ing of property for which compensation must be paid.[52] Thus, the means employed to effect its exercise may be neither arbitrary nor oppressive but must bear a real and substantial relation to an end that is public, specifically, the public health, safety, or morals, or some other aspect of the general welfare.[53]

An ulterior public advantage, however, may justify a comparatively insignificant taking of private property for what seems to be a private use.[54] Mere "cost and inconvenience (different words, probably, for the same thing) would have to be very great before they could become an element in the consideration of the right of a state to exert its reserved power or its police power."[55] Moreover, it is elementary that enforcement of a law passed in the legitimate exertion of the police power is not a taking without due process of law, even if the cost is borne by the regulated.[56] Initial compliance with a regulation that is valid when adopted, however, does not preclude later protest if that regulation subsequently becomes confiscatory in its operation.[57]

"Liberty".—As will be discussed in detail below, the substantive "liberty" guaranteed by the Due Process Clause has been variously defined by the Court. In the early years, it meant almost exclusively "liberty of contract," but with the demise of liberty of contract came a general broadening of "liberty" to include personal, political and social rights and privileges.[58] Nonetheless, the Court is generally chary of expanding the concept absent statutorily recognized rights.[59]

---

[52] Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922); Welch v. Swasey, 214 U.S. 91, 107 (1909). *See also* Penn Central Transp. Co. v. City of New York, 438 U.S. 104 (1978); Agins v. City of Tiburon, 447 U.S. 255 (1980). *See* also analysis of "Regulatory Takings" under the Fifth Amendment. Although the Fourteenth Amendment does not contain a "takings" provisions such as is found in the Fifth Amendment, the Court has held that such provision has been incorporated. Webb's Fabulous Pharmacies v. Beckwith, 449 U.S. 155, 159 (1980).

[53] Liggett Co. v. Baldridge, 278 U.S. 105, 111–12 (1928); Treigle v. Acme Homestead Ass'n, 297 U.S. 189, 197 (1936).

[54] Noble State Bank v. Haskell, 219 U.S. 104, 110 (1911) (bank may be required to contribute to fund to guarantee the deposits of contributing banks).

[55] Erie R.R. v. Williams, 233 U.S. 685, 700 (1914).

[56] New Orleans Public Service v. New Orleans, 281 U.S. 682, 687 (1930).

[57] Abie State Bank v. Bryan, 282 U.S. 765, 776 (1931).

[58] *See* the tentative effort in Hampton v. Mow Sun Wong, 426 U.S. 88, 102 & n.23 (1976), apparently to expand upon the concept of "liberty" within the meaning of the Fifth Amendment's Due Process Clause and necessarily therefore the Fourteenth's.

[59] *See* the substantial confinement of the concept in Meachum v. Fano, 427 U.S. 215 (1976); and Montanye v. Haymes, 427 U.S. 236 (1976), in which the Court applied to its determination of what is a liberty interest the "entitlement" doctrine developed in property cases, in which the interest is made to depend upon state recognition of the interest through positive law, an approach contrary to previous