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# On the devaluation of Merit. An economic analysis of Spanish Premial Law

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## Abstract

This paper studies the Spanish Premial Law applying an economic viewpoint. We reach the conclusion, that during the period studied (1995-2009) there has been a sharp increase in the number of civil order awarded, thus showing a phenomenon of "inflation". This would imply a devaluation of the supposed merits underlying the awarding, meaning a corruption of the Premial system.

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## 1. Introduction

Generally speaking, incentives have received a broad attention, not only by economists, but also from related fields like sociology and law. This notwithstanding, interest has mainly centred on monetary incentives (for example Stiglitz, 2006), as this sort of compensation allows the receptor to maximise its utility (Becker, 1974), or on non-monetary incentives (like business cars, better offices, etc.) summarised under the term "fringe benefits". Alternatively, economic analysis of law has studied mostly negative incentives, such

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as fines and punishment.<sup>i</sup> Nevertheless, one major category —if not *the* main category— of positive incentives used by States have so far been nearly neglected both by economists and jurists: the awarding of orders, medals, decorations and other honours that constitute the so called Premial Law, referring to which already Beccaria lamented that:

“Upon this subject [Premial Law] the laws of all nations are silent. If the rewards proposed by academies for the discovery of useful truths have increased our knowledge, and multiplied good books, is it not probable that rewards, distributed by the beneficent hand of a sovereign, would also multiply virtuous actions.” [Beccaria [1764] (1991), p. 83].

There are serious evidences that Beccaria intended to write a complete *Tract on Premial Law*, although he finally did not achieve this purpose (Jiménez, 1915:27). It was Dragonetti (1836) who published a *Treatise on virtues and rewards*. Nevertheless it is Jeremy Bentham, who might be considered the father of Premial Law with his work entitled *Théorie des peines et des recompenses*. Later, Le Grasserie (1900) published an important article in *La Scuola positive* dealing with this topic and in which he (erroneously) stated that he was the first to introduce the concept of Premial Law. Finally, it might be stressed that the probably most important monograph on this matter was published by a Spaniard, Luis Jiménez de Asúa (1915), entitled *La recompensa como prevención general. El Derecho Premial*.

## 2. Orders as incentives

Only very recently the works by Frey (2005) and Frey and Neckermann (2006) have drawn their attention on the topic from an economic viewpoint, setting a significant theoretical framework although lacking any empirical analysis.<sup>ii</sup> Frey (2005:4) points out some possible reasons why economists have so largely disregarded the study of awards:

- Firstly, awards may be considered to be less efficient as an incentive device, because they are not fungible and difficult to apply marginally.
- Secondly, awards may just be a reflection of success and high monetary income.
- Thirdly, economists assume that awards as such are of no interest to recipients as, after all, they cannot be consumed.

Yet, this last point deserves some deeper consideration, as, in fact, medals and orders were often used as a monetary substitute. For example, during the second German Reich (1871-1918) there existed a *Sonderklasse* (an especial class) of the main orders made completely of brilliants. After the awarding, these orders were usually given back to the Official Jeweller Godet, Wagner & Sohn y Gb. Friedländer in Berlin, who exchanged them with another piece made of simile-stones, paying the recipient the difference in cash. This procedure was indeed intended by the Kaiser as a form of “paying their subjects without offending their honour”.

This notwithstanding, there are major differences between awards and monetary compensations, that fully justify analysing them separately (Frey, 2005:5):

- The material costs of awards may be very low, or even nil, for the donor, but the value to the recipient may be very high. In this respect, the cost benefit balance is therefore unlike that of gifts (which are generally valued less by the recipient than what they cost to the donor).

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