reasonable consideration to undertaking such an action might appear, at least at first sight, to be a rather gigantic jump.

However, that sense of distance is largely illusory. The difference would indeed involve an immense escalation if the duty in question were not one of giving reasonable consideration to a possible action, but an absolute obligation to undertake that action, no matter what other values one has and what other commitments one has reason to consider. But that way of seeing one's duties—as compulsory action—is not only at some distance from the acknowledgment of reasons for action, but it also lacks cogency, and even internal coherence. There are many fine deeds for each of which a reason for action exists, but it would typically be impossible to carry out the totality of all those deeds. There is a need for the assessment of priorities and for discrimination in the way the obligation to give reasonable consideration may be followed up by sensible choices of action.

To accept that one has a duty to give reasonable consideration to many different types of actions is not an agreement to tie oneself up in hopeless knots. And it is particularly important in the present context to emphasize the converse: the determination not to get into a pandemonium of practical reasoning is not a ground for denying that one does have a duty to give reasonable consideration to what one can sensibly do for the rights, and the underlying significant and influenceable freedoms, of others. The demands of reasonable consideration would vary with a great many parameters that may be relevant to a person's practical reasoning.[42] Even though the acknowledgment that certain freedoms qualify as human rights already reflects an assessment of their general importance and their possible influenceability (discussed in Section IV), a person has to go beyond these pervasive features into more specific circumstances in giving reasonable consideration to what he or she, in particular, should do in a specific case.

The person has to judge, for example, how important the freedoms and rights are in the case in question compared with other claims on the person's possible actions (involving other rights and freedoms, but also

42. Making adequate room for parametric variations is a general feature of rational assessment, and not a characteristic only of ethical reasoning in particular. I have discussed this issue in *Rationality and Freedom* (Cambridge, Mass.: Harvard University Press, 2002), essays 1 through 5.

altogether different concerns that a person may, inter alia, sensibly have). Furthermore, the person has to judge the extent to which he or she can make a difference in this case, either acting alone or in conjunction with others. It will be relevant also to consider what others can be expected to do, and the appropriateness of how the required supportive actions may be shared among possible agents. A great many parametric considerations of these and other kinds will inescapably figure in the reasoned evaluation of what a person should do, even after the need to undertake such an evaluation has been fully accepted. Also, since detailed reflection on what one should do is itself time consuming (and cannot even be actually undertaken for all the ills of the world), the duty of reasonable consideration will not, in a great many cases, translate into an obligation to take on an elaborate scrutiny—only a willingness to do just that, when it seems relevant and appropriate.

The recognition of obligations in relation to the rights and freedoms of all human beings need not, thus, be translated into preposterously demanding commands. And yet, despite the parametric variability of the reach and force of reasonable consideration, the requirement to give such consideration is not by any means vacuous. The basic general obligation is that one must be willing to *consider* seriously what one should reasonably do, taking note of the relevant parameters of the cases involved. The necessity to ask that question (rather than proceeding on the assumption that we owe nothing to others, unless we have actually harmed them) can be the beginning of a more comprehensive line of ethical reasoning.[43] The territory of human rights firmly belongs there. The reasoning cannot, however, end there. Given one's limited abilities and reach, and the need for priorities involving different types of obligations as well as the demands of other moral concerns, there are serious exercises of practical reasoning to be undertaken, in which one's various obligations (including "imperfect obligations") must figure, in an explicit or implicit form.

The recognition of human rights is not an insistence that everyone everywhere rises to help prevent every violation of every human right no matter where it occurs. It is, rather, an acknowledgment that if one is in a plausible position to do something effective in preventing the violation

43. The centrality of that general question is powerfully discussed by Thomas Scanlon, *What We Owe to Each Other* (Cambridge, Mass.: Harvard University Press, 1998).

of such a right, then one does have an obligation to consider doing just that. It is still possible that other obligations or non-obligational concerns may overwhelm the reason for the particular action in question, but that reason cannot be simply brushed away as being "none of one's business." Loosely specified obligations must not be confused with no obligations at all. Rather, they belong, as was mentioned earlier, to the important category of duties that Immanuel Kant called "imperfect obligations" (and to which he attached great importance).

It is to be noted that, in this understanding, imperfect obligations are ethical requirements that stretch beyond the fully delineated duties, "the perfect obligations," that specific persons may have to perform particular acts. They involve the demand that serious consideration be given by anyone in a position to provide reasonable help to the person whose human right is threatened. These "imperfect obligations" firmly correlate, in the same way as fully specified "perfect obligations" do, with the recognition of rights. The difference lies in the nature and form of the obligations, not in the general correspondence between rights and obligations, which apply in the same way to imperfect as well as perfect obligations.

It may be useful to illustrate, with a concrete example, the distinction between different kinds of obligations that, despite their differences in content, relate in a similar way to human rights. Consider a real-life case that occurred in Queens, New York, in 1964, when a woman, Kitty Genovese, was fatally assaulted in full view of many others watching the event from their apartments, who did nothing to help her. It is plausible to argue that three terrible things happened here, which are distinct but interrelated:

(1) the woman's freedom—and right—not to be assaulted and killed was violated (this is clearly the principal nastiness in this case);

(2) the murderer violated the immunity that anyone should have against assault and killing (a violation of a "perfect obligation"); and

(3) the others who did nothing whatever to help the victim also transgressed their general—and "imperfect"—obligation to seriously consider providing the help which they could reasonably be expected to provide.

These distinct failings bring out a complex pattern of rights–duties correspondence in a structured ethics, which can help to explicate the

evaluative framework of human rights, which yields imperfect as well as perfect obligations.[44]

The presumed precision of legal rights is often contrasted with inescapable ambiguities in the ethical claims of human rights. This contrast, however, is not in itself a great embarrassment for ethical claims, including those of imperfect obligations, since a framework of normative reasoning can sensibly allow variations that cannot be easily accommodated in fully specified legal requirements. As Aristotle remarked in the *Nicomachean Ethics*, we have "to look for precision in each class of things just so far as the nature of the subject admits."[45]

As it happens, however, in the laws of some countries, there is even a legal demand, which can hardly have extreme precision, for providing reasonable help to third parties. For example, in France there is provision for "criminal liability of omissions" in the failure to provide reasonable help to others suffering from particular types of transgressions. Not surprisingly, ambiguities in the application of such laws have proved to be quite large and have been the subject of considerable legal discussion in recent years.[46] The ambiguity of duties of this type, whether in ethics or in law, would be difficult to escape if third-party obligations of others in general are given some room, and this cannot be avoided for an adequate theory of human rights.

VII. Recognition, Agitation and Legislation

While the preceding analysis has been concerned with giving reasonable consideration to actions in general that people can undertake in defending or advancing the human rights of others, it is the legislation of human rights, along with their institutionalization, that has tended to

44. In this analysis I do not go into the distinction between *agent-specific* and *agent-neutral* moral evaluations. The present line of characterization can be further extended through making room for "position specific" assessments, in ways that I have tried to investigate in "Rights and Agency," and "Positional Objectivity."

45. The admissibility of inescapable ambiguities within a framework of rational assessment is discussed in my "Internal Consistency of Choice," *Econometrica* 61 (1993): 495–521, and "Maximization and the Act of Choice," *Econometrica* 65 (1997): 745–79, both reprinted in *Rationality and Freedom*. See also *Inequality Reexamined*, pp. 46–49, 131–35.

46. See, for example, Andrew Ashworth and Eva Steiner, "Criminal Omissions and Public Duties: The French Experience," *Legal Studies* 10 (1990): 153–64; Glanville Williams, "Criminal Omissions: The Conventional View," *Law Quarterly Review* 107 (1991): 86–98.

receive the lion's share of attention in the theoretical literature in this field. It is this legislative outlook that has also been firmly incorporated in much of the institutional understanding of human rights. However, while legislation is an important domain of public action, there are other ways and means which are also important and often effective in advancing the cause of recognized human rights.

First, under what can be called the "recognition route" (to be distinguished from the "legislative route"), there is acknowledgment but not necessarily any legalization or institutional enforcement of a class of claims that are seen as fundamental human rights.[47] The Universal Declaration of Human Rights, sponsored by the United Nations in 1948, which was perhaps the most important move that promoted global activities on human rights in the last century, falls solidly into this category (even though, as was discussed earlier, the framers of the Declaration had also hoped that it would lead to specific bills of rights in different countries). Subsequently, there has been a sequence of other international declarations, often through the United Nations, giving recognition, rather than a legal and coercive status, to various general demands, for example the "Declaration on the Right to Development," signed in 1986.[48] This approach is motivated by the idea that the ethical force of human rights is made more powerful in practice through giving it social recognition and an acknowledged status, even when no enforcement is instituted.

A second line of advance goes beyond recognition to active agitation. There can be organized advocacy urging compliance with certain basic claims of all human beings that are seen as human rights, and there can

47. As Charles Beitz has pointed out, human rights play "the role of a moral touchstone—a standard of assessment and criticism for domestic institutions, a standard of aspiration for their reform, and increasingly a standard of evaluation for the policies and practices of international economic and political organizations." See "Human Rights as a Common Concern," p. 269.

48. Analyses of the content of the right to development have been presented in United Nations Development Programme, *Human Development Report 2000* (New York: United Nations, 2000); S. R. Osmani, "Human Rights to Food, Health, and Education," mimeographed, UNDP and the University of Ulster, 2000; Arjun Sengupta, "Development Policy and the Right to Development," *Frontline*, February 7–March 2, 2001; Arjun Sengupta, Asborn Eide, Stephen Marks, and Bård Anders Andreassen, "The Right to Development and Human Rights in Development," presented at the Nobel Symposium in Oslo on Right to Development, October 2003.

also be monitoring of violations of these rights and attempts to generate effective social pressure. The global NGOs have increasingly been involved in advancing human rights, through public discussion and support, on the one hand, and publicizing and criticizing violations, on the other. These efforts have come not only from dedicated human rights organizations, such as Human Rights Watch and Amnesty International, but also from broader organizations, such as OXFAM, Médicins Sans Frontièrs, the Red Cross, Save the Children, and Action Aid. The rights invoked in this "agitation route" may or may not have any legal status in the country in question, but advocacy and support are not necessarily rendered useless by the absence of legal backing.[49] Furthermore, even when some identified human rights have legal status, good *enforcement* of the relevant legislation may also call for public activism, which is to be distinguished from the process of *legislation* itself.

The third approach is, of course, that of "legislation." As was discussed in Section III, even though the ethics of human rights must not be seen merely as "parents" of "human rights laws," it is certainly the case that many such legislations have been encouraged or inspired by considerations of human rights. Many actual laws have been enacted by individual states, or by associations of states, which gave legal force to certain rights seen as basic human rights. For example, the European Court of Human Rights, established in 1950 following the European Convention, can consider cases brought by individuals from the signatory states against violations of human rights. This has been supplemented by the Human Rights Act of 1998, aimed at incorporating the main provisions of the European Convention into domestic law, with an overseeing role of the European Court to see "just satisfaction" of these provisions in

49. It is also worth noting that even when the agents involved in activist promotion of human rights do not have any special legal status, they can still make a difference to political, social and administrative practice through the use of existing laws, combined with seeking public disclosures and critical debates. For example, unlike the Indian and South African Human Rights Commissions, which are recognized in the respective national laws, the Pakistan Human Rights Commission is basically just an NGO, and yet under the visionary and courageous leadership of Asma Jahangir, I. A. Rehman, and others, it has been remarkably effective in identifying and resisting violations of human rights, and in defending vulnerable persons, including religious minorities and ill-treated women. For a good discussion of some of these supportive activities, see *The State of Human Rights, 2001* (Lahore: Human Rights Commission of Pakistan, 2002).

domestic judgments. Many other examples can be given from different parts of the world. The "legislative route" has had much active use.

There is an interesting question about the appropriate *domain* of the legislative route. It would be a mistake, I would argue, to presume in general that if a human right is important, then it must be ideal to legislate it into a precisely specified legal right. For example, recognizing and defending a wife's moral right to be consulted in family decisions, even in a traditionally sexist society, may well be extremely important, and can plausibly satisfy the threshold conditions needed to qualify as a human right.[50] And yet the advocates of this human right, who emphasize, correctly, its far-reaching ethical and political relevance, can quite possibly agree that it is not sensible to make this human right into, in Herbert Hart's language, a "coercive legal rule" (perhaps with the result that a husband would be taken in custody if he were to fail to consult his wife). The necessary change would have to be brought about in other ways. Because of the importance of communication, advocacy, exposure and informed public discussion, human rights can have influence *without* necessarily depending on coercive legislation.

Similarly, the moral or political entitlement, which can easily be seen as a human right, of a somewhat slow speaker not to be snubbed in an open public meeting by a rudely articulate sprinter may well be important both for the self-respect of the leisurely speaker and for public good, but it is not likely to be a good subject for punitive legislation. The protection of that human right would have to be sought elsewhere. The effectiveness of the human rights perspective does not rest on seeing them invariably as putative proposals for legislation.[51]

VIII. Economic and Social Rights

I turn now to criticisms that have been particularly aimed against extending the idea of human rights to include economic and social rights, such as the right not to be hungry, or the right to basic education or to medical attention. Even though these rights did not figure in the

50. The importance and social reach of woman's participation in family decisions is discussed in my *Development as Freedom*, ch. 8, "Women's Agency and Social Change."

51. For an early advocacy of a much broader approach, see Mary Wollstonecraft, *A Vindication of the Rights of Woman: with Strictures on Political and Moral Subjects* (1792).

classic presentations of rights of human beings in, say, the U.S. Declaration of Independence, or French "rights of man," they are very much a part of the contemporary domain of what Cass Sunstein calls the "rights revolution."[52] The legitimacy of including these claims within the general class of human rights has been challenged through two specific lines of reproach, which I shall call, respectively, the *institutionalization critique* and the *feasibility critique*.

The institutionalization critique, which is aimed particularly at economic and social rights, relates to the general issue of the exact correspondence between authentic rights and precisely formulated correlate duties. Such a correspondence, it is argued, would exist only when a right is institutionalized. Onora O'Neill has presented this line of criticism with force:

> Unfortunately much writing and rhetoric on rights heedlessly proclaims universal rights to goods and services, and in particular "welfare rights," as well as to other social, economic and cultural rights that are prominent in international Charters and Declarations, without showing what connects each presumed right-holder to some specific obligation-bearer(s), which leaves the content of these supposed rights wholly obscure. . . . Some advocates of universal economic, social and cultural rights go no further than to emphasize that they *can* be institutionalized, which is true. But the point of difference is that they *must* be institutionalized: if they are not there is no right.[53]

In responding to this significant criticism, we have to invoke the understanding, already discussed, that obligations can be both perfect and imperfect. Even the classical "first generational" rights, like freedom from assault, can be seen as yielding imperfect obligations on others, as was illustrated with the example of the case of assault on Kitty Genovese in public view in New York. Depending on institutional possibilities, economic and social rights may similarly call for both perfect and imperfect obligations. There is a large area of fruitful public discussion and possibly effective pressure, concerning what the society and the state, even

52. Sunstein, *After the Rights Revolution: Reconceiving the Regulatory State*.

53. Onora O'Neill, *Towards Justice and Virtue*, pp. 131–32. See also her *Bounds of Justice* (Cambridge: Cambridge University Press, 2000).

an impoverished one, can do to prevent violations of certain basic economic or social rights (associated with, say, the prevalence of famines, or chronic undernourishment, or absence of medical care).

Indeed, the supportive activities of social organizations are often aimed precisely at institutional change, and these activities can be seen as part of imperfect obligations that individuals and groups have in a society where basic human rights are violated. Onora O'Neill is right to emphasize the importance of institutions for the realization of "welfare rights" (and even for economic and social rights in general), but the ethical significance of these rights provide good grounds for seeking realization through institutional expansion and reform. This can be helped through a variety of approaches, including demanding and agitating for appropriate legislation, and the supplementation of legal demands by political recognition and social monitoring. To deny the ethical status of these claims would be to ignore the reasoning that motivates these constructive activities.

The *feasibility critique* proceeds from the argument that even with the best of efforts, it may not be feasible to arrange the realization of many of the alleged economic and social rights for all. This would have been only an empirical observation (of some interest of its own), but it is made into an allegedly powerful criticism of the acceptance of these claimed rights on the basis of the presumption, largely undefended, that recognized human rights must, of necessity, be wholly accomplishable. If this presumption were accepted that would have the effect of immediately putting many so-called economic and social rights outside the domain of possible human rights, especially in the poorer societies.

Maurice Cranston puts the argument thus:

> The traditional political and civil rights are not difficult to institute. For the most part, they require governments, and other people generally, to leave a man alone. . . . The problems posed by claims to economic and social rights, however, are of another order altogether. How can governments of those parts of Asia, Africa, and South America, where industrialization has hardly begun, be reasonably called upon to provide social security and holidays with pay for millions of people who inhabit those places and multiply so swiftly?[54]

54. Cranston, "Are There Any Human Rights?" p. 13.

In assessing this line of rejection, we have to ask: why should complete feasibility be a condition of cogency of human rights when the objective is to work towards enhancing their actual realization, if necessary through expanding their feasibility? The understanding that some rights are not fully realized, and may not even be fully *realizable* under present circumstances, does not, in itself, entail anything like the conclusion that these are, therefore, not rights at all.[55] Rather, that understanding suggests the need to work towards changing the prevailing circumstances to make the unrealized rights realizable, and ultimately, realized.[56]

It is also worth noting in this context that the question of feasibility is not confined to economic and social rights only; it is a much more widespread problem. Even for liberties and autonomies, to guarantee that a person is "left alone," which Cranston seems to think is simple to guarantee, has never been particularly easy. That elementary fact, easily seen always, cannot but be rather clearly recognized now, at least since September 11, 2001 (and more recent events). If the current feasibility of guaranteeing complete and comprehensive fulfillment were made into a necessary condition for the cogency of every right, then not only economic and social rights, but also liberties, autonomies and even political rights may well fall far short of cogency.

IX. The Reach of Public Reasoning

How can we judge the acceptability of claims to human rights and assess the challenges they may face? How would such a disputation—or a defense—proceed? I would argue that like the assessment of other ethical claims, there must be some test of open and informed scrutiny,

55. For this reason, I would argue, it would be a misapplication to invoke the familiar principle "ought implies can" to suggest that claims that are not yet fully realizable cannot be taken to be rights at all. To see the ethical force of some claims is also a demand to consider what one should do to make them realizable, for example through working for the development of new institutions.

56. This corresponds to what Charles Beitz calls the "practical conception" of human rights: "To say something is a human right is to say that social institutions that fail to protect the right are defective" with the implication that "international efforts to aid or promote reform are legitimate and in some cases may be morally required." ("Human Rights and the Law of Peoples," in *The Ethics of Assistance: Morality and the Distant Needy* ed. Deen Chatterjee [Cambridge: Cambridge University Press, 2004], p. 210. See also Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* [Princeton: Princeton University Press, 1980; 2nd ed., 1996].)

and it is to such a scrutiny that we have to look in order to proceed to a disavowal or an affirmation. The status of these ethical claims must be dependent ultimately on their survivability in unobstructed discussion.[57] In this sense, the viability of human rights is linked with what John Rawls has called "public reasoning" and its role in "ethical objectivity."[58]

Indeed, the connection between public reasoning and the formulation and use of human rights is extremely important to understand. Any general plausibility that these ethical claims, or their denials, have is dependent, on this theory, on their survival and flourishing when they encounter unobstructed discussion and scrutiny, along with adequately wide informational availability. The force of a claim for a human right would be seriously undermined if it were possible to show that they are unlikely to survive open public scrutiny. But contrary to a commonly offered reason for skepticism and rejection, the case for human rights cannot be discarded simply by pointing to the fact (even when that is the case) that in politically and socially repressive regimes, which do not allow open public discussion, many of these human rights are not taken seriously at all. Uncurbed critical scrutiny is essential for dismissal as well as for defense. Even as far as use is concerned, the fact that monitoring of violations of human rights and the procedure of "naming and shaming" can be so effective (at least in putting the violators on the defensive) is some indication of the reach of public reasoning when information becomes available and ethical arguments are allowed rather than suppressed.

However, it is important not to confine the domain of public reasoning to a given society only, especially in the case of human rights, in view of the inescapably non-parochial nature of these rights, which are meant to apply to all human beings. This is in contrast with Rawls's inclination,

57. Even though this requirement has a largely procedural form, the very insistence on open public discussion from which no one is excluded involves an acceptance of equality, which has substantive implications also for the content of the deliberation. On the substantive aspects of deliberative democracy, see Joshua Cohen, "Procedure and Substance in Deliberative Democracy," in *Democracy and Difference: Contesting the Boundaries of the Political*, ed. Seyla Benhabib (Princeton: Princeton University Press, 1996), pp. 95–119.

58. John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), and *Political Liberalism* (New York: Columbia University Press, 1993), esp. pp. 110–13. On related matters, see also Amy Guttman and Dennis Thompson, *Democracy and Disagreement* (Cambridge, Mass.: Harvard University Press, 1996), and *Democracy and Difference*, ed. Seyla Benhabib.

particularly in his later works, to limit such public confrontation within the boundaries of each particular nation (or each "people," as Rawls calls this regional collectivity), for determining what would be just, at least in domestic affairs.[59] We can demand, on the contrary, that the discussion include, even for domestic justice (if only to avoid parochial prejudices and also to examine a broader range of counterarguments), views also from "a certain distance." The necessity of this was powerfully identified by Adam Smith:

> We can never survey our own sentiments and motives, we can never form any judgment concerning them; unless we remove ourselves, as it were, from our own natural station, and endeavour to view them as at a certain distance from us. But we can do this in no other way than by endeavouring to view them with the eyes of other people, or as other people are likely to view them.[60]

The universalist nature of Adam Smith's approach raises the question whether distant people can, in fact, provide useful scrutiny of local issues, given what are taken to be "uncrossable" barriers of culture. One of Edmund Burke's criticisms of the French declaration of the "rights of man" and its universalist spirit was concerned with disputing the acceptability of that notion in other cultures. Burke argued that "the liberties and the restrictions vary with times and circumstances, and admit of infinite modifications, that cannot be settled upon any abstract rule."[61] The argument that, for this, or some similar, reason, the universality that underlies the notion of human rights is profoundly mistaken can be found in many other writings as well.

59. See particularly John Rawls, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999). See also Rawls's formulation of the original position in *Political Liberalism*, p. 12: "I assume that the basic structure is that of a closed society: that is, we are to regard it as self-contained and as having no relations with other societies. . . . That a society is closed is a considerable abstraction, justified only because it enables us to focus on certain main questions free from distracting details." If my reasoning is right, the Rawlsian restrictions eliminate much more than the influence of "distracting details."

60. Adam Smith, *The Theory of Moral Sentiments* (1759; rev. ed., 1790; republished, Oxford: Clarendon Press, 1976), III, 1, 2, p. 110. The Smithian perspective on moral reasoning is pursued in my "Open and Closed Impartiality," *The Journal of Philosophy* 99 (2002): 445–69.

61. Quoted in Steven Lukes, "Five Fables about Human Rights," in *The Human Rights Reader*, ed. Micheline R. Ishay (London: Routledge, 1997), p. 238.