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FROM "PUBLIC ENEMY" TO AUTHORITARIANISM: JEOPARDIES IN ROUSSEAU'S CONCEPTION OF THE CRIMINAL

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Abstract. The paper examines Rousseau's designation of the lawbreaker as a "public enemy," an individual who is deemed to have broken the social pact and forfeited their status as a citizen. By reframing the criminal as a foreign threat, the state's response is shifted from judicial punishment—governed by civil law and proportionality—to an act of political self-defence against an existential threat. The analysis further argues that this move, which allows the Sovereign to judge an individual's *incompatibility* with the collective will, provides a theoretical framework dangerously susceptible to political abuse. The paper, thus, concludes that this element within Rousseau's republican thought allows for the suspension of individual rights and the suppression of domestic opposition under the guise of protecting the state's preservation. Ultimately, the paper demonstrates how the conceptual architecture intended to secure liberty can, through this emphasis on eliminating the internal enemy, be leveraged to justify authoritarian control.

Keywords: Public Enemy, Existential Threat, Citizen, Self-Preservation, Authoritarianism.

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1. Introduction

Jean-Jacques Rousseau's *The Social Contract, or Principles of Political Right*[1], is a foundational text of modern republicanism, establishing sovereignty in the collective will of the people—the "general will" (Rousseau, 2004, p. 19). It is the animating principle of the legitimate body politic, the moral and collective force, that directs the state towards its proper end: the common good (Rousseau, 2004, p. 26).

Rousseau, however, meticulously distinguishes this general will from the "will of all", which is merely the sum of particular, private interests. The general will "studies only the common interests, while the former studies private interest and is indeed no more than the sum of individual desires" (Rousseau, 2004, p. 30). This distinction is crucial for understanding the concept of state coercion. The legitimate state, for Rousseau (2004), is premised on the "total alienation" of individual rights to the community (p. 15). In this totalizing framework, a crime is not merely a legal infraction, but an act that fundamentally *breaks* the 'sacred' pact of association, as the citizen attempts to draw back the rights definitively surrendered upon entering the contract.

The principle of "forcing to be free," as articulated by Rousseau, applies when an individual's private, self-serving desires conflict with the general will—the collective interest of the citizenry. Since the general will represents the true, rational self-interest of every citizen, forcing a dissenting subject to obey, is not an act of enslavement but one of liberation. It compels them to align with their genuine citizen-self and upholds the integrity of the state. As Riley (2001) elucidates, "Rousseau's aim is to "generalize" will over time without destroying freedom — which makes it crucial that he find nonauthoritarian authority that can "compel without violence" (p. 126). Consequently, the state's punishment of a criminal—who acts against the general will—is necessary to reaffirm the social contract to which all citizens *consented* and protect the freedom of all citizens.

Nevertheless, Rousseau (2004) also warns against blind obedience, stating that if *a people*[2] merely promises to obey, it dissolves itself; and the presence of a master annihilates the body politic (p. 27). Sovereign power, although is a complete and superior authority, must operate within the boundaries of the social contract; it cannot arbitrarily take away guaranteed rights, nor can it impose a heavier burden on one person than another. If the Sovereign were to act in a way that targeted specific individuals unequally, the issue would

[1] Originally published as *Du Contrat Social ou Principes du Droit Politique* in 1762.

[2] In Rousseau's political theory, the individuals who have united to form the Sovereign political body are together referred to as *a people* (Rousseau, 2004, p. 17).

become private rather than a matter of the general will, which would disqualify it from being a legitimate exercise of authority.

Despite these constraints on the Sovereign, the act of criminality is seen as a radical undermining of the very foundation of this entity, forcing the state to respond with a severity and reflecting the transgression's existential threat. The pivotal moment of conceptual recasting occurs when the domestic lawbreaker is *expelled* from the community and recategorized as a combatant. Rousseau (2004) writes unequivocally that whoever violates the social rights "ceases to be a member of it; indeed, he makes war against it" (p. 38). The citizen, thereby, is transformed into the "public enemy", an entity that must be counteracted not to correct a moral failing, but to remove a direct, "existential" threat to the body politic.

The paper, therefore, highlights that by eliminating the citizen's status of the lawbreaker, Rousseau strips the individual of their contractual protections, rendering them an *outlaw* whose fate is decided outside the realm of civil law and within the realm of political security. As opined by Schmitt (2007), "If such physical destruction of human life is not motivated by an existential threat to one's own way of life, then it cannot be justified" (p. 49). Furthermore, grounding state action in an existential defence fundamentally alters the nature of state power, implicitly granting the general will the *temporary* quality of an unlimited sovereign, effectively discarding the ethical constraint of proportionality in favour of expediency. Ultimately, the political neutralization of the criminal as an 'internal' enemy becomes a gateway to political extremism and authoritarianism, demonstrating the slippery slope from judicial action against a "public enemy" to the political persecution of "dissenters."

As such, the paper is driven by the central idea that Rousseau's effort to define the legitimacy of state punishment inadvertently bequeathed a model of political exclusion and state violence that is dangerously easy to appropriate for authoritarian ends, far exceeding the philosopher's own democratic and republican aspirations. To fully investigate this claim, the analysis will proceed through three interconnected stages: The first section of the paper will be dedicated to a rigorous analysis of the term "public enemy"; the subsequent section will then examine the philosophical justification of state preservation underpinning the right to eliminate the enemy; finally, the third section of the article will analyse how this framing—the political nullification of the criminal as an internal enemy—becomes an entryway to political fanaticism in historical and theoretical practice.

2. The Criminal as a "Public Enemy" in Rousseau

The tension between individual liberty and state authority is the central dilemma of political philosophy. Rousseau in *The Social Contract*, attempts to resolve this through the concept of the general will. Yet his theory of punishment presents a severe and unsettling challenge to this reconciliation, where he (2004) introduces a radical concept: the criminal as a "public enemy" and a "traitor" who has *voluntarily* excluded themselves from the body politic (p. 38).

Rousseau's argument necessitates a fundamental distinction between the ordinary lawbreaker and the public enemy. The lawbreaker is defined as one who violates the specific terms of the social contract (e.g., theft, assault), but remains at their core, a member of the community (Rousseau, 2004, p. 38). Their crime is merely an attempt to profit from the system without honouring its obligations—a failure of compliance—but their right to be subject to the general will remains intact (Brettschneider, 2011, p. 58) The state punishes this individual to *force* them to "be free," forcing their particular will to align with the general will they ostensibly consented to in the formation of the pact (Toto, 2021, p. 417).

The public enemy, conversely, is a figure of "existential threat", one who attacks the very existence of the social body by violating the fundamental pact. At this moment of violation, the individual "ceases to be a member of it" and must "either be banished into exile as a violator of the social pact or be put to death as a public enemy" (Rousseau, 2004, p. 38). Toto (2021), however, meticulously details that Rousseau is primarily concerned with the 'political' criminal, namely the "usurper or the despot," whose actions undermine the very foundation of legitimate authority (p. 415). The usurper, in seeking to become the master of the whole, is not merely committing a crime but engaging in a form of civil war against the sovereign (Rousseau, 2004, p. 102).

This logic rests on the claim that the criminal, by infringing the laws, attempts to benefit from the protection and stability of the social system while simultaneously refusing to honour its reciprocal obligations, thereby breaking the foundational treaty. The critical differentiation here is that the "enemy" designation is *less* about the crime committed, and more about the relationship severed with the body politic. The famous line, "it is in order to avoid becoming the victim of a murderer that one consents to die if one becomes a murderer oneself," reveals this logic of contractual self-cancellation (Rousseau, 2004, p. 38). The murderer has *chosen* to live outside the terms of the agreement; the act of murder is, therefore, not merely a statutory violation, but an act of "war" against all citizens. This concept differentiates sharply from standard penal theory, which views punishment as a

sanction within the framework of law. For Rousseau, the criminal's act is an attempt to annihilate the political body's unity, and once that unity is threatened, "no mediation or reconciliation is possible, but only victory or slavery. That's why he must be punished not as a citizen, but as a public enemy." (Toto, 2021, p. 439). Legal scholar Paul Kahn (2010) apprehends this danger, arguing that "the enemy...is not a juridical figure at all", but can only be met with a "reciprocal relationship of threat" (p. 149), positioning Rousseau's move as one that effectively authorizes the state to engage in a 'sanctioned' domestic war.

The label "enemy" performs a powerful rhetorical function, acting as a term of "dehumanization" (Schmitt, 2007, p. xvi) as, applying this label confiscates a criminal of legal standing. Rousseau's schema, as Toto (2021) points out, dictates, "Each citizen. . . 'is nothing' outside the bond of solidarity with others" (p. 439). The enemy is rendered a "dangerous nothing" (p. 439)—which justifies the state's extreme response, including the death penalty. Thus, the state is acting not in its judicial capacity to punish, but in its military capacity to defend itself against an intruder (Kahn, 2010, p. 149). This transformation, eventually, enables an authoritarian suppression of rights under the guise of existential self- defence. As Kahn (2010) notes, "every war is imagined as "self-defence" by both sides of the conflict" (p. 149). The philosophical move, therefore, from a judicial response to a military one—from *punishment* to *liquidation*—is the critical aperture for the abuse of state power.

3. **The "Compatibility" Paradox**

The cornerstone of Rousseau's most extreme punitive claims is the uncompromising consideration of 'preservation' as the highest law (Rousseau, 2004, p. 99); not merely a policy goal, but a fundamental political *truth* that leads to the edict: "the preservation of the state is incompatible with *his* preservation" (Rousseau, 2004, p. 38). This constitutes a political assessment of existential 'necessity', replacing the penal code's judgment of guilt with a strategic decision based on the supremacy of the welfare[3] of the people. The criminal is thus reframed not as a lawbreaker to be disciplined, but as a hostile force to be defused through an imperative of *collective* self-defence, as the crimes Rousseau talks about "are all political crimes"[4] (Toto, 2021, p. 433). Consequently, the state's response is not a simple restoration of order but the "institution of a new order" that requires the total

[3]In fact, Brettschneider (2011) argues that if the state fails to secure citizens' basic welfare rights, those individuals may claim their fundamental interests are not represented in the general will, thus invalidating their consent to penalties for breaking the social rules (p. 63).

[4]The assertion that all offenses in *The Social Contract* are political crimes is based on the argument that Rousseau explicitly restricts his subject to Political Laws, which dictate the form of government (Rousseau, 2004, p. 63).

elimination of the threat posed by the enemy (Toto, 2021, p. 439). This obdurate stance suggests that the integrity of the general will demands the erasure of anything deemed *incompatible* with it.

This leads directly to Rousseau's attempted justification for the Sovereign's right of life and death, which he bases on an ingenious but flawed exercise in 'conditional' surrender. Citizens, he argues, agree to surrender their lives to the state only for the greater purpose of mutual protection, because as Rousseau (2004) explicates, "it is only on such terms that he has lived in security as long as he has and also because his life is. . .a gift he has received conditionally from the state" (p. 37). When the individual breaks the fundamental pact, they forfeit the protection of that bond, returning the right over their life back to the Sovereign in an act of 'self-cancellation' to which they implicitly *consented*.

Yet, this justification is undone by its operational reality. The critical flaw lies in the fact that the "the sovereign alone is judge" (Rousseau, 2004, p. 33) of what constitutes the "incompatibility" criterion warranting elimination. The individual, though their surrender was conditional, has no external or independent tribunal to appeal against this absolute threat assessment. Their life is forfeit not because of a legal conviction subject to appeal, but because of a political declaration that they no longer possess the *status* of a citizen. As Corey Brettschneider (2011) critiques, the idea that the condemned individual *consents* to die struggles immensely with the practical, non-consensual reality of *resisting* criminals (p. 51). The metaphysical purity of the general will, which Rousseau asserts cannot err or harm its members (Rousseau, 2004, p. 30), provides no comfort to the judged, as the judgement of incompatibility is a collective decision that holds a monopoly on political truth. Once this judgment is rendered, the individual is divested of any juridical recourse because they have been conceptually placed "external to the State" (Toto, 2021, p. 415). The Sovereign's assessment is thus, not a legal finding of fact, but a definitive political declaration of "exception." This dynamic finds a profound precursor in the later thought of Carl Schmitt (2005), who defines the Sovereign as the one who "decides on the exception" (p. 5), the moment when normal legal protections are suspended in the face of an extraordinary threat. Rousseau's Sovereign, in exercising the right to declare the internal actor an enemy whose preservation is incompatible with that of the state, executes precisely this decision, wielding the ultimate power to *unmake* the citizen under the banner of preserving the social contract itself[5].

[5]The individual's life is forfeited, not as punishment for a specific past deed, but as a necessary act of surgery upon the body politic, akin to a surgeon cutting out a gangrenous limb to save the rest of the organism. The body of the sovereign must remain whole and healthy, and those who threaten its fundamental unity and life must be removed.

Nevertheless, the danger of this framework culminates in shifting the burden of proof from a measurable legal act to an unquantifiable existential state. Traditional jurisprudence requires the state to prove a specific, quantifiable, and codified violation of law, focusing on what the defendant did and rooting judgment in verifiable facts. Rousseau's "public enemy" framework abandons this standard. By framing the extreme penalty as a response to *incompatibility* and an attack on the *existence* of the political body, the burden shifts from proving an act of 'lawbreaking' to proving a 'state of being.' This is a perilously flexible and subjective standard. First, an 'existential threat' assessment is inherently political. As Paul Kahn (2010) observes, the distinction between the criminal— 'juridified' and subject to punishment within a "bordered space of law"—and the enemy—met with force based on a "political threat"—is central to modern political imagination (p. 148). Rousseau's fusion of these figures allows the state to apply the finality of political force to a domestic actor. Second, this concept necessitates that the Sovereign must judge the suspect's status—their inherent disposition—not just their momentary action, a standard unprovable in any conventional legal sense. This is because, as Rousseau (2004) believes, "No man should be put to death, even as an example, if he can be left without danger to society" (p. 39). The flexibility of this standard, hence, offers the Sovereign a powerful mechanism for pre- emptive elimination, justifying the removal of any individual whose influence, if left unchecked, *might* lead to the dissolution of the social union. This ideological slippage transforms state power from a reactive mechanism of justice into a proactive tool of political purity, where the state, as Kahn (2010) suggests, asserts a "limitless assertion of sovereignty" (p. 148) over life and death. The shift in the burden of proof, therefore, represents the point at which Rousseau's concern for collective preservation[6] most overtly compromises the civil liberty of the individual, providing a dangerous theoretical template for the suppression of domestic opposition under the impenetrable shield of national security.

4. **The Conceptual Gateway to Authoritarianism**

The paradox inherent in Rousseau's justification of punishment—the annihilation of the citizen's 'juridical' personhood under the shield of state preservation—does not merely reflect a tension in Enlightenment philosophy; it provides the precise conceptual gateway for authoritarian overreach. As established in the preceding sections, the moment Rousseau

[6]Conversely, Rousseau (2005) proclaims, "[If] it is lawful for the government to sacrifice an innocent man for the good of the multitude, I look upon it as one of the most execrable rules tyranny ever invented, the greatest falsehood that can be advanced, the most dangerous admission that can be made, and a direct contradiction of the fundamental laws of the society (p. 133).

recasts the lawbreaker as a "traitor" or an "enemy" of the social compact, the action ceases to be a *penal* concern—focused on crime, guilt, and proportional sentence—and becomes a *political* concern—focused on existential compatibility, security, and state defence (Schmitt, 2007, 37).

The conceptual designation of an individual as an "enemy" is decisive because, as political theorist Carl Schmitt famously argued, the defining feature of the political sphere lies in the ability to distinguish between a friend and an enemy (Frye, 1966, p. 825). While Schmitt referred to the public, *external* enemy, Rousseau's framework dangerously introduces this binary logic into the domestic sphere. By identifying the criminal as one who is "no longer a member of the state" (Rousseau, 2004, p. 38) because he has broken the social pact, Rousseau allows the Sovereign to apply the logic of war to its own citizenry. Carl Schmitt, whose work provided a philosophical justification for extreme political action, defined the designation of an "enemy" not just any competitor or an adversary (Frye, 1966, p. 820), but as "the most intense and extreme antagonism" (Schmitt, 2007, p. 29). The power to make this latter distinction, the power to name the enemy and thus invoke this "most intense antagonism" domestically, is the sovereign power par excellence, creating what Giorgio Agamben (1998) terms the "state of exception"[7] as the ultimate paradigm of government, a space where "law is suspended" in the name of political survival (p. 99).

The core of this vulnerability rests on the Rousseauian declaration that the criminal, by virtue of his violation, becomes a "rebel" and a "traitor" to the state. As Rousseau (2004) explains, the aggressor who "attacks the social's law...becomes by his deed a rebel and a traitor to the nation; by violating its law, he ceases to be a member of it; indeed, he makes war against it." (p. 38). By framing the crime as an act of war, the state's subsequent action—whether it be exile or execution—is recast as a defensive measure of self-preservation. As Toto (2021) asserts, once that bond is wilfully severed, the aggressor possesses no inherent political or legal worth that the state must respect (p. 439).

This conceptual shift enables the *weaponization* of the label of the "public enemy" for purely political ends. In Rousseau's framework, the criminal is removed because their actions reveal an "incompatibility with preservation" (Rousseau, 2004, p. 38). While initially intended for literal treason—acts aiming to dissolve the state—this concept, Rousseau (2004) observes, is easily extended, particularly in times of instability or by ambitious regimes seeking unified control (p. 57). The abstract nature of the general will makes it

[7] In Schmitt's legal and political theory, a state of exception is triggered by any severe economic or political turmoil that requires the application of *extraordinary* measures that suspend the rule of law (Schmitt, 2005, p. 5).

a particularly pliable tool. The will of the people, which Rousseau intended to be non-representable and non-transferable (Rousseau, 2004, p. 46), is, in practice, inevitably conflated with the will of the ruling party, the leader, or the dominant faction. As Charles E. Frye (1966) observes in the context of dictatorship, the rejection of universal standards allows a regime to become a "revolutionary challenge to the whole foundation of Western thought" (p. 830). In Rousseau's design, the preservation of the state being the highest law, any action perceived as undermining state unity—even if non-violent—can be reclassified as an act of *war* against the general will.

In authoritarian regimes, this conceptual slipperiness allows the state to transcend the strictures of the criminal justice system, extending the concept of "incompatibility with preservation" to encompass two critical forms of non-compliance: political dissent and ideological non-conformity.

Firstly, political dissent—the legitimate opposition to the ruling party or leader—is transmuted into a form of high treason. Where a 'liberal' republic views dissent as vital to self-correction, the Rousseauian-inspired state views it as an existential challenge to the supposed unity of the general will. The political opponent is no longer seen as merely *wrong*, but as actively *destructive* of the social unity itself (Schmitt, 2007, p. xxii). As philosopher Paul Kahn (2010) summarizes the core difference between judicial punishment and political elimination: "The criminal is not the enemy; the enemy is not the criminal. The enemy can be killed but not punished." (p. 148). The political opponent, by being labelled an "enemy", is instantaneously moved from the realm of the punishable to the realm of the killable. The opponent is not merely breaking a temporary law; they are fundamentally breaking the social pact, retroactively annulling their status as a citizen (Toto, 2021, p. 433). The state's response is, therefore, not to punish a crime, but to *eliminate* a threat, justifying the imprisonment or execution of opposition leaders not as acts of justice, but as necessary acts of "self-defence" against domestic enemies (Kahn, 2010, p. 149).

Secondly, the scope expands further to ideological non-conformity. This occurs when individuals hold beliefs, religious affiliations, or cultural identities deemed contrary to the state's unified ideal. The footing of the state is no longer the social contract, but a unified ideological vision—be it communist, fascist, or radical nationalist. In this context, thinking differently or maintaining a separate identity becomes the crime. The person's very existence, their *state of being*, is what makes them "incompatible". Because "Everything that destroys social unity is worthless; and all institutions that set man at odds with

himself are worthless" (Rousseau, 2004, p. 160), the state is morally and legally compelled to eliminate any element that prevents the total, organic harmonization of the body politic. This is how expulsions are justified: not as punishment for specific actions, but as *cleansing* for ideological impurity, ensuring the 'necessary' unity of the state against internal, corrosive elements. As explicated by Rousseau (2004), "Without being able to oblige any one to believe...the sovereign can banish from the state anyone who does not believe them...not for impiety but as an anti-social being, as one unable sincerely to love law and justice, or to sacrifice...his life to his duty" (p. 166). This zero-sum logic, hence, confirms that the threat is not the *act* but the *being* of the dissident, creating an imperative for elimination over reform or reconciliation.

5. **Conclusion**

The ultimate and most dangerous consequence of this rhetorical move is the dissolution of the due process. Once the dissenting subject is successfully labelled an "enemy" of the state, the state action remains no longer penal, but a defensive act of war. The individual no longer has the constitutional rights afforded to a citizen accused of a crime, such as the right to counsel, the right to confront accusers, or the presumption of innocence. These rights are applicable only to criminals who operate *within* the system; they are meaningless to an "enemy" who is *outside* the system. In this suspension of law, the Sovereign reasserts the archaic power of the spectacle, as Kahn (2010) witnesses: punishment was once "a display of sovereign power—the spectacle of the scaffold"[8] (p. 148). By classifying the dissident as an enemy, the authoritarian regime reverts to the sovereign spectacle, executing or detaining the individual not to administer justice, but to publicly re-affirm the state's absolute, existential power over its ideological opponents. Corey Brettschneider (2011) too stresses that, in the context of contemporary jurisprudence, "citizenship is a status that does not "expires" with bad behaviour" (p. 73); but the authoritarian state, through the "enemy" label, treats citizenship precisely as a *conditional* license that is revoked upon ideological or political incompatibility, and entirely expelling them.

[8]Michel Foucault uses the term "spectacle of the scaffold" to describe the highly public, ceremonial, and brutal nature of pre-modern punishment in his work *Discipline and Punish: The Birth of the Prison*. This system was not primarily about deterrence or justice, but about demonstrating and re-establishing the absolute physical power of the sovereign over the criminal's body and, by extension, over the populace. Foucault conducts a genealogical analysis, through which he argues that this system was eventually replaced by the modern prison, which shifts the focus of punishment from the body to the soul or mind, aiming for discipline through surveillance rather than public terror.

The conceptual gateway that Rousseau provided, therefore, is the substitution of the *rule of law* with the *rule of necessity* [9]. The shift from criminal to enemy allows the state to bypass the cumbersome mechanism of the judicial branch—designed to protect the accused—and engage the swift, decisive action of the executive or military branch—designed to prosecute war. This move grants the Sovereign, or the body that successfully claims to represent it, the theoretical justification for the most extreme measures of coercion, providing a dangerous blueprint for the suppression of any domestic opposition under the impenetrable shield of national security. The true peril in Rousseau's conception lies, therefore, not in his intention, which was to secure the liberty of the citizen, but in the conceptual architecture he forged, which grants the state the power to classify the "dissenting" voice as a threat warranting eradication, thereby moving the locus of political authority from justice to an endless, defensive war against its own people. The designation of the "public enemy" is, therefore, a fatal conceptual ambiguity that transforms the project of republican freedom into the potential blueprint for totalitarian control.

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[9] The rule of necessity is a common law principle allowing a person to breach a law to prevent a greater imminent harm, provided the action was a last resort taken in good faith. This defence is applicable only in specific, immediate situations, contrasting sharply with the broader, policy-driven concept of the state of exception.