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978-0-521-51995-3 - Common Law, History, and Democracy in America, 1790-1900: Legal Thought before Modernism

Kunal M. Parker

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Common Law, History, and Democracy in America, 1790–1900

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.

Kunal M. Parker is Professor and Dean's Distinguished Scholar at the University of Miami School of Law. He was previously the James A. Thomas Distinguished Professor of Law at Cleveland State University and has held fellowships at New York University Law School, Cornell Law School, Queens University in Belfast, and the American Bar Foundation. Professor Parker has served on the editorial boards of *PoLAR: Political and Legal Anthropology Review* and *Law and Social Inquiry*. His writing focuses on U.S. intellectual and legal history, the philosophy of history, the history and theory of immigration and citizenship law, and the history of law in colonial India.

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Kunal M. Parker

Frontmatter

[More information](#)

Contents

<i>Acknowledgments</i>	<i>page ix</i>
1 Introduction	1
2 The Creation of Times: Custom and History in the British Background	25
3 Time as Consent: Common Law Thought after the American Revolution	67
4 Time as Spirit: Common Law Thought in the Early Nineteenth Century	117
5 Time as Law: Common Law Thought in the Mid-Nineteenth Century	168
6 Time as Life: Common Law Thought in the Late Nineteenth Century	219
7 Conclusion	279
<i>Index</i>	293

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Frontmatter

[More information](#)

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Frontmatter

[More information](#)

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Cambridge University Press

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Frontmatter

[More information](#)

Acknowledgments

xi

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