
ESSAYS HONORING CHARLES M. HAAR

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INTRODUCTION

There are various ways to honor and declare appreciation to a colleague. For Charles Haar, this festschrift seems just right. The provocative contributions from Fessler, Kayden, Wolf, and Zax typify the wide range of interests that have attracted Charles's attention, curiosity, and commitment. These are subjects that he has pursued as teacher, scholar, lawyer, and public servant. They are, as he has always been, on the cutting edge. They draw, as his work has always done, on various disciplines. And they speak, as his work has always spoken, of deep commitment to making a difference for people in the world.

During five decades, the professional work of Charles Haar has investigated the ways in which the words formally uttered by judges, legislators, and regulators shape and affect the lives, fortunes, and minds of Americans. No American law professor in the second half of the

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twentieth century has had a more unerring taste (or smell) for the great topic. Charles saw earlier than nearly anyone else the enigmatic nature of the takings clause,¹ the intricacies of the master plan,² the racial and other inequities in the provision of public services,³ the evolution of Anglo-American property law,⁴ the intergovernmental struggle over regulatory power,⁵ and the shape of the municipal landscape.⁶ His writings have been essential to students, lawyers, planners, and historians. His active participation in conferences, jointly written and edited books, trips, and research projects have stimulated the efforts of colleagues in many disciplines. Charles Haar is one of our great scholar-entrepreneurs.

The Haar opus is a work in progress. *Suburbs Under Siege*, his 1996 study of the *Mount Laurel* litigation (which appropriately appears as Chief Justice Wilentz of the New Jersey Supreme Court retires), is but Charles Haar's latest (and most post-modern) muse on the proper role of judges in redressing the injustices and abuses of land-use regulators.⁷ As a veteran special master who has been thrown in the intergovernmen-

1. Charles's memorable observation that "[t]he attempt to distinguish 'regulation' from 'taking' is the most haunting jurisprudential problem in the field of contemporary land-use law—one that may be the lawyer's equivalent of the physicist's hunt for the quark," CHARLES M. HAAR & MICHAEL ALLAN WOLF, *LAND-USE PLANNING* (4th ed. 1989), has been quoted twice by the United States Supreme court in important regulatory takings cases. See *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 200 n.17 (1985); *San Diego Gas & Elec. v. City of San Diego*, 450 U.S. 621 n.15 (1981).

2. The leading works in this area remain Charles M. Haar, *In Accordance with a Comprehensive Plan*, 68 HARV. L. REV. 1154 (1955); and Charles M. Haar, *The Master Plan: An Impermanent Constitution*, 20 LAW & CONTEMP. PROBS. 353 (1955).

3. CHARLES M. HAAR & DANIEL WM. FESSLER, *THE WRONG SIDE OF THE TRACKS* (1986); see also CHARLES M. HAAR & MICHAEL ALLAN WOLF, *LAND-USE PLANNING* 647-73 (4th ed. 1989).

4. See, e.g., CHARLES M. HAAR & LANCE LIEBMAN, *PROPERTY AND LAW* (2d ed. 1985); CHARLES M. HAAR, *LAND PLANNING LAW IN A FREE SOCIETY* (1951).

5. See, e.g., CHARLES M. HAAR, *SUBURBS UNDER SIEGE: RACE, SPACE, AND AUDACIOUS JUDGES* (1966); *CITIES, LAW AND SOCIAL POLICY: LEARNING FROM THE BRITISH* (Charles M. Haar ed., 1984).

6. See, e.g., CHARLES M. HAAR, *BETWEEN THE IDEA AND THE REALITY* (1975).

7. In addition to the works already cited, see CHARLES M. HAAR & JEROLD S. KAYDEN, *LANDMARK JUSTICE: THE INFLUENCE OF WILLIAM J. BRENNAN ON AMERICA'S COMMUNITIES* (1989); CHARLES M. HAAR, *THE GOLDEN AGE OF AMERICAN LAW* (1965); Charles M. Haar, *Reflection on Euclid: Social Contract and Private Purpose, in ZONING AND THE AMERICAN DREAM: PROMISES STILL TO KEEP* 333 (Charles M. Haar & Jerold S. Kayden eds., 1989).

tal fray (and, unlike some others, has emerged unscathed),⁸ Charles's insights are special and perhaps unique. This book, like so much of the Haar work, is about democracy and expertise, about science and values, and about race and poverty. Its subject is no less than the capacity of our species to rise above parochial concerns and make collective decisions that are acceptable in terms of their impact on people without voice and people not yet born.

Charles Haar has been a great mentor. He has mentored all the contributors to this issue and dozens of other lawyers, planners, bureaucrats, and elected officials. A generation of scholars and activists have been led to the fields of property, land-use planning, environmental law, economic development, and legal history by his work and his personality. He has shared authorship and generously promoted the careers of his students and his friends.

Charles Haar still holds the faith. He has the faith in judges that he learned after World War II at Harvard Law School. He has the faith in planners and the processes and professions of planning that he learned as an early student of land use processes. He has the faith in law that is inevitable in someone who saw the chaos and cruelty of European lawlessness. Most important, he has the faith in democracy that is hard—but essential—to sustain when daily observation brings more examples of rent-seeking political behavior than of the search for the common good.⁹

As to law, Charles overcame early the Frankfurterian emphasis on the excesses of judicial activism. Instead, seeing the imperfections of legislation and unreviewed bureaucratic regulation, he found the judiciary to be an essential part of our Madisonian governmental matrix, sometimes bringing coherence, sometimes skeptical review, and sometimes a dramatic intervention to restructure failing institutions. He finds all these judicial roles in the traditions of evolutionary common-law development and of the provocative dissent.

Charles Haar has entered the fray. He was the first Assistant Secretary for Metropolitan Development at the new Department of

8. See Charles M. Haar, *Boston Harbor: A Case Study*, 19 B.C. ENVTL. AFF. L. REV. 641 (1992); OF JUDGES, POLITICS AND FLOUNDERS: PERSPECTIVES ON THE CLEANING UP OF BOSTON HARBOR (Charles M. Haar ed. 1986).

9. See, e.g., Charles M. Haar, *Zoning For Minimum Standards: The Wayne Township Case*, 66 HARV. L. REV. 1051 (1953); Charles M. Haar, *Wayne Township: Zoning for Whom?—In Brief Reply*, 67 HARV. L. REV. 986 (1954).

Housing and Urban Development in the Johnson Administration. Before and since his federal service, he has served on presidential and gubernatorial task forces and as an internationally known consultant. For him, the real world, the classroom, and scholarship sustain each other in creative and synergistic tension.

All who work in the fields Charles Haar pioneered and all who care deeply about the issues central to him join in honoring his contributions and his commitment.