

# 25 Liberty

The words liberty (*libertas*) and republic (*res publica*) grew up together in the political vocabulary of the Roman state and its would-be successors. Liberals separated the two by discarding the republican commitment to popular sovereignty and balanced government. Pursuit of the common good and the rule of law remained, at least initially, to support the idea that governments should rule by consent. This meant that liberalism and republicanism were not very different, at least at the outset. John Locke defined the “liberty of man in society” as subjection to the duly enacted laws of a legislature established by consent, and independent of any private will.<sup>1</sup> The legislative power itself should be “*limited to the publick good*” of society.<sup>2</sup> Benjamin Constant saw “liberty” in England, France, and the United States of America as “the right to be subjected only to the laws” and never to the “arbitrary will of one or more individuals.”<sup>3</sup>

These definitions simply repeat the old republican conception of liberty as service to the common good, under the rule of law. Republican vocabulary had distinguished liberty from license (*licentia*), meaning the unrestrained power to do what one wants.<sup>4</sup> Locke endorsed this distinction,<sup>5</sup> and castigated the monarchist theorist Sir Robert Filmer for identifying “freedom” as the ability “for every one to do what he lists, to live as he pleases, and not to be tyed by any Laws.” Locke’s liberty required “having a standing Rule to live by, common to every one of that Society, and made by the Legislative Power erected in it.”<sup>6</sup>

This republican distinction between “liberty” and “license” becomes hard to sustain without recourse to popular sovereignty and procedures of balanced government. The early liberal commitments to law and the common good came into conflict once legislatures lost the legitimacy of their republican foundations. If the public good sets the “utmost bounds” of the legislature’s power,<sup>7</sup> then laws that contravene the public good are void. Liberals need a new technique to distinguish the boundaries of valid legislation. This was the purpose of John Stuart Mill’s harm principle, and remains the central dilemma of liberal theorists ever since.<sup>8</sup> What is liberty if not the simple ability to what one wants? And who would be safe from their neighbors, if everyone did what they wanted?