PART I

AN ANCIEN REGIME QUESTION: RESISTANCE
In “Justice as Fairness: Political not Metaphysical,” John Rawls admits that his twentieth-century version of contract theory builds in the parochial horizon of our time. “Justice as fairness is framed to apply to what I have called the ‘basic structure’ of a modern constitutional democracy.”¹ “In contrast to what Nagel calls ‘the impersonal point of view,’” he explains in Political Liberalism, “constructivism both moral and political says that the objective point of view must always be from somewhere.”² By implication, Rawls’s admission calls into question more than the abstract universality of A Theory of Justice: it should lead to a rethinking of classic contract theory generally.

According to standard accounts of contract thinking, A Theory of Justice belongs to a tradition of theorizing inaugurated by Thomas Hobbes and John Locke. They developed a genre of abstract, universalizing contract thinking that was sharply distinct from the older tradition of historical (or ‘constitutional’) contractarianism. A survey of the tradition explains:

> The theoretical ambitions and the aimed-for generality of thought of those who employed ['philosophical' contractarianism] tended to be greater than that of the alternative language, best described as constitutional contractarianism….In constitutional contractarianism particular positive laws and the institutional inheritance of specific polities were more relevant and important, rather than universal propositions about all men and all politics.³

Rawls’s admission prompts us to be skeptical about so thoroughgoing a contrast as it may confuse style with substance. If the universalistic clothing of the arguments in A Theory of Justice fails to imply a universal

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