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# Mining the Philosophers' Stone: Sixteen Tons and What Do You Get? Another Day Older and Deeper in Doubt

Harry W. Arthurs

*Osgoode Hall Law School of York University*, [harthurs@osgoode.yorku.ca](mailto:harthurs@osgoode.yorku.ca)

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Another Day Older and Deeper In Doubt**

Conference on the Philosophical Foundations of Labour Law  
University College London, June 2016.

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**Abstract:**

This brief essay explores the tensions between competing philosophies of labour law, and between legal philosophies on the one hand, and real-life outcomes on the other.

**Keywords:**

Labour law; legal philosophy, rights

**Author(s):**

Harry W. Arthurs

Osgoode Hall Law School, York University

E: [harthurs@osgoode.yorku.ca](mailto:harthurs@osgoode.yorku.ca)

**MINING THE PHILOSOPHERS' STONE:  
SIXTEEN TONS AND WHAT DO YOU GET?  
ANOTHER DAY OLDER AND DEEPER IN DOUBT**

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**Harry Arthurs  
York University, Toronto**

Two very different tendencies inform most philosophical discussions of labour law.

The first, the idealist tendency, resembles alchemy — a discipline whose great ambition was to discover the legendary “philosophers’ stone” that was capable of turning “base” metals into “noble” ones such as gold or silver. This tendency is analytical and optimistic: its adherents believe that the incantation of an as-yet-undiscovered juridical formula will one day convert dark satanic mills into temples of just and joyful labour. However, this hasn’t happened so far. On the contrary, the past three decades — a period of brilliant alchemical advances in the scholarly and judicial articulation of human, labour and social rights — have coincided with significant social, economic and political setbacks for workers. Nor is the philosopher’s stone of liberal legalism likely to produce positive results any time soon: relations of power are notoriously impervious to right reason or moral exhortation.

The second tendency, the materialist tendency, tends to be preoccupied with what I will call “muscle and blood” — an evocative phrase I have borrowed from *Sixteen Tons*,<sup>1</sup> an American popular song about the fate of a coal miner. Unlike alchemy, the “muscle and blood” tendency deals squarely with the nasty side of power. It holds that under our current form of capitalism, working people are subordinated, their interests callously disregarded and their lives brutally impoverished. Resistance is not only inevitable but justifiable, and the point of labour law is to legitimate and facilitate it: to expose and expunge all juridical impediments to the power of workers to resist subordination, to

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<sup>1</sup> The lyrics of Merle Travis’ working class anthem *Sixteen Tons* are found in Appendix 1. Several versions can be compared at [C:\Users\kablake\AppData\Local\Temp\notes6CFB2E\UCL PAPER\\_V2docx.docx](http://C:\Users\kablake\AppData\Local\Temp\notes6CFB2E\UCL PAPER_V2docx.docx) [http://wn.com/sixteen\\_tons\\_pete\\_seeger](http://wn.com/sixteen_tons_pete_seeger).

protect their interests or to secure reparations for the abuses visited on them. A less categorical version of the “muscle and blood” tendency accepts the inevitability of conflict between workers and employers, but conceives of labour law as a sort of Geneva Convention designed to ensure that the conflict is waged in a civilized fashion.

I said earlier that the alchemists’ rights-based theories of labour law were unlikely to produce positive outcomes for workers. Now I must admit that, alas, the same is true for conflict-based, “muscle and blood” theories. A brief reference to the lyrics of *Sixteen Tons* reminds us why: “You load sixteen tons [the song proclaims] and what do you get? Another day older and deeper in debt”. This last observation (which dates from 1946) was certainly prescient: American workers today are on average many days older and much deeper in debt than they have ever been; however, they no longer load coal; that’s done by machines; and work in most advanced economies no longer requires “muscle and blood” so much as “semi-conductors and brains”.

So it turns out that neither of these broad philosophical tendencies in labour law — not alchemy, not “muscle and blood” — provides a sturdy platform on which to construct the kind of labour markets and workplaces that a thoughtful philosopher might hope to inspire. Nor do the other philosophies of labour law: not Catholic social doctrine nor anarcho-syndicalism nor Marxism; not theories that stress market efficiency, nor those that prioritize human capital and capacities; not critical theories of class, race or gender, nor those that advocate the peaceful co-existence of social forces. None of these has been translated into legal, political or social strategies that have successfully slowed labour’s long decline, much less reversed it.

This disjuncture between good ideas and bad outcomes is deeply disturbing — especially for people with a genuine interest in philosophy, and a desire to deploy it to make the world a better place. But why this disjuncture? Perhaps Thomas Huxley, the 19<sup>th</sup> century public intellectual, was right when he observed that some ideas are able to survive long after their brains have been bashed out. Neo-liberalism might be a case in point. Other examples include the false promise of trickle-down prosperity, the mindless pursuit of labour market flexibility and the foregone conclusion-ism of much econometric analysis. Nonetheless, these discredited ideas continue to dominate

much policy discourse. Worse yet, they have persuaded most governments not only to abandon labour law as an instrument for the achievement of social justice but to abandon social justice as the ultimate goal of political thought and action. So I want to propose a corollary to Huxley's aphorism: "some ideas, no matter how logically sound, morally compelling and empirically incontestable, must nonetheless struggle to gain acceptance in the face of deeply-held prejudices and powerful self-interest".

Still, there is a ray of hope. Thomas Huxley was known as "Darwin's bulldog". With persistence, courage and a sharp wit (not to mention a good case on the merits) he successfully defended Darwin's theory of evolution against attacks by conservative theologians and populist know-nothings. And in the end Darwin and Huxley prevailed. Good thinking — good philosophy if you like — did overcome bad. Creationism lingers on, of course, like much of neo-liberal ideology, despite having its brains bashed out; and even those who accept evolution in principle are not always prepared to accept scientific method when it produces outcomes they don't understand or don't like. But no one is in doubt: Huxley's advocacy and Darwin's theory prevailed.

Now, in conclusion, I want to say that we are all of us here because we aspire to be someone's bulldog — Sinzheimer's, or Kahn-Freund's, John Commons' or Amartya Sen's. Some of us believe, like alchemists, that we can convert noble ideals such as equality and dignity, freedom and justice into legally enforceable workers' rights. Perhaps so, but surely not by simply tweaking legal doctrine or patching leaky legislation, not even by the clever channeling of traditional constitutional theory. If we want to propose ideas about rights that might be able to transform relations of work, they must be big ideas like Darwin's, and we must advocate them aggressively, as Huxley did. Subordination, injustice, indignity are endemic in our society; they are not confined to the employment context. If we want our critique of the status quo to be taken seriously it must therefore be a broad and deep critique of our society and political economy; if we want to make rights a reality, they must be everyone's rights, not just workers'; and if we want to change the nature of our society, we must speak not just to each other and to judges, but to the broadest possible audience of our fellow citizens.

Of course, some of us take as our point of departure the grim facticity of “muscle and blood”, of power, oppression and conflict. But however compelling the case for doing so, this approach to theorizing about labour law poses two risks. The first is that we will become so committed to this narrative that we close our minds to new evidence that qualifies it or alters its character. This is perhaps why labour law has failed to adapt to the changing technologies, demographics and social dynamics of the contemporary workplace. The second and more serious risk is that we will become so preoccupied with demonstrating the original sin of our labour law system that we fail to offer hope of redemption. *Sixteen Tons* does not lay out a plausible blueprint for a more just society and fairer workplaces, nor frankly does much scholarship by adherents of the “muscle and blood” school. Here, then, is worthy work for the alchemists, the liberal theorists: to support their colleagues of the muscle and blood persuasion by re-articulating labour law’s constituting narrative in light of contemporary evidence and experience, by re-imagining what comes after neo-liberalism and hyper-managerialism, and especially by re-stating in a contemporary vernacular the fundamental values that once sustained workers, inspired scholars and, on their best days, guided lawmakers.

The refrain of *Sixteen Tons* portrays miners as ending up another day older and deeper in debt. At the end of this conference, we will all be two days older and, I predict, deeper in *doubt*. That is inevitable and proper. Doubt — skepticism — is what philosophers do. But we must try to do more. We must try to achieve a synthesis of the two tendencies represented in our conversations — a synthesis that not only conjures up the image of a better world but also acknowledges that struggle is inevitable if we are to make that image into a reality.

**APPENDIX 1****SIXTEEN TONS****by Merle Travis (1946)**

Some people say a man is made outta mud  
A poor man's made outta muscle and blood  
Muscle and blood and skin and bones  
A mind that's a-weak and a back that's strong

You load sixteen tons, what do you get  
Another day older and deeper in debt  
Saint Peter don't you call me 'cause I can't go  
I owe my soul to the company store

I was born one mornin' when the sun didn't shine  
I picked up my shovel and I walked to the mine  
I loaded sixteen tons of number nine coal  
And the straw boss said "Well, a-bless my soul"

You load sixteen tons, what do you get  
Another day older and deeper in debt  
Saint Peter don't you call me 'cause I can't go  
I owe my soul to the company store

I was born one mornin', it was drizzlin' rain  
Fightin' and trouble are my middle name  
I was raised in the canebrake by an ol' mama lion  
Cain't no-a high-toned woman make me walk the line

You load sixteen tons, what do you get  
Another day older and deeper in debt  
Saint Peter don't you call me 'cause I can't go  
I owe my soul to the company store

If you see me comin', better step aside  
A lotta men didn't, a lotta men died  
One fist of iron, the other of steel  
If the right one don't a-get you  
Then the left one will

You load sixteen tons, what do you get  
Another day older and deeper in debt

Saint Peter don't you call me 'cause I can't go  
I owe my soul to the company store