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## **PLANNING LAW, POWER AND PRACTICE: HAUSSMANN IN PARIS (1853–1870)**

Antoine Paccoud  
Department of Geography and Environment  
London School of Economics and Political Science

### **Abstract**

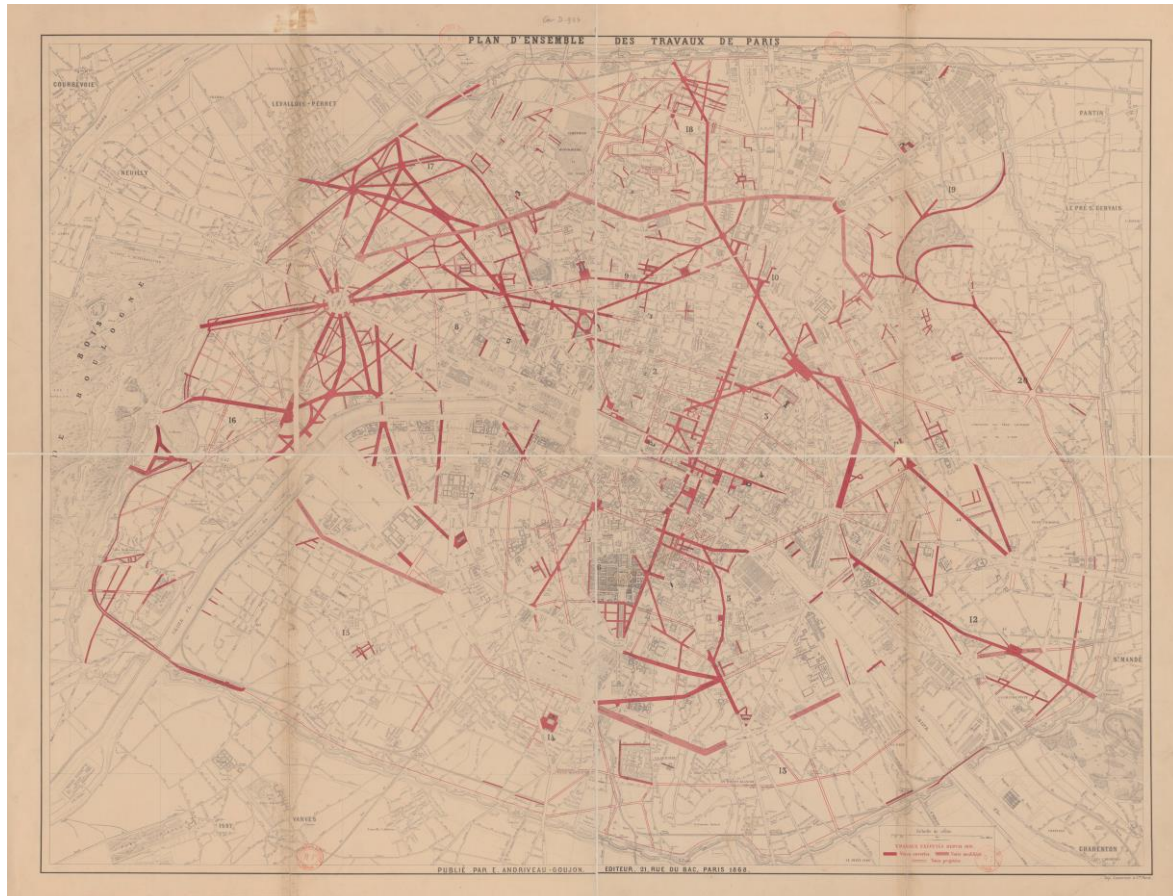
The transformation of Paris by Haussmann (1853–1870) is presented as a classic case of state-led modernisation. What most accounts do not take into consideration is that Haussmann faced formidable opposition from property owners in his attempts to realise the emperor's ambitions for Paris, an opposition that centred on competing interpretations and uses of planning law. Based on heretofore unstudied archival material, this paper traces Haussmann's attempts to establish his (at times) creative use of planning law as legitimate in a context where planning was firmly in the hands of property owners. Haussmann's strategic use of the law, or planning practice, was able to lay bare the fact that planning law has no legitimacy in itself – only particular uses of the law can gain or lose legitimacy. Planning power can thus be defined as the possession of legitimacy in the use of planning law. And since the legal framework is a site of contest rather than a source of legitimacy, planning power depends on external legitimation. In the Haussmann case it is clear that state backing was central, even though (implicit) early support from the Parisian population cannot be ruled out until more research has been conducted.

**Keywords:** Haussmann, Paris, Second Empire, Napoleon III, planning power, planning practice.

# 1. INTRODUCTION

## 1.1 SITUATING HAUSSMANN IN THE TRANSFORMATION OF PARIS

Much of the Paris of today – the wide, tree lined and monumental boulevards bordered by lines of uniform facades and the perspectives they create – can be traced to the work of Haussmann and Emperor Napoleon III during the Second Empire (1853–1870).



*Figure 1: An 1858 map of Paris showing the streets created (filled) and modified (hatched) since 1851 as well as those still in the planning stage (outlined). Source: Bibliothèque Nationale de France, GED-933*

The aim of this paper is to focus specifically on the way in which Haussmann made use of planning law, and as such will only touch on studies that provide some traction on this issue. However, it is important to acknowledge that there is a vast literature on these public works. As detailed elsewhere<sup>1</sup>, its central strands have been biographical studies of Haussmann, French Durkheimian sociology<sup>2</sup> (first applied to the transformation of Paris by Halbwachs in 1909), urban Marxist theory and planning history. A central concern of this literature has been to evaluate Haussmann's actions. While most of the biographers and planning historians have tended towards mildly positive evaluations of the public works, and Durkheimian scholars have attempted to eschew evaluation for the careful study of processes, the strongly negative views of the urban Marxist scholars (Engels, Lefebvre and Harvey) have most strongly permeated contemporary accounts of Haussmann's actions. It is only quite recently that a more nuanced reconsideration of the transformation of Paris has emerged, carried by studies of urban history in France, most notably Francois Loyer's discussion of the surprising balance of the Haussmannian architectural system<sup>3</sup>,

and Florence Bourillon's detailed work on Parisian industrial quarters which tempers the usual association of the public works with worker displacement<sup>4</sup>.

Given the focus of this paper on Haussmann's use of planning law, it is necessary to engage with two diametrically opposed interpretations of Haussmann's position in the public works. More critical accounts of the historical period have as their central assumption that Haussmann had full control over the city and could push through, relatively unhindered, Napoleon's III ambitions<sup>5</sup> for Paris. The three quotes below, by Engels, Geddes and Benjamin, illustrate this tendency for three interpretations given to this historical period – proto-gentrification<sup>6</sup>, authoritarian modernisation<sup>7</sup> and the consolidation of urban capitalism<sup>8</sup> respectively:

'By 'Haussmann' I mean the practice which has now become general of making breaches in the working class quarters of our big towns.'<sup>9</sup>

'Town planning is not something which can be done from above, on general principles easily laid down, which can be learned in one place and imitated in another – that way Haussmannism lies.'<sup>10</sup>

'As for the phantasmagoria of civilization itself, it found its champion in Haussmann and its manifest expression in his transformations of Paris.'<sup>11</sup>

This personification took its final form in the concept of haussmannisation, 'used very loosely, to designate virtually every topographical alteration or social change that marked Paris during Haussmann's tenure as Prefect of the Seine.'<sup>12</sup> This concept, or the condensate of the 17 years of public works, has been invoked in urban contexts as different as London<sup>13</sup>, Brussels<sup>14</sup>, Dakar<sup>15</sup>, Managua<sup>16</sup> and Cairo<sup>17</sup>, but its central assumption that Haussmann was able to push through the emperor's vision of the city relatively unhindered remains. This is an assumption that is best summarised by Chapman & Chapman for who 'Haussmann could only have had the career he did under the Second Empire. And very few men indeed could have made what he did of the unique position he held. He was fortunate in that for seventeen years he was able to exercise his considerable talents to the full.'<sup>18</sup>

This interpretation of the public works is diametrically opposed to work that details the difficulties Haussmann faced in trying to bring the emperor's ambitions for the city to life: 'it had to be developed into practical working plans and then transformed into the reality of stone and mortar over the almost insuperable obstacles of expense, vested property interests, the inertia of municipal authorities, and political hostility.'<sup>19</sup> Similarly, Giedion points out that 'there would have been no objections if he had confined himself to enlarging streets already in existence. But to cut new ones was to disturb the settled scheme of things and to show a lack of respect for the rights of property.'<sup>20</sup> The accounts that foreground Haussmann's planning power forget that property owners had become a 'formidable competitor for control of urban space.'<sup>21</sup>

These studies which question the image of Haussmann as an omnipotent planner also discuss a number of legislative defeats he suffered in the Council of State<sup>22</sup>, France's supreme court of appeal for administrative law. The most direct consequence of these decisions was that expropriations became a source of enrichment for property owners, given that they were allowed to reap the value added to their properties by the municipal public works without having to contribute in any way<sup>23</sup>. Expropriations thus became a clear source of enrichment by the early 1860s: Halbwachs notes that before then, expropriations juries had not 'distorted the public judgment of the right to property by attributing compensations that were without relation to the real value of the building.'<sup>24</sup> This clearly made expropriations more expensive, a fact which pushed Haussmann into using the services of building companies in order to share with them the heightened costs of expropriations. As Hall informs us 'from the end of the 1850s the regularization operations were being increasingly handed over to entrepreneurs, who became responsible for the entire process of implementation, including expropriations, and who supplied the town with finished streets.'<sup>25</sup>

Can these two different accounts of the public works be reconciled? On the one hand are statements that Haussmann had the full backing from the Emperor and could pursue, relatively unhindered, the program he had set out for the city, and on the other are interpretations which take seriously the series of legislative defeats which fundamentally altered his mode of operation, forcing him to relinquish control over the public works to property owners and developers.

Planning historian Benevolo provides an important starting point with his conception of planning as an activity that has two components, what he calls the technical and the political. Historically, there have been configurations in which these two dimensions have been fused, and some in which they have been separated. The line separating out these two periods is the 1848 revolution. Before that date, planning had been undertaken by specialists and officials but had kept close links to the activism of the utopians (Owen, Saint Simon, Fourier, Cabet and Godin) and thus, their 'achievements, even the most technical, had their roots firmly planted in matters of ideology, which in turn corresponded largely with the beginnings of modern socialism.'<sup>26</sup> After that, however, politics and planning split, leaving planning as a technical activity ready to be captured by the regimes in place, what he calls the 'new conservative ideology'. It is in this new context that 'Haussmann set the pattern for the town-planner as a specialist worker who declines all responsibility for initial choice, and therefore in practice for the town planner who is at the service of the new ruling class.'<sup>27</sup>

It is therefore possible to reframe the question thus: if Haussmann was merely a technical planner, why did he face such strong opposition in the Council of State? To answer this question it is necessary to take a more detailed look at the daily decisions Haussmann took in the delivery of the Emperor's ambitions for Paris. And given that the opposition Haussmann faced played out in the highest administrative court, such an investigation must centre on Haussmann's use of planning law. As will be shown in the rest of the paper, Haussmann had a very strategic approach to the use of planning law, an observation that will be fleshed out by focusing on two types of planning interventions. In street widening procedures, Haussmann worked to strictly enforce a law that had become dead letter. And in street creation procedures, Haussmann fought against the strict application of planning law to protect the public works from speculation.

A planning practice can thus be defined as the way in which the body of law is used to advance the goals of the planning apparatus. The empirical material discussed in this paper will make it clear that Haussmann's planning practice faced considerable opposition. This is because it led to planning's legal framework to once again become a site of contest. Indeed, it will be shown that in mid-19<sup>th</sup> century Paris, the legal framework for planning was firmly in the hands of property owners. They had the capacity to disregard planning law when it went against their interests and the ability to strictly enforce planning law when it advanced their cause. Haussmann's planning practice, with its strategic use of the law, was able to lay bare the fact that planning law has no legitimacy in itself – it is particular uses of the law that can gain or lose legitimacy.

Planning power can thus be defined as the possession of legitimacy in the use of planning law. Haussmann's ability to recapture planning power from property owners will be shown to have depended on the backing of the Imperial Regime. But it will also be suggested that Haussmann's early actions may have been seen as legitimate by the Parisian population because they were a practical response to the city's concrete problems. After a quick methodological discussion, the paper has four main sections: a description of the body of planning law Haussmann encountered upon his arrival in Paris; a detailed presentation of his planning practice; an account of the way in which property owners defeated this practice; and a discussion of the implications of this battle for planning power. What emerges is a better appreciation of the complexities of the transformation of Paris. But this paper also highlights the importance of thinking through the implications of the mobility of planning power for the possibility of truly public interventions.

## *1.2 HAUSSMANN IN THE ARCHIVES*



Haussmann was appointed Prefect of the Department of the Seine in June 1853. As prefect and sole executive authority over the department of the Seine, Haussmann's attributions were vast. He cumulated the functions of Prefect of the Department and of Mayor of Paris and was thus in charge of appointing the agents of municipal services, deciding on alignments and building permits for all of Paris' roads, establishing expropriations to be carried out, and in general presided over all aspects of the municipal administration. In spite of these vast attributions and of his special relationship with the Emperor, as prefect, Haussmann was still a civil servant of the Imperial regime and thus subordinated to the Ministry of the Interior.

The material discussed in the rest of the paper comes from the archives of the Departmental Affairs section of the Interior Ministry, to which Haussmann reported, and more specifically, from three boxes<sup>28</sup> containing cases related to the urban road network in the Department of the Seine<sup>29</sup> from 1853 (Haussmann's assumption of the role of Prefect of the Seine) to 1859<sup>30</sup> (just after his defeat in the Council of State). These boxes contain 115 administrative cases<sup>31</sup> centred on letters or petitions sent to the Minister of the Interior (Haussmann's immediate superior) by Parisians over the 1853 to 1859 period, an example of which can be found in figure 2.

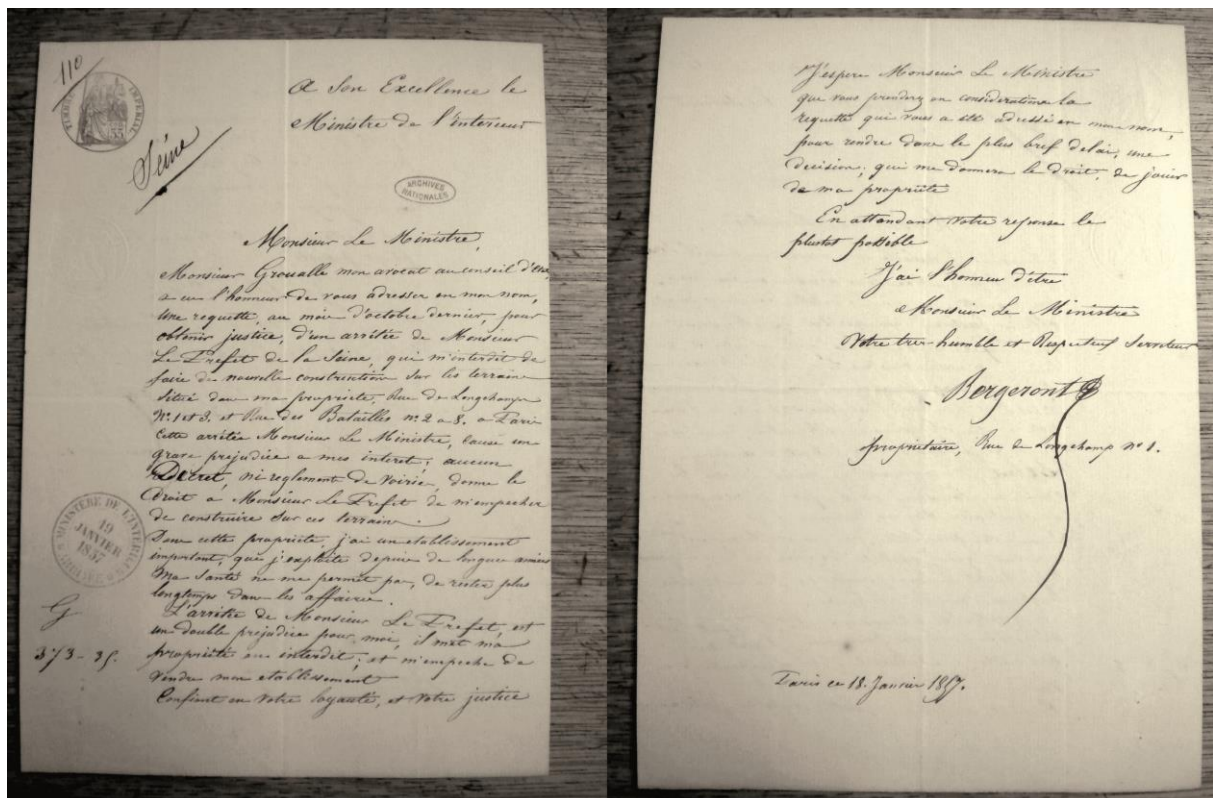


Figure 2: A letter written to the Minister of the Interior in 1857 to bypass the refusal he had received from Haussmann. Source: author.

These letters were sent to Haussmann's superiors deliberately: most of them were complaints about his actions or attempts to bypass his authority. These three boxes thus reveal the issues Parisians (and mostly property owners) had with his planning practice<sup>32</sup>. What is important is that the cases do not only contain the letters of complaint: once the Ministry of the Interior received a letter or petition concerning Haussmann's work, it had to be forwarded to Haussmann either to ask him about his view on the petition or to ask for his justification of the decision that was complained about. Most cases were resolved quite quickly and the paper trace that remains is usually the original letter and Haussmann's reply to the Ministry of the Interior's request for more information.

Some more complex cases can contain multiple letters to the Ministry of the Interior over the period of a couple of years, Haussmann's replies to the Minister's request for information or for a justification and the Minister's responses to these.

Taken together, these cases thus offer written traces of the usually conflictive relations between Haussmann and property owners and, more importantly for the outcome of this opposition, indications of disagreements between Haussmann and the Interior Ministry. Before presenting what can be gleaned of Haussmann's planning practice from these letters, it is necessary to introduce the planning context Haussmann inherited.

## **2. PLANNING LAW BEFORE HAUSSMANN**

### *2.1 THE DEFEAT OF NAPOLEONIC PLANNING*

Passed under Napoleon I's Empire, the 1807 law gave the planning authority strong tools to modify the urban fabric. It 'empowered all towns to draw up plans showing the desired 'alignements' of all their streets and other public places, including those not yet in existence. After approval of the plans by the prefect of the department and the central government, the mayors were empowered to require all new building to conform to the 'alignements'. Lands ceded to the highway in execution of the 'alignements' were to be compensated at their assessed value only, with no indemnity paid for disturbance. General powers of compulsory purchase were also clarified.'<sup>33</sup> The word 'alignement' has a particular meaning in this context: it refers to the layout of the street as it features in a general street plan of the area. A street that is outside its alignment is one that does not conform to the way in which it is laid out in the plan of the area. The 1807 law was thus meant to foster the incremental widening of streets by refusing to allow buildings to be erected or repaired if they overstepped the decreed alignment. But it also placed the powers of expropriation in the hands of the executive, not the judiciary: the administration had the mandate to decide on the works to be undertaken in the name of public utility, to pronounce the expropriations required and to decide on the compensations to be distributed.

In practice, however, the 1807 law never received full application in terms of both its street widening and street creation (and expropriation) clauses. There seem to have been two main ways in which this occurred. First, the 1807 law came under attack in the legislature and the courts. The power to decide on expropriations was quickly handed back to the courts in 1810, where it resided until 1833. In that year, the power to decide on expropriations was given back to the administration but the right to pronounce expropriations stayed with the courts. This system was very cumbersome in practice, with very long administrative procedures and could be threatened by the refusal of a single property owner, problems faced by Prefect Rambuteau while piercing Paris' first boulevard in 1838 (the street near the Pompidou Centre which still bears his name). With respect to expropriations then, the 1807 law quickly became dead letter. Because expropriations had been separated out from the general concept of alignment, they were now subject to the stringent requirements of the 1833 law (and of the 1841 law, a railroad building instrument) rather than treated as fixed lines on a general plan that property owners needed to yield to.

Attacks by the courts on the 1807 law were also directed at its street widening clauses. Here, it seems as though the Civil Buildings' Council ('Conseil des Bâtiments Civils'), henceforth CBC, played a central role. The CBC was an institution that offered architectural guidance in the context of public building commissions and public works projects. In a 1858 letter to the Minister of the Interior, Haussmann indicts the CBC for contributing to the weakening of the 1807 law: 'it is not the first time that the Civil Building's Council's opinion goes against measures decided by the administration to improve the road network based on a sound evaluation of the city's needs. Its influence has contributed in no small measure to the creation of the narrow and petty case law which still holds sway in the Council of State today as concerns housing under legal order to be



pulled back and that allows most of these houses to defy the 1807 law with impunity.’ In the same letter, Haussmann exposed the CBC’s historical links with private property, denouncing ‘the architects (most of them kept very busy by private construction projects) that make up the Civil Buildings Council and who bring to it mind-sets fore-warned against the actions of the municipal authority.’

But the courts and property owners and their allies in the CBC were not the only institutions that sought to limit the power of the 1807 law. A second way in which the 1807 law was not invoked to its full potential concerns its application in practice. Over and beyond the defeats it suffered in the courts and legislature, Roncayolo offers an indication that it was never applied very rigorously during the July Monarchy (1830-1848): ‘the figures of the property owner and of the tax payer (often the same person) inspire the utmost respect. Thus, one refrains from scrupulously implementing the measures of the 1807 law on alignments and city extensions, notably with respect to the drawing up of a general plan. One limits oneself, under the fastidious gaze of the architects of the Civil Building’s Council, to ensuring the smooth join at the limits of existing and new urban tissue.’<sup>34</sup> Under the July Monarchy, a time of strong reaction against the centralising tendencies of the Empire and the Bourbon Restoration, it thus seems as though property owners could do with their properties as they pleased. Napoleonic planning and its manifestation in the 1807 law had quickly been defeated by property owners and their architects – the planning power in 19th century Paris.

## *2.2 THE CONTEXT FOR A PLANNING PRACTICE?*

It is only in 1850 – after the cholera epidemic of 1849 – that the focus returned to strong planning laws. The Second Republic (with Napoleon’s nephew as president) pushed through an efficient compulsory acquisition instrument. Its thirteenth article stated that the municipality may acquire all concerned properties through the 1841 law’s procedure if their insanitary condition is the result of external and permanent causes. As Benevolo notes: ‘the whole importance of the law lies in this article.’<sup>35</sup> Insanitary conditions could thus serve as a pretext to put the 1841 law’s compulsory purchase procedure to use.

Expropriation legislation was further strengthened by the 1852 decree, passed by Napoleon III (after his 1851 coup) only a year before Haussmann’s tenure as Prefect of the Seine. Its most important article is the following: ‘In all expropriation projects aimed at widening, straightening or creating Parisian streets, the Administration will have the possibility of including the totality of affected buildings in its plans, in those cases where it considers that remaining sections are not of a size or shape that would allow for salubrious constructions to be erected on them.’<sup>36</sup> In other words, when a new street is to pierce through urban fabric, the sections of buildings through which the new street is to pass will be expropriated, but also all those sections of buildings that have been partially cut through and which are not deemed to be large enough to accommodate salubrious buildings.

The 1852 decree thus reinforced the tools at planners’ disposal by allowing for the expropriation not only of the required buildings themselves but also of strips of land that bordered the future path of the boulevard. This allowed for the capture by the city of real estate that would immensely increase in value after the boulevard was pierced and that could then be sold off at a high margin. The huge expenditures needed to expropriate, demolish, clear, level, pave, etc., could then be recouped by selling the land bordering the new boulevards.

This clause of the 1852 law thus strengthened the hand of the municipal administration but the lengthy administrative procedures that had been accumulated through the trials and errors of the expropriation legislation since 1807 still remained. In addition, for all the changes introduced to the expropriation legislation by both the 1850 and 1852 laws, they did not strengthen the 1807 law as concerns the issue of alignments, understood here as the need to draw up general plans and limit

repairs and new constructions that did not conform with them. By themselves, these new laws did not challenge the prevailing planning power. But they did set the context for Haussmann to creatively fashion his planning practice.

### 3. HAUSSMANN'S PLANNING PRACTICE

It is now possible to turn to the archival material to flesh out Haussmann's short-lived planning practice. Two main types of administrative decisions were the focus of most of the property owners' complaints: refusals of any repairs, minor constructions or property development because the building in question was not on the proper street alignment or because a new street was to be opened up over the property. These will be discussed in turn, with a focus on the way in which Haussmann used the legal framework he inherited.

#### *3.1 STREET WIDENING IN PRACTICE*

Following a refusal from the municipal authority to authorise the repair or renovation of a property that was not on the proper alignment, property owners wrote to the Minister of the Interior to ask him to revoke this decision, usually because they did not think that the repair works would lead to a strengthening of the building. The issue of whether repairs or renovations would strengthen a property that sat outside of the alignment was important because it determined the effectiveness of the gradual approach to urban change street widening represented. The stricter the municipal authority was on the kinds of repairs that should be considered as reinforcing a property, the more quickly the state of the properties would deteriorate and the more quickly the property owners would have to destroy or pull back their properties. On the other hand, if (as during the July Monarchy) property owners were allowed to reinforce their properties or mask the extent of their state of disrepair, they could perpetuate the existence of a property outside of the proper alignment. This issue is well illustrated by the two letters below: a property owner's complaint to the Minister of the Interior on the 12th of February 1854 and Haussmann's response to the Minister's inquiry about this letter, from the 28th of April of the same year. Here is the property owner's letter:

'Mr Minister, a prefectural decree from the 26th of January refused to authorise me to renovate parts of the right gable of a house at 4 rue Saint Christophe in Paris of which I am the owner. I take the liberty to appeal to your Excellency about this decision. The refusal I was notified of is based on the bad state of the wall I am not allowed to renovate: but a careful examination will easily make noticeable, I have no doubt about this, that this wall is not in the state of disrepair and damage reported by the 'Bureau de Consultation de la Grande Voirie' [Highway Consultation Council], that it is, quite to the contrary, in conditions of solidity that guarantee its life for a long time still and that finally the fears that its exposed construction may have elicited are in reality without any basis. Such is the conscientious and oft repeated opinion of several architects and I do not hesitate, Mr Minister, to vouch on my honour for these facts. Another consideration is worth submitting to your Excellency's kind attention: owner of a house at 18 rue d'Arcole, I purchased the one at 4 rue Saint Christophe that leans against it only with the view of joining it to the first and to make the one the essential complement, in a way, of the other. This project has never ceased to be mine, but adverse events have until now prevented its fulfilment: at the moment I am about to go through with it, the obligation to destroy a significant portion of one of these houses would be extremely painful to me, all the while greatly harming me materially, as it would take away from me, without any possible compensation, a part of what constitutes my assets, more than modest, and would mean losing all of the rewards of the sacrifice I have forced unto myself. Allow me, Mr Minister, to trust in your Excellency's equity, and to ask you, in this occasion, to accept the homage of my highest consideration and respectful devotion. Signed: Baron Martineau.'

And here is Haussmann's response to the Minister's request for his opinion on the case:

‘Here is, Mr Minister, the cause of this refusal. According to the general plan of alignments for the rue Saint Christophe authorised on the 13th of Ventose year VII (March 3rd 1799), the aforementioned house is liable to be pulled back by about 2.6 meters. The road surveyors having recognised that the portion of the shared wall that exceeds the aligned house to its right is in a bad state, criss-crossed vertically by two large cracks and built with major and filling stones that are degraded and disjoined; that the two bottom layers of the main pillar joining the two houses were destroyed 10 centimetres deep and that the projected works would have had the effect of consolidating that wall; I thought I needed to forbid all manner of repairs. Mr Baron Martineau presents, in support of his complaint that his gable wall is not in the state of degradation and deterioration that the agents of my Administration have pointed out, that it is in conditions of solidity that guarantee its life for a long time still, and that finally the fears that this wall may have elicited are in fact without foundation, and are not shared by several architects he consulted. He ends by looking to put forward motives of a private interest of which I have no need to judge the value. I have had this case examined again and the agents of my Administration have recognised, as they had the first time around that the gable wall of Mr Martineau’s wall is in a very bad state. I think I need to add here that in 1847 already this wall was filled in and full of cracks, and that this situation has only worsened, to the point that the Police Prefect has ordered its demolition for safety reasons. In consequence, I can only persist in the reasons underlying my refusal, and I have the honour of proposing that you reject Mr Martineau’s complaint.’

The repairs that Baron Martineau needed to execute to comply with the Police Prefect’s injunction could only be done on the proper alignment and this was thus a perfect opportunity for Haussmann to bring a refractory building back to the decreed alignment. The fact that Haussmann invoked an alignment plan that precedes the 1807 law shows that he had taken on the task of making sure that alignments were properly enforced, regardless of how long they had been ignored. In the case of street widening procedures, Haussmann thus pushed for the strict application of a law that had become dead letter. It will be made clear below that Haussmann’s relation to the law was very different in street creation cases.

### *3.2 STREET CREATION IN PRACTICE*

As mentioned above, the 1852 law gave the executive the power to decree expropriations but the separation of the concept of expropriation from that of alignment after the 1807 law meant that the lengthy administrative procedure of the 1841 law remained. There were a number of administrative steps that needed to be taken between the moment when the public became aware of expropriation plans for their neighbourhood and the moment at which the expropriation of their particular property would be consumed. During this time, Haussmann thought property owners in the zone to be expropriated should be forbidden from making any changes to their properties, even if they were on the proper alignment. That this should not be the case was inconceivable for him, as he explains in an 1857 letter to the Interior Minister:

‘The administration should, without taking any account of its projects and without making a single comment, provide all construction permits requested by individuals within the limits of the old alignments, even as an administrative procedure is under way to adopt new plans. Until the decree declaring expropriations of public utility, everyone should be completely free to take all possible actions to block its subsequent execution; the administration alone would have its hands tied. In this system, the inevitable administrative delays would be a time reserved for private interests, always very apt and very active, to speculate on the projects submitted to the public enquiries, and commit all possible frauds against general and municipal interests. It would be the moment, or never, to invoke the maxim: *summum jus, summa injuria*.’

This led Haussmann to apply the principle that no building or rebuilding could take place on a property outside of a new alignment to street creations and he thus forbade any repair, construction or property development that could be seen as adding value to a property that was to be

expropriated for public utility works, however far in the administrative process these had gotten to. This was the case from simple projects decided with the Emperor to expropriations just about to be officially decreed: once the plan had been decided, it was illegal to build or rebuild on the wrong alignment. In effect, Haussmann was applying, and even strengthening, the 1807 law whose street creation clauses had been severely defeated by property owners. He explained this conception of street creation to the Minister in his 1857 letter:

‘The refusal I notified Mr. Bergeront of the authorisation to erect new buildings on the rue de Longchamps does not cause him any noticeable harm. Finally, there is a real analogy here between his situation and that of a property owner subject to a normal alignment procedure who can neither repair nor improve his building, but who continues to make the most out of it in the state in which it finds itself and who cannot take advantage of speculations he is forbidden to undertake to claim compensation. In any case, the municipal administration, whose right and duty it is to implement all improvements to the city’s old plans that are called for by the new needs of traffic and circulation, would be paralysed in its action if, in the presence of project well established in the sovereign’s will, but not yet decreed, it could be forced to authorise constructions that would come to obstruct them. [...] The application of these principles has been made by you, Mr Minister, in numerous occasions, notably in the Radiguet case (December 1st 1855). I have the honour of calling the serious attention of your Excellency on this case, the solution of which could have a great influence on the future of street network measures.’

Haussmann’s interpretation of the law can be confronted to that of a property owner in his 1856 letter to the Minister of the Interior:

‘The 1807 law had confused two cases, which are nonetheless very different, one that is concerned with widening, of correcting an existing street, and that concerned with the opening of a new street, a new communication axis. In both cases, one proceeded through alignments; and one then confused the alignment and the expropriation jurisprudences. The March 1810 law quickly came to put an end to this confusion; nonetheless, the Administration has still sometimes wanted to invoke the right to subject properties that new streets would traverse to alignment, i.e. the refusal to build or repair, when financial resources did not allow it to proceed through expropriation. But the 1833 and 1841 laws have come to cease what amounted to a veritable despoliation, and settle this issue with principles that are now indisputable. The mistake of Mr Prefect of the Seine is to want to apply today, once more, a case law that can no longer be used: this error is not allowed, this doctrine can no longer be questioned.’

In effect, Haussmann was bracketing out over 40 years of court proceedings and was applying the 1807 law as it was meant to be used, and more, by including not just plans officially decreed but also any project that had been decided by his administration. The fact that Haussmann persisted in using the 1807 law to forbid property owners to build or repair their property if it was on the path of a street that was to be created explains why street creations were by far the most contentious aspect of Haussmann’s planning practice.

## **4. A BATTLE FOR PLANNING POWER**

### *4.1 PROPERTY OWNER RESISTANCE*

Faced with a planning practice that contested their power over planning, property owners quickly had to adapt. In street widening cases, the response was to call on the Minister of the Interior. For example, in the letter quoted above, Baron Martineau gives as much space in his letter to a refutation of the road surveyors’ statement as he does to the explanation of the project this house was to play a part in. But the project is in no way an argument that can be seriously invoked to refute the municipal administration’s decision, as Haussmann is very quick to point out. In general,

property owners did not contest the legal basis of alignments but attempted to escape the application of the law by calling on the Minister of the Interior. This was the only possible response to the surprise of seeing the municipal administration taking the ignored 1807 law seriously. Property owners seem to have taken the laxity in the application of planning regulations under the July Monarchy as the confirmation of what they believed was a well-founded right to do as they pleased with their properties. This can be seen in the following 1854 letter of a property owner to the Interior Minister:

‘Owner of a house in Paris at 92 boulevard de l’Hôpital (in between the rue du Marché aux Chevaux and the market itself), I asked Mr Prefect of the Seine the authorisation to repair its northern angle and to redo the exterior plastering degraded for a meter by the leaking of a gutter – this building is under an order to be pulled back by about a meter. In his 7 January 1854 decree, Mr Prefect of the Seine has refused, ‘considering that the house’s facade wall is strongly cracked in its portion that exceeds the house on its right; that this portion of it is completely detached from the facade of the house on its left, that several stones are broken in its lower portion, that the planned repair work would result in the wall being strengthened and, consequently, in delaying the widening of the street that fronts the property’. Despite these reasons, of which the terms are a little forced as concerns the consequences of the crack that I myself widened with a view to repair works I was not expecting to see refused, I have the honour of seeking from Your Excellency the same authorisation, asking you to extend it to the repair of two meters of the entablature degraded by the leaking of the same gutter and situated just above the reported plaster degradations.’

This property owner brushed away the municipal administration’s refusal and turned directly to the Minister of the Interior for the same authorisation, and more. In attempting to enforce the 1807 law rigorously, Haussmann was confronted with the inertia of a planning regime in which infractions were not prosecuted. It is in this space that the CBC must have operated to disqualify Haussmann’s attempts at the regularisation of the urban fabric.

In street creation cases, it is clear that after 1856 most property owners had come to realise that Haussmann was using his own interpretation of the regulations at his disposal, and that this improper use could be attacked more forcefully in their letters to the Minister. Haussmann’s conflation of alignments and expropriations was something property owners deeply opposed, as this 1856 letter to the Interior Minister makes clear:

‘There is first a profound difference between the alignment of existing public streets and the creation, the opening of new streets. With respect to existing streets, public utility is, in a manner of speaking, declared, and the alignment decision produces immediate effects [...] we must recognise that in all cases, he can no longer build on the plot included in the alignment.[...] The opening of new streets accompanies public utility works, for the execution of which the law has consecrated and organised the possibility of expropriating, by imposing on individuals the sacrifice of their right to private property, in exchange for a prior compensation.’

For property owners, the loss of their property through expropriation was a ‘sacrifice’ and they thought they were thus justified in attempting to profit as much as possible from this loss. Administrative hurdles were thus seen as a healthy safeguard against the excessive power expropriation law afforded the public authorities, all the more when they allowed for opportunities to increase the compensation one would eventually receive. A further quote taken from Mr Bergeront’s 1856 letter to the Minister of the Interior gives a good indication of the way in which property owners viewed Haussmann’s actions:

‘Against these tendencies, legal action would be a powerless remedy. Everything depends on the Administration itself, on the spirit that moves it, on the thought it obeys. We have full trust in the judgement and wisdom of the authorities, whose scrupulous observance of the principles and laws has always been the supreme rule, and who will know, we have no doubt, how to prevent the emergence of these dangers we have brought to their attention.’

What the quote above suggests is that this dispute was as much about financial issues as it was about the existence of a strong and independent planning practice at the municipal level. This property owner is asking the Minister to uphold the laws that govern expropriations because they allowed property owners some independence from the public authority: they were free to repair, improve or build while waiting for their expropriation, and thus free to speculate on the public works to increase the compensation they were to receive. Mr Bergeront's complaint about the powerlessness of legal action can thus be seen as a reaction to a phenomenon he felt property owners no longer had any hold on. It is quite clear that he did not want everything to depend on the 'spirit' that moves the Administration or on the 'thought' it obeys. What property owners such as Mr Bergeront wanted to avoid was precisely an autonomous planning practice at the municipal level without much regard for the rights of private property. It is in this context that the multiple legal proceedings that brought down Haussmann's planning practice were initiated.

#### *4.2 THE DEFEAT OF A PLANNING PRACTICE*

Given that Haussmann's planning practice was built on a strategic (and at times creative) reappropriation of planning law, it is clear that the courts would be the preferred outlet for property owner frustration. And the letters reveal very close links between the property owners most virulent in their attacks on Haussmann and the judicial bodies, and especially the Council of State and the Court of Cassation. Many property owners hired lawyers to defend their interests in the Council of State (as mentioned in the letter in Figure 2), and in a number of cases it is the lawyers themselves who wrote to Haussmann. These are the letters in which Haussmann's planning practice came under the most intense legal scrutiny. Gaillard notes that very close links existed between property owners and the judicial bodies because magistrates were themselves property owners but also because these courts offered property owners protection, given that they represented 'traditional legislation favourable to individual property ownership'<sup>37</sup>. But court proceedings could not achieve much if Haussmann had the personal backing of the emperor. This support must thus have been lost by Haussmann at some point in the late 1850s. The strength of Napoleon III's support can most effectively be read through the relation between Haussmann and the Interior Minister.

And while there were many such Ministers during Haussmann's tenure, there was a notable change in attitude towards Haussmann's planning practice over the years. This change occurred during the time Adolphe Billault was Minister of the Interior, between 1854 and 1858. It seems as though Billault's major concern during that period was to ensure that election results were favourable to the Empire, and especially at the legislative elections of 1857. And while successful at the national level, the fact that the only five opposition candidates elected took half of 10 Parisian seats must have been a source of worry. This was a period in which the Emperor was trying to display his popular support, a support that had elected him President of the Second Republic in 1849 but which he had mostly lost with his 1851 coup d'état.

This is directly reflected in the exchanges between Haussmann and the Ministers: while Persigny, whose tenure ended in 1854, and Billault until 1856 raised only occasional objections to Haussmann's planning practice, from 1856 onwards Billault and his successors Espinasse and Casanova started to side quite forcefully with property owners (and the Civil Buildings' Council) against Haussmann. While their arguments remained focused on the defence of property rights, their concern was much more with matters of national interest, that is, with securing property owners as supporters of Napoleon III's regime. What Interior Minister Billault and his successors must have sensed was that Haussmann's hard-line stance against property owners was pushing these away from the regime into republican arms: 'A material foundation was laid for a political rapprochement between Parisian property owners and Empire. Unbeholden at the beginning, the Empire increasingly looked to them as a base of support in a capital where opposition sentiment dominated as early as 1857.'<sup>38</sup>



The survival of the imperial regime seems to have become a more pressing concern than planning power. The following case is a good illustration of this. The owner of a large apartment building in the 8th Arrondissement wrote to the Minister of the Interior in 1856 because she had been refused the authorisation she had requested to repair her facade on grounds that her property had to be pulled back 25 centimetres from the street. She argued that such a small gain to the width of the street was useless, as well as the following: ‘As this house is occupied as of July by twenty small households, getting rid of these apartments at a time when small lodgings are rare, especially in this neighbourhood, is to go directly against the government’s stated goal of encouraging new constructions of this kind.’

As detailed in his letter in Figure 3, for Haussmann, this is a property owner who is driven by private interest only, given that the idea is to join this house to her residence in two years’ time when the tenancies have run out. As the house is in such a state of disrepair, it cannot be allowed to persist any longer. He recommends the Minister not to heed the property owner’s request, given that the house ‘has arrived at the end of its time; now, its reconstruction being mandatory, whatever the extent of the retrenchment, the administration cannot authorise, even temporarily, repairs that to be actually effective, would not only consist in a partial renovation but also in the rebuilding of the main columns, piers, etc. It would establish a precedent all the more regrettable that in almost all neighbourhoods the grounds Mrs de Montgomery put forward could be evoked.’

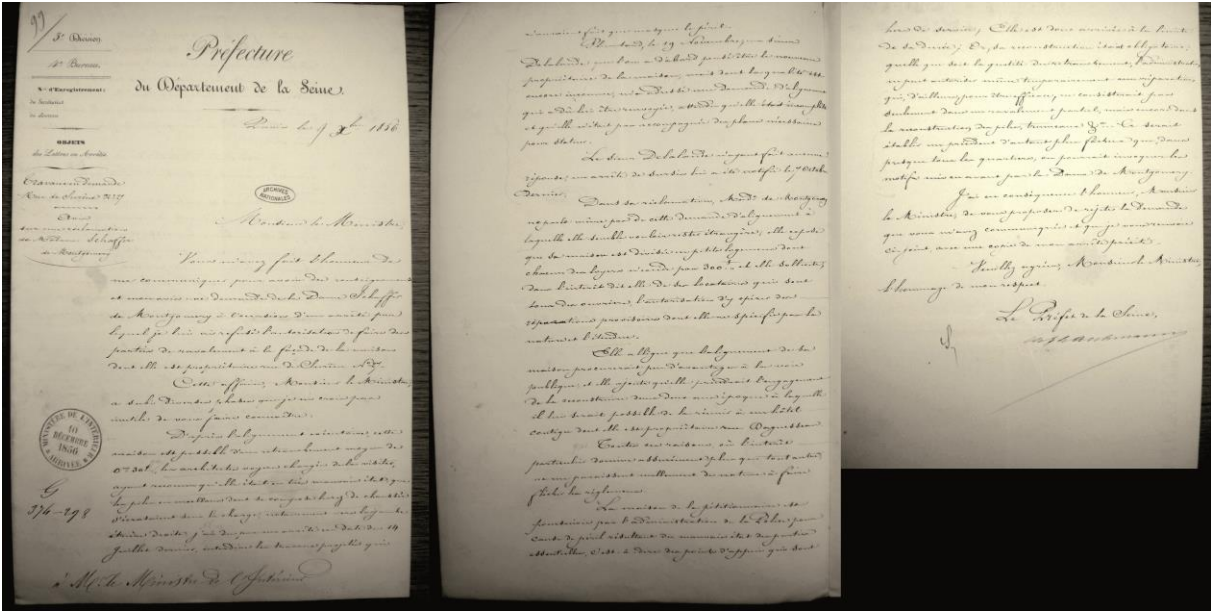


Figure 3: A letter written by Haussmann to the Minister of the Interior in 1856. Source: author.

The Ministry of the Interior did not follow Haussmann’s recommendation, but for reasons very far removed from the planning oppositions discussed here: ‘In the strict legal sense, the Prefecture of the Seine is right. However, as the permission is requested only as toleration, for 18 months only, and the house it concerns containing 20 worker lodgings, it seems to me that a refusal would be too rigorous and even impolitic in the current crisis of the rarity and dearness of small lodgings.’

The key word here is ‘impolitic’: the Minister of the Interior thus decided on Haussmann’s planning practice based on external political considerations. He wanted to keep both the property owner and the tenants as supporters of the imperial regime. Haussmann was becoming a liability to this regime and his close relationship with the emperor could no longer uphold his planning practice. In the cases that followed, Haussmann continued to call on the authority of Napoleon III, such as in this 1857 letter: ‘Your administration, Mr Minister, wants the same thing as mine: to

safeguard the execution of the plans decided by the Emperor.’ But this was no longer productive, as this 1858 letter from the Interior Minister to Haussmann makes clear:

‘As I have already mentioned to you several times, Mr Prefect, such grounds are not acceptable. It is impossible to refuse this individual the authorisation to build on the present alignment on the grounds that there are discussions to establish a new one. In addition, the decree you asked for, and which is currently under examination in the Council of State, does not impose any servitudes forbidding repairs on the property of Mr Coqueret. It only authorises you to acquire it amicably, or through expropriation. As long as you do not make use of that authorisation, you cannot oppose the repairs he is planning on undertaking. Following these explanations, I have concluded, Mr Prefect, with the General Council of Civil Buildings, that Mr Coqueret’s petition must be accepted, and I invite you to deliver him the permission he requests.’

The Minister’s intervention in planning debates sealed the end of the possibilities opened up for a truly autonomous planning apparatus by Haussmann. The loss of protection from the Emperor meant that the court cases in the Council of State from property owners and the direct line of the CBC to the Minister of the Interior could easily bring down Haussmann’s planning practice. As Roncayolo notes, following the defeats in the courts, ‘initial possession of land is worth speculative profits, while the law of 1807 and the sharing of value-added it imposed are brought back to memory less and less often.’<sup>39</sup> It is clear that this was an effective strategy to secure property owners as supporters of the regime – it meant that planning power had returned to the hands of property owners.

## **5. THE IMPLICATIONS OF PLANNING POWER**

Property owners and their allies in the CBC and the courts had defeated Napoleonic planning and were ready to brush aside the nephew’s envoy. What they did not expect was that Haussmann would reopen the legal framework as a site of contest by making use of legal possibilities they thought they had effectively curtailed. Planning power was once again available to be claimed. And Haussmann was quick to exploit this newly gained planning power.

In street widening cases, Haussmann had a legal basis on which to draw but had to re-establish its authority. His efforts thus centred on creating a structure that could effectively scrutinise property owner actions to make sure that buildings refractory to the alignment could not be consolidated. Complaints could then be deflected by referring to planning law. In street creation cases, he decided to take the law into his own hands to limit the extent to which property owners could speculate on the municipal public works. Without a clear legal basis, Haussmann resorted to Napoleonic ideas of the pre-eminence of the state over private interests.

Viewing Haussmann’s actions as a strategically devised planning practice allows for an assessment of the contradiction highlighted in the introduction. Haussmann clearly had autonomy: the planning practice is his own and he had to constantly defend it in the face of property owner attacks. But Haussmann was also limited in his autonomy: a crucial variable here is Napoleon III’s backing. It is this political support which opened the space in which he could craft his planning practice. It is no surprise that the two short moments in 19th century France where state intervention was given a strong legal basis were Napoleonic. A genuinely autonomous planning practice thus only seems possible in certain singular periods in which the political will exists to supersede private interests<sup>40</sup>. It is this political will to placate private interests that gave legitimacy to Haussmann’s extra-legal planning practice.

This interpretation of the relation between planning and private interests is in sharp contrast to that of Benevolo, who concludes his history of the European city with this statement: ‘The quality of urban space depends upon a fluctuating balance between spontaneity and regularity, and upon a combination of public control and private initiative that can either succeed or fail, stimulate

creative change or paralyse it.<sup>41</sup> To achieve this balance, he seems to recommend 'public intervention at those moments when the urban fabric undergoes change, while giving free rein to private initiative in the intervening periods.'<sup>42</sup>

But the material presented here has made it clear that there is an important distinction between public intervention and public control: while public intervention took place over the whole period of Haussmann's tenure in the form of the public works (street and park creations, infrastructure projects, monuments, etc.), public control in the sense of the regulation of private activity was lost with Haussmann's defeats in the Council of State. The crucial variable Benevolo does not consider is that the position of planning power is not fixed, that it can be captured by different segments of society. In 19th century Paris, the holders of planning power were property owners and the architects and lawyers that served their interests. In that context, there could be no autonomous public intervention unless planning power was recaptured from these private interests.

And since the legal framework is a site of contest rather than a source of legitimacy, this recapture could only be achieved if its legitimacy was external to this field. The backing of the Imperial Regime was key here, but there is also a sense that Haussmann's early actions may have been seen as legitimate by the Parisian population because they were a practical response to the concrete problems of overcrowding and public health risks. This is a point made by Choay who edited the *Mémoires* that Haussmann wrote towards the end of his life: 'Haussmann's thinking is not carried out in the abstract, but is concerned with specific case, that of Paris which is to be adapted to the requirements of the new era.'<sup>43</sup> And, for her, this adaptation centred on 'the will to optimise the city's functioning by the integration of the ends and of the means put at his disposal by science and technology.'<sup>44</sup>

More research is needed on this early period of Haussmann's tenure (until his defeats in the Council of State which made it necessary for him to accommodate private interests) as the literature does not reveal any traces of popular discontent in the early years of this vast transformation of the inner city<sup>45</sup>. It must be possible to find some traces of the views of ordinary Parisians on the public works in the endless boxes of archives that remain to be explored.

## 6. CONCLUSION

While the material discussed in this paper may be insignificant in relation to the volume of reports, correspondence and bureaucratic paper trail generated during the 17 years of Haussmann's tenure as Prefect, it nonetheless sheds light on an understudied episode in the history of urban planning.

While the public works that transformed Paris are usually seen as a direct application of Napoleon III's vision for the city, this paper revealed the distance that separated these abstract ambitions from the contested terrain of planning in Paris. To execute these ambitions with the means available to him, Haussmann had to forge a planning practice and wrest back planning power from property owners. This planning practice, which aimed to ensure property owners contributed meaningfully through limitations on their private property rights, had to be abandoned when it became too dangerous for the Empire. And while Haussmann pushed on with the public works, these became a source of speculative profit for property owners and developers.

This episode makes it clear that planning law cannot be evaluated outside of a consideration of planning power: the legal framework in which planning is conducted is too easily captured by private interests, a situation which renders any public intervention only a means for further private gain. Effective public interventions thus first require the recapture of planning power based on the strategic reappropriation of planning law, even if this sometimes entails 'creative law-making'. The crucial variable is the source of the external legitimacy which supports planning power. In the Haussmann case, it is clear that state support was central, even though early (implicit) population support cannot be ruled out until more research has been conducted.

## 7. NOTES

1. Paccoud, *Paris, Haussmann and Property Owners*.
2. Halbwachs, *Les Expropriations*.
3. Loyer, *Paris XIX<sup>e</sup> Siècle*.
4. Bourillon, in *La Ville Divisée*.
5. The word ‘ambitions’ has been preferred to that of ‘plan’ here given the limited nature of the Emperor’s initial plans – detailed in Casselle, *Les Travaux* and Tamborrino, *Le Plan d’Haussmann* – in comparison to what was actually undertaken during the public works.
6. Engels, *Housing Question*; Smith, *New Urban Frontier*; Lefebvre, *Espace et Politique*; Lefebvre, *State, Space, World*; Clark, in *Gentrification in a Global Context*; and Merrifield, *New Urban Question*.
7. Geddes, *Cities in Evolution*; Holston, *Modernist City*; and Scott, *Seeing Like a State*.
8. Benjamin, *Arcades Project*; Berman, *Solid Melts into Air*; and Harvey, *Paris Capital of Modernity*.
9. Engels, *Housing Question*, 71.
10. Geddes, *Cities in Evolution*, 205.
11. Benjamin, *Arcades Project*, 14–15.
12. Ferguson, *Paris as Revolution*, 118.
13. Schubert and Sutcliffe, *Haussmannisation of London*.
14. Van Loo, *L’Haussmannisation de Bruxelles*.
15. Vernière, *Les Oubliés de l’Haussmannisation’ Dakaroise*.
16. Rodgers, *Haussmannization in the Tropics*.
17. Volait, in *Urbanism. Imported or Exported*.
18. Chapman and Chapman, *Life and Times of Haussmann*, 251.
19. Pinkney, *Napoleon III’s Transformation of Paris*, 130.
20. Giedion, *Space, Time and Architecture*, 496.
21. Jordan, *Transforming Paris*, 241.
22. Gaillard, *Paris la Ville*, 28–30; Harvey, *Paris Capital of Modernity*, 131–133; Benevolo, *Origins of Modern Town Planning*, 135–136; Hall, *Cities in Civilisation*, 737–738; and Roncayolo, in *La Ville de l’Age Industriel*, 114.

23. Gaillard, *Paris la Ville*, 29.
24. Halbwachs, *Population et Voies à Paris*, 34.
25. Hall, *Planning Europe's Capital Cities*, 74.
26. Benevolo, *Origins of Modern Town Planning*, xii.
27. *Ibid.*, 135.
28. Coded as F2 II Seine 33, 34 and 35 in the National Archives
29. From 1790 to 1964, the city of Paris was at the centre of a large department (one of France's 86 at the time), called the Département de la Seine and designed to include Paris and all of the suburbs contained within a radius of 3 leagues, approximately 12km. Magné de la Londe, *Attributions du Préfet de la Seine*, 38.
30. I have searched extensively for the continuation of this archive past 1859 but it seems to have been lost, as was the case with a large amount of documents, when the City Hall was burnt down in the final days of the Semaine Sanglante in May 1871. Milza, *L'Année Terrible*.
31. These letters are relatively well distributed over the period: 1854 (18 letters), 1855 (11), 1856 (28), 1857 (26), 1858 (21), 1859 (7).
32. Out of the 115 cases studied here, 93 originated from property owners (with the others roughly split between tenants and individuals representing companies or developers). These property owners were a heterogeneous group: based on the information in the letters, it was estimated that 43 owned a single property, 47 owned two properties and 3 owned three properties.
33. Sutcliffe, *Towards the Planned City*, 128.
34. Roncayolo, *La Production de la Ville*, 97.
35. Benevolo, *Origins of Modern Town Planning*, 104.
36. Faure, *Spéculation et Société*, 443.
37. Gaillard, *Paris la Ville*, 28.
38. Harvey, *Paris Capital of Modernity*, 127.
39. Roncayolo, *La Production de la Ville*, 114.
40. For a detailed theorisation of Haussmann's early years in Paris as one of Alain Badiou's political events, see Paccoud, *A Politics of Regulation*.
41. Benevolo, *European City*, 217.
42. *Ibid.*, 217–218.
43. Choay, *Pensée sur la Ville*, 166.
44. Choay, *Règle et modèle*, 274.

45. However, there are clear indications of increased discontent as the works progressed, and especially in the final years of the Empire. Tamborrino, *Le Plan d'Haussmann*.

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