

tice that gave rise to a legitimate expectation. Indeed, for a time it appeared that this positivist conception of protected rights was going to displace the traditional sources.

As noted previously, the advent of this new doctrine can be seen in *Goldberg v. Kelly*,<sup>770</sup> in which the Court held that, because termination of welfare assistance may deprive an eligible recipient of the means of livelihood, the government must provide a pre-termination evidentiary hearing at which an initial determination of the validity of the dispensing agency's grounds for termination may be made. In order to reach this conclusion, the Court found that such benefits "are a matter of statutory entitlement for persons qualified to receive them."<sup>771</sup> Thus, where the loss or reduction of a benefit or privilege was conditioned upon specified grounds, it was found that the recipient had a property interest entitling him to proper procedure before termination or revocation.

At first, the Court's emphasis on the importance of the statutory rights to the claimant led some lower courts to apply the Due Process Clause by assessing the weights of the interests involved and the harm done to one who lost what he was claiming. This approach, the Court held, was inappropriate. "[W]e must look not to the 'weight' but to the nature of the interest at stake. . . . We must look to see if the interest is within the Fourteenth Amendment's protection of liberty and property."<sup>772</sup> To have a property interest in the constitutional sense, the Court held, it was not enough that one has an abstract need or desire for a benefit or a unilateral expectation. He must rather "have a legitimate claim of entitlement" to the benefit. "Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits."<sup>773</sup>

Consequently, in *Board of Regents v. Roth*, the Court held that the refusal to renew a teacher's contract upon expiration of his one-year term implicated no due process values because there was noth-

<sup>770</sup> 397 U.S. 254 (1970).

<sup>771</sup> 397 U.S. at 261–62. See also *Mathews v. Eldridge*, 424 U.S. 319 (1976) (Social Security benefits).

<sup>772</sup> *Board of Regents v. Roth*, 408 U.S. 564, 569–71 (1972).

<sup>773</sup> 408 U.S. at 577. Although property interests often arise by statute, the Court has also recognized interests established by state case law. Thus, where state court holdings required that private utilities terminate service only for cause (such as non-payment of charges), then a utility is required to follow procedures to resolve disputes about payment or the accuracy of charges prior to terminating service. *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1 (1978).