may do to such "fast lands" by causing overflows, by erosion, and otherwise, consequent on erection of dams or other improvements.[679] And, when previously nonnavigable waters are made navigable by private investment, government may not, without paying compensation, simply assert a navigation servitude and direct the property owners to afford public access.[680]

Regulatory Takings.—Although it is established that government may take private property, with compensation, to promote the public interest, that interest also may be served by regulation of property use pursuant to the police power, and for years there was broad dicta that no one may claim damages that result from a police regulation designed to secure the common welfare, especially in the area of health and safety.[681] "What distinguishes eminent domain from the police power is that the former involves the *taking* of property because of its need for the public use while the latter involves the *regulation* of such property to prevent the use thereof in a manner that is detrimental to the public interest." [682] But regulation may deprive an owner of most or all beneficial use of his property and may destroy the values of the property for the purposes to which it is suited.[683] The older cases flatly denied the possibility of compensation for this diminution of property values,[684] but the Court in 1922 established as a general principle that "if regulation goes too far it will be recognized as a taking." [685]

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[679] United States v. Lynah, 188 U.S. 445 (1903); United States v. Cress, 243 U.S. 316 (1917); Jacobs v. United States, 290 U.S. 13 (1933); United States v. Dickinson, 331 U.S. 745 (1947); United States v. Kansas City Ins. Co., 339 U.S. 799 (1950); United States v. Virginia Electric & Power Co., 365 U.S. 624 (1961).

[680] Kaiser Aetna v. United States, 444 U.S. 164 (1979); Vaughn v. Vermillion Corp., 444 U.S. 206 (1979).

[681] Mugler v. Kansas, 123 U.S. 623, 668–69 (1887). *See also The Legal Tender Cases*, 79 U.S. (12 Wall.) 457, 551 (1871); Chicago, B. & Q. R.R. v. City of Chicago, 166 U.S. 226, 255 (1897); Omnia Commercial Co. v. United States, 261 U.S. 502 (1923); Norman v. Baltimore & Ohio R.R., 294 U.S. 240 (1935).

[682] 1 NICHOLS ON EMINENT DOMAIN § 1.42 (Julius L. Sackman, 2006).

[683] *E.g.*, Hadacheck v. Sebastian, 239 U.S. 394 (1915) (ordinance upheld restricting owner of brick factory from continuing his use after residential growth surrounding factory made use noxious, even though value of property was reduced by more than 90%); Miller v. Schoene, 276 U.S. 272 (1928) (no compensation due owner's loss of red cedar trees ordered destroyed because they were infected with rust that threatened contamination of neighboring apple orchards: preferment of public interest in saving cash crop to property interest in ornamental trees was rational).

[684] Mugler v. Kansas, 123 U.S. 623, 668–69 (1887) (ban on manufacture of liquor greatly devalued plaintiff's plant and machinery; no taking possible simply because of legislation deeming a use injurious to public health and welfare).

[685] Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 415 (1922). *See also* Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992) (a regulation that deprives a property owner of *all* beneficial use of his property requires compensation, unless the owner's proposed use is one prohibited by background principles of property or nuisance law existing at the time the property was acquired).