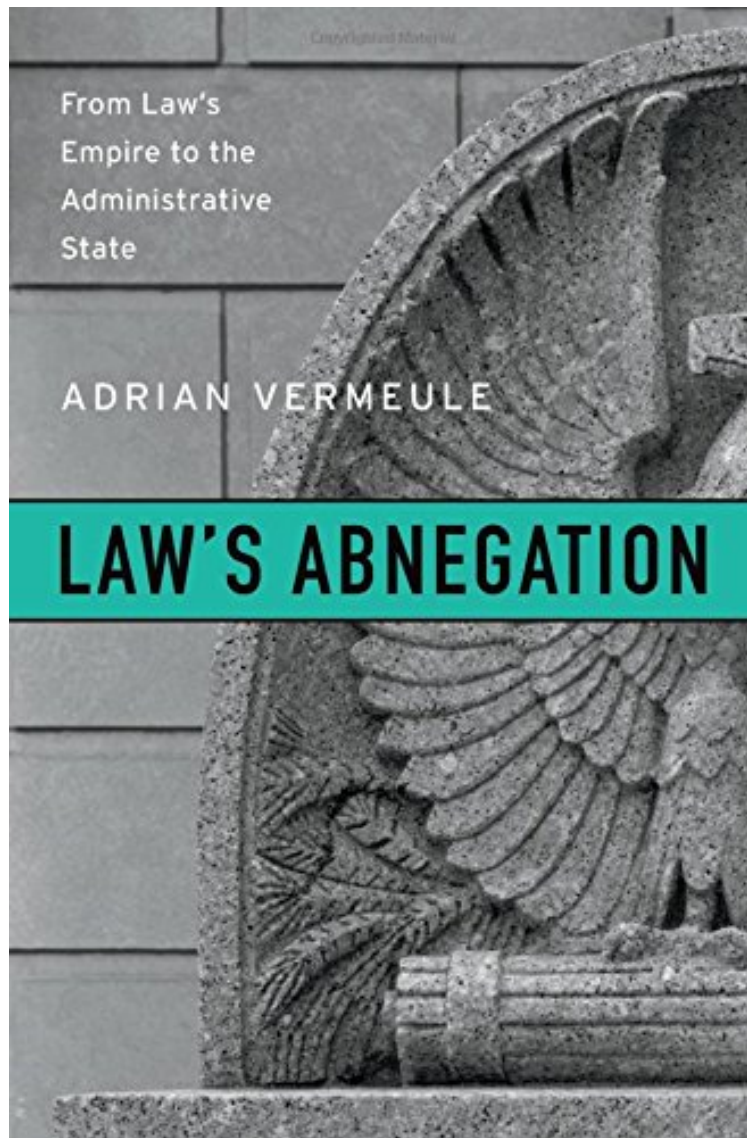


Laws Abnegation: From Laws Empire to the Administrative State

Adrian Vermeule

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Adrian Vermeule : Laws Abnegation: From Laws Empire to the Administrative State before purchasing it in order to gage whether or not it would be worth my time, and all praised Laws Abnegation: From Laws Empire to the Administrative State:

5 of 5 people found the following review helpful. Collapse of Law's EmpireBy Hande ZThis book should be read with Philip Hamburgers Is Administrative Law Unlawful? published in 2014 by the University of Chicago Press. They

exemplify the extreme views on the status of administrative law in America. Hamburger answers the title question of his book with a strong affirmative. Vermeule, who had already written a review of that book with the curt title, No, follows up and expands on his views in this book. These two books express the extreme views on the subject. Vermeule tries to plant his view gently by choosing the word ceding when he is in fact describing, if not advocating a total surrender of the courts to the state when it comes to administrative affairs. Is there no middle ground? Lawyers on the other side of the Atlantic, and some on the American side, probably think that there is. They would be amused, if not perplexed by these two books. Vermeule referred to Chief Justice Charles Evans Hughes judgment in *Crowell v Benson* (1932) where Hughes steered the court along the middle path. This seemed too mild and inadequate for Vermeule's liking and he reminded his readers that Hughes was trying to serve two masters the court and the state. The newly converted Catholic Vermeule cited Matthew 6:24 saying that CJ Hughes (who was nicknamed Charles the Baptist) of all people, ought to have understood that passage: No one can serve two masters. Either you will hate the one and love the other, or you will be devoted to the one and despise the other. Hamburger and Vermeule both see the law and the world (and to Vermeule, it meant the real world as oppose to what others like Hamburger might perceive their world to be) in absolute black and white, good and evil. Nothing in between. Vermeule may be right in that one cannot serve two masters, but the question is, has he made out a convincing case that he is serving the right one? One mans God is another mans Devil. 3 of 3 people found the following review helpful. Worth Reading if for No Other Reason than to Reject Entirely By Vivek I wrote a more complete review of this for my Jurisprudence seminar in my final semester of law school. The distilled points are as follows: (1) This book is superficially Dworkinian. Vermeule speaks of "detaching Dworkin's methodology from his intellectual proclivities" without a hint of irony. In briefest terms, Dworkin argued for judges upholding the integrity of law by solving difficult cases through reasoned interpretation that best fit the broader framework of law AND (most importantly) stood upon the strongest bones of moral justice. His proclivities are rights; namely taking them seriously. If law is not moral, so Dworkin postulated, no one would or should submit to it. Vermeule argues that the administrative state and administrative law "fits" with broader American laws and goals and is "justified" by its efficiency. His mere use of Dworkin's vocabulary, however, completely misses the point of what Dworkin was driving at in the first place, for Vermeule does not talk about rights or liberties or even greater social values. He just talks policy in the bold style of a law professor (which he is). (2) Certain chapters are simply wrong. Chapter Three, the one about Due Process stuffs an analysis that is both ahistorical and wilfully ignorant of certain Supreme Court cases that suspiciously contradict his theory. I won't go into details, but suffice to say, starting with "Mathews v. Eldridge" as the seminal due process administrative law case without giving any context of what came before is like saying that the history of cinema begins with "Star Wars." It's an important case, sure, but its conception was not immaculate. Otherwise, he ignores certain cases (Gregory v. Ashcroft - a Chevron case wearing a state sovereignty prom dress BFP - a case about administrative law judges that presents itself as a book on textualism) that implicate the federalist balance that the Court is concerned with maintaining, and whose rulings are entirely at odds with Vermeule's theory of abnegation. Yet Chapter Two: "Separation of Powers without Idolatry" is easily the most intellectually insulting. For an easy incidental repudiation of Vermeule's ideas here, I encourage you to read then-Judge Neil Gorsuch's concurring opinion in "Gutierrez," the 10th Circuit case from 2016. It's a fast read and you won't regret reading it; you don't even need to know the context of the case. **After all this, if you're still reading you're probably wondering why I'm giving this book two stars instead of one. The answer is that for all that doesn't persuade (and truly his argument's futility cannot be understated) there is still some value here. For example, Chapter 4 shifts from the Constitution to the Administrative Procedure Act and its interpretation, where Vermeule talks about the innate difficulty with trying to apply a tougher standard of scrutiny on agencies. The reality he paints there should not be fled from. As a positivist appraisal of the state of law, you could probably do worse than this book. But as an argument (especially a Dworkinian argument) for maintaining if not expanding that ber-deferential status quo, "Law's Abnegation" cannot persuade at all.

Ronald Dworkin once imagined law as an empire and judges as its princes. But over time, the arc of law has bent steadily toward deference to the administrative state. Adrian Vermeule argues that law has freely abandoned its imperial pretensions, and has done so for internal legal reasons. In area after area, judges and lawyers, working out the logical implications of legal principles, have come to believe that administrators should be granted broad leeway to set policy, determine facts, interpret ambiguous statutes, and even define the boundaries of their own jurisdiction. Agencies have greater democratic legitimacy and technical competence to confront many issues than lawyers and judges do. And as the questions confronting the state involving climate change, terrorism, and biotechnology (to name a few) have become ever more complex, legal logic increasingly indicates that abnegation is the wisest course of action. As *Laws Abnegation* makes clear, the state did not shove law out of the way. The judiciary voluntarily relegated itself to the margins of power. The last and greatest triumph of legalism was to depose itself.

Law's Abnegation is a theoretically informed, analytically rigorous, and, above all, lawyerly interpretation of the law of the modern administrative state. But it is much more than that. Vermeule also brilliantly deconstructs confused and

myopic alternative accounts and, most importantly, demonstrates how legal doctrine really works from an internal perspective. Built on the foundation of cases familiar to most administrative lawyers, his analysis is nevertheless revelatory concerning the field's core commitments, why those commitments make sense, and how they cohere across a wide range of seemingly disparate topics. (Jerry L. Mashaw, Yale Law School) In this powerfully argued book, Vermeule shows that the administrative state, far from being lawless, developed in accordance with the internal logic of the U.S. Constitution, and that by working the law pure judges appropriately relegate themselves to the margins of the legal order. Both critics and supporters of the administrative state will learn much from his careful, imaginative, and non-polemical analysis. (David Dyzenhaus, University of Toronto Faculty of Law) Vermeule's knowledgeable and unapologetic account of the theoretical foundations of judicial deference to administrative agencies will unsettle those who think of Congress and the courts as the dominant institutions in our legal system. But even skeptics will have to reckon with the breadth of his erudition and the rigor and forcefulness of the arguments in this impressive book. (Ronald M. Levin, Washington University School of Law) With sophisticated but understated decision theory, political economy, legal philosophy, political science, and economics covertly lurking in the background, Vermeule relies heavily on traditional legal materials to demonstrate, convincingly, that the administrative state has grown to irreversible proportions with little constraint from the legal system. This book is essential reading not only for lawyers, but also for anyone who wishes to understand contemporary governance. (Frederick Schauer, author of *The Force of Law*)

About the Author Adrian Vermeule is John H. Watson Professor of Law at Harvard Law School.