

## ***This Week's Citation Classic***

**Van Alstyne W W.** The demise of the right-privilege distinction in constitutional law.  
*Harvard Law Rev.* 81:1439-64, 1968. [Duke Law School, Durham, NC]

A critical review is presented of a century-old paradox: How can a government barred by the Bill of Rights from directly abridging basic freedoms nonetheless require a waiver of those freedoms by those with whom it deals as employer, contractor, licensor, and welfare administrator? [The *Science Citation Index*® (SCI®) and the *Social Sciences Citation Index*™ (SSCI™) indicate that this paper has been cited over 265 times since 1968.]

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"This article has been cited a good deal most probably because it is short, published in the most widely-circulated law journal in this country, and deals with a constitutional issue affecting a vast number of people in this new age of The Administrative State. It was written as one of several pieces during a year off as a faculty fellow at the Yale Law

School. I wrote it from some professional concern with the importance of the issues it addresses, but I became interested principally from a sense of delight with the contradictory nature of several Supreme Court cases that seemed to be all riddle and no answer—a carryover from undergraduate preoccupations as a philosophy major.

"These ten years later, I have picked up the remaining pieces of the constitutional puzzle to write about a closely related problem: When (if ever) must government provide some kind of hearing to those with whom it deals through its manifold administrative powers? This article is probably better than the *Harvard Law Review* piece and is fully as important as that piece. Because it is longer, however, and because it appears in a journal of slightly less distinction (*The Cornell Law Review*), it shall surely not become a 'Citation Classic/1

"After seventeen years of teaching, I find that my own best writing results from subjects I regularly teach in an institution whose ambience stimulates one's writing without demanding or quantifying it—in the 'inefficient' tradition which most people outside universities regard as indefensible and wasteful. They are quite wrong. The best work still comes from conditions of freedom, choice, and encouragement—rather than from direction, duress, and anxiety."

1. **Van Alstyne W W.** Cracks in "the new property": adjudicative due process in the administrative state.  
*Cornell Law Rev.* 62:445-93, 1977. [The SSCI indicates that this paper has been cited 18 times since 1977.]