This book argues for a change in our understanding of the relationships among law, politics, and history. Since the turn of the nineteenth century, a certain antifoundational conception of history has served to undermine law’s foundations, such that we tend to think of law as nothing other than a species of politics. When law is thus viewed, the activity of unelected, common law judges appears to be an encroachment on the space of democracy. However, Kunal M. Parker shows that the world of the nineteenth century looked rather different. Democracy was itself constrained by a sense that history possessed a logic, meaning, and direction that democracy could not contravene. In such a world, far from seeing law in opposition to democracy, it was possible to argue that law – specifically, the common law – often did a better job than democracy of guiding America along history’s path.

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Legal Thought before Modernism

KUNAL M. PARKER
University of Miami School of Law
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