



**POPULAR SOVEREIGNTY, POLITICAL FREEDOM, AND THEIR IMPACTS ON
CONTEMPORARY CONSTITUTIONALISM: THE INFLUENCES OF THE
THEORIES OF MONTESQUIEU AND ROUSSEAU**

**SOBERANIA POPULAR, LIBERDADE POLÍTICA E IMPACTOS NO
CONSTITUCIONALISMO CONTEMPORÂNEO: AS INFLUÊNCIAS DAS
TEORIAS DE MONTESQUIEU E ROUSSEAU**

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CONSTITUCIONALISMO CONTEMPORÁNEO: LAS INFLUENCIAS DE LAS
TEORÍAS DE MONTESQUIEU Y ROUSSEAU**



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ABSTRACT

This article seeks, in light of the works of Montesquieu and Rousseau, to conduct a detailed comparison of the concepts of popular sovereignty, political freedom, general will, separation of powers, and their impacts on contemporary constitutionalism, as well as their influence on the organization of current national states. In this sense, the text will attempt to discuss the main concepts and characteristics of political freedom developed according to the aforementioned thinkers, the problems inherent in the concentration of power, and the evolution and challenges of these theorizing within the current contemporary constitutional organization. Thus, it will analyze whether the constitution of a government, by guaranteeing the independence of powers and respect for the law, truly ensures the political freedom of its citizens, protecting them against tyranny and abuse of authority. Finally, a contrast will be made between the views presented by Montesquieu and Rousseau, exposing the main points of contact, as well as the divergences they advocate on topics such as political freedom, separation of powers, general will, and citizen participation.

Keywords: Political Freedom. Separation of Powers. Contemporary Constitutionalism. Popular Sovereignty.

RESUMO

Este artigo procura, à luz das obras de Montesquieu e Rousseau, realizar um cotejo pormenorizado entre os conceitos de soberania popular, liberdade política, vontade geral, separação de poderes e impactos no constitucionalismo contemporâneo, bem como suas influências na organização dos atuais estados nacionais. Nesse sentido, tentar-se-á ao longo

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do texto discutir quais os principais conceitos e características da liberdade política desenvolvidas segundo os supracitados pensadores, os problemas inerentes à concentração de poder, bem como a evolução e desafios destas teorizações dentro da atual organização constitucional contemporânea. Assim, será analisado se a constituição de um governo, ao garantir a independência dos poderes e o respeito às leis, assegura de fato a liberdade política de seus cidadãos, protegendo-os contra a tirania e o abuso de autoridade. Ao final, far-se-á um contraponto das visões apresentadas por Montesquieu e Rousseau, expondo os principais pontos de contato, bem como as divergências que os mesmos propugnam quanto a temas como a liberdade política, separação dos poderes, vontade geral e participação dos cidadãos.

Palavras-chave: Liberdade Política. Separação dos Poderes. Constitucionalismo Contemporâneo. Soberania Popular.

RESUMEN

Este artículo, a la luz de las obras de Montesquieu y Rousseau, busca realizar una comparación detallada entre los conceptos de soberanía popular, libertad política, voluntad general, separación de poderes y sus impactos en el constitucionalismo contemporáneo, así como su influencia en la organización de los actuales Estados-nación. En este sentido, el texto abordará los principales conceptos y características de la libertad política desarrollados por los pensadores mencionados, los problemas inherentes a la concentración de poder, así como la evolución y los desafíos de estas teorías dentro de la organización constitucional contemporánea. De este modo, se analizará si la constitución de un gobierno, al garantizar la independencia de poderes y el respeto a las leyes, asegura efectivamente la libertad política de sus ciudadanos, protegiéndolos contra la tiranía y el abuso de autoridad. Finalmente, se establecerá una comparación entre las perspectivas de Montesquieu y Rousseau, exponiendo los principales puntos de encuentro, así como las divergencias que plantean en temas como la libertad política, la separación de poderes, la voluntad general y la participación ciudadana.

Palabras clave: Libertad Política. Separación de Poderes. Constitucionalismo Contemporáneo. Soberanía Popular.



1 INTRODUCTION

Before we begin the study, an important observation is in order: According to Matos, although it is so widely known that Montesquieu would have been the author of the doctrine of the separation of powers, many elements of the modern formulation of the doctrine of the separation of powers are prior to and influenced the formation of Montesquieu's thought on the subject. Many works, in fact, consider an eventual authorship to John Locke, fifty years earlier, and not to Montesquieu. There are also arguments that deny not only Montesquieu's originality, but also claim that Montesquieu's theory expressed in *The Spirit of the Laws* does not have as its object a doctrine of the separation of powers, but another distinct subject, albeit close (2024, p.51).

In book 11 of *The Spirit of the Laws*, Montesquieu presents his conception of political freedom, which is closely related to the security of citizens and the limitation of power. For the author, political freedom is not simply the absence of coercion or the ability to do everything one wants. Instead, he defines political freedom as the right to do whatever the laws allow, that is, to live in safety under a government that protects the rights of citizens and that does not become oppressive.

The author reveals that the meaning of freedom is not precise, in such a way that each form of government, whether republican or monarchical, adopts different concepts, according to the very political conception that guides government decisions. For Montesquieu, political freedom is not to be confused with independence, so that the former consists of the right to do what the Law allows (to be able to do what one should want and not be forced to do what one should not want) (2011, pp. 263 and 264).

Montesquieu considers democracy a regime that is not free. The author, when discussing political freedom, emphasizes that it only exists in moderate states, but not in all, restricting its existence to moderate governments in which there is no abuse of power. According to Montesquieu, the abuse of power is only removed when power restrains power (checks and balances > political freedom), and the Constitution is the mechanism by which political freedom can be ensured, understood according to the concept highlighted above (2011, p. 265).

For Montesquieu, England is the only state whose constitution has freedom as its specific objective. Montesquieu goes on to state that political freedom can only be ensured when there is a division between what he calls legislative power (to legislate), executive power of the gentiles (Head of State) and executive power based on civil law (power to judge). For Montesquieu, there is no political freedom when the power to judge is concentrated in the figure of the legislator, because he can legislate and judge based on the laws they have



created. Thus, he considers most European governments moderate, since they delegate this function to the people (2011, pp. 267 and 268).

Political freedom, this time, exists when there is no abuse of power, that is, when citizens are protected from arbitrary government actions. To ensure this protection, it is essential that there is a system of separation of powers, in which different branches of government (Legislative, Executive and Judiciary) mutually control each other, avoiding the concentration of power in a single institution or person.

The constitution of a government, according to Montesquieu, is an essential mechanism to ensure political freedom. The author argues that freedom can only exist in a system in which political power is properly divided and regulated by laws. Montesquieu is one of the main defenders of the separation of powers as a basic constitutional principle to guarantee the freedom of citizens. The division of power into three branches (Executive, Legislative, and Judiciary) is seen as a way to prevent a single group or individual from concentrating power, which would inevitably lead to tyranny.

The author warns that, in order for political freedom to be guaranteed, it is necessary that power is not concentrated in a single authority. He defends the separation between the three branches of government: the Legislative, responsible for creating laws; the Executive, responsible for implementing them; and the Judiciary, which ensures the fair application of the laws.

Each of these powers must be independent, but at the same time capable of controlling and balancing the others. This system of checks and balances prevents any of the powers from abusing their authority.

2 THE PROBLEM OF CONCENTRATION OF POWER

Montesquieu believes that power, when concentrated in a single person or institution, tends to be exercised in an arbitrary and oppressive manner. He argues that "every man who has power is led to abuse it", and that if there are no clear limits to the exercise of power, rulers will end up acting in a despotic way. This reasoning leads him to conclude that the only way to prevent the abuse of power is through its distribution among different agencies or branches of government.

Montesquieu points out that, for example, in Venice, there is a differentiation between who legislates, who executes and who judges. However, the members of each "power" make up the same corporation. For that reason, it considers that those different courts constitute only the same power. Even so, he believes that pure aristocracy does not correspond to Asian despotism (2011, p. 268).



The concentration of power in a single authority, be it an absolute monarch or a legislative house with total control, puts the political freedom of citizens at risk, as there is no one to limit or supervise the decisions of the ruler. When power is not limited, individual freedom is compromised, since there are no guarantees that laws will be applied in a fair and predictable manner. The solution proposed by Montesquieu to avoid the concentration and abuse of power is the separation of powers into three independent branches: the Legislative, the Executive and the Judiciary. For him, this division of power promotes political freedom by ensuring that no branch of government has sufficient authority to exercise absolute control over society.

With regard to the judiciary, Montesquieu considers that the power to judge should be invisible and null in the author's view, and should be exercised by commons, and not by a permanent senate, fixed temporarily, as provided for by law, at least as long as necessary, and is necessarily composed of their equals (judges equal to peers)

As for the legislative, Montesquieu conceives an ideal scenario for the exercise of Legislative Power when exercised "in weight" by the people, but recognizes the impossibility of this in large States, which is why he justifies the representation exercised by the vote attributed to citizens, as long as it is materialized over a fraction of the people, in districts, under penalty of reversing the representative purpose (2011, pp. 269 and 270).

The Executive, in turn, must be exercised by a monarch, considering that, due to the nature of its functions, it is better administered by a single person than by several. In the author's view, it does not make sense to compose the Executive with members of the Legislative, at the risk of causing a rupture with the political freedom also materialized in the separation of functions (2011, p. 272).

However, in addition to the separation of powers, the author emphasizes the need for a system of checks and balances. He asserts that in order to guarantee political freedom, each power must have the ability to control the others, preventing any one of them from becoming overly powerful. This system creates a balance between the powers, in which each one supervises and limits the actions of the other, preventing any one of them from abusing their authority.

For example, the Legislature can control the Executive by passing or rejecting laws that the Executive must implement. The Executive, in turn, has the power to veto decisions of the Legislature. The Judiciary, on the other hand, has the power to review laws created by the Legislature and ensure that they are applied in accordance with the Constitution.

This mechanism of mutual control prevents a single power from having total domination, protecting citizens against authoritarianism and arbitrariness. When the three



powers are in balance, political freedom is maintained, as government decisions are subject to the control of different institutions that act as "brakes" for each other.

2.1 POWER MUST CONTROL POWER

The principle that "power must control power", formulated by Montesquieu is probably one of the fundamental pillars of the theory of the separation of powers. This principle states that political power, by its very nature, tends to expand and be exercised arbitrarily if it is not properly limited. Thus, in order to protect the freedom of citizens and avoid the concentration of power in a single institution or individual, it is necessary to create a system in which the different branches of government are independent while also having the ability to control and limit each other.

In modern democracies, this principle remains central to the functioning of political institutions. The separation of powers into Executive, Legislative, and Judiciary, with each of these powers exercising specific and autonomous functions, has been widely adopted and adapted in various constitutions around the world. The contemporary application of Montesquieu's principle manifests itself mainly through the mechanisms of checks and balances, which ensure that no part of the government has absolute power and that its excesses can be controlled by the other branches.

In this sense, the principle that power should control power translates, in modern democracies, into systems of checks and balances that ensure that each branch of government has tools to monitor and contain the actions of the others. These mechanisms are essential to prevent abuses and protect the political freedom of citizens. Some examples of how this principle is applied today include legislative control over executive acts, such as the ability to approve or reject budgets, investigate government actions, summon ministers and other officials for testimony, and *impeachment* powers in cases of crimes of responsibility.

The executive's control over the legislature, for example, in many presidential systems, the head of the executive has the power to veto laws passed by the legislature. In parliamentary systems, the prime minister or president can dissolve parliament in certain circumstances and call new elections.

The judiciary controlling the other two branches: One of the most important functions of the judiciary in modern democracies is judicial review, in which courts have the power to interpret the constitution and invalidate laws or executive acts that are unconstitutional. This is crucial to ensure that the Executive and Legislative branches act within the limits set by the constitution.



It should be noted that Montesquieu conceived the separation of powers as a guarantee of freedom, as it ensures that political power is exercised with moderation and that government decisions are not arbitrary.

In modern democracies, the separation of powers continues to play an essential role in protecting the fundamental rights of citizens, as such separation would result, on the one hand, in preventing authoritarianism, since by dividing power between different branches of government, democracies reduce the risk that a single individual or group controls all political decisions, which could lead to tyranny. The fragmentation of power ensures that there is always a balance and that decisions are made in a more thoughtful and democratic way and, on the other hand, in the promotion of responsibility, in the sense that in the separation of powers, the mechanisms of checks and balances ensure that rulers are held accountable for their actions.

If the Legislature approves an unjust or unconstitutional law, the Judiciary can step in and annul it. Likewise, if the Executive acts abusively, the Legislature can investigate it or initiate impeachment proceedings. This *accountability* is crucial to ensure that the government meets the interests of the population.

2.2 THE EVOLUTION OF THE PRINCIPLE IN CONTEMPORARY CONSTITUTIONALISM

While Montesquieu's principle has been widely adopted and remains fundamental, it has also been adapted to deal with the complexities of modern democracies. In some cases, the strict separation of powers has been adjusted to allow for greater coordination between the different spheres of government, especially in emergency or crisis contexts. However, even in these cases, the basic principle that power must be controlled remains central.

In addition, the increasing complexity of modern democracies has brought new challenges to the principle that power must control power. This includes, for example, the influence of new power actors, as there is a pressing concern about the role of interest groups, lobbies, and corporations that can exercise political power invisibly, without being subject to the same formal controls as traditional government powers. These groups can disproportionately influence legislative or executive decisions, without the public or the judiciary being able to effectively monitor or contain their actions.

On the other hand, the judicialization of politics, considering that, in many countries, the judiciary has taken a more active role in controlling the actions of the Legislative and Executive branches, interpreting and applying laws in a way that protects constitutional rights. This, on the one hand, reinforces the principle that power should control power, but it also



raises debates about the role of judges in a democracy and about the balance between judicial review and popular sovereignty.

Moreover, despite its importance, the principle that power should control power faces challenges in modern democracies. These challenges include the concentration of power in the executive, as it is observed that in many countries, there is a tendency to concentrate power in the central power, especially in times of crisis, such as pandemics or wars. While this concentration of power may be justified in some circumstances, it also raises concerns about the risk of authoritarianism and the erosion of checks and balances.

Also noteworthy is the growing political polarization that, in its extreme form, can weaken the control mechanisms, since the different branches of government, instead of monitoring each other, can act together to promote the interests of a single group or party, undermining the independence of the powers. This can occur when the Executive and the Legislative are controlled by the same party, resulting in a Legislative that abdicates its supervisory role.

In short, Montesquieu's developed principle that "power must control power" remains relevant and crucial to the functioning of modern democracies. It is enforced through the separation of powers and checks and balances, which ensure that no branch of government can act in an arbitrary or authoritarian manner.

However, this principle faces challenges in the contemporary context, such as the concentration of power in the Executive, the influence of new unelected actors, and political polarization. To preserve political freedom and ensure governmental accountability, it is essential that modern democracies continue to uphold and strengthen this principle, adjusting it to meet the new realities of today's political world.

3 THE ROLE OF THE JUDICIARY IN THE PROTECTION OF POLITICAL FREEDOMS

As mentioned earlier, in Montesquieu's theory, the Judiciary has a specific function within the system of separation of powers: it is the branch that must interpret and apply the laws, ensuring that they are executed fairly and in accordance with the principles established by the constitution. The thinker argues that, in order for political freedoms to be protected, the Judiciary must be an independent power, capable of acting as a counterweight to the Legislative and Executive branches.

In this sense, Montesquieu understands that the Judiciary must act as a "power" against the abuse of power. When the Legislature creates unjust laws or the Executive acts arbitrarily, the Judiciary has the function of protecting the rights of citizens by interpreting the law in a way that avoids oppression. This is essential to ensure that power is limited and that



citizens can enjoy their freedoms without fear of unfair actions by the government. (2011, p. 275).

This time, the Judiciary, in his view, would be the most appropriate power to guarantee impersonality in the application of laws. Montesquieu argues that while the Legislature creates the laws and the Executive implements them, the Judiciary must ensure that these laws are applied equally to everyone, regardless of social position, wealth, or power. The impersonality of the Judiciary is what ensures justice, as it prevents individuals from being treated unequally or unfairly based on political or personal interests.

Moreover, according to Montesquieu, the role of the judiciary in protecting political liberties can only be adequately fulfilled if that power is independent. Judicial independence is critical because it ensures that judges can apply and interpret the law without being pressured or interfered with by other branches of government or interest groups. Montesquieu sees independence as the key to the impartiality of the judiciary, which ensures the protection of political freedoms. (2011, p. 277).

As outlined in the past, Montesquieu fears that if the judiciary is controlled by the legislature or the executive, it could be used as a tool to secure the interests of those branches rather than protect citizens. Judicial independence prevents the legislature from creating unjust or oppressive laws without proper oversight, and the executive branch from applying the law selectively or partially. When judges are free to make decisions based on the law, without being influenced by political or personal interests, they can ensure that citizens' political freedoms are respected.

Judicial independence is also directly related to legal certainty, one of the pillars of political freedoms. Montesquieu argues that citizens should be able to predict the consequences of their actions, trusting that their freedoms and rights will be protected by laws. If the judiciary is under the control of other powers, citizens lose this security, as judicial decisions can be arbitrary or politically motivated. The independence of judges ensures that laws will be applied consistently and fairly, promoting trust in political institutions.

Furthermore, Montesquieu saw the Judiciary as the main guardian of individual rights. When the Legislative or Executive attempts to violate the fundamental rights of citizens, such as freedom of expression, freedom of association, or the right to property, it is up to the Judiciary to protect these rights by annulling laws or government actions that are contrary to the constitution. This is especially important in modern democracies, where political institutions need to ensure that individual rights are protected against the majority and against possible abuses of power (2011, p. 279).



3.1 THE RELEVANCE OF THE ROLE OF THE JUDICIARY IN CONTEMPORARY CONSTITUTIONALISM

The role of the judiciary, as described by Montesquieu earlier, is essential in modern democracies. His vision of an independent judiciary that protects political liberties and ensures that power is exercised within legal limits is as relevant today as it was in the eighteenth century.

In contemporary democracies, the importance of the judiciary has increased with the increasing judicialization of politics, where constitutional courts and supreme courts play a fundamental role in the revision of laws and public policies, ensuring that they are in accordance with constitutional principles. The independence of the Judiciary is essential for this review to be carried out in an impartial manner and without political interference.

Contemporary democracies also face challenges related to the protection of human rights and civil liberties, and the judiciary plays a central role in guaranteeing these rights. Judicial independence is crucial to ensure that minorities, vulnerable groups, and individuals can have their rights protected, even in the face of legislative or executive majorities that may seek to restrict their freedoms.

Montesquieu understood that justice was the result of a fair and impartial legal process. In modern democracies, judicial independence ensures that citizens have access to a legal system that applies the law equitably, ensuring that everyone is treated equally before the law. This reinforces the legitimacy of the democratic system and protects individual freedoms. (2011, p. 281).

Therefore, for Montesquieu, the Judiciary is essential in the protection of political freedoms, as it acts as a moderating and independent force, capable of controlling abuses of power and ensuring the fair application of laws. Judicial independence is essential for the Judiciary to be able to exercise its role in an impartial manner, without interference from other powers or interest groups. In modern democracies, this independence is vital to ensure legal certainty, protect individual rights, and ensure that power is limited and controlled, while preserving the political freedoms that are the foundation of any democratic system.

4 DISTINCT CONCEPTIONS OF POLITICAL FREEDOM AND POPULAR SOVEREIGNTY: A COUNTERPOINT BETWEEN MONTESQUIEU AND ROUSSEAU

Unlike materialists who saw the natural order as a pre-existing, harmonious logical structure ready to be discovered and put into operation, Rousseau conceived of it as a categorical imperative—an order to be realized through the political and moral transformation of humanity (1956, p. 41).



Rousseau's political proposal aimed to create "a cohesive man, without contradictions, without centrifugal forces or antisocial desires" — a citizen who desired "only what the general will desires" (1956, p. 42). Freedom, in this context, is no longer individual spontaneity, but adherence to universal and collective reason. "It was vitally important for Rousseau to save the idea of freedom while insisting on discipline." The individual, according to him, must obey the voice of the "inner man", because he will only be truly free when he obeys his rational nature and the general will (1956, p. 43-44).

The general will, in this model, "serves to enlighten man to what extent he can be a man, a citizen, a subject, a father or a son, and when it is convenient for him to live or die." In its essence, it is "a pure act of the understanding, which reasons in the silence of the passions about what man can demand of his fellow man, and about what his fellow man has the right to demand of him" (1956, p. 44).

Freedom, therefore, becomes a matter of instruction and morality. "The essential aspiration of political life consists, in fact, in educating and preparing men to desire the general will without feeling coercion" (1956, p. 45-46). This re-education involves annulling individual resources and replacing them with collective provisions. The individual must become a functional part of a social whole. "The individual will must give way to collectivism; selfishness, to virtue". The legislator, in this scenario, molds man, creating institutions capable of fusing him with the collectivity. "It can be said that legislation has reached the highest degree of perfection" when the resources of the whole exceed those of the individual (1956, p. 46).

The sovereign, in Rousseau, is the general will objectified. By combining it with popular sovereignty, Rousseau "gave rise to totalitarian democracy". Its formulation transforms a philosophical speculation into a collective political passion, the "modern secular religion" (p. 46-47). Even if a desire is widely shared, "this would still not constitute the general will, if there were not, on the part of those who desire, a right disposition" (1956, p. 47).

Rousseau, replacing the enlightened monarch with the people, maintains the criticism of "partial interests" as obstacles to harmony. "It can be said, without exaggeration, that this attitude points to the idea of a society without social classes." With this, unanimity, which does not need to be forced, becomes a possible goal when representative mediation is eliminated. Rousseau "rejected any attempt to divide sovereignty." A people "buys for itself a master whenever it hands over its sovereignty to a representative or parliamentary body" (1956, p. 50).

This exclusionary logic takes on dangerous contours by restricting the concept of "people" to those who identify with the general will. "Those who are outside do not really



belong to the nation. They are foreigners." Thus, "Sieyès stated that only the Third Estate constituted the nation"; the Jacobins, than only the sans-culottes; Babeuf, the proletariat; Buonarroti, those formally admitted to the National Community (1956, p. 52-53).

In the name of the general will, the insurrection abolishes all existing institutions. "The moment the people legitimately assemble as a sovereign body, the jurisdiction of the government lapses." The revolutionary leader embodies Rousseau's Legislator, who models the "young nation". "It is not enough to change the machinery of the government [...] It is necessary to transform human nature itself" (1956, p. 53-54).

With this, Rousseau concludes the path begun by the philosophers of the eighteenth century, synthesizing social criticism, appeal to virtue and a project of total political regeneration. The result is a conception of democracy that, in seeking the totality of popular sovereignty, flirts with exclusion, authoritarianism and the denial of freedom in the name of freedom itself.

According to Ingeborg Maus, The democratic theory of the Enlightenment founded a comprehensive competence of action of the "sovereign people", which invested the people simultaneously as guardians of the current Constitution and as a permanently effective constituent power, that is, it positioned the decision on the continuation and innovation on the social basis, resistance and disobedience presuppose a behavior of the recipients of the law merely reactive to prefabricated political and legal decisions. (2010, p. 154).

The formation of the democratic will is replaced by the interpretation of "sovereign" and predetermined constitutional contents, in which the constitutional court and the courts of instance, through the expertocratic competence, always have the last word in the face of alternative social efforts of interpretation. (2010, p. 157).

According to the theory of popular sovereignty, the guarantee of freedom does not reside - as in the American constitutional model - in the antagonism between partially sovereign powers, but in the antagonism between the legislative sovereignty of the people and the state apparatuses legally bound and managing the monopoly of state power as a whole. [...] the legislator is not allowed to know the specific case, to which the general law applies; The Administration and the Justice, which know the specific case, are not allowed to redefine the law during its application. (2010, p. 181-182).

Montesquieu's starting point, the English Constitution, of real existence, corresponds to the premise that one does not have to first invent principles that guarantee freedom, but that these must be discovered in an already "existing" reality. (2010, p. 190).



What Montesquieu outlines is an arrangement of the political process that should not rely on the good intentions of the agents, since this arrangement contains, in itself, the limitations of their action. (2010, p. 197).

The well-known fundamental principle of Montesquieu's system of the separation of powers runs exactly in the opposite direction of this vertical system of control, since it does not really (segmentally) separate powers, but sovereignty: in that the separated powers work only in a personal way within the same functional framework of legislation, thus competing with each other as partially sovereign factors of power, they kill each other within certain limits. (2010, p. 199).

The freedom of the subjects, an important theme in Montesquieu, is ensured in a monarchy moderated by this horizontal balance of powers. It is precisely this horizontal institutionalization of *checks and balances* (checks and balances) that today is considered the system of the division of powers pure and simple. (2010, p. 199).

The precise differentiation of the Judiciary, in the division of powers, is determined in Montesquieu in a functional way: justice is a distinct power because it has exclusively tasks of applying the law, but not of creation. [...] "Judges are but the mouth that utters the words of the law, (they are) beings devoid of will." (2010, p. 200).

In this context, Montesquieu gives the correct understanding that, in any case, the legal binding of justice guarantees, in general, the freedom of citizens in the face of arbitrary abuses. (2010, p. 200)

In short, Montesquieu and Rousseau share a concern for the protection of political freedom, but they differ significantly in their understanding of how this freedom should be guaranteed. Montesquieu sees freedom as protection against the abuse of power and suggests that this is achieved through the separation of powers and the creation of a moderate government, where power is balanced and controlled.

For Rousseau, political freedom is achieved through the active participation of citizens in the political process, with the general will being the main mechanism for the creation of laws that ensure freedom. Thus, while Montesquieu emphasizes security and the balance between powers, Rousseau places the focus on collective autonomy and the direct participation of citizens as the basis of political freedom.

5 FINAL CONSIDERATIONS

Montesquieu conceived that political freedom is intimately linked to the security of citizens against the abuse of power. This security can only be secured by a constitution which provides for the separation of powers and ensures that each branch of government is limited



by laws and the action of the other branches. Mutual control between the powers and the existence of clear and fair laws are the fundamental elements to preserve the freedom of individuals in a democratic society. Thus, the constitution of a government, by guaranteeing the independence of powers and respect for the laws, ensures the political freedom of its citizens, protecting them against tyranny and the abuse of authority.

Throughout this work, we sought to demonstrate, in the light of the works of Montesquieu and Rousseau, the main aspects outlined by the authors in themes dear to this day, such as popular sovereignty, political freedom, general will and separation of powers, as well as their influences and impacts on contemporary constitutionalism. In this sense, it was tried to discuss the concepts and characteristics of political freedom according to the aforementioned thinkers, the problems inherent to the concentration of power, as well as the evolution and challenges of these theorizations within the current contemporary constitutional organization.

Finally, through the counterpoint of the views presented by the authors, it was decided to expose the main points of contact and divergence that they advocate regarding the themes of political freedom, separation of powers, general will and participation of citizens.

We hope that this work has contributed to deepen the debate on such discussions, expanding the interest of scholars on the subject.

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