property.[18] Laws requiring a minimum floor area in homes that are to be built, which are not shown to promote the health, morals, safety or general welfare, unconstitutionally deny property owners of the right to erect a home.[19] An ordinance requiring surrounding land owners to be first notified and to testify as to the suitability of a proposed building before one is allowed to build on his land, is violative of the constitutional right of a citizen to use his own property as he sees fit, as he is not interfering with anyone's rights.[20]

It was during the 1920's that the courts started "taking more and more liberal views of the 'zoning power.'"[21] The power has become so pervasive that we are now no better off than when our ancestors were under the feudal system.

THE RIGHT TO LABOR, WORK & BUSINESS

The right to work fully encompasses the right to life, liberty and property. Every one is to have the *liberty* to engage in any lawful work, business, or avocation; a person's labor or business which he owns is regarded as his *property*; and one's ability to work, labor or pursue a business is a part of their right to *life* since they cannot sustain a livelihood without such things. The right to work is a God-given right, as Jesus said, *"a worker is worthy of his meat"* (Matt. 10:10).

There have been instances where the government has attempted to prescribe the number of hours per day or per

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18 *Land Purchasing Corp v. Grunewald,* 195 N.Y.S.2d 69 (1959); *Mandalay Construction, Inc. v. Eccleston,* 195 N.Y.S.2d 84 (1959). *Ritenour v. Dearborn Twp.,* 40 N.W.2d 137; 326 Mich. 242 (1949); 96 ALR2d 1376.

19 *Appeal of Medinger,* 104 A.2d 118; 377 Pa. 217 (1954). *City of West Palm Beach v. State,* 30 So.2d 491 (Fla. 1947).

20 *City of Dallas v. Mitchell,* 245 S.W. 944 (Tex. 1922). See also *Spann v. City of Dallas,* 235 S.W. 513 (Tex. 1921); *Hill v. Storrie,* 236 S.W. 234 (Tex. Civ. App. 1921).

21 19 *American Law Reports,* Annotation, 1395, 1397.

week that an employer can have his employees work. In such a case the Supreme Court of Illinois said that people, whether employers or employees, have the right to contract for labor, which cannot be infringed upon by government:

> The privilege of contracting is both a liberty and property right. Liberty includes the right to acquire property, and that means and includes the right to make and enforce contracts. Labor is property, and the laborer has the same right to sell his labor, and to contract with reference thereto, as has any other property owner. In this country the legislature has no power to prevent persons who are sui juris from making their own contracts, nor can it interfere with the freedom of contract between the workman and the employer. The right to labor or employ labor, and make contracts in respect thereto upon such terms as may be agreed upon between the parties, is included in the constitutional guaranty (*no person shall be deprived of life, liberty or property without due process of law*).[22]

In Colorado the legislature had passed a law that limited the period of employment of working men in all underground mines and in smelters to 8 hours per day. The State Supreme Court said the measure was not a valid exercise of the police power, since the health of the miners alone, and not the public at large, was its object. It also stated:

> How can one be said injuriously to affect others, or interfere with these great objects [to secure public health, etc.], by doing an act which confessedly visits its consequences on himself alone? * * * The welfare of the people is indeed the supreme law, but this maxim cannot be twisted to sustain a law violating private rights, which contemplates the promotion of the welfare of less than the entire people. Our bill of rights expressly says that government is instituted solely for the good of the whole. * * * It is beyond the power of the legislature, under the guise of the police power, to prohibit an adult man who desires to work thereat, from working more than eight hours a day, on the ground that working longer he may, or probably will, injure his own health. * * * Every person sui juris has a right to

22 *Ritchie v. People,* 40 N.E. 454, 455; 115 Ill. 98 (1895).

> make use of his labor in any lawful employment on his own behalf, or to hire it out in the service of others. This is one of the first and highest of civil rights.[23]

Another means used to control labor and deprive citizens of inherent rights, is by schemes of **labor unionization.** In an Illinois case, a man named Gillespie had fired a man because he belonged to a labor union. Gillespie was charged with violating a statute that said it was unlawful to keep any employee from joining or belonging to any lawful labor union. He was convicted but it was reversed on appeal, holding:

> The law under review declares that to be a crime which consists alone in the exercise of a constitutional right, to wit, that of terminating a contract,—one of the essential attributes of property; indeed, property itself. * * * We deny the power of the legislature to do this,—to brand as an offense that which the constitution designates and declares to be a right, and therefore an innocent act. It is nothing more or less than a 'legislative judgment,' and an attempt to deprive all who are included within its terms of a constitutional right, without due process of law. * * * His sole offense consisted in refusing to give employment to a man who belonged to a labor organization. In other words, he merely exercised his constitutional right of terminating a contract, or refusing to make a contract. Liberty includes not only the right to labor, but to refuse to labor, and consequently the right to contract to labor or for labor, and to terminate such contracts, and to refuse to make such contracts. The legislature cannot prevent persons who are sui juris from laboring, or from making such contracts as they see fit to make relative to their own lawful labor.[24]

A citizen cannot be compelled to give employment to another, for all have the right to make or terminate contracts of employment. Individuals who have the opportunities and

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23 *In re Morgan,* 58 Pac. 1071, 1075-76, 1082; 26 Colo. 415 (1899). For similar cases see: *In re Jacobs,* 98 N.Y. Rep. 98 (1885). *City of Cleveland v. Clements Bros. Const. Co.,* 65 N.E. 885; 67 Ohio St. 197 (1902).

24 *Gillespie v. People,* 58 N.E. 1007, 1009-10 (Ill. 1900), citing in part *State v. Julow,* 129 Mo. 163, 31 S.W. 781 (1895).

positions for work have as much right to discriminate in whom they will hire or fire, as does the worker in deciding with whom he will work. The right of discriminating between union and nonunion labor has been upheld by all early courts, including the U.S. Supreme Court, and is thus *res judicata*.[25]

The rights of liberty and property are entangled within the functions of working and hiring. "It is a constitutional right of an employer to refuse to have business relations with any person or with any labor organization, and it is immaterial what his reasons are."[26]

The most effective means in undermining and controlling the rights of labor and business have been by laws imposing licenses, taxes, and certificate requirements upon the laborer or business. In Florida, members of the State Board of Accountancy filed suit against several persons to prevent them from holding themselves out as accountants, and from using the word "accountant" in their ads, as they were not certified public accountants. The State Supreme Court said that they had a right to do accounting work:

> We agree with the Oklahoma court that to prohibit non-certified accountants in this state from doing routine accounting work in their own offices, rather than in that of an "employer," and to require them to designate themselves as "bookkeepers" rather than as accountants, is in conflict with the spirit and express provisions of the Constitution and void, in this, that it abridges the right of private property and infringes upon the right of contract in matters purely of private concern bearing no perceptible relation to the general or public welfare, and thereby tends to create a monopoly in the profession of accountancy for the benefit of certified accountants.[27]

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25 *Adair v. U.S.,* 208 U.S. 161 (1908); *Coppage v. Kansas,* 236 U.S. 1 (1915).

26 6 *American Law Report,* 2nd, 497, citing *Goldfield Consol. Mines Co. v. Goldfield Miners' Union,* 159 Fed. 500 (1908).

27 *Florida Accountants Assoc. v. Dandelake,* 98 So.2d 323, 328 (Fla. 1957); citing *State ex rel. Short v. Riedell,* 109 Okla. 35, 233 P. 684 (1924).

A man named Delbert Brown was charged with engaging in the business of a master plumber without a master plumber's license as was required by the Plumbing License Law. This law also prohibited one to be a journeyman plumber who was not approved of by a master plumber. The County Court held provisions of the law unconstitutional and the People brought error to reverse. The Supreme Court of Illinois sustained the decision stating:

> A person's business, profession, trade, occupation, labor and the avails from each constitute "property" envisioned in the [due process] provision. The right to follow any of those activities is "liberty" as also envisioned therein. * * * Statutes enacted under the police power must be construed, if possible, so as to avoid infringing any of those basic rights. * * * The legislature, by the act under consideration, has interfered with the inherent right of citizens freely and of their own choice to engage in the legitimate vocation of learning the trade of journeyman plumber . . . and being a master plumber.[28]

Where an ordinance prohibited the storing of hides within the city limits without permission (license) from the city council, it was held invalid since the business of storing hides and pelts, "is not a nuisance per se." The Court said that, "The common businesses and callings of life, the ordinary trades and pursuits, which are innocuous in themselves, have been followed in all communities from time immemorial, and must therefore be *free* in this country to all alike."[29]

In *Barthet v. New Orleans,* 24 Fed. 564, an ordinance of that city was held invalid which made it unlawful to maintain a slaughterhouse "except permission be granted by the council of the city." In *Richmond v. Dudley,* 129 Ind. 112, 28 N.E. 312, an ordinance forbidding the storing of inflammable oils within city limits, without permission of the common

28 *People v. Brown,* 96 N.E.2d 888, 893, 899, 407 Ill. 565 (1950). For a similar case see *Replogle v. City of Little Rock,* 267 S.W. 353, 166 Ark. 617 (1925).

29 *May v. People,* 27 Pac. 1010, 1012; 1 Colo. App. 157 (1891).

council, was held void. In *State v. Dubarry,* 44 La. Ann. 1117, 11 So. 718, an ordinance of the city of New Orleans was held void because it prohibited the setting up of any private market without permission of the city council.[30]

The use of licensing or a license tax has been a common means to control the labor or business of citizens. A confusion on the matter arises with the difference between a mere business tax, from that of a license or license tax, the latter which cannot be levied on a legitimate business or work which every citizen has an inherent right to engage in. This distinction was revealed in the following decision:

> The object of a license is to confer a right that does not exist without a license. * * * A common right is not the creation of a license. * * * By a license * * * that is permitted which cannot be done without permission; and to say a person is permitted— licensed—to do what he may lawfully do without permission, is a misuse of words. Hence, unless it can be shown that a simple tax on the traffic [of liquor] enlarges the privileges of those engaged in it, or confers a right that did not previously exist, there is no ground for saying that the tax is a license of the business. * * * The distinction between the tax upon a business, and what might be termed a license, is that the former is enacted by reason of the fact that the business *is carried on,* and the latter is exacted as a condition precedent to *the right* to carry it on. In the one case the individual may rightfully engage in and carry on the business without paying the tax; in the other he cannot.[31]

Since the object of a license is to confer a right that does not exist without the license, where one has an inherent or inalienable right to do something, the state cannot compel him to obtain a license as a condition to performing that right. It is a practice in socialist states to make every commercial activity a privilege granted by the state.

30 As recorded in *Hays v. City of Popular Bluff,* 173 S.W. 676, 679-80.

31 *Adler v. Whitbeck,* 9 N.E. 672, 674, 675, 44 Ohio 539 (1887).

In Texas, a statute was passed levying an "occupation tax of $5,000 on persons engaging in the business of purchasing assignments of unearned wages." Since the tax was a "prohibitive tax," requiring one to "first pay to the state" the $5,000 before engaging in the business, the tax was of the nature of a privilege tax or license, and thus was held to be an unlawful restraint of the freedom of trade:

> A person living under the protection of this government has the right to adopt and follow any lawful industrious pursuit, not injurious to the community, which he may see fit. * * * Is not a man's wages or his time "property?" If so, has he not the right under the Constitution to sell and convey such property? If a law be passed that prohibits the purchase of his "time" or labor, does it not abridge his right of contract?[32]

In New Hampshire a revenue bill was drafted which imposed privilege taxes on persons engaged in various vocations, occupations, or businesses. Many of the occupations "involved only the ordinary transactions of private life." They thus "contained no element subject to supervision either under the police power or as things affected with a public use." The State Supreme Court said:

> [The act] unquestionably exceeds the legislative power. Even in jurisdictions where excises are authorized, the power to lay them does not extend to the imposition of a charge upon the exercise of a common right.[33]

In the State of Mississippi, a privilege tax was imposed on "each individual, firm, or corporation doing a plumbing business." A man name Wilby was indicted by a grand jury for "unlawfully conducting a plumbing business, without first paying the privilege tax." It was held that such a tax can only be applied to corporations or subcontractors, not citizens:

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32 *Owens v. State,* 112 S.W. 1075, 1076, 1077; 53 Tex. Cr. R. 105 (1908). See also *Ex parte Woods,* 108 S.W. 1171; 52 Tex. Cr. R. 575 (1908).

33 *In re Opinion of the Justices,* 138 Atl. 284, 286; 82 N.H. 561 (1927).

> Liberty, in its broad sense, must consist in the right to follow any of the ordinary callings of life without being trammeled. * * * The right to follow any of the common occupations of life is an inalienable right. * * * Legislation of this kind is on the increase. It is stealthily stealing its way into the statutes for the ostensible purpose of raising revenue for the state, when in truth and in fact the only purpose of the promoters of such legislation is to control the business to which it is directed, to shut out competition, create a monopoly, and force those unable to pay the tax and possessing a knowledge of the business to look to the ones in control of the monopoly for employment.[34]

POSSESSING PROPERTY

There is a tendency in legislative enactments to prevent crime by making the possession of some item an unlawful act. Recent examples involve the possession of drugs, certain guns, large amounts of cash, unregistered automobiles, or unlicensed dogs. The legal problems associated with these laws have frequently been exposed in cases dealing with the possession of alcohol. In the landmark *Wynehamer* case (13 N.Y. 378), a law which required destroying all intoxicating liquors owned and possessed by any person, was invalid as depriving people of property without due process of law.

As an attempt to justify such oppressive laws, it has been common to say that such possession is *prima facie* evidence of intent to sell the alcohol. In Minnesota, such an act was passed, but the Court said that it could not be constitutionally applied to the finding of a case of whiskey in one's garage:

> Possession in the eyes of the law is a perfectly innocent act. It is only the sale, or possession with intent to sell, that the law forbids and punishes. What the United States Supreme Court said in reference to possession of agricultural land by an alien is equally applicable to the possession of liquor:

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34 *Wilby v. State,* 47 So. 465, 466; 93 Miss. 767 (1908). See also *Mayor of City of Vicksburg v. Mullane,* 63 So. 412; 106 Miss. 199 (1913).