The two books approach the problem of enhancing undervalued ‘Worker Rights’ from quite variant viewpoints, presenting an intriguing divergence of views on a very important question. For some time, many advocates for Labor rights have been trying to hitch their wagon to the star of “human rights”, as a way of stressing the fundamental importance and the universality of the rights-claims made, notwithstanding their serious neglect in recent U.S. labor history. The rights claims involved – the right to associate, to form unions, to bargain collectively, and to strike – are somewhat vaguely identified in Human Rights documents, but have not received much emphasis.

On the other hand, those coming from a Marxist tradition are inclined to understand the “human rights” approach as too close to what Marx called “Utopian Socialism”. This Marx identified as a “moralism” fruitlessly opposing powerful economic forces, and not of much value in the struggle, basically “whistling into the wind”. Contemporary Marxist sympathizers tend to see worker rights claims as worthwhile only when emerging from a hard struggle in which workers themselves strongly assert and battle for their legitimate claims.

Professor Gross is a well known expositor of the struggle for worker rights as over against their employers, and in this book he largely retells a story much of which he has recounted before.¹ This history tells a tale of dominance by the American “free market ideology” from roughly the inception of our nation to the Great Depression. That ideology gained its greatest strength during the period after the Civil War, in the late nineteenth and early twentieth centuries, when it dominated both legislatures and courts. These rapidly developing economic conceptions and their expression in legal rules gave American business managers a largely uncontested sway over nearly all business decisions, e.g., as to what would be produced and how, what its manner of being financed and marketed would be, and most importantly, how well or poorly employees would be compensated and how they would be generally treated with regard to the conditions under which they would work.
However under the impact of the Great Depression of the 1930s, the wisdom of this “laissez-faire” approach was sharply challenged, not only by social commentators but by vast numbers of everyday people who were laid off from their jobs, with no “safety net” to help them. This challenge took on institutional form with the New Deal legislation that formalized worker rights in the National Labor Relations Act of 1935. This Act (NRA) advanced a policy approach new to the U.S., of restraining employers from (at least heavy-handed) interference with efforts to organize unions, and insisting on negotiated settlements of the terms of work between organized groups of workers and their individual firms. The National Labor Relations Board (NLRB) was created to oversee and enforce the various provisions of the NRA (but not to dictate or help negotiate settlements).

As Gross recounts this history (Ch. 4), it didn’t take long for American business, aided by its often powerful political sympathizers, to gather its forces and strike back. A key step in moving back towards the earlier untrammeled power of management over its workers was passage of the Labor-Management Relations Act of 1947, the so-called Taft-Hartley Act. This Act, passed over President Truman’s veto, succeeded in adding to fundamental labor law the significant purpose of “protecting the rights of individual employees” (emphasis added), including affirming their right to refrain from collective bargaining. It also succeeded in adding an even more important protection of the “freedom of speech” of employers, by refusing to allow the NLRB to continue to treat as “unfair labor practices” employers’ forceful presentations to “captive employees” of their views of the bargaining situation in labor disputes. As Gross puts it: “The dominant hierarchy of rights established by Congress in Sec. 8(c) of the Taft-Hartley Act, and by subsequent judicial and NLRB decision-makers, gives employer speech and property rights dominance over workers’ freedom of association” (p. 74).

Professor McIntyre agrees with this assessment: “In the United States, workers have few legally guaranteed rights, and what rights they do have have eroded over the last generation” (p. viii). But, as he puts it, (p. vii)

Asserting the rights of workers may be … a promising strategy, but in failing to distinguish between the individual and collective meaning of rights, the supporters of such slogans as ‘worker rights are human rights’ may end up with something quite different from what they expected.

By that he seems to mean that if the individualistic conception of a human right subsumes the claims of workers, the laborer who wishes to claim his rights as an individual will be up against impenetrable corporate barriers in which he will be overwhelmed by the resources brought into play against him.

McIntyre employs an approach that he describes as Marxist in inspiration (“I follow Marx to some extent”) but he also accepts something from “certain postmodern and Institutional economists who see ideas, and especially moral conventions, as having a life of their own”: (p.2)
In emphasizing but not essentializing class relations and interests, I try to avoid both the economic determinism of classical Marxism and the hyperindividualism of neoliberalism.

But, he says, (p. 4)

If my theoretical approach lies at the intersection of Institutional thought and the Marxian critique of political economy, my political concerns flow from the array of social dislocations that have struck the industrialized world over the last generation, first as ‘deindustrialization’ and more recently as ‘globalization’.

What his “concerns” amount to is the identification of an ongoing process by which manufacturers “distance themselves” from their workers, by moving their manufacturing processes to “third-world” countries and then hiring subcontractors to deal with the workers, including their pay, hiring and firing, and conditions of work. The subcontractors will tend to set the wages at the lowest level they can, and “explain” to the workers that there is no use protesting these “sweat shop” wages to the subcontractor himself, because he will claim that the wage level is being set by the “distant” manufacturer. The latter is typically of course not in the area and well out of reach of most protests, and hence can feel “absolved” of responsibility for the plight of “their” workers.

The only way around this, McIntyre thinks, is a focus on the institutionalization of international labor standards, in an organization with sufficient enforcement power (he looks to a renewal of the relatively weak International Labor Organization, the ILO) to call to account, at least partially, the great global corporations that now dominate the economic world we live in.

So, where does this discussion leave us if we are interested in supporting worker claims to such fundamental ‘rights’ as freedom of association, of organizing, of bargaining, and withholding labor (striking)? Should we join the chorus of those urging the US to get past its well-known casual disregard of any economic ‘rights’ that it finds inconveniently in conflict with its dominant “free market” ideology? Or should we put our hopes in taking the struggle into the international arena, hoping to pull together other nations that are less bound to the hyperindividualism that gets so much in the way in the U.S.?

Neither of these alternatives would seem to hold out great promise. It seems not totally unlikely that the “anti-sweatshop movement”, which has after all achieved some successes in embarrassing great US corporations for taking advantage of workers overseas, might catch on beyond college campuses and bring real new emphasis to worker rights. But this would probably have only minimal effects. On the other hand, if a renewed and reconstituted International Labor Organization could be reborn with new vigor and international support, that would seem a possible sources of more powerful assistance to Labor’s cause. However, in the face of not only a lack of leadership by the U.S. but its likely positive opposition, this does not seem to me a very plausible option to rely on.