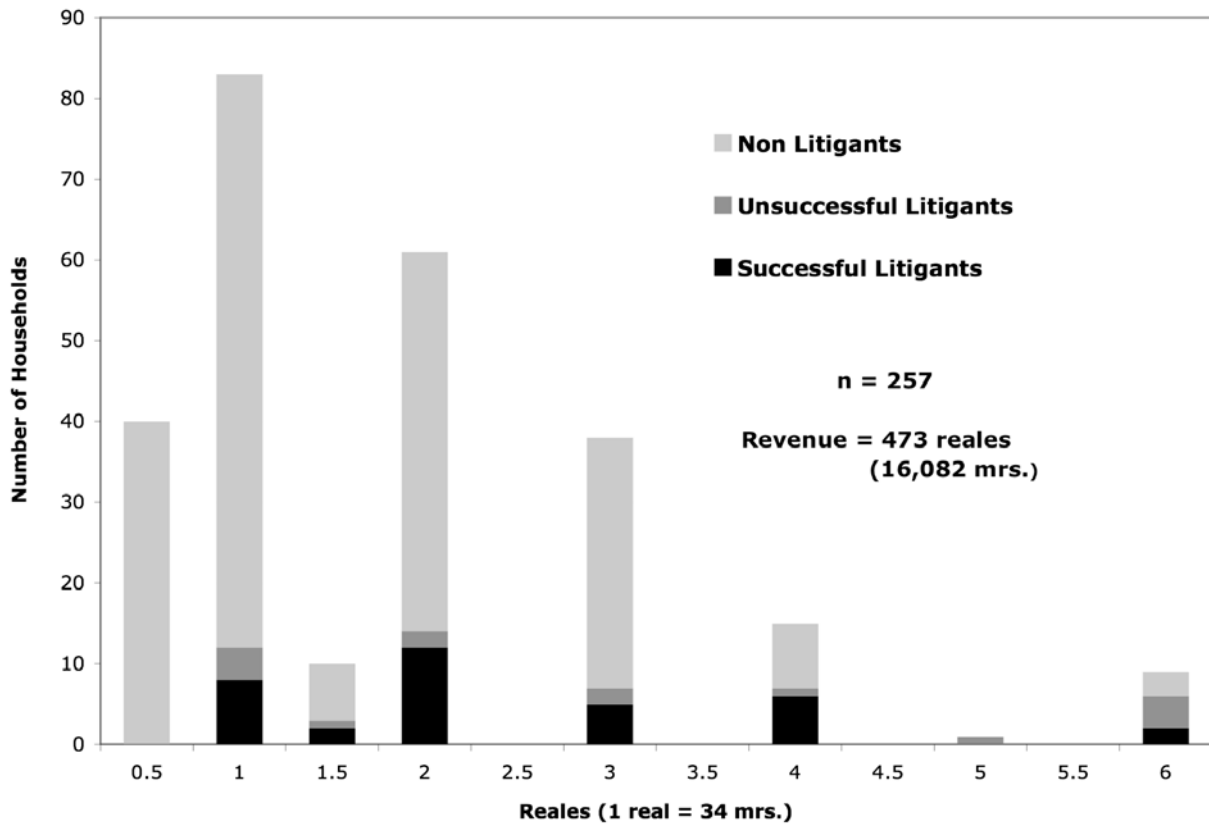
Figure 4 shows the distribution of the tax liability that emerges from the 1554 tax roll, further broken down by the litigant status of the household. The implied distribution of wealth has a very plausible shape; the 1562 tax roll suggests an even more skewed distribution, since some of the households that were assessed at the maximum of six *reales* in 1554 were even further to the right when the total tax bill allowed for it.<sup>44</sup>

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<sup>44</sup> Since the court had allowed the town to assess anyone without an *ejecutoria* for the purposes of the 1554 extraordinary contribution, town officials might have wanted to tax as many households as possible as a way to strengthen the case for denying them *hidalgo* status. As a consequence, the tax bill of the richer households might have been kept artificially low to ensure that every taxable household in the lower wealth brackets was assessed at least some tax, while not exceeding the maximum revenue allowed by the court.



Figure 4: Distribution of tax liability by litigants – Medina de Pomar, 1554.

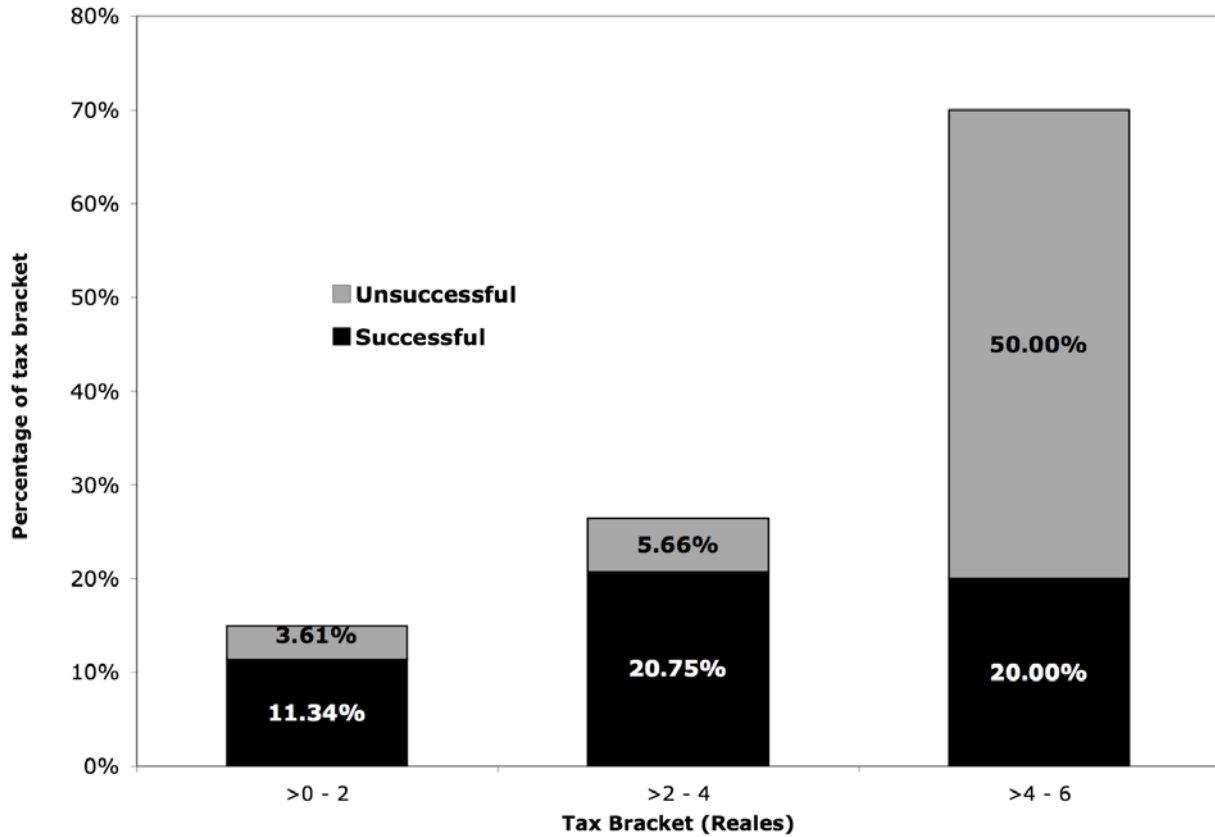


Compiled from the catalogue of the Archivo de la Real Chancillería de Valladolid and the tax rolls for the years 1554 (PP 68.5) and 1562 (PP 68.6).

The above data allow to examine the town’s strategy for fighting the avalanche of lawsuits.

Figure 5 divides the population into 2-reales tax brackets, and reports the percentage of each tax bracket that filed a lawsuit of *hidalguía* between 1550 and 1559, further broken down by whether they were successful or not as defined above.

Figure 5: Litigants as percentage of tax bracket



It is immediately clear that richer households were much more likely to claim being *hidalgo*; 70% of households in the highest tax bracket filed a lawsuit, while only 14.95% of those in the lower bracket did. It is also apparent that those in power directed the town's legal efforts to keep the wealthy households out of the ranks of *hidalgos*. Two thirds of the households in the upper bracket of the 1554 assessment that claimed an *hidalgua* were still paying taxes in 1562; in comparison, only one quarter of the lower income households that filed a lawsuit during the 1550 decade were still in the 1562 tax roll.

At first glance, the introduction of direct taxation seems to explain fairly well the timing of the litigation emanating from Medina de Pomar, as well as that of several other localities, and is entirely consistent with the focus on tax exemptions that traditional scholarship has used to explain the increase in the ranks of *hidalgos*. The main problem with this theory, however, is that

the value of direct taxes was not nearly high enough to justify by itself the trouble and expense involved in acquiring an *hidalguía* through the judicial route. In Briones, for example, the wealthiest commoners paid less than 300 maravedíes per year in royal taxes in 1568.<sup>45</sup> In Medina de Pomar, with the exception of one person who paid 1,200 maravedíes, no one was assessed over 375 maravedíes in 1580.<sup>46</sup> Such sums were equivalent to about a week of an urban labourer's wages, a sum that, as the following analysis shows, could not justify the cost of a lawsuit of *hidalguía* even under the most favourable assumptions.<sup>47</sup>

*The returns to ennoblement.*

Obtaining a precise estimate of the total cost of a lawsuit is an arduous task, as no clear information survives in this respect. A 1570 estimate by a royal auditor put the cost of the average lawsuit at 24,000 *maravedíes*, while Kagan (1981), using evidence from civil cases, reached a very similar figure.<sup>48</sup> I have not found any lawsuit of *hidalguía* containing such detail, and have had to rely on the 16 cases from Medina de Pomar that report partial expenses. The information yielded by them is nonetheless consistent with Kagan's estimate. We learn, for example, that the city spent an average 5,016 *maravedíes* in deposing witnesses and filing motions alone. Other court fees, attorney fees and reimbursement of expenses would have easily doubled that figure. In one of the cases, the council was sentenced to reimburse the costs of Francisco Barbero, whose claim had been successful, in the amount of 9,000 *maravedíes*.<sup>49</sup> That

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<sup>45</sup> PP 37.13.

<sup>46</sup> PP 68.6. The person who received a 1,200 maravedíes assessment was Juan del Campo, who had sued the town for an *hidalguía* in 1554, but lost. His lawsuit is SHP 424.4.

<sup>47</sup> Labourer wages for the relevant years in Old Castile are available in Hamilton (1934). In 1568 they were 68 mrs. per day, while in 1580 they were 60 mrs. per day.

<sup>48</sup> Kagan (1981), p. 39.

<sup>49</sup> These costs are reported in a loose paper, SHP 1923.1, containing a 1556 legal filing against the mayor of the town, who was refusing to levy a special contribution to pay the judgment. The lawsuit in question is SHP 743.7.

figure still did not include the fee for the issuance of the *carta ejecutoria*, which was often the single most expensive item of the entire lawsuit, and the final payment to the court's reporter – at least an additional 3,000 *maravedies* by Kagan's count. That the city was sentenced to reimburse Barbero was most unusual; in all other cases from Medina de Pomar, litigants had to cover their own costs.<sup>50</sup> The Barbero case was also short and expeditiously settled, which would have placed it on the cheap end of the spectrum.

So what was the rate of return on ennoblement if only the resulting tax exemption is considered? Let's take the wealthiest taxpayers from Medina de Pomar, who paid 375 mrs. per year in direct taxes. Assume that there was no risk of losing the lawsuit (although two thirds of the wealthy residents of Medina de Pomar who filed actually lost), and that there was also no risk of the city challenging the *hidalguía* further down the road (which was not an unusual occurrence). Assume as well that the claimant was completely altruistic about his offspring and considered the *hidalguía* a perpetual stream of tax relief, and that he expected direct taxes to remain constant in real terms (when in fact their value was steadily being eroded by inflation). Finally, assume an impossibly cheap lawsuit, costing in all 5,000 mrs. (when all indications are that the cheapest lawsuits would have more than doubled that figure), and abstract from the foregone interest on the legal costs during the proceedings (which could drag on for several years). Such a setup is equivalent to a risk free perpetuity paying 375 mrs. per year in return for an initial investment of 5,000 mrs.; this would imply an annual rate of return of 7.5%, barely higher than what most

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Since Mr. Barbero had won it before 1554, he was not included in that year's special levy, and so we don't know in what particular tax bracket he would have fallen.

<sup>50</sup> Each party covering their own costs was the norm; a party could be sentenced to reimburse the other if the judges found it had litigated in bad faith. All cases from Medina de Pomar were individually checked to determine cost assessments.

relatively safe loans and bonds paid at the time.<sup>51</sup> With less extreme assumptions, it becomes impossible to justify the cost of an ennoblement relying on tax exemptions alone – even in those few cases in which more than one claimant was included in the same lawsuit. In a more realistic (but still quite optimistic) case assuming a cost of 12,000 mrs., a 50% chance of losing the lawsuit and no other risks or delays, the rate of return would drop to a negligible 1.5% per year. For those whose tax assessments were not as high, the fiscal rates of return to ennoblement would have been even lower.

As discussed in the previous section, distributive litigation points to political access and the redistribution of rents as the main source of the value of ennoblement. To further buttress this argument, it is worth noting that virtually all the nobility lawsuits heard by the *Sala de Hijosdalgo* originated in small and medium-sized communities not unlike Briones or Medina de Pomar. The large cities of Northern Castile, among which were the economic and administrative powerhouses of Madrid, Valladolid, and Burgos, are conspicuously absent from the record. If tax exemptions had motivated the flight to nobility there would have been no reason for such clear-cut geographical distribution of lawsuits. The distributive motive, on the other hand, is much more consistent with the data: since the government of large cities was already in the hands of nobles and grandees, there would have been little scope for distributive and nobility litigation.

## **5. A game of litigation and redistribution.**

I now use the characteristics of nobility and distributive litigation described so far to set up a simple game involving the three players that rise prominently in the archival record: the

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<sup>51</sup> A wealthy sixteenth century Castilian would have been able to use a variety of lending devices to earn interest on capital. The most popular private alternative was a form of mortgage – the *censo* – while, for larger sums, purchasing long term bonds from the Crown – the famed *juros* – was also an option. Either alternative would have provided a relatively safe return of *catorce mil al millar* – 7.14%.

incumbent *pechero* political elite (I); the *hidalgos* that had been blocked from the town government (H); and the commoners that had also been denied access to town offices, and were now opportunistically seeking it through ennoblement (DC). I assume each player represents  $1/3$  of the population of the town and is neutral to risk, and normalize initial town resources to 1.

A first version of the game is presented in its extensive form in Figure 6. I take the monarchy's centralizing drive as exogenous, and consider a starting point where *hidalgos* are presented with the choice to maintain the status quo or seek political power through a distributive lawsuit, demanding half of the town's offices. To abstract from the trivial case where the status quo is maintained, I assume that the legal costs of existing *hidalgos* are small in relation to the expected payoff from legal action, and hence they will always choose to litigate. I also assume away the tax exemption motive for seeking ennoblement; adding it does not qualitatively alter the results and only complicates the algebra.

Incumbents then face the choice of whether to oppose the *hidalgos'* bid for half the offices or accommodate it. If incumbents fight, hence giving rise to a distributive lawsuit, a share  $1-a$  of the town's wealth is lost in litigation. Incumbents win the lawsuit with an exogenous probability  $1-p$ , and lose it with probability  $p$ . If incumbents win, the game ends with a payoff equal to zero for *hidalgos* and disenfranchised commoners and equal to  $a$  for incumbents.

If incumbents lose a distributive lawsuit, or if they choose not to fight the *hidalgos'* demand for half the offices, access to offices is opened to the nobles; at this point, disenfranchised commoners can attempt to gain a share of political power by filing nobility lawsuits, which entail a private cost  $k$ . If they do not seek ennoblement, they can only receive a share of the town's wealth if the incumbents seek ennoblement themselves, thus leaving formerly disenfranchised commoners as the only candidates to fill the offices allotted to *pecheros*. Such a strategy is

always dominated for incumbents, and hence in the equilibrium of this subgame disenfranchised commoners receive a payoff of zero if they do not file for *hidalguía*.

If disenfranchised commoners seek ennoblement (which they will as long as the expected payoff of doing so is nonnegative) the town needs to decide whether to fight or accommodate those claims. Since *hidalgos* have now succeeded in claiming half of the offices, the question of who gets to decide for the town arises. The game in Figure 6 assumes that incumbents still get to decide whether to litigate. The version in Figure 7 solves the alternative problem, where the decision rests with the *hidalgos*. In practice, either player could be in control of the town's legal policy at any given time; political manoeuvring, the particular implementation of *mitad de los oficios* in the town, and even the luck of the draw (for in some towns such was the system to allocate offices) could determine who would be in charge of legal policy.

Assume first that incumbent *pecheros* are still in charge of deciding whether to fight a bid for ennoblement from the disenfranchised commoners (the situation pictured in Figure 6). If they choose to oppose the bid, the legal expenses of the town amount to a share  $1-g$  of the remainder of the town's wealth. Litigation has the effect of preventing a share  $1-b$  of the disenfranchised commoners from achieving ennoblement; the remaining share  $b$  of disenfranchised commoners go on to join the ranks of *hidalgos*, and claim a share of offices allocated to nobles equal to their participation in the noble population. If the town chooses not to fight the bid for ennoblement, then all the disenfranchised commoners become *hidalgos*. Finally, incumbents can choose to seek ennoblement themselves, a bid that would go unopposed (since they control legal policy) but would force them to share the offices of *hidalgos*, making it a strictly dominated strategy. Once the distributive and nobility lawsuits are settled, the remaining town resources are distributed in proportion to the number of offices held by each player.

Figure 6: Distributive Game I – incumbents retain power over litigation decisions

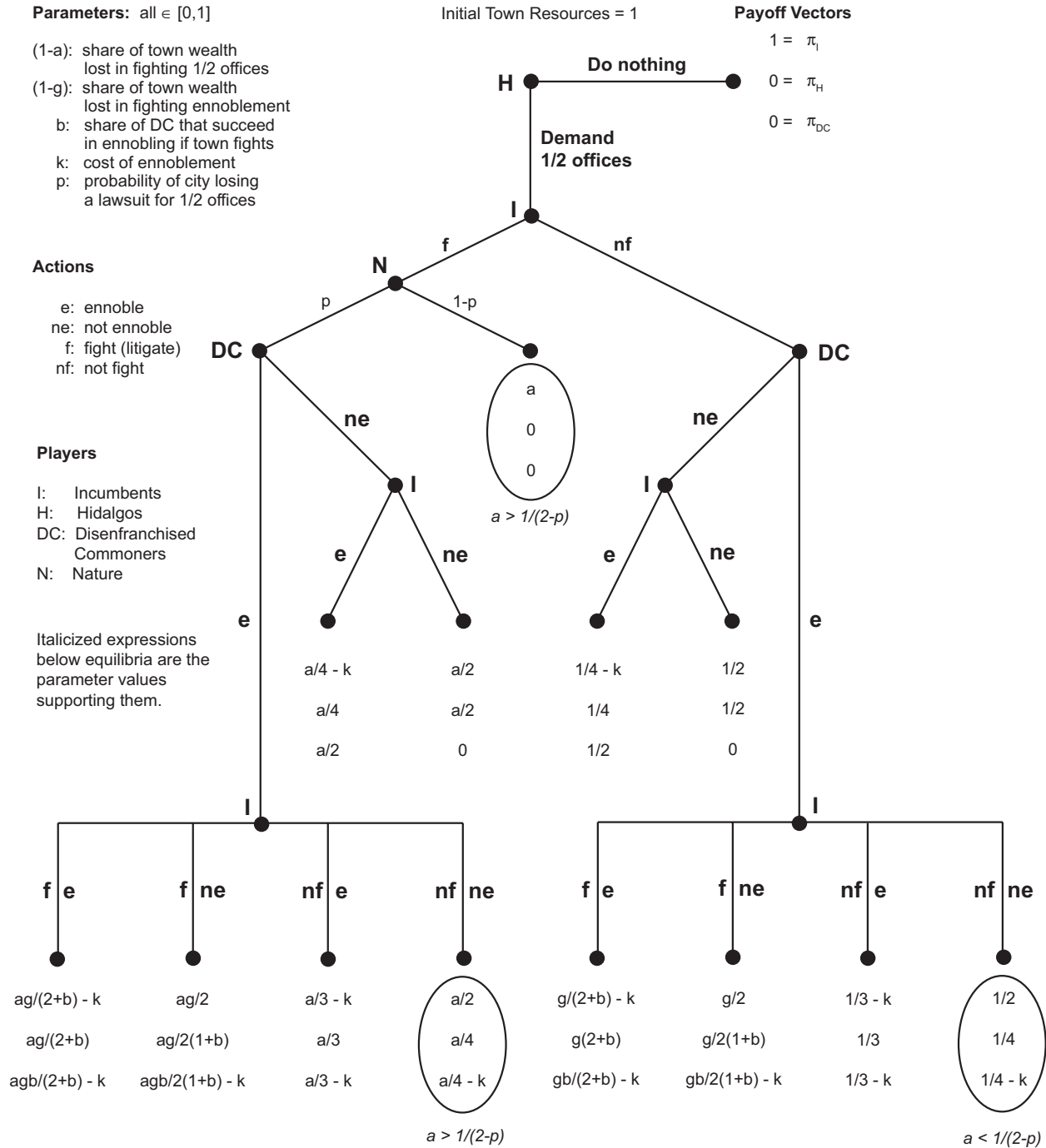


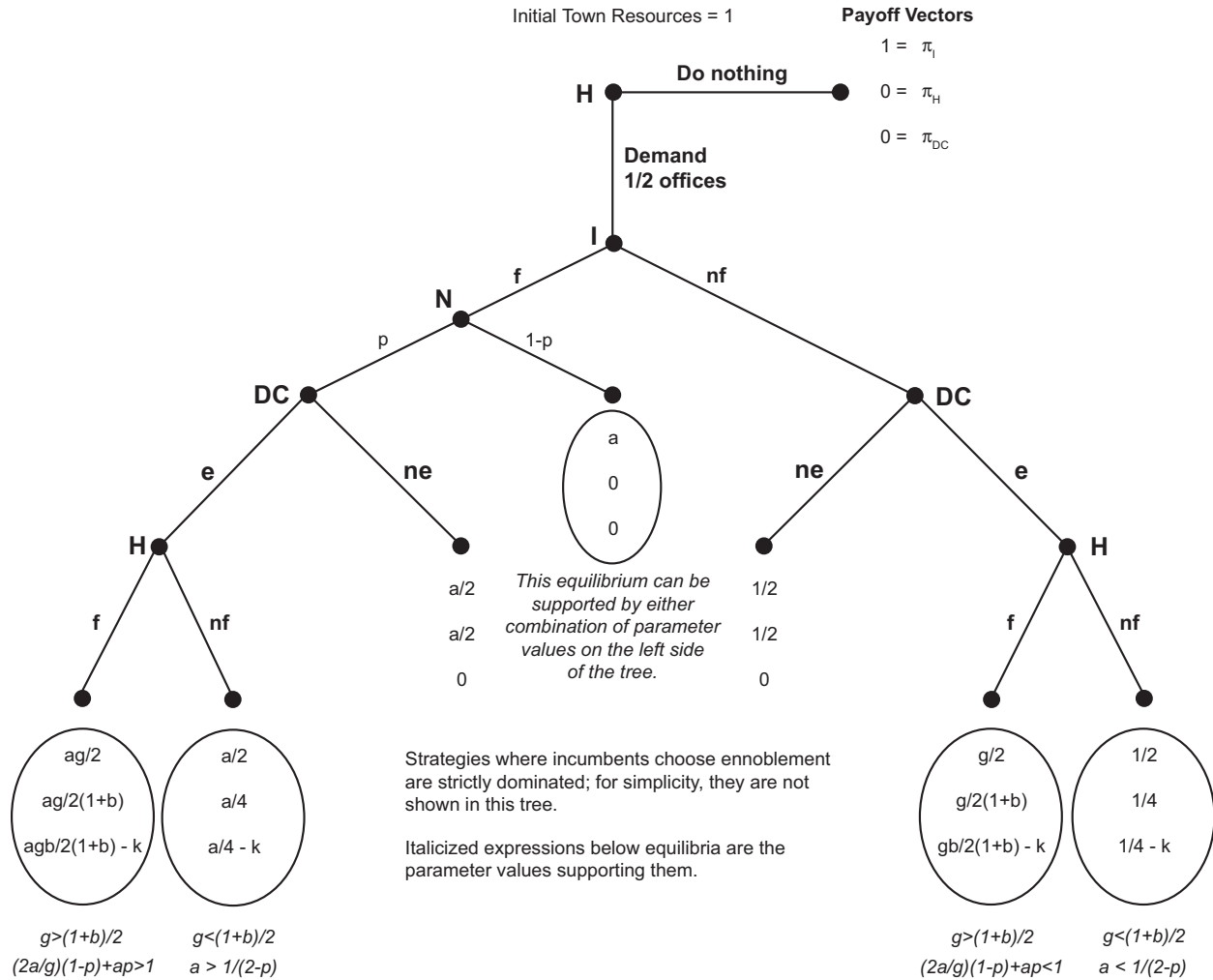
Figure 6 shows all the possible outcomes of the game; the payoff vectors corresponding to equilibria are circled, and the supporting parameter values appear italicized beneath them. The first key insight yielded by the game is that, if the power to decide over the town’s involvement



in nobility litigation still rests with the incumbent *pecheros*, claims of *hidalguía* from disenfranchised commoners will not be opposed; their ennoblement only dilutes the ranks of *hidalgos* without altering the share of offices available to incumbents, and active litigation would only reduce the resources available for distribution. There would still be nobility lawsuits, for they remain the only gateway for commoners to become noble, but the town would not be actively fighting them, and most claimants should obtain *ejecutorias*. The game also shows that incumbents would fight a distributive lawsuit only if the amount of resources needed to litigate was not too high, or if the probability of losing was not too elevated; otherwise, incumbents would be better off by accommodating the demands of *hidalgos* and sharing power. This version of the game suggests that the only deadweight losses should come from distributive litigation, and only when the cities anticipated a high probability of winning coupled with limited legal expenses. As distributive lawsuits became more expensive and courts sided consistently with *hidalgos* (thereby increasing  $p$ ), beliefs about both costs and chances of success would have been updated by the incumbents, distributive litigation would have gradually moved off the equilibrium path, and resources would have been redistributed without any recourse to the Royal Chancery Court. These results suggest, then, that the rent seeking activity captured by the archival record is only a lower bound for the level of redistribution in Early Modern Castile.

The outcome is slightly different if the decision on whether to fight ennoblement rests with *hidalgos*, who would in principle oppose newcomers into their ranks, as they would compete for the same number of offices and hence reduce the share of resources accruing to existing nobles. Figure 7 illustrates this case, abstracting for simplicity from the (strictly dominated) strategies where incumbent commoners choose to seek ennoblement.

Figure 7: Distributive Game II – *hidalgos* obtain power over further litigation decisions



Under the new assumption, equilibria with and without both distributive and nobility litigation become possible. Incumbents will still fight *hidalgos'* demands for half the offices if the costs are not too high and the chances of success reasonable, and disenfranchised commoners will still seek ennoblement as long as the expected payoffs of doing so do not become negative. But *hidalgos*, now in control of the town's legal policy, will find it optimal to oppose the nobility claims of disenfranchised commoners if the legal expenses of doing so are not too onerous and if the expected success rate of the town in fending off claims of *hidalgua* is high enough. The case of Medina de Pomar, where *hidalgos* captured key offices in the town government in the first

distributive lawsuit and the town went on to actively fight ennoblement bids, echoes this last scenario.

While the legal strategies of all players at any given point in time would have depended on a number of parameter values that remain impossible to calibrate, the theoretical framework is still consistent with the time series of distributive and nobility litigation. The strengthening of royal power in the first half of the sixteenth century allowed *hidalgos* to claim their share of local control from the commoner elites; as the Chancery Courts sided more and more with the demands of *hidalgos* in matters of local political power, incumbents would have updated their beliefs regarding their chances of success; more demands for half the offices would have been accommodated without the intervention of the Chancery Courts, and litigation would have become an off-the-equilibrium-path action. Such a scenario is consistent with the rise and subsequent fall of distributive lawsuits throughout the sixteenth century reported in Figure 2. The patterns of ennoblement described in Figure 1 can also be reconciled to the game-theoretical setup. While incumbents retained decision-making power in the councils, it would not have been in their interest to fight claims of ennoblement. Town governments would have allowed most claimants to win their lawsuits, obtain *ejecutorias* and become *hidalgos*, concentrating only on fighting those they thought could put a serious dent in their tax base. Such connivance between authorities and *pecheros* seeking ennoblement was in fact commonplace in the sixteenth century.<sup>52</sup> As *hidalgos* cemented their power in the town councils, however, the situation would have turned to the one described in Game II; claims of nobility would have been more vividly

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<sup>52</sup> The lawsuit of St. Theresa's father is again the most prominent example; several witnesses for the prosecution testified that they knew the mayor of the town had agreed not to actively oppose the claim. See Ejido (1986). In reforming the Sala de Hijosdalgo in 1593, Philip II also alluded to the connivance of claimants and town officials. See C.P 5.5 and C.P. 5.7.

opposed by towns, increasing the cost of becoming noble and eventually turning the expected payoffs of disenfranchised commoners negative, thus putting a stop to nobility litigation.

Additional factors combined to reduce the number of nobility lawsuits by the end of the sixteenth century. The marked increase in the number of *hidalgos* had become a concern for the Crown, which in 1593 intervened by adding a number of costly and time consuming hurdles to successfully complete a lawsuit of *hidalguía*, further reducing their expected payoffs.<sup>53</sup> Direct taxes had also remained frozen in nominal terms since 1539 in the face of widespread inflation, while the bulk of the fiscal burden had gradually shifted to sales and excise taxes, from which *hidalgos* were not exempt. With the costs of obtaining an *hidalguía* on the rise and its benefits constantly eroded, ennoblement ceased to be an attractive proposition. The fall in litigation, however, did not bring about the decline of *hidalguía* as a mark of social distinction. The title of *hidalgo* was hereditary, and its lustre persisted well into the nineteenth century, relieved, from 1783 on, of the incompatibility with any kind of profession.<sup>54</sup>

## **6. Conclusion.**

The institution of *hidalguía* emerged during the late Middle Ages as a product of the war against the Arab kingdoms; distinguished military service was rewarded with an honorific title, the advantages of which included tax exemptions, legal privileges and an ongoing commitment to

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<sup>53</sup> The most important rules imposed by Philip II in 1593 were a) that all witnesses travel to Valladolid to be personally examined by one of the three judges rather than having an itinerant court official depose them in their hometowns; b) that when a witness was unable to make the trip, one of the three judges travel to take a deposition; c) that all “dubious” *ejecutorias* issued in the last 20 years be revised and, if justified, revoked. While the extent of the enforcement of this last requirement is unclear, the other two (and many minor ones) were certainly a major factor in increasing the length and cost of the proceedings. The judges protested the new norms, but the king imposed his will. See CP 5.5 and CP 5.7.

<sup>54</sup> Thompson (1987), p. 29.

serve in times of war. The prohibition of engaging in “vile” or “mechanical” occupations, though of unclear origin, was intended to keep *hidalgos* well trained in the military arts.

Over time, the concept of *hidalguía* came under pressure from several directions. The grant of universal privileges to certain areas, such as Biscay, made it difficult for everyone to honour the technical requirements of the title. By the sixteenth century the entire peninsula was in Christian hands, all but ending the intermittent episodes of small-scale warfare to which *hidalgos* had been normally summoned, and the rapid changes in military technology required the creation of armies with an increasing degree of time commitment and professionalism.<sup>55</sup> While *hidalguías* were sometimes used to reward special favours or monetary contributions, most notably by Henry IV Trastámara (r. 1454-1474), the Catholic Kings (r. 1474-1516) revoked most of the privileges granted in such fashion, and the institution seemed headed towards an opaque decline.

The revival and unprecedented expansion of *hidalguía* during the sixteenth century was traditionally blamed on supposedly indiscriminate sales of patents by Charles V and Philip II; while the argument had been proved wrong by Thompson (1979), no alternative explanation had surfaced to replace it. Using legal cases argued before the Valladolid Royal Chancery Court, I have further shown that tax exemptions, while a welcome bonus for an *hidalgo*, in most cases could not justify the time, expense and risk involved in a lawsuit of *hidalguía*.

The sixteenth century ushered in a renewed assertion of royal power, spearheaded by the Catholic Kings and consolidated under Charles V and Philip II. As a result, towns that had previously met royal tax obligations from their commons revenue were increasingly forced to tax their commoners directly to safeguard *hidalgo* privileges; *hidalgos* soon reclaimed their right of half of the offices of the towns, backed by the Royal Chancery Courts when needed.

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<sup>55</sup> On Spain’s role in pioneering the military revolution of the sixteenth century see Parker (1976).

In the cases where litigation flared, the conflict over local control depleted the resources of the towns, which were spent fighting nobility and distributive lawsuits. Despite legal strategies aimed to keep the richest (and possibly most powerful) neighbours in the tax rolls, towns could not hope to defend the dozens of lawsuits that piled up against them over the year. As suggested by the theoretical framework and several pieces of evidence, many of them must have chosen not to fight, their ruling elites reluctantly consenting to a redistribution of resources for the sake of avoiding an even larger reduction in both their own personal income and in the town's wealth.

The archival record is silent on the efficiency implications of the redistribution; there is nothing to indicate that *hidalgos* would have made better or worse administrators of town property or, in the case they embezzled or appropriated public resources, that they would have diverted them from their most productive use. There is also little support for the “treason of the bourgeoisie” hypothesis; while *hidalgos* took pride in their title and ostensibly complied with all its requirements, I have been unable to find a single piece of evidence of *hidalgos* being stripped of their privileges for engaging in banned professions. Quite to the contrary, several documents casually mention *hidalgos* freely engaging in “mechanical and vile” activities throughout Spain; of course, in the areas that enjoyed universal *hidalguía*, such occurrences were almost a tautology.

The number of *hidalgos* did in fact grow substantially during the sixteenth century. By 1600 at least 6,221 *ejecutorias* had been issued for Northern Castile alone, each representing the start of a new *hidalgo* lineage or the confirmation of one whose purity had been challenged. Since *ejecutorias* do not include self-avowed *hidalgos* that were not challenged or whose lawsuits were dropped by the towns, they represent just a lower bound on the number of families that established themselves as part of the petty nobility. The rest of the traditional wisdom regarding

*hidalgos*, though, needs to be thoroughly reexamined. Tax incentives seem to have had little to do with ennoblement; distributive conflict, often dismissed as inconsequential, played an important role; and although the misallocation of talent argument holds some appeal, no archival evidence is available to support it. Finally, while substantial redistribution certainly took place at the local level, and some localities suffered large losses through litigation, these processes seem unlikely candidates for having precipitated or contributed in large measure to the decline of Spain in the late sixteenth and seventeenth centuries.

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Unless otherwise noted, all primary source references are from the holdings of the Archivo de la Real Chancillería de Valladolid. The abbreviations corresponding to the different sections of the archive are:

SHP: Sala de Hijosdalgo – Pleitos

PP: Protocolos y Padrones

RE: Registro de Ejecutorias

CP: Cédulas y Pragmáticas

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