From a Council of brave men toward a last resort
council of arbiters?

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Abstract

This paper provides a new innovative approach to the economic analysis of French labor courts. These atypical employment tribunals are composed of non-professional judges, elected in the ranks of trade unions and employers’ organizations. Previous work has attempted to relate judge’s trade union affiliation with the judicial outcome, unveiling an influence on settlements and litigants’ strategies. The present paper, instead, use a different stand, relating for the first time some wine-producing peculiarities and the law and economics work on the subject. By means of an instrumental variable – the well-known winemaker’s nightmare, the phylloxera vastatrix – it is possible for once to demonstrate that there is no correlation between the syndical affiliation of the judges and the judicial outcome.

Keywords: Philloxéra, Wine, Trade Unions, Labor economics, Comparative judicial empirical analysis, IV Testing

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1. Introduction

The French labor judicial system is without any doubt quite fascinating. Its employment-competent court – Conseil de prud’hommes (Cph) – reflects the importance of cooperation between employers and employees organizations in the arduous task of fostering social and economic progress. This long-lived institution originates as far back as the 13th century, when conflicts between craftsmen were solved by their peers, among men of trade who were notorious for their “prudence” and “good advice”. The Council has evolved over time and has undergone numerous revisions, which have not dismantled its original structure and it is still characterized by men of labor who judge their colleagues and belong to the same social category.

First and foremost, it is vitally important to understand that there are some precise institutional reasons behind the semantic use of the terms “Council” and – referring to its honorable members – “counselors”. In particular, the extensive peacemaking and conciliatory scope of Cph, which was intended to calm down adversarial tempers and avoid harsh labor disputes, is by definition the most important feature of this institute. The natural inclination of the judges toward recommendation and advising is the cornerstone of the Council since its foundation.

The composition of its judicial panels is characterized by the presence of syndical associations, which are sometimes perceived as the bastions of some belligerent policies in labor relations. In this regard, historians share the view that the complex syndical relationship between French social partners is the result of the troubled history of its labor law. The latter was characterized by a strong distance between the Republicans and the working class, which resulted in a “particular labor language” (Tucker, 2005: 3 ff.), intended to advocate for a direct action in the promotion of social issues. At the last professional election, held in 2008 to elect labor judges, the most “adversarial” trade unions disposed of half of the seats, allocated among the employees’ representatives list.

The labor panorama is dominated by a trade unions’ affiliation rate which is stable at less than ten percent, besides a syndical contractual coverage rate of almost ninety-five percent. These indeed paradoxical figures rank France – simultaneously
– in one of the lowest and the highest positions in OECD countries\footnote{According to a study commissioned by the General direction of the Ministry of the Treasury, available \url{here}.} The singularity of the consolidated model of French industrial relations is that trade unions and employer’s organizations negotiate for all the employees of the branch and not only for their syndical members, in a procedure that extends *erga omnes* the authority of collective agreements. The weight and power of trade unions, therefore, depends on their results in the professional elections, set for the appointment of counselors in every competent Cph.

With the aforementioned premises being true, it was reasonable to expect that prominent literature has attempted to establish a causal relationship between settlement and syndical membership of judicial members. If we consider the hypothesis that judges come from “belligerent” trade unions and are educated to fight, then it is reasonable to expect that they would adjust their behavior in the courtroom accordingly, maximizing the litigiousness in the cases they are confronted with. This issue was addressed in a previous analysis of the functioning mechanism of French labor conciliation, with the hypothesis that the provenance of counselors affects the conciliatory outcome of the Council.

Nevertheless, since Cph has been designed with judicial panels composed of an even numbers of members – a fact that imposes inevitably a negotiation between employers and employees’ views – we should regard with caution any direct relation between part of the judicial panel and the entire outcome, in view of the aforementioned compromising nature, which is inherent in every judgement of Cph. If we are seriously willing to relate judges’ syndical origins and judicial outcome, we should first explain the degree to which these trade unions are rooted in the territory, as well as their social and historical role.

In this regard, it could be not immediately evident how the wine-producing world is connected with the labor-judicial one. However, the relevance is much stronger than it looks at first glance. Using historical data and high functioning instrumental variable techniques, it is possible to demonstrate that the nowadays presence of some “confrontational” trade union among councillors is the result of the dissemination of *philloxra vastatrix*, the insect responsible for the disruption of the agricultural
The economy of France in the 19th century. The crisis triggered by this tiny little insect gave the impetus for a radical change in the social French institutional panorama, fostering a rapid migration from the countryside to the cities and the appearance of new emerging actors on the national scene.

As will be shown below, *philloxéra* channeled commoners and bourgeois’ anger, forcing them to join efforts into a legalist movement intended to fight against wine-counterfeiting. Both social partners found in the syndicate the institution capable to provide direct answers to this struggle and protect collective and diffuse interests.

The transition, from the total ban of trade unions to the encouragement of mutual aid and self-organization amongst classes, reached its peak and was encouraged by the success of the wine-makers structured mobilization. This movement was capable to professionalize its activists and forepersons, develop effective strategies for a claiming campaign and achieving the objective to convince the parliament to enact legislation against wine counterfeiting.

In this sense, the territorial presence of nowadays “uncooperative” trade union – as well as the current methodology to fight class struggle by means of mass protests and strikes – is, to a large extent, the positive result of the advanced psychological pressure tactics used by winegrowers to achieve legality, transparency and crisis alleviation against *philloxéra*.

In the light of the above, it will be here demonstrated that the mere presence of some belligerent trade unions in judicial panels is not in itself sufficient to explain the legal procedures’ outcome, since quantitative results could be simply driven by ambiguous non-measurable factors. In this sense, previous efforts to analyze Cph failed to take into account the particular institutional and historical background that lies behind its functioning.

The present paper contributes to the economic analysis of labor law and its judicial policies with a stimulating, innovative and proactive approach to Cph, combining the world of wine and the world of law, for the first time, through the medium of economics. The evident downside and limitation of the present work are the open and unresolved complex issues concerning the identification of the driving factors of conciliation, which should be the subject of future researches.

The remainder of the paper is organized as follows. Section 2 describes in detail the conciliation procedure in front of Cph and the origins of its compromising
vocation. The subsequent Section 3 describes in detail how the diffusion of our microscopic aphid, which brought France to its knees, laid down the foundations for the channeling of the class struggle through trade union movements. Section 4 discusses more in depth some technical details about the instrumental variable that we chose to explain unionization, presenting some preliminary results and discussing the strength of the latter. Conclusions are then drawn in Section 5.

2. A Council of trusted advisors

As previously mentioned, the Conseil de prud’hommes represents both the world of employees and the employers, with judges that are themselves from the world of work. The latter was introduced in 1806 by Napoleon Bonaparte, having in mind an idealistic “homo prudens” characterized by wisdom, experience, foresight, fairness, and probity (Hess-Fallon et al., 2015: 363). The reason behind the establishment of a neo-corporative council was to grant and maintain the “industrial peace” and, at the same time, to improve the management of changing labor demands (cfr. Royer et al., 2016: 401 and 623).

In this regard, the Council was expressly designed to go straight to the heart of the close relationship between employers and employees, with the clear mission to foster reconciliation between distant social partners. This is the main reasons why Cph is neither called “tribunal” nor “court” and, instead, it is called “council”: the roots of this institution sink in the primary intention to give guidance and meet of the “patronal and militant humanism” (Mouriaux, 1982: 284).

The Council is competent to settle individual disputes that arise between employees, or apprentices, and their employers throughout the employment relationship. In particular, Cph is the responsible authority that recognizes, inter alia: whether or not a contract of employment exists or its valid; disturbances to the performance of the contract (e.g. wages, bonuses, leave, discrimination, training, etc.) and when the contract is legitimately terminated (e.g. dismissal, compensation, non-competition clause, legal duration of the notice of departure, etc.). In summary, the jurisdiction of prud’hommes concerns solely the private labor sector, involving parties from the commercial, industrial, agricultural, civil or liberal sector.

This institution is unanimously considered to be a “partitarian” Council, the symbol of French social landscape (Mazeaud, 2016: 81). It is composed of an equal
number of non-professional judges – hereinafter more appropriately referred as “coun-
selors” – belonging to opponent social partners, who are nominated on the basis of a proposal by the “representative” trade unions and employers’ organizations, according to their respective audience. In this sense, “paritarianism” would mean a particular approach to the governance of social protection (Damon, 2017: 85), designed to have field actors among judges, aware of the realities of the business they are confronted with.

The referral to our labor tribunal involves a prior conciliation procedure between the parties before a conciliatory panel, nowadays termed Bureau de conciliation et d’orientation. The transition before the conciliatory office is preliminary to trial and develops with a non-public hearing, in which each party provides explanations and can be heard without the presence of the other and in confidentiality. In case of arrangement between the parties, the dispute ends with the drafting of a minute of agreement. In case of disagreement, the case is sent to the judgment office. The assiduous search for a compromise and the attempt to find an amiable solution and settle the case, is not only compulsory but it is the fundamental objective of the entire legal procedure, to such an extent that it is considered a “substantial formality of public policy” (Bataille, 2017: 202), which is capable, if omitted, to potentially nullify the entire procedure at all judicial levels.

The prominence of such topic in our discussion is made even more evident if we look at the intention of the legislator – both Napoleonic and contemporary – since in the wake of every reform of Cph, the longstanding aim has always been to favor the amicable settlement of disputes. The French regulatory system is not particularly slow or cumbersome: withdrawal period is short – 15 continuous days – and the approval by the administrative bodies is relatively fast – another 15 continuous days term. Furthermore, 30,000 terminations by mutual agreement are homologated in France every month, as a mean of a slightest judicialization and reduction of costs and uncertainties (Barthélemy and Cette, 2015: 104-105). Therefore, to an outsider’s eye, it is difficult to understand the reasons for the massive failure to reach in Court an agreement between the parties.

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It might be said, for the sake of completeness, that until very recent times, judges were elected through a veritable direct electoral process, which was replaced in 2018 with a “proposal” by the most representative employers and employees’ unions to the Ministry of Justice.
In this regard, however, we should not neglect that labor is a complex branch of law, because it involves personal feelings and dignity, and it is not always a mere matter of monetary settlement. Keeping this firmly in our mind, then, we should investigate economic nuances and describe the relevant social situation. It is not said that these elements, external to the court, would be the only ones to influence the so low number of agreements reached by the parties before the counsellors. Experience shows that empirical analyses that do not take into account the rights of working people, may have no substantive results.

Previous and prestigious literature on this subject has highlighted that the Council’s composition is correlated with the outcome of the cases. Judges elected from the ranks of the most confrontational trade unions would, in fact, lead to more conciliation and abandon of the lawsuit, rectius to more settlements (Desrieux and Espinosa, 2016: 14-15)

Nevertheless, there is a problematic question, related to the extreme difficulty to pin down and measure the tangible choices made by counselors in their pronouncements. The two scholars intended to deal with the sources of endogeneity inherent in the presence of “non-reformist” trade unions (idem: 5) by approximating the results of professional elections with the national political vote, in such a way to capture the degree of “confrontational preferences” among the population. However, since electoral processes and voting outcome are a sum of decisions of individual voters, which depends vigorously on an almost endless heterogeneous list of driving factors (Kelley, 2016: 10), any empirical estimations of electoral results would be probably echoed by the omission of an important determinant factor.

In the present analysis, I have not the ambition to call for a critical assessment of their selected endogenous measure, since their analysis deals with cases between 1998 and 2012. Nevertheless, since the last election of counselors was held in 2008 and the balance in the composition of judicial panels has not changed meanwhile, nothing prevents a comparison on the topic.

Hence, in the present analysis, in order to avoid any omission of a relevant variable, it is exploited an instrumental variable, capable to explain the syndical provenance of French labor judges. In particular, making use of phylloxëra vastatrix, the alien parasite that destroyed most of French vine landscape and forced both social partners to a general mobilization against this “inexplicable disease” (Gale, 2011: 7
it is possible to show the irretrievable transformation of the social landscape and the creation of a tripartite institutional dialogue between producers, laborers and government.

3. A bug that changed the course of history

In the last chapter, we argued that there is a relationship between the presence of nowadays trade union’s counselors and the infamous “phylloxera crisis”. Indeed, the “heritage” of the most ancient and more contentious trade unions is tightly interconnected with the dramatic “wine blight” and destruction of vineyards’ roots. During the mid-1800s, French winemakers came close to losing their entire industry due to the endemic dissemination of a minute aphid termed *Daktulosphaira vitifoliae*, commonly referred as *phylloxéra*. This sap-sucking insect feeds on the roots and leaves of grapevines, cutting off progressively the nutrients and water leading to the death of the vine, without any possible cure.

The *phylloxéra* was unknown to French scientists and it was registered the first time in the south of France, following the unexpected and inexplicable death of vines. At the time, experts described the diffusion of the insect merely as a “spot of oil upon paper” (Jemina, 1887, p. 8), emphasizing that the disease had the power to be spread to some great distances, either thanks to the hand of man, unaware vehicle for the creature, or in complete independence by means of the wings for which the bug is equipped.

The capacity of these winged insect to penetrate and infests the ground has been said to be “exceptionally effective” and “lethal” to plants, specially combined with their capacity to fly to a broad magnitude, in combination with a high reproductive capacity, pursuant to which a single androgynous adult can, under ideal circumstances, produce up to several hundred viable eggs (Powell, 2012, p. 224). During the crisis, the highest concern of the scientific community about the treatment of this underground pest was that any possible solution would involve, in the end, either the impossible or the miraculous (Riley, 1883, p. 578).

In those days, French society was still dominated by small cultivators and farmers (Carpentier and Lebrun, 2014, p. 305) and it was not prepared to answer to such titanic endogenous shock. Wine-producing domains employed substantial labor force from rural villages, whose majority consisted of vine-workers, that worked addition-
ally their personal small plots of land. The quantity of wine produced in France dropped from almost fifty-seven to twenty-nine million hectoliters (cfr. Bateman, 1883, p. 114, and Stevenson, 1980, p. 49), with an important and decisive decline on average prices, which have fallen from twenty to five francs per hectoliter (Gide, 1907, p. 370).

Between 1872 and 1907, the social movement of “vigneron” – winemakers – intended to challenge those who reacted to the crisis by counterfeiting wine, with the addition of alcohol and sugar, or importing low-quality raisins from Greece and Asia Minor on the market, side by side the more expensive “pure juice” (Beaulieu, 1885, p. 470) of French grapes. Among other sovereign nations affected by the crisis – e.g. England, Germany, Ireland, Italy, Portugal and Russia – no other country suffered more than France. In addition to that, it has to be stressed that French wine production represented the main export after textiles to the country and provided the government with one-sixth of its total revenues (Bittner, 2015, p. 153).

The defense of natural and superior wines, under a mechanism of registered designation of origin and the protection of local producers, in conjunction with the appearance of trade unions, that were presented as strenuous advocates of legality in the fight against fraud, resulted in an innovative political insurance to have the market run smoothly and efficiently (Gavignaud-Fontaine et al., 2009, p. 10-11). This is crucial to understand the historical roots of the so-called “non-reformist” trade unions (Desrieux and Espinoza, 2017, p. 156), which were born, de facto, during the crisis.

In particular, the most surprising and long-lasting effects of this mobilization – to such an extent that it could even be considered as the last big popular uprising experienced by France (Pech, 2007, p. 80) – was definitely the organization of structured movements, with clear strategies for effective claiming campaigns, alongside a certain degree of professionalization of activists and institutionalization of networks (Dufour, 2013, p. 717), which was the key to guarantee the success of grievances, face to the crisis and the subsequent perceived injustice.

The capacity of this movement to recruit local village unions into regional federations, conveyed a comprehensive, straightforward and meaningful message to the government by means of an elected body of labor leaders. It should not surprise that one of them, Paul Ader, leader of the Confederation Generale du Travail (C.G.T.)
and signatory of the famous Charter of Amiens, was himself a vine-worker (Smith, 1978, p. 108).

The multiplication of professional associations, unions, and cooperatives were wherewithal used to respond to the extensive “depression” caused by the *phylloxéra crisis*. The idea was to reorganize production and trade and increase the bargaining power of producers in front of a third arbitrator, the state, who was supposed to protect the market face to fraud (Stanziani, 2003, p. 167, 170). This aphid had, therefore, a positive influence on the enhancement of syndical confrontational tactics, which have found in the insurgency a justification and a fruit of their policies, as a prolongation of the union between social classes, toward the empowerment of labor unions (cfr. Verdejo, 2007, p. 10-11).

Hence, the efficient organization of the winemaker revolt inspired much of the principles established in the aforementioned Charter, leaded by leftist sensibilities. The revolt was not confined only to southern territories – which were the first territories affected by the over mentioned insect – but had important effects on the entire Nation, “illuminating” the legislative fulcrum with social demands, by means of an “homerí” debate of many honorable members of the Parisian Chamber of Deputies (Lemarchand et al., 2008, p. 181).

An important element of the revolt of French winemakers is that it offers several modern aspects: it was indeed a legalistic insurrection, aimed directly at the government, to demand the application and refinement of a legislation deemed insufficiently protective. It was groundbreaking because it was tolerated and even long encouraged by the government and by members of parliaments, prefect and mayors, who were urged to gloat public buildings on the passage of protesters (Pech, 2014, p. 252-253).

In summary, *phylloxéra* has the “merit” to have mobilized and regrouped social demands, channeling anger in a constructive way that has promoted the social dialogue by means of the creation of self-organized groups that endorsed the same legalistic interest. Such organizations were taken as an example for militancy and approach to institutions, laying the foundations of current leftist trade unions. Such claims converged into the CGT and then, after a long and emotional secession, to the even more confrontational FO, which was inspired by eminent leaders – such as Léon Jouhaux – who were born and raised during the crisis.
4. Does syndicate affiliation influence judicial settlements?

We have related phylloxéra and trade unions’ presence in Cph arguing with historical and economic reasoning. All that stands is a quantitative analysis capable to prove that the aphid is significant in explaining the presence of the most “confrontational” counselors among the ranks of our labor Council, explaining syndical rootedness. Before going in greater depth on the strength of our instrument, it would be necessary to mention that there were previous attempts to use such variable in the economic domain, even though such studies are not linked to our labor judicial analysis.

To the best of my knowledge, the use of phylloxéra as an instrumental variable was first used by Banerjee et al. (2010), to study the long-run effects on the adult height, health, and life expectancy of infants that were born in the regions affected by the insect. The analysis conducted by these scholars emphasizes that phylloxéra had a substantial effect on nutritional deprivation in uttering flows and on the subsequent stature of newborn children.

The path dependency analysis of Badia Miró et al. (2010) considers phylloxéra as a natural experiment, which allows the test of the economic impacts of such ecological shock on entrepreneurial innovations and institutional responses. The recovery from this agrarian crisis was predominantly due to the comparative advantage of Catalan territories, compared to other Spanish regions. The authors suggest that the capacity of Catalonia to endure and recover is the result of a long-lasting historical process, deeply rooted in the differentiated natural, social, and cultural framework of this territory.

Moving on the economic analysis of crime, Bignon et al. (2017) examine the evolution of French delinquency midway between late 19th and 20th century, suggesting that the income shock induced by the phylloxéra crisis caused a substantial increase in property crime rates and a significant decrease in homicides, driven by the negative impact of phylloxéra on legal earnings opportunities.

Finally, in one very recent working paper, Cirone (2018) argues that the agricultural crisis provided a natural experiment, according to which it could be possible to study how urbanization increased electoral competition and mobilization of social forces via political associations. This result is in line with our hypothesis that phylloxéra was at the base of the dawn of French syndicalism.
Keeping in mind the over-mentioned historical reasons that have determined the modern French trade union structures and demands, it is here tested the relationship between the spread of the \textit{phylloxéra} among the French lands and the construction of trade union strongholds across such territories. The present empirical investigation is based on a balanced panel dataset composed of data of every \textit{Conseil de prud’hommes} in France, equivalent to 203 annual observations, in the time span between 2012-2016. French overseas territories are excluded, due to their particular legal status and their different levels of autonomy, which affect the information available and homogeneity of observation of our variables. Official data is collected annually by the \textit{Institut national de la statistique et des tudes conomiques} (INSEE) at departmental level and by the Ministry of Justice.

Concerning our instrumental variable, our analysis starts with an official map, that dates back to 1882, which show the capillary diffusion of the phylloxéra. The map was then compared with the existing wine-producing geographical zones, divided by the different existing registered designation of origin. A reproduction of both geographical depictions can be found in the Annex – Figure 1 and 2 – of the present work.

Our main estimating equation is:

\[
conc_{cy} = \beta_1couns_{cy} + \beta_2X_{cy} + \Omega_c + \Omega_y + \epsilon_{cy}
\]  

where \(conc_{cy}\) is the rate of conciliated cases registered by each CPH \(c\) in the year \(y\); \(couns_{cy}\) is the representation of the most confrontational syndicates in the Council; \(X_{cy}\) is the set of control variables that comprise socio-demographic factors of the territory; \(\Omega_c\) is the counsel-fixed effects and \(\Omega_y\) is the year-fixed effects; \(\epsilon_{cy}\) is our error term. We consider that phylloxéra, described as an instrumental variable , would be not correlated with the error term, such that

\[
\hat{\beta}_{iv} = \sum_{cy} phyl_{c}conc_{cy}/\sum_{cy} phyl_{c}couns_{cy}
\]  

Following that path, our IV estimator \(\hat{\beta}_{iv}\) would then be consistent for \(\beta\), provided that the instrument is uncorrelated with \(\epsilon_{cy}\) but correlated with our regressor \(\beta couns_{cy}\). Before regressing, we have performed some preliminary tests.
The results of our first-stage test statistics—summarized in Table no. 1—are substantially above the thresholds considered in the literature on the exclusion of variables, weak identification (Stock and Yogo, 2005), under-identification and inference. Nonetheless, we are aware of the possibility that we could have stumbled into a methodological error by means of the omission of an important variable that could be the real driver of the rootedness of syndical presence on French territories.

To check for this eventuality, we have inserted a dummy control variable—wine—that takes into account the territorial presence of vineyards in France, to check if the driving factor of syndical presence is the vineyard and not our insect. The strength of our instrumental variable is not heavily affected by the addition of a control variable. On the contrary, when introduced in our regression, the overall results becomes more stable, proving to endure above the critical levels cited supra. The results of the additional tests—on the joint significance of the endogenous regressor in our main equation and under/weak identification of the latter—are reported in Table no. 2.

In view of the foregoing, once agreed that our instrument fits well to estimate the presence of non-reformist trade unions among the ranks or our counselors, we have proceeded to analyze the effects on labor conciliation rates. Table no. 3 summarizes the results of our IV estimation, showing a negative but negligible impact on conciliation, not statistically significant. These figures demonstrate the lack of direct influence of the counselors, elected among the most confrontational syndicates, on the capacity of reconciliation between the parties, at least at the judicial level.

This result should not surprise, since most of the issue concerning disclosure, representation, confidentiality, expenses, duties and responsibilities are concerns of the plaintiff and defendant, not the judges. The judicial panel, in fact, disposes only of a weak power of “moral suasion”, rather than a direct effect on the capacities of the parties to conciliate their conflicting interests. A monocratic judge could eventually have direct arbiter capacities in discouraging the litigation process, or the power to interfere directly in the mediation and conciliation process between parties and their respective representatives, but this is clearly not the case of our prud’hommes.

To test the robustness of our estimates, we have performed several alternative specifications that include a number of socio-demographic, economic and judicial variables, to keep into account different driving factors for settlement and the struc-
ture of the labor institutional framework. The magnitude and significance of our coefficients have not been drastically affected by these specifications. The results of this monitoring are summarized in Table no. 3, while the detailed regressions are available on request from the author.

5. Conclusion

This paper envisioned to lay the foundations for an in-depth analysis of Conseil de prud'hommes, given the importance that this labor institution has in the French judicial panorama. Throughout the years, the French government has launched major structural reforms in the fields of labor law, with the aim to meet the flexibility demand of the business community and simplify the traditional labor-dispute resolution context. The conditions for a strong conciliatory transition – from a Council of honorable men of labor toward a more flexible and efficient arbitration procedure – are not entirely met.

At the same time, the so-called “confrontational trade unions” are sometimes blamed for the stalemate that characterizes the procedure and/or conciliation. These censures appears to be biased or incomplete, and responsibility cannot be held entirely against the councilors chosen in professional elections. Many commentators have identified the lack of funding as being the main barrier to preventing the proper implementation of Cph's founding mission.

Notwithstanding the legitimate aspiration of a flexible and dynamic market, we should not lose sight of the conciliatory spirit of the Council. If this institution was born to foster social partners’ reconciliation and maintain social peace – by means of a compromise between employees and entrepreneurs’ interests – this is the cornerstone we should deal with.

Hence, before proceeding to any analysis of judicial determinants of conciliation, it was necessary to explain in detail the historical roots that identify the criteria for the representativeness of French workers’ organizations among judges. To perform such assessment it was necessary to build an eloquent and well-crafted instrumental variable. Much of the balance existing among labor judicial boards can be explained by phylloxéra, as a vector to explain of the capacity of trade unions to foster legitimate claims and equilibria in the labor market. The underlying deep-rooted syndical relationship among workers has endured and exists to this day in most employment
tribunals, reflected in hardened positions and in the almost declined capacity of judges to conciliate distant social partners.

Consequently, this paper was intended to explore whether access to settlement is substantively barred by the presence of such trade unions. Collecting data from different official sources and building an original dataset – that considers French labor councils in the period between 2012 and 2016 – it was possible to use a two-stage least squares regression analysis to investigate if the previous hypothesis on the influence of syndicates on judicial outcome were correct. As mentioned supra, previous scholars’ reasoning relied too heavily on the syndical provenance of French labor judges. This claim appeared to be rather superficial, since it was based on the speculation that half of the judicial panel would influence the outcome, an assertion that should be considered implausible and unsubstantiated.

The results achieved in the current study does not support hitherto previous research in this area. In fact, in contrast with what was previously thought, we did not find any statistically significant causal effect nor correlation between conciliation and composition of judicial panels. This result has been proven to be robust across several specifications and checks, both on the control variables and the instruments. This study controlled, among others, for some economic and socio-demographic characteristics of each territory and of judicial end-users, as well as the territorial presence of lawyers, active in each competent bar association, to check if they had an impact on the capacity of the parties to settle the case. The central issue of endogeneity was addressed by constructing an original instrumental variable, which is based on solid historical roots.

The phylloxéra has shown to have bought, almost by accident, the national economy to its knees, but it has also conveyed rage and population’s legal request to a new shape, laying down the conditions for the foundation of present syndical bodies. The crisis triggered by this insect can also explain the typical French heat among tripartite social relations and some of its labour market rigidities. I am confident that this research will serve as a base for future studies on French labor law, judge-based analysis and judicial policies. In this regard, it could be interesting to test whether the representation of the parties influences their capacities to conciliate in front of the labor panel. Hence, this should indeed be the aspiration of future investigations and the object of a prospective inquire over the functioning of prud’hommes.
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Appendix

Table 1
Testing the significance of our endogenous regressors in the structural equation

<table>
<thead>
<tr>
<th>Test performed</th>
<th>Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sanderson-Windmeijer excluded instruments test</td>
<td>25.20***</td>
</tr>
<tr>
<td>Kleibergen-Paap underidentification test</td>
<td>25.20***</td>
</tr>
<tr>
<td>Cragg-Donald weak identification test †</td>
<td>25.20***</td>
</tr>
<tr>
<td>Kleibergen-Paap weak identification test †</td>
<td>89.54***</td>
</tr>
<tr>
<td>Anderson-Rubin weak-instrument-robust inference test ‡</td>
<td>0.50</td>
</tr>
<tr>
<td>Stock-Wright weak-instrument-robust inference test ‡</td>
<td>0.50</td>
</tr>
</tbody>
</table>

Observations 1,013
Clusters 203

*** p<0.01, ** p<0.05, * p<0.1

Note: the present table summarizes the tests performed on joint significance of endogenous regressor in main equation, under-identification and weak identification.

† The Stock and Yogo critical value for the weakness test, based on one instrument and a significance level of 5%, is 16.38.

‡ The result of this tests is that orthogonality conditions are respected.
Table 2
Testing the significance of our endogenous regressors in the structural equation, alongside vineyard control

<table>
<thead>
<tr>
<th>Test performed</th>
<th>Results</th>
</tr>
</thead>
<tbody>
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<td>Sanderson-Windmeijer excluded instruments test</td>
<td>17.03***</td>
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<tr>
<td>Kleibergen-Paap underidentification test</td>
<td>16.25***</td>
</tr>
<tr>
<td>Cragg-Donald weak identification test†</td>
<td>17.03***</td>
</tr>
<tr>
<td>Kleibergen-Paap weak identification test‡</td>
<td>17.36***</td>
</tr>
<tr>
<td>Anderson-Rubin weak-instrument-robust inference test‡</td>
<td>0.01</td>
</tr>
<tr>
<td>Stock-Wright weak-instrument-robust inference test ‡</td>
<td>0.01</td>
</tr>
</tbody>
</table>

Observations 1,013
Clusters 203

***p<0.01, **p<0.05, *p<0.1

Note: the present table summarizes the tests performed on joint significance of endogenous regressor in main equation, under-identification and weak identification.
† The Stock and Yogo critical value for the weakness test, based on one instrument and a significance level of 5%, is 16.38.
‡ The result of this tests is that orthogonality conditions are respected.
### Table 3
Testing the influence of confrontational counselors on conciliation

<table>
<thead>
<tr>
<th></th>
<th>Conciliation</th>
<th>Conciliation</th>
<th>Conciliation</th>
<th>Conciliation</th>
<th>Conciliation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>-0.0931</td>
<td>-0.0931</td>
<td>-0.0333</td>
<td>-0.0527</td>
<td>-0.0177</td>
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<td></td>
<td>(0.0736)</td>
<td>(0.0736)</td>
<td>(0.0586)</td>
<td>(0.0712)</td>
<td>(0.0658)</td>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Judicial controls</td>
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<td>No</td>
<td>Yes</td>
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<tr>
<td>Socio-economic controls</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>All controls</td>
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<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

**Observations:** 1,013  
**Clusters:** 203  
**R-squared:** 0.017  0.031  0.177  0.070  0.178

***p<0.01, **p<0.05, *p<0.1  
(Robust standard errors in parenthesis)

Note: the present table summarizes the 2sls regressions performed on conciliatory rates. Even with the presence of a number of controls, there is no significativity between the confrontational presence of trade union among counselors and the conciliatory rate which has registered between 2012-2016.
Figure 1: In grey, the territorial diffusion of phylloxéra in 1882, according to a contemporaneous official Ministerial Order.
Figure 2: The map of French wine regions