liceman."[763] Under this theory, a finding that a litigant had no "vested property interest" in government employment,[764] or that some form of public assistance was "only" a privilege,[765] meant that no procedural due process was required before depriving a person of that interest.[766] The reasoning was that, if a government was under no obligation to provide something, it could choose to provide it subject to whatever conditions or procedures it found appropriate.

The conceptual underpinnings of this position, however, were always in conflict with a line of cases holding that the government could not require the diminution of constitutional rights as a condition for receiving benefits. This line of thought, referred to as the "unconstitutional conditions" doctrine, held that, "even though a person has no 'right' to a valuable government benefit and even though the government may deny him the benefit for any number of reasons, it may not do so on a basis that infringes his constitutionally protected interests—especially, his interest in freedom of speech."[767] Nonetheless, the two doctrines coexisted in an unstable relationship until the 1960s, when the right-privilege distinction started to be largely disregarded.[768]

Concurrently with the virtual demise of the "right-privilege" distinction, there arose the "entitlement" doctrine, under which the Court erected a barrier of procedural—but not substantive—protections[769] against erroneous governmental deprivation of something it had within its discretion bestowed. Previously, the Court had limited due process protections to constitutional rights, traditional rights, common law rights and "natural rights." Now, under a new "positivist" approach, a protected property or liberty interest might be found based on any positive governmental statute or governmental prac-

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[763] McAuliffe v. Mayor of New Bedford, 155 Mass. 216, 220, 29 N.E.2d 517, 522 (1892).

[764] Bailey v. Richardson, 182 F.2d 46 (D.C. Cir. 1950), *aff'd by an equally divided Court,* 314 U.S. 918 (1951); Adler v. Board of Educ., 342 U.S. 485 (1952).

[765] Flemming v. Nestor, 363 U.S. 603 (1960).

[766] Barsky v. Board of Regents, 347 U.S. 442 (1954).

[767] Perry v. Sindermann, 408 U.S. 593, 597 (1972). *See* Speiser v. Randall, 357 U.S. 513 (1958).

[768] *See* William Van Alstyne, *The Demise of the Right-Privilege Distinction in Constitutional Law*, 81 HARV. L. REV. 1439 (1968). Much of the old fight had to do with imposition of conditions on admitting corporations into a state. *Cf.* Western & Southern Life Ins. Co. v. State Bd. of Equalization, 451 U.S. 648, 656–68 (1981) (reviewing the cases). The right-privilege distinction is not, however, totally moribund. *See* Buckley v. Valeo, 424 U.S. 1, 108–09 (1976) (sustaining as qualification for public financing of campaign agreement to abide by expenditure limitations otherwise unconstitutional); Wyman v. James, 400 U.S. 309 (1971).

[769] This means that Congress or a state legislature could still simply take away part or all of the benefit. Richardson v. Belcher, 404 U.S. 78 (1971); United States Railroad Retirement Bd. v. Fritz, 449 U.S. 166, 174 (1980); Logan v. Zimmerman Brush Co., 455 U.S. 422, 432–33 (1982).