adjust what they need to adjust to reach the ends they most desire. In other
words, all persons have the ability to regulate their thoughts, feelings, and
actions in pursuit of ends that define themselves as self-determining per-
sons—that define themselves as being free.

The concluding chapter identifies the major implications of this re-
vised policy to be (a) suggestions for measuring progress toward fairness
in liberty for all and (b) the elimination of the apparent conflict between
the desire for fairness and the quest for excellence. The measure of progress
toward fairness suggested by equal opportunity theory requires a change
in what it means to be a person and what it means to have an opportunity.
Whereas in the past, a person's capacity to adjust to life's circumstances
was seen as invariant, today it is seen as variable, depending as it does on
one's acquisition or loss of various resources during different transactions
with the environment. Likewise, with the concept of opportunity that was
once conceived as independent of the person and determined by the
environment, now it is conceived as interdependent and variable with the
person and the environment, depending as it does on the optimality value
Person attaches to it in judging prospects for various self-determined
pursuits.

Finally, the apparent incompatibility between equality, liberty, and
excellence dissolves (a) when we understand that fairness is a means for
self-determination and that excellence is an outcome of that self-determination
and (b) when we understand that the condition needed to achieve fairness
in liberty for all is the same condition that promotes excellence. This is
because fairness is present when individuals engage opportunities for
self-determination, and all people are likely to engage opportunities for
self-determination when their opportunities are optimally challenging. In
other words, the pursuit of excellence occurs "naturally" when all actors
are fully engaged in optimally challenging opportunity for pursuing their
own ends in life.

Fair Chances

What most people expect in life is a fair chance to pursue their own plans
(see Gans, 1991, pp. 2-5, 36-38). They do not want guarantees for the best
in life, nor do they want unfair discrimination to frustrate pursuits that may
prove successful. What they want is to be treated fairly and to have the
same chance of determining their own direction and pursuing their own
interests as others. Unfortunately, this expectation is more reasonably
stated than practically fulfilled in most societies of the world. Historically,
the opportunity to pursue one's own version of the good life has favored
small group of privileged elites who have benefited from labor of the
masses. Today, gradual amelioration of gross differences between the few
and the many has raised hopes that fair chances for determining the
direction and content of one's life can be guaranteed to all and that
universal rights to self-determination can be achieved (Humana, 1992). 1

These expectations for a fair chance in life are reflected in the United
Nations human development index, which monitors progress toward
improving the longevity and literacy of different peoples of the world. The
index identifies disparities in life prospects as measured by opportunities and
outcomes people experience in different regions, ethnic groups, and
income classes. Its intent is to encourage use of surplus wealth to improve
prospects for self-determination among the least advanced and to im-
prove their lives so they have more options. This means getting resources
to the people who most need them by increasing the level of democracy,
by equalizing prospects for self-determination among the least advantaged,
and by preventing development aid and investment from being concen-
trated in the hands of the politically powerful (Lewis, 1994, p. A6).

The United States ranks 8th in the world on the human development
index and 11th on the human freedom index, which compares the freedoms
actually enjoyed. On gender equality, for example, the United States ranks
first in affirming women’s right to stand for election, second in
the percentage of women holding economic, political, or legal decision-making
positions, second in the percentage of those who are in the armed forces,
and fourth in the percentage of those who are lawyers (Wolff, Rutter, & Bayers,
1992). But even in the United States, getting what you want in life varies by
gender, ethnicity, and the presence of physical or mental disability. If you are
female, from a minority group, and have a disability, your chances of pursing
the life you want is less propitious than if you are a white male without a
disability. Women earn 65% of male income; African Americans and Hispanics
earn 58% of what whites earn and are three times as likely to live below
the poverty level (Wright, 1990, pp. 287-288). Presence of a mental or physical
disability lowers employment rates to 33%, with 67% willing but unable to
find work. For those with jobs, compensation is only 67% of what nondisabled
workers earn (Shapiro, 1993, p. 27-28).

So the disturbing reality is that many U.S. citizens experience per-
sonal, social, and economic circumstances that adversely affect their prospects
for achieving a personally meaningful and satisfying life. This
demands explanation. Why do these people suffer from unfortunate condi-
tions throughout life? One answer claims that unequal prospects are the
result of failure to take full advantage of the fair chances available to
everyone. This view is shared by many Americans, even in times when
everyone experiences hardship. In 1980, for example, when 8 million
Americans were out of work, 70% of the public considered economic
prospects for the poor to be good or very good, whereas two thirds believed
their prospects to be the same as or better than the average American
(Schwarz & Volgy, 1992, p. 11). The public also believed lower economic
outcomes for the poor resulted because they were not thrifty, thus lacked
effort, ability, and talent, so they deserved what they got. These attitudes
have not changed. In 1989, a Gallup poll found that 64% of the public
believed economic conditions of the poor were due to lack of effort
(Schwarz & Volgy, 1992). Rothman (1993) calls this the dominant stratifi-
cation ideology, which argues the following:

1. There are abundant economic opportunities.
2. Individuals should be industrious and competitive.
3. Rewards in the form of jobs, education, and income are, and should be, the
   result of individual talent and effort.
4. Therefore, the distribution of inequality is generally fair and equitable.
   (p. 57)

Another explanation for persistent misfortune is that the United States
does not provide a fair chance for all. The claim of fair chances is simply
a myth born of philosophies from people such as Benjamin Franklin who
said, “If they are poor, they first begin as Servants or Journeymen; and if they
are sober, industrious, and frugal, they soon become Masters; establish
themselves in business, marry, raise Families, and become respectable
Citizens” (quoted in Rothman, 1993, p. 33). Nineteenth-century author
Horatio Alger (1834-1899) popularized the same message in books such as
Ragged Dick, Luck and Pluck, and Tattered Tom, describing how underprivi-
leged youth succeeded through honesty, diligence, and perseverance.

So the claim of equal opportunity goes back centuries, adding credence
to the social stratification ideology that if you work hard you will succeed,
and if you do not, you deserve to fail. Of course, experiences of the poor,
people of color, and individuals with disabilities belie this claim. For them,
the rags-to-riches story is just that—a story. The discrimination, denied
opportunity, and diminished prospects for participation in community life
that they experience is unlike anything most Americans will ever face.
Today, at least, we are sensitive to the effects of these debilitating personal,
social, and economic circumstances. Perhaps this is because we have 40
years of experience with social policies that contradict assumptions under-
lying this popular ideology. After all, the emergent equal opportunity
principle reflected in these policies is based on an assumption that fairness in
the distribution of educational and occupational opportunity is necessary
for every American to have a reasonable chance at success and happiness
in adult life.
Fairness in Equal Opportunity

Since Brown v. Board of Education ruled in 1954 that segregated educational opportunity unfairly diminished prospects for school achievement for African American children and, as a consequence, limited their chances of success as adults, equal opportunity has become the guiding principle for assessing fairness in social policy. A decade after Brown, Congress passed the Civil Rights Act requiring the commissioner of education to investigate educational inequality in American schools. In the decades following Coleman's study, which affirmed the extent of disadvantages experienced by African American students, schools across the United States commenced programs of desegregation—voluntarily and in response to court mandates—to correct inequalities caused by the "separate but equal" doctrine. By the 1970s, the equal opportunity principle also covered children and youth with disabilities. Public Law 94-142—the Education for All Handicapped Children Act of 1975—guaranteed all students with disabilities a free and appropriate public education. This created a new legal theory for guiding treatment of those least well situated in society—people with disabilities (Rothstein, 1990).³

Today, application of the equal opportunity principle extends to adult opportunity. The Individuals With Disabilities Act of 1990 connects school and work by providing assistance to students in transition to the community, and the Americans With Disabilities Act of 1991 prohibits discrimination and other obstacles in the way of equal opportunity, full participation, independent living, and economic self-sufficiency. This expands self-determination entitlement from birth to adulthood and creates disability policies that are unique in the world and in the history of civilization.

Derivatives of this evolving pattern of social redress to correct inequalities of opportunity have sensitized policymakers to the plight of other less well situated groups as well. Recently, groups such as the "forgotten half" who drop out of school or who leave the system for employment in American business and industry with only a high school diploma have become targets for opportunity rectification. For them, prospects for the good life over the long term have become progressively less auspicious than their counterparts who pursue college degrees and access to high-paying jobs in the professions.⁴ Social reform measures are also being considered for welfare mothers, another less well situated group failing to make the transition to social and economic well-being and respect in the community. But here there is less concern with opportunity and more concern about responsibility. This comes from different assumptions about what is just opportunity and outcome under conditions of long-standing dependence on governmental subsistence support. Even though most experts agree welfare dependence will not decrease under existing circumstances, rationales for different policies evoke different theories about what is fair.⁵

What is different about the treatment of these four groups is attribution of responsibility. The assumption driving intervention on behalf of the first three groups is that through no fault of their own, they are less well situated personally, socially, and economically; consequently, they are in need of governmental assistance. Individuals with disabilities are unable to correct their disabling condition without help; children of African American descent are not responsible for their disadvantaged background brought on by past generations in slavery; youth who do not go to college but who seek work in business and industry are not responsible for the lack of decent-paying jobs available to them when they leave school. But welfare mothers are presumed to be responsible for their situation and for its solution. Notions about what is fair suggest that they should not remain on welfare forever and that the government should provide disincentives for the status quo as well as incentives for behaviors that will escape poverty and dependence.

So it is of interest here how the plight of these less well situated populations evoke different assumptions about cause, responsibility, and justification for help. Exempting African Americans, people with disabilities, and youth aspiring for non-college-degree careers from responsibility while affixing responsibility to welfare recipients raises questions about the theory or theories of justice that justify these different moral judgments. What are they and how do they discriminate between those who deserve noncontingent social support for self-determined behavior and pursuit and those who deserve contingent incentives and disincentives to rectify their behaviors and pursuits?

Two theories come to mind here—Rawls's theory of justice as fairness and Nozick's theory of justice as entitlement. Rawls's theory recommends social intervention on behalf of the less well situated because all personal, social, and economic advantages are morally arbitrary. Hence, all four groups are eligible for social support because no one is morally responsible for the plight they experience. Nozick's theory recommends social intervention on behalf of the less well situated only through charitable acts of individuals because none of the four groups is morally deserving of what they do not possess. Any transfer of goods from the well situated to the
less well situated violates principles of justice as entitlement, which claims individuals deserve only what they earn through legitimate acquisition and transfer of holdings.

RAWLS'S THEORY OF JUSTICE

John Rawls (1991) argues that because people do not earn their intelligence any more than they earn their disability, they do not deserve to be unduly rewarded for intelligent activity that brings great wealth, nor do they deserve to be punished for unintelligent activity that guarantees poverty. Instead, they deserve an equal share of the collective surplus resulting from cooperation. Because individuals come together in contractual agreement to guarantee long-term safety and mutual benefit, each has an equal right to that surplus, regardless of conditions of natural physical and mental capacity. Human institutions are fair and just to the extent they distribute cooperative surplus to correct and compensate for nature's random dispensation of advantages and disadvantages in life. Because all individuals benefit more through cooperation than from working alone, they deserve equal shares, unless an alternative distribution is more beneficial for everyone.

Under Rawls's rules for the just social order, no one is left out because of nature's lottery. Persons with abilities and disabilities benefit alike from cooperative gain, as do persons with less ample social and economic resources. Social cooperation in just institutions is similar to a family in which each shares the success of others. In circumstances in which exceptional fortune justifies giving one a greater proportion of the cooperative surplus, everyone still benefits in some proportion. No one is sacrificed for the good of the whole or for the good of some fraction of the whole. Rawls argues that rational persons who are free to construct principles of justice based on this conception of cooperation for mutual advantage would agree on two principles to guide their construction of fair and just social institutions—one principle guaranteeing equality in the assignment of rights and duties in the group and the other tolerating social and economic inequalities to the extent that they benefit all members of the group (Rawls, 1991):

1. Each person is to have equal right to the most extensive basic liberty compatible with similar liberty for others.
2. Social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all. (p. 60)

The purpose of social redress is to make equal opportunity fair, to ensure that those suffering personal, social, and economic disadvantages have the same prospects for pursuing their life plan as others better situated at the starting gate. It is to correct the problem of holding positions open to groups of disadvantaged persons only to have them denied access because they lack skills, attitudes, and experiences necessary to compete successfully for the positions. It makes "open" positions "live" options for persons previously denied access. Fair equal opportunity means equal prospects. Rawls (1991) calls this the liberal interpretation of social redress:

The thought here [about the principle of fair equality of opportunity] is that positions are to be not only open in a formal sense, but that all should have a fair chance to attain them. Offhand it is not clear what is meant,
but we might say that those with similar abilities and skills should have similar life chances. More specifically, assume that there is a distribution of natural assets, those who are at the same level of talent and ability, and have the same willingness to use them should have the same prospects of success regardless of their initial place in the social system, that is, irrespective of the income class into which they are born. In all sectors of society there should be roughly equal prospects of culture and achievement for everyone similarly motivated and endowed. The expectations of those with the same abilities and aspirations should not be affected by their social class. (p. 73)

Although fair equal opportunity is a step toward social redress, it is not sufficient from the moral point of view because it leaves unregulated sociocultural bias resulting from expressions of natural talent and ability arbitrarily bestowed by nature. In that no one deserves the abilities or disabilities given them by nature, they do not deserve the opportunities and outcomes derived from those arbitrary gifts, either. So Rawls adds the difference principle to fair equal opportunity that yokes the success of the most advantaged with the nonsuccess of the least advantaged, arguing the following:

Higher expectations of those better situated are just if and only if they work as part of a scheme which improves the expectations of the least advantaged members of society. The intuitive idea is that the social order is not to establish and secure the more attractive prospects of those better off unless doing so is to the advantage of those less fortunate. (p. 75)

In combination, fair equality of opportunity and the difference principle operationalize the second principle of justice as fairness, which is to arrange social and economic inequalities so they are to everyone’s advantage and are attached to positions and offices open to all. The difference principle addresses regulations on behalf of universal advantage and the fair equal opportunity principle addresses regulations to open positions and offices to all. Rawls calls this combination “democratic equality.”

NOZICK’S ENTITLEMENT THEORY

Rawls’s theory makes sense if you accept his conception of social cooperation as interdependent activity for mutual benefit. It is less appealing, however, if you define mutual advantage as a situation in which independent actors engage in bilateral exchanges to satisfy different individual interests. After all, a good portion of the American experience, present as well as past, is predicated on these less cohesive versions of social cooperation in which independent and collateral social action presume substantial autonomy of individuals acting as their own agents in aggregate rather than cohesive relationship. Under these conditions, fairness in the distribution of benefit depends more on what individuals bring to the relationship than what emergent surplus is produced for common distribution due to coordinated activity. In exchange, there is a presumption from the outset that Person will produce benefit to other who will reciprocate by producing benefit to Person. The relationship is fair to the extent both gain in proportion to what they give. In other words, they deserve what they receive because they earn what they receive by giving something to get it. Person earns X by giving other X, and other earns Y by giving Person Y. This is fair and just, and it is the argument put forth in Nozick’s entitlement theory.

Fairness as entitlement claims primacy for the individual’s right to think and act independently. It is based on a conception of an autonomous being that is (Nozick, 1974)

able to formulate long-term plans for its life, able to consider and decide on the basis of abstract principles or considerations if it formulates to itself and hence not merely the playing of immediate stimuli, a being that limits its own behavior in accordance with some principles or picture it has of what an appropriate life is for itself and others. (p. 49)

For Nozick, autonomous actors have primacy over groups, institutions, and states. In fact, the only reason for ceding any authority to such entities is to constrain actions of other beings from infringing on that autonomy. Hence, Nozick⁸ (1974) argues for the minimum state:

Our main conclusions about the state are that a minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified; that any more extensive state will violate persons’ rights not to be forced to do certain things, and is unjustified; and that the minimal state is inspiring as well as right. Two noteworthy implications are that the state may not use its coercive apparatus for the purpose of getting some citizens to aid others, or in order to prohibit activities for people for their own good or protection. (p. ix)

The action of autonomous individuals being obliged by membership in a group to share their success with the less fortunate is unjust and unfair,
a conclusion that contradicts Rawls’s theory of justice. According to entitlement theory, the only basis for helping the less fortunate is through voluntary transfer of goods and benefits from those who have more to those who have less. There is no legitimate external entity for accomplishing this transfer either. Unauthorized redistribution of social goods is wrong because it violates what one is entitled to receive from his or her own production or from his or her legitimate exchange with others. Nozick conceives of the autonomous actor as the principle unit of action and benefit in a loosely connected social network of exchanges initiated and consummated through voluntary, self-determined associations. Society and its institutions are not exemplars of cohesive, closed systems of social cooperation as conceived by Rawls. Hence, the surplus gain Rawls claims is available for redistribution through cooperative activity is really traceable to individual effort and ownership (Nozick, 1974):

Is it now impossible to disentangle people’s respective contributions? The question here is not whether marginal productivity theory is an appropriate theory of fair or just shares, but whether there is some coherent notion of identifiable marginal product. It seems unlikely that Rawls’ theory rests on the strong claim that there is no such reasonably serviceable notion. Anyway, once again we have a situation of a large number of bilateral exchanges: owners of resources reaching separate agreements with entrepreneurs about the use of their resources, entrepreneurs reaching agreements with individual workers, or groups of workers first reaching some joint agreement and then presenting a package to an entrepreneur, and so forth. People transfer their holdings or labor in free markets, with the exchange ratios (prices) determined in the usual manner. If marginal productivity theory is reasonably adequate, people will be receiving, in these voluntary transfers holdings, roughly their marginal products. (p. 187)

Nozick’s society is composed of autonomous actors freely interacting with each other to fulfill plans for meeting their needs and interests in accordance with their various capacities and motivations for effective thought and action. Under these conditions of freedom, there can be no central entity collecting and distributing products according to supercooperative rules of justice. There can only be actors determining what they need and want, deciding how to get it, developing plans for acquisition, initiating action, following through, getting results, evaluating consequences, making adjustments, and then trying again. Self-determining individuals, not cooperative groups, are units around which judgments of fairness and justice must be made. Nozick (1974) explains that we are not in the position of children who have been given portions of pie by someone who now makes last minute adjustments to rectify careless cutting. There is no central distribution, no person or group entitled to control all the resources, jointly deciding how they are to be doled out. What each person gets, he gets from others, who give to him in exchange for something, or as a gift. In a free society, diverse persons control different resources, and new holdings arise out of the voluntary exchanges and actions of persons. There is no more a distributing or distribution of shares than there is a distributing of mates in a society in which persons choose whom they shall marry. The total result is the product of many individual decisions which the different individuals involved are entitled to make. (pp. 149-150)

Accordingly, justice as entitlement specifies only three principles: (a) those defining circumstances under which a good or holding can come under the control of a person (to be held), which Nozick calls the principle of justice in acquisition; (b) those defining circumstances under which a good or holding can legitimately change hands from one holder to another, which Nozick calls the principle of justice in transfer; and (c) those circumstances that justify rectification for injustices occurring in which either of the first two principles is violated, which Nozick calls the principle of rectification. Justice occurs when all holdings are held or transferred in accordance to these principles, as summarized in the following (Nozick, 1974):

1. A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.
2. A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to the holding.
3. No one is entitled to a holding except by (repeated) applications of 1 and 2. (p. 151)

Nozick argues that individuals have Lockean rights to make decisions about what they will do with their own labor and the products of that labor. As a consequence, any infringement or abridgment of labor or, by extension, its resultant property is a violation of the right to self-determination because it abrogates decisions about how one is to use her own resources to satisfy personal needs and interests. To permit such invasions of personal decision making is to give others control over oneself, to become, in a sense, the slave of another (Nozick, 1974):
Seizing the result of someone’s labor is equivalent to seizing hours from him and directing him to carry on various activities. If people force you to do certain work, or unrewarded work, for a certain period of time, they decide what you are to do and what purposes your work is to serve apart from your decisions. This process whereby they take this decision from you makes them a part-owner of you; it gives them a property right in you. Just as having such partial control and power of decision, by right, over an animal or inanimate object would be to have a property right in it. (p. 172)

The product of your labor is rightly yours because you already have it. You may not deserve it in any moral sense, but you are entitled to keep it because no one else is more entitled to what you have created. If you are entitled to the product of your labor, then you are entitled to your personal assets in the same way. All natural assets, labor, and its products connected in this causal chain, therefore, are yours (Nozick, 1974):

A. If people have X, and their having X (whether or not they deserve to have it) does not violate anyone else’s (Lockean) right to entitlement to X, and Y flows from (arises out of, and so on) X by a process that does not itself violate anyone’s (Lockean) rights or entitlements, then the person is entitled to Y. 
B. People’s having the natural assets X: Y do not violate anyone else’s (Lockean) entitlements or rights.

Therefore,
1. People are entitled to their natural assets.
2. If people are entitled to something, they are entitled to whatever flows from it (via specified types of processes).
3. People’s holdings flow from their natural assets.

Consequently,
4. People are entitled to their holdings.
5. If people are entitled to something then they ought to have it (and this overrides any presumption of equality there may be about holdings). (pp. 225-226)

Fairness as entitlement, therefore, is freedom to exchange products of one’s labor according to the principles of acquisition and transfer. Nozick’s summary phrase for this is “from each as they choose, to each as they are chosen,” which assumes a social world built on freely constructed transactions between autonomous actors pursuing their own life plans. Fairness here does not mean equality. It does not imply, for example, that final distributions of social exchange be equal or conditionally unequal according to some normative principle. Fair outcome depends on fair process. If acquisitions and transfers of holdings are fair, then outcome distributions are fair too—even though they result in social and economic inequality. In consideration of equal opportunity then, opportunities are holdings that Person acquires by creating or exchanging with another who has the desired opportunity. Person acquires and transfers opportunities as any other resource. The bottom line is that no resource—including an opportunity resource—can be transferred without consent of the holder of that resource. The equal opportunity problem as conceived by Nozick comes down to the following:

There are two ways to attempt to provide such equality [of opportunity]: by directly worsening the situations of those more favored with opportunity, or by improving the situation of those less well-favored. The latter requires the use of resources, and so it too involves worsening the situation of some: those from whom holdings are taken in order to improve the situation of others. But holdings to which these people are entitled may not be seized, even to provide equality of opportunity for others. In the absence of magic wands, the remaining means toward equality of opportunity, convincing persons each to choose to devote some of their holdings to achieving it. (Nozick, 1974, p. 235)

Freedom and Equality

So the antinomy between freedom and equality remains. The discrepancy between the right and the experience of freedom for all continues unresolved. On the one hand, there is the dominant social stratification ideology that denies a discrepancy problem because failure to express the right to self-determination always follows those who lack talent, effort, and persistence. If you lack these traits, you deserve to fail. On the other hand, there is the equal opportunity principle implied by Brown, which challenges this view, as well as the conclusions drawn from theories of justice by Rawls and Nozick. The principle challenges any social policy that ignores circumstances associated with people that limit prospects for self-determination.

The equal opportunity principle bases these challenges on the empirical fact that variation in personal capacity and social opportunity affects success in life. This recognition of interaction effects between capacity and
circumstance highlights difficulties in using Rawls's theory of justice as fairness or Nozick's theory of justice as entitlement to resolve the discrepancy between the promise and the reality of fair chances. The difficulty with justice as fairness has to do with Rawls's use of the difference principle to adjust all inequalities for the benefit of the less well situated. Application of that principle actually decreases prospects for self-determination because it increases dependence on social and economic benefits that are provided independently of individual needs for just right opportunities to fulfill self-determined interests and abilities. This undermines the basis of self-respect, which is an essential good in Rawls's just social order.\footnote{In other words, Rawls's emphasis on collective security rather than individual self-development threatens the very autonomy and self-respect he claims parties to the original position (in formulating a just society) would want to avoid.}

Nozick's theory of entitlement does not create this problem. In fact, its priority is protecting the autonomy of individual thought, action, result, and consequence. Whereas this emphasis on personal autonomy sanctifies self-development and ensures self-respect in a way that Rawls's theory does not, it fails to check unregulated cumulative effects of categorically protected self-determined acts that gain advantage of resource and opportunity for the 'few to create gross inequalities of social circumstance that the equal opportunity principle attempts to redress. It is here that application of Nozick's entitlement theory creates rather than resolves the discrepancy between the promise and the reality of fair chances. Nozick's theory denies the justice of ameliorating any personal, social, or economic circumstance causing a decline in life prospects for any individual or group.

Although he agrees suffering is unfortunate, he still holds that the misfortune of others does not justify taking resources from those who have acquired them fairly and giving them to the less fortunate who would not be acquiring them fairly. Rawls's rational restructuring toward greater equality is unjust because it takes holdings from those who earned them to give to those who did not. Nozick's theory of entitlement promotes self-determination by guaranteeing connections between personal initiative and rewards, but it denies legitimacy for any external intervention that weakens or strengthens an individual's personal, social, or economic circumstances.

So the dilemma for determining what is fair remains. Both theories of justice argue convincingly from different horns of the dilemma about whether social intervention on behalf of the less well situated is justified. Rawls's justice as fairness recommends social redress for their benefit, and Nozick's justice as entitlement recommends rectification only through voluntary transfers from persons well situated to persons less well situated. Governmental intervention on behalf of children and youth who are disabled and who are socially and economically disadvantaged is justified by Rawls's justice as fairness but not by Nozick's justice as entitlement. Public charity is the only redress for the least advantaged under justice as entitlement because governmental opportunity and outcome transfers are fundamentally unjust.

Where does this leave compensatory social policy whose legitimacy comes from the equal opportunity principle? Does it leave justification with the theory of justice we apply? Or does it depend on how different conceptions of justice balance the treatment of freedom and equality? For example, when freedom as power is the basis for justice—as in Nozick's entitlement theory—the emphasis is on individual capacity to self-determine a course of action to justify success and failure in life. Consequently individuals are entitled to their own pursuits and morally responsible for results they produce through those pursuits. Any external entity interfering in the process is an infringement of this capacity to self-determine. But when equal freedom for all is the basis for justice, as in Rawls's justice as fairness, the emphasis is on rectifying inequalities created by variability in individual capacity and opportunity to self-determine. The focus shifts from the individual pursuit to comparative opportunity and outcome of different pursuits—how they are distributed among a population of actors. This perspective judges fairness as a function of equality of opportunity and outcome rather than of freedom from obstacles to self-determination.

Nozick and Rawls emphasize different components of the freedom condition to create alternative conceptions of justice, one focusing on individual freedom and the other on rights of all to that freedom. The first deals with individual initiative, responsibility, and desert under the notion of freedom as power, and the latter deals with equal opportunity and entitlement under the notion of freedom as right. Neither deals fully with justice as a balance between freedom and equality. Weinreb (1987) explains it the following manner:

In highly developed, modern societies, public policies and practices are critical aspects of self-determination and other determination. It is a mistake, however, to regard the principles of liberty and equality as prior and independent. They acquire their normative content by reference to the content of justice, without which they merely describe what is the case. The relationship is reciprocal; they in turn give content to the idea of
justice. Within a human community, in which the reach of positive law is unlimited, justice is realized as liberty and equality. Very likely because of our practical concerns, it is easier to work from liberty and equality to justice, rather than the reverse. But justice comprises the others; it is the larger idea, and the more fundamental. (pp. 248-249)

The Nozick and Rawls theories offer partial solutions to the problem of freedom and equality. Nozick’s solution emphasizes the individual and his or her capacity, responsibility, and desert in the process of self-determination, whereas Rawls’s solution emphasizes the collective responsibility of the cooperative group for ensuring all persons an equal right to self-determination. But neither is a complete formulation. Again, Weinreb (1987) explains it:

The theories of Rawls and Nozick are as convincing as they are because each of them elaborates one aspect of the complete idea of justice and excludes the other. Since the constraint that is finally introduced in the other direction is so much more limited than what our actual practices suggest, it may appear to be obviously consistent with justice and not to require argument. Nevertheless, the failure of each theory as a general theory of justice becomes evident when they are placed side by side. Both play the same game; and one does not succeed more than the other. The constraints introduced to resolve the antinomy of justice have themselves no general theoretical basis. In the end, the specific boundaries drawn by Rawls and Nozick between what constitutes a person and what is merely circumstantial are not abstractly more just than any other; all that can be said for them is that they serve plausible and, from opposite points of view, minimal utilitarian goals. (p. 240)

The failure of the two theories to meet the standard for a general theory of justice is due to their singular focus on one component of the justice problem—individual responsibility for freedom to the exclusion of collective responsibility for equality for Nozick’s theory of entitlement and collective responsibility for equality to the exclusion of individual responsibility for freedom for Rawls’s justice as fairness (Weinreb, 1987):

Rawls’ argument leads to the complete displacement of desert by entitlements according to his principles, all that a person is and has been at the disposal of the community for the equal benefit of all. The full implication of Nozick’s argument leads to the unlimited extension of desert, “mine” meaning simply anything I can get and keep [freedom as power]. In both cases, the implication has to be avoided, because neither entitlement without desert nor desert without entitlement satisfies the idea of justice.

(pp. 239-240)

For Rawls, the concept of person is diminished in significance and the concept of the group enhanced to maximize entitlement, and for Nozick the concept of person is fully inclusive of events and resources causally linked to personal decision and action and the concept of person is fully maximized through freedom as power (capacity). But between these half conceptions of the just social order lies the principle function of justice, which is to adjudicate balance between one person’s freedom as power and another person’s freedom as right. For justice is nugatory when freedom as power for some expands to oppress freedom as right for others or when demand for equal freedom for all expands to diminish individual capacity for freedom of some. Response to this pragmatic need for a conceptual distinction between freedom as power and freedom as right is a just and moral order is formed.

Freedom and the social circumstances that expand and constrain its expression reflect actions of individuals and groups whose experiences operationalize the meaning of freedom and equality. On the one hand, individuals experience capacity and opportunity to choose and enact those of personal needs and interests, and on the other hand, groups of actors experience protection from denial or infringement of their capacity and opportunity for experiencing comparable levels of self-determination. So for any social condition there are freedom conditions unique to individual needs and interests in self-determined pursuits and opportunity conditions defined by the intersection of one person’s rights to experience self-determination and other persons’ obligations to respect those opportunities for those expressions. In other words, freedom as power and opportunity rights entitle the expression of that power are locked in interdependent relations that demand boundaries that both separate and join Person and Other.

Reduced to these elemental states, the problem becomes one of interaction between capacity and opportunity for self-determination, as Table 2.1 illustrates. Column 1 presents the essential components of freedom as self-determination with “Autonomy of X” in row 1 representing the autonomous thinker and actor, “Freedom from Y” in row 2 representing potential obstacles to X’s pursuit of self-determined ends, “Freedom for Z” in row 3 representing opportunities available to X to pursue self-determined ends, and “Results A-W” in the last row representing the results of X’s self-
for autonomous thought and action (autonomy of X), (b) the social circumstances describing constraints (freedom from Y) and opportunities (freedom for Z) for expressions of autonomous thought and action toward self-determined ends, and (c) results and consequences of self-determined thought and action. From here, it is evident that variation in any factor will affect subsequent conditions of freedom by expanding, contracting, or maintaining levels of expression and outcome. On one hand, increased capacity will affect social circumstances by enabling Person to overcome obstacles and seize opportunities that produce good results, and on the other hand, improved social circumstances for Person will affect his chances of producing beneficial results that in turn will enhance his autonomy for subsequent self-determined thoughts and actions.

Columns 2 through 4 in Table 2.1 describe changes in the freedom condition from an initial state of capacity to self-determine in column 2 to a final state of capacity to self-determine in column 4, with an intervening opportunity to self-determine represented in column 3. Row 1 traces Person's capacity for autonomous thought and action through those three phases. Rows 2 and 3 represent initial, intermediate, and final phases of the social circumstances constraining and facilitating autonomous thought and action, and row 4 shows the disposition of outcomes before, during, and after self-determined choices and actions.

Table 2.1 shows how the freedom condition changes from initial to final states. It shows how variation in optimality of prospects are a function of (a) Person's autonomy, which may be enhanced, maintained, or lessened; (b) obstacles in the way of self-determined plans, which may be enhanced, maintained, or lessened; (c) opportunities to pursue plans, which may be enhanced, maintained, or constrained; and (d) results of enacted plans, which may be more, same, or less that expected. In other words, each self-determination episode is a function of an initial state of autonomy, social circumstance, and benefits that constitute conditions that affect Person's decision to choose and to act to satisfy subsequent unmet needs.

### Equal Opportunity Theory

The equal opportunity principle is consistent with this conception of freedom and opportunity as interacting components of a changing condition of optimality prospects for self-determination. The Brown decision
schools for African American students and in least restrictive environments (mainstreaming) for students with disabilities.

But the importance of matching capacity and opportunity did not show up in federal policy until school-to-work programs of the 1990s sought to increase correspondence between learning in school and work opportunity in the community so students could adjust more successfully to adult life. For the first time, the connection between learning what to do and demonstrating how to apply it for personal gain reflected this dynamic between capacity building and opportunity restructuring for students failing to enter adulthood with a fair chance at determining their own future on a footing equal to their peers. This capacity-opportunity nexus reflects what is necessary for the right of self-determination to be experienced by all persons, including those least well situated in society.

Equal opportunity theory and Rawls’s theory of justice agree that the four groups identified earlier—African Americans, people with disabilities, non-college-bound students, and poor people—deserve social redress in some form, which contrasts implications of Nozick’s theory denying mandatory redress of any kind for any group. Nevertheless, the approaches implied by the two theories are different. Equal opportunity theory recommends improvements in capacity and opportunity according to individual needs, interests, and abilities, which means treating members of less well situated groups as individuals whose capacities and opportunities must match if they are to engage in self-determined thought and action. This contrasts Rawls’s conception of individuals sharing economic needs to be remedied through income transfers irrespective of their level of capacity and opportunity to self-determine. According to the theory of self-underlying equal opportunity theory, this approach would depress rather than enhance prospects for self-determination, and as a consequence, jeopardize the basis for self-respect, a point we will return to in the next chapter. Only through interventions that optimize the match between Person and his or her circumstance will prospects for self-determination improve.

Notes

1. Part 1, Article 1, and Item 1 of the International Covenant on Civil and Political Rights, approved by the General Assembly of the United Nations in 1966, specified that “All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development” (quoted in Humana, 1992, p. 385).


3. “The application of the principles set forth in the Brown decision to the education of handicapped children became a legal theory in more than 30 separately filed cases throughout the United States. Two of these cases culminated in landmark decisions in 1971 and 1972. In Pennsylvania Association for Retarded Children (PARC) v. Pennsylvania and Mills v. Board of Education, district courts approved consent decrees that enjoined states from denying education to mentally retarded and handicapped children without due process. The Mills consent decree went so far as to set out an elaborate framework for what that due process would entail. Both of these cases were based on constitutional theories of equal protection and due process under the fourteenth amendment and were the impetus for similar cases in a large number of other states” (quoted in Rothstein, 1990, p. 2).

4. See, for example, the William T. Grant Foundation Commission on Work, Family and Citizenship (1988), The Forgotten Half: Non-College Youth in America, An Interim Report on the School-to-Work Transition. The decidedly unequal educational opportunities for the two groups became evident in comparisons of federal aid to students and schools for college graduates that averaged $15,200 per year and only $1,460 for young people who do not go to college.

5. Congressional initiatives to reduce this inequity are likely to be in the form of a school-to-work transition support through apprenticeships, community-based training, and employer incentives to assist noncollege youth establish careers for themselves in occupational areas that fit their needs, interests, and abilities.

6. Rawls (1991) says,

Let us assume, to fix ideas, that a society is more or less a self-sufficient association of persons who in their relations to one another recognize certain rules of conduct as binding and who for the most part act in accordance with them. Suppose further that these rules specify a system of cooperation designed to advance the good of those taking part in it. Then, although a society is a cooperative venture for mutual advantage, it is typically marked by a conflict as well as by an identity of interests. There is an identity of interests since social cooperation makes possible a better life for all than any would have if each were to live solely by his own efforts. (p. 4)


7. “But because there is no effort to preserve an equality, or similarity, of social conditions, except insofar as this is necessary to preserve the requisite background institutions, the initial distribution of assets for any period of time is strongly influenced by natural and social contingencies. The existing distributions of income and wealth, say, is the cumulative
effect of prior distributions of natural assets—that is, natural talents and abilities—as these have been developed or left unrealized, and their use favored or disfavored over time by social circumstances and chance contingencies such as accident and good fortune. Intuitively, the most obvious injustice of the system of natural liberty is that it permits distributive shares to be improperly influenced by these factors so arbitrary from a moral point of view" (Rawls, 1991, p. 72).

10. The longer version is as follows: "From each according to what he chooses to do, to each according to what he makes for himself (perhaps with the contracted aid of others) and what others choose to do for him and choose to give him of what they've been give previously (under this maxim) and haven't yet expended or transferred" (Nozick, 1974, p. 160).
11. Weinreb (1987) provides a full account of the nature of this contradiction.
12. Rawls (1991) says,

On several occasions I have mentioned that perhaps the most important primary good is that of self-respect. We must make sure that the conception of goodness as rationality explains why this should be so. We may define self-respect (or self-esteem) as having two aspects. First of all . . . it includes a person’s sense of his own value, his secure conviction that his conception of his good, his plan of life, is worth carrying out. And second, self-respect implies a confidence in one’s ability, so far as it is within one’s power, to fulfill one’s intentions. When we find that our plans are of little value, we cannot pursue them with pleasure or take delight in their execution. Nor plagued by failure and self-doubt can we continue in our endeavors. It is clear then why self-respect is a primary good. Without it nothing may seem worth doing, or if some things have value for us, we lack the will to strive for them. All desire and activity becomes empty and vain, and we sink into apathy and cynicism. Therefore the parties in the original position would wish to avoid at almost any cost the social conditions that undermine self-respect. The fact that justice as fairness gives more support to self-esteem than other principles is a strong reason for them to adopt it. (p. 440)

14. Sen (1992) makes a similar distinction between freedom and the consequences of freedom that he calls achievement (see pp. 31-38).

Judgments about fairness in social life depend on how membership in the group affects life prospects for its members, as well as how the work of its members is rewarded. When Person believes she has a fair chance of getting what she needs and wants in life by being a member of the group, she believes membership in the group to be worthwhile, and when Person is satisfied with the rewards she earns for her contribution to the cooperative endeavor, Person believes she is being treated fairly (see Beauchamp, 1980, for a discussion). Both judgments of fairness result from calculations about the advantage gained from different social relationships. They result from judgments about whether one would be better off in an absolute sense by joining another group or in a relative sense by getting a better return for contribution to the cooperative enterprise than what others get for their contribution. How Person answers these questions will affect her conclusion about justice through fairness.

The first question connects with the larger issue of how the group routinely distributes benefits and burdens of cooperation. Given that all