David B. Spence

Curriculum Vitae

Professor, Law, Politics & Regulation
Co-Director, Energy Management & Information Center
McCombs School of Business
University of Texas at Austin

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Professor of Law
University of Texas School of Law
University of Texas at Austin

Mail: D1800, JON 6.286

Employment

Current: Professor of Law, Politics & Regulation, **McCombs School of Business**, Professor of Law (2013), **University of Texas School of Law**, Austin, TX .
Spring 2007: Visiting Professor of Law, **Harvard Law School**, Cambridge, MA
Fall 2001: Visiting Assistant Professor of Law, **Cornell University** Law School, Ithaca, NY.
Fall 1999: Visiting Assistant Professor of Law, **Vanderbilt University** Law School, Nashville, TN.
1995-97: Visiting Assistant Professor/Instructor, Resource Economics and Policy Graduate Program, Nicholas School of the Environment, **Duke University**, Durham, NC.
1984-91: Attorney (environmental and energy regulatory law), **Nixon Hargrave Devans & Doyle** (now Nixon Peabody), Rochester, NY and Washington, DC.
1982-83 Energy Policy and Finance Analyst, **North Carolina Dept. of Administration**, Raleigh, NC., and **North Carolina Alternative Energy Corp**., Research Triangle Park, NC.

Education

Ph.D (1997) , M.A. (1993), **Duke University** Dept. of Political Science, Durham, NC (Certificate in Political Economy)
J.D. (1984), **University of North Carolina** School of Law, Chapel Hill, NC
B.A. (1980), Magna Cum Laude, **Gettysburg College**, Gettysburg, PA Phi Beta Kappa, Pi Lambda Sigma, Phi Alpha Theta

Research/Publications

Books

Energy, Economics and the Environment (co-author), Foundation Press (law casebook series)(co-authored)(3d Ed., 2010).
Law, Ethics and Corporate Social Responsibility: Theory and Practice (with Robert Prentice)(electronic text).

Edited Volumes/Book Chapters

The Regulation of Coal-Fired Power in the United States, in *Energy Law: U.S. Legal Portrait* (forthcoming, Russia, 2014)
Electric Power Generation and Climate Change (with Emily Meazell), in *Global Climate Change and U.S. Law* (Michael Gerrard and Jody Freeman, eds.)(forthcoming 2014)
Why Does ERCOT Have Only One Regulator (with Darren Bush), in *Electricity Restructuring: The Texas Story*, (L.Lynne Keisling and Andrew Kleit, eds.) (American Enterprise Institute, 2009).
Using Law to Steer Administrative Agencies, in *The Economics of Administrative Law* (Rose-Ackerman, Ed., 2008).
The Benefits of Agency Policymaking: Perspectives from Positive Theory, in *Politics, Policy, and Organizations: Frontiers in the Scientific Study of Bureaucracy* (Krause, George A., and Kenneth J. Meier, eds.). Ann Arbor, MI: University of Michigan Press, 2003.
The Shadow of the Rational Polluter, *Land Use and Environment Law Review* (year in review issue, 2002).
The New Political Economy of Regulation: Looking for Positive-Sum Change in a Zero-SumWorld. (with Lekha Gopalakrishnan), in *Environmental Contracts: Comparative Approaches to Regulatory Innovation in the United States and Europe* (Orts and Deketelaere, eds., 2001)(Kluwer Academic Publishers).

Academic Journal Articles

Moral Outrage vs. Cool Analysis in the Regulation of Shale Gas Production, ***Fordham Journal of Environmental Law,*** forthcoming 2014.
Federalism, Regulatory Lags, and the Political Economy of Energy Production, ***University of Pennsylvania Law Review***, 161:431-508 (2013).
The Transformation of American Energy Regulation and the Problem of Market Power (with Robert Prentice), ***Boston College Law Review***, 53:131-202 (2012).
Regulation, Climate Change and the Electric Grid, ***San Diego Journal of Climate and Energy Law,*** 3:267-98 (2011-12).
Regulation, "Republican Moments," and Energy Policy Reform, ***BYU Law Review***, 5:1561-1623 (2011).
Corporate Social Responsibility in the Oil and Gas Industry, ***Chicago-Kent Law Review,*** 86:59-85 (2011).
The Political Barriers to a National RPS, ***Connecticut Law Review***, 42:1451-73 (2010).
Can Law Manage Competitive Energy Markets?, ***Cornell Law Review*** 93: 767-817 (2008).

(Research / Academic Journal Articles cont'd)

Sarbanes-Oxley as Quack Corporate Governance: How Wise is the Received Wisdom (with Robert Prentice), ***Georgetown Law Journal*** 1843-1909 (2007).

Coal-Fired Power in a Restructured Electricity Market, ***Duke Environmental Law & Policy Forum***. 15:187-220 (2005).

The Politics of Electricity Restructuring: Theory vs. Practice, ***Wake Forest Law Review.*** 40:417-49 (2005).

A Fair Weather Federalism on the High Court, ***Harvard Environmental Law Review*** 27:71-105(2003).

The Never Ending Story: The Constitutionality of Superfund.s Retroactive Liability Regime, ***Environmental Law Reporter***. 32:11284-98 (2002).

A Public Choice Progressivism, Continued, ***Cornell Law Review***. 87:397-448 (2002).

The Shadow of the Rational Polluter, ***California Law Review***. 89:917-98 (2001).

Can the Second Generation Learn from the First? Understanding thePolitics of Regulatory Reform, ***Capital University Law Review***. 29:205-22 (2001).

A Public Choice Case for the Administrative State, ***Georgetown Law Journal.*** 89:97-142 (2000)(with Frank Cross).

Bargaining Theory and Regulatory Reform: The Political Logic of Inefficient Regulation, ***Vanderbilt Law Review***. 53:1-58 (2000)(with Lekha Gopalakrishnan).

The Law, Economics and Politics of Federal Preemption Jurisprudence, ***California Law Review***. 87:1125-1206 (1999) (with Paula Murray).

Managing Delegation Ex Ante: Using Law to Steer Administrative Agencies," ***Journal of Legal Studies***. 28:413-59 (1999).

Agency Discretion and the Dynamics of Procedural Reform, ***Public Administration Review***. 59: 425-42 (1999).

Imposing Individual Liability as a Legislative Policy Choice: Holmesian 'Intuitions' and Superfund Reform, ***Northwestern University Law Review***. 93:389-452 (1999).

Administrative Law and Agency Policymaking: Rethinking the Positive Theory of Political Control, ***Yale Journal on Regulation***. 14:407-50 (1997).

Modeling Away the Delegation Problem, ***Journal of Public Administration Research and Theory***. 7:199-219 (1997).

The Electoral Connection in the Early Congress, ***American Journal of Political Science***. (with W. Bianco and J. Wilkerson). 40: 145-71 (1996).

Paradox Lost: Logic, Morality and the Foundations of Environmental Regulation, ***Columbia Journal of Environmental Law.*** 20: 145-82 (1995).

Book Reviews

Book Review, Bosselman et al., *Energy, Economics and the Environment* (Foundation Press 2000), in ***Energy Law Journal,*** 22:127-32 (2001).

Book Review, Probst et. al, *Footing the Bill for Superfund Cleanups* (Brookings/RFF, 1995), and Revesz and Stewart (eds.), *Analyzing Superfund: Economics, Science and Law* (RFF, 1995), in ***Journal of Policy Analysis and Management***, Vol. 15, No. 3 (1996).

(Research, cont'd)

Scholarly Commentary

The Regulation of Coal-Fired Power in the United States, Backyard Politics, National Policies: Understanding the Opportunity Costs of Fracking Bans, ***Yale Journal of Regulation Online*** (2013).

Research Awards/Recognition

- Winner, 2001-02 University of Texas at Austin, CBA Foundation Research Excellence Award for Assistant Professors.
- Article (The Shadow of the Rational Polluter. *California Law Review*. 89:917-98) named one of top 10 articles in the field of land use and the environment, 2001, by *Land Use and Environment Law Review*.
- Article (Imposing Individual Liability as a Legislative Policy Choice: Holmesian 'Intuitions' and Superfund Reform." *Northwestern University Law Review*. 93:389-452) named one of the top 30 articles in the field of land use and the environment, 1998-99, by *Land Use and Environment Law Review*.

Ongoing Research

Working Papers

- Policy Entrepreneurship in Energy Regulation (with Jody Freeman)
- Regulation, Markets and Complex Adaptive Systems
- Member, Public Utilities Commission Clean Energy Project

Teaching

Teaching Interests:

- Energy Regulation
- Business-Government Relations
- Ethics and Corporate Social Responsibility
- Environmental Law
- Administrative Law
- Law and Economics
- Public Choice and Public Law
- Legislation
- Business Law

Teaching Experience

University of Texas McCombs School of Business (1997-present):

Business, Government & Public Policy
Energy Law
Law, Ethics and Corporate Social Responsibility
Environmental Law
Business Law
Summer Program in Business Law, **Edinburgh University**, Edinburgh, Scotland, Summer 2002-present.

(Teaching Experience, cont'd)

University of Texas School of Law (2011-present)
Energy Law

Harvard Law School (Spring 2007)
Energy Law
Environmental Enforcement (seminar)

Cornell University Law School (Fall 2001)
Administrative Law
Environmental Law

Vanderbilt University Law School (Fall 1999)
Advanced Environmental Law (seminar)
Environmental Law

Duke University Nicholas School of the Environment (1995-1997)
Environmental Policy
Hazardous Waste Policy
Constitutional Limits of Environmental Regulation
Environmental Policy and the Courts

Short Courses and Executive Education
Energy Restructuring, **E.ON Finance Academy**, Dusseldorf, Germany, 2004
European Environmental Law, **IMADEC University**, July 2004
Energy Regulation and Renewable Energy Regulation, **Bren School of the Environment**, University of California at Santa Barbara, periodically, 2005-present.
Business Law: **El Instituto Tecnológico y de Estudios Superiores de Monterrey**, Mexico City, Spring 2001-2007.
Managing External Stakeholder Relationships: **Shell Project Academy**, 2006-present.
Corporate Citizenship and Government Relations: **Integrated Influencing Skills Program**, and **Advanced Influencing Skills Program**, ExxonMobil, 2009-present.
Managing External Stakeholder Relationships: **Petrobras, Sinopec, Ecopetrol,** and **Construction Industry Institute**, 2007-present.

Recognition/Awards
McCombs School MBA Teaching Honor Roll, 2002, 2003, 2008, 2011.
CIBER Award for best "internationalized" course, Energy Law
2011-12 Fawn and Vijay Mahajan Teaching Excellence Award for Executive Education

Other Professional Activities

Professional/Op-Ed Publications
Psychological and Cultural Biases Distort Fracking Debates, **UT Law Grid Commentary**, March 1, 2013.
LNG Exports—A Good Idea?, **UT Law Grid Commentary**, January 23, 2013.
Conflict Over Hydraulic Fracturing: Politics vs. Policy, **UT Law Grid Commentary**, December 12, 2012.

(Prof. Activities/Op-Ed Publications, cont'd)

Before You Blame EPA for Texas Electricity Supply Problems, Consider This, **McCombs Energy Management and Innovation Center Energy Brief**, May 30, 2012.
Is It Time for Federal Regulation of Shale Gas Production, McCombs **EMIC Energy Brief**, April 19, 2012
How (and Why) Republicans Killed the Keystone Pipeline, U.T. **Energy Institute Commentary**, February 6, 2012.
The Politics of National Energy Policy Reform, **EMIC Energy Brief**, December 17, 2010
Fracking Regulations: Is Federal Hydraulic Fracturing Regulation Around the Corner?, **EMIC Energy Brief**, September 22, 2010
Op-Ed, Energy, Risk and Coal, ***Houston Chronicle***, August 21, 2011.
The Strange Politics of the Bailout, ***McCombs Today***, January 27, 2009.
Op-Ed: Two White Houses; Two Energy Policies. ***Fort Worth Star-Telegram*** (April 20, 2002).
Op-Ed: Real or fictional, can't ignore 'ideological middle'. ***Houston Chronicle*** (April 8, 2002).
Op-Ed: Two White Houses; Two Energy Policies. ***Dallas Morning News*** (April 7, 2002).
Contributor, ***Guide to Sustainable Development and Environmental Policy***, Duke University Press (2001).
Op-Ed: Will Bush Heed Jeffords. Warning on Green Policies? ***San Francisco Chronicle*** (June 7, 2001).
Op-Ed: The Jeffords Effect on the Environment. ***Austin American Statesman*** (June 2, 2001).
Op-Ed: Will Bush Use Jeffords as Gauge for Energy Plan? ***Houston Chronicle*** (May 29, 2001).
Op-Ed: Little Room for Gray When Talking Green. ***Houston Chronicle*** (May 4, 2001).
Op-Ed: Bush Must Aim for the Environmental Center. ***Dallas Morning News*** (March 12, 2001).
Using the Internet in Environmental Law Instruction, ***Business and Environment*** (Newsletter of the Section on Business and the Environment), Academy of Legal Studies in Business (1998).
Contributing Editor, ***New York Environmental Law Handbook*.** Government Institutes, 1990.
SARA Title III: Pitfalls and Practicalities, ***Journal of the Air Pollution Control Association***. 39: 29-33 (1989) (with M. Levin).
New SEQR Regulations: Fine-tuning the Process, ***Westchester Bar Journal*.** 14:373-86 (1987).

Conference Participation

Invited Presentations

Federalism and Electricity Market Regulation, Searle Center Conference on Environment, Energy and Federalism, Northwestern University School of Law, Chicago, IL, November 17-18, 2013.
Regulation of Shale Gas Production: Federalism Questions, Marcellus Shale and Sustainability Conference, Widener Law School, Harrisburg, PA, September 27, 2013.
Shale Gas Regulation: Cool Analysis vs. Moral Outrage

- University of Pittsburgh School of Law, 2013 Energy Policy Institute, Pittsburgh, PA, August 8, 2013
- UCLA School of Law, Los Angeles, CA, April 4, 2013

(Invited Presentations, cont'd)

Federalism, Shale Gas Production, and Regulatory Lags, Paper Presentations:
- Georgetown University, School of Public Policy, February 13, 2012
- University of Michigan, School of Business and School of Law, February 1, 2013
- Searle Center Conference on Regulatory Federalism, Northwestern University School of Law, Chicago, IL, March 1, 2012.

The Ethics of Fracking, Ethics and Energy Conference, Fordham University Law School, February 22, 2013.

Keynote Address: The Future of Competitive Electricity Markets, Electric Utility Cost Group Annual Meeting, Austin, TX, April 17, 2012.

The Electric Grid and Climate Change, paper presentation, University of California at San Diego School of Law, April 15, 2011.

Environmental Regulation of Hydraulic Fracturing, presentation, Conference on the Legal and Environmental Aspects of Extracting Gas from Shale, University of Texas School of Law, Austin, Texas, October 29, 2010.

The Politics of Energy Reform, paper presentation, Stanford School of Law, Palo Alto, CA, May 10, 2010.

The Politics of Biofuels, Conference Presentation, Long Institute for Latin American Studies, Austin, TX October 13, 2009.

Can Law Manage Competitive Energy Markets, Invited Paper, William Mitchell Law School, St. Paul, MN, April 16, 2009.

Coal-Fired Electric Generation and Restructuring, Cummings Colloquium on Environmental Policy, Duke University Law School, November, 2004.

The Rational Polluter Revisited.. Presented at (a) Duke University Law School, November 2003,(b) the Bren School of the Environment, University of California at Santa Barbara, October 2003, and (c) the University of Houston Law Center, January, 2003.

A Public Choice Progressivism, Continued. Symposium: "Getting Beyond Cynicism: Perspectives on Administrative Law,. Cornell Law School, Ithaca, NY, March 9-10, 2001; Law and Economics Colloquium, Cornell Law School, November 29, 2001.

A Public Choice Case for the Administrative State. University of San Diego Law School, Law and Economics Colloquium, October 26, 2000.

Can the Second Generation Learn From the First?: Confrontation and Cooperation in Environmental Regulation," Symposium on the Second Generation of Environmental Policy and Law, Capital University Law School, Columbus, OH, April 14, 2000.

The Benefits of Agency Policymaking: Perspectives from Positive Theory. Presented at the Fifth National Public Management Conference, Texas A&M University, College Station, TX, December 3-4, 1999.

The New Political Economy of Regulation: Looking for Positive-Sum Change in a Zero-Sum World. Presented at the Wharton Impact Conference on Environmental Contracting, University of Pennsylvania, Philadelphia, PA, September 20-21, 1999.

Accepted Conference Papers

Politics vs. Law in Regulatory Permitting. Midwest Political Science Association Annual Meeting, Chicago, IL, April 2004.

(Conference Papers, cont'd)

Voluntary Agreements and Environmental Regulation: Barriers to Success in the United States. (with Lekha Gopalakrishnan). Presented at the Conference on The Integration of Voluntary Approaches into Existing Legal Systems, Brussels, Belgium, February 24-25, 2000.

Federal Preemption of State Police Power Regulation: Politics and Principles (co-author Paula Murray). Presented at the 1998 Annual Meeting of the Academy of Legal Studies in Business, San Diego, CA, August 19-22, 1998.

Imposing Liability as a Policy Choice: Holmesian 'Intuitions' and Superfund Reform. Presented at the 1998 Hurst Seminar, Gainesville, FL, February 19-21, 1998.

Superfund Liability Reform: Why This Issue Won't Just Go Away. Prepared for presentation at the November, 1997 meetings of the Association for Public Policy and Management, Washington, DC.

Administrative Procedures and Agency Discretion: The Limits of Political Control. Presented at the 1996 fall meetings of the Association for Public Policy and Management, Pittsburgh, PA.

Testing the Procedural Control Hypothesis: FERC, Hydropower and the Environment. Presented at the August, 1996 meetings of the American Political Science Association, San Francisco, CA and the April, 1996 meetings of the Midwest Political Science Association, Chicago, IL.

Inter-governmental Conflict in Environmental Law: Federal Preemption of State and Local Environmental Regulation. Presented at the November, 1995 meetings of the Association for Public Policy and Management, Washington, DC.

Federalism and Environmental Regulation." Presented at the October, 1994 meetings of the Association for Public Policy and Management, Washington, DC.

Agency Policymaking, Rationality and the Limits of Political Control. Presented at the April, 1994 meetings of the Midwest Political Science Association, Chicago, IL.

Other Conference Participation

Panel Participant/Presentation, Climate Change and the Power Sector, University of Texas School of Law, February 17, 2013.

Panel Moderator, The Power Sector: Nuclear, Smart Grid, Renewables and Efficiency, Comparative Energy: Policies and Technologies in France and the USA, Austin, TX, December 19, 2012

Panel Moderator, Risks and Rewards of More Texas Wind and Solar, SXSW Eco Conference, Austin, TX, October 5, 2012.

Panel Moderator, Power Plants and Climate Change, C2ES and EMIC Conference on Climate Change and Natural Gas, Houston, TX, May 17, 2012.

Panel Moderator, Renewable Portfolio Standards, Austin Electricity Conference, April 4-5, 2012, Austin, TX.

Presentation, Managing Competition in Energy Markets, Symposium, Texas Journal on Oil, Gas and Energy Law, Austin, TX, February 10, 2012.

Panel Moderator, Risk and Externalities in Energy Production, University of Texas Energy Forum, Austin, TX, February 3, 2012.

Panel Moderator, Who Pays for Our Renewable Future, University of Texas Energy Forum, Austin, TX, February 2, 2012.

Panel Moderator, The Behavioral Aspects of Smart Grid Implementation, Conference on Smart Grid Solutions, University Of Texas at Austin, April 7-8, 2011.

(Other Conf. Part'n, cont'd)

Panel Participant, Conference on Alternative Energy Futures, University of Texas School of Law, February, 2010.

Panel Participant, Searle Center Symposium on Emerging Issues in Energy, Northwestern University, Kellogg School of Management, June, 2009.

Presentation, Competition in Electricity Markets, 2d Annual Texas Journal of Oil, Gas, and Energy Law CLE Symposium, February 17, 2007, University of Texas School of Law

Presentation, Siting LNG Facilities: Politics vs. Law, Fourth Annual New Era Conference, Houston, TX, May 8, 2006.

Panel Participant, Legal Challenges Surrounding LNG, 1st Annual Texas Journal of Oil, Gas, and Energy Law CLE Symposium, January 26-27, 2006, University of Texas School of Law.

Panel Participant, Administrative Law and Political Control,. Joint Program of the Sections on Legislation and Administrative Law, Association of American Law Schools Annual Meeting, Atlanta, GA, January 2004.

Panel Participant, Legal Scholarship on Trial: Alice's Adventures in Publications Wonderland. Plenary Session, Association of American Law Schools Annual Meeting, New Orleans, LA, January 4, 2002.

Panel Participant, Deregulation.. 2001 Energy Finance Conference. University of Texas at Austin, February 22-23, 2001, Austin, TX.

Panel Participant, Dinosaur or Phoenix? Choosing Between Old Fashioned Regulation and Second Generation. Strategies in the New Millennium.. Joint Program of Sections on Administrative

Panel Participant, Law and Environmental Law, Association of American Law Schools Annual Meeting, San Francisco, CA, January 5, 2001.

Panel Moderator, "Environmental Regulatory Reform." Annual Meeting of the Association for Public Policy and Management, Washington, DC, November, 1999.

Panel Participant, "Fifteen Years of Congressional Dominance." Annual Meeting of the American Political Science Association, Atlanta, GA, September, 1999.

Panel Discussant, "Comparative Environmental Policy." Annual Meetings of the Association for Public Policy Analysis and Management, New York, NY, October, 1998.

Panel Participant, "Roundtable Discussion on Environmental Law Research." Annual meetings of the Academy of Legal Studies in Business, Atlanta, GA, August, 1997.

Panel Moderator, Urban Development: How Can We Develop Sustainably?. Development and the Environment in the United States. Durham, NC. April 4, 1997.

Panel Discussant, Should Public Values Guide Risk Policy?. Risk in the Republic:

Comparative Risk Analysis and Public Policy. Duke University School of Law. Durham, NC. November 15-16, 1996.

Panel Moderator, Prospects for Risk Reform.. Duke University. Durham, NC. March 29, 1996.

Professional Memberships

- New York State Bar
- American Bar Association
- American Political Science Association
- Midwest Political Science Association
- Board of Directors, The Washington Campus, Washington, DC 2007-present
- Board of Directors, North Austin Soccer Association, 2002-06
- Board of Directors, Northwest Austin Youth Basketball Association, 2004-07
- Board of Directors, Genesee Land Trust, Rochester, NY 1990-91
- Board of Directors, Flower City Habitat for Humanity, Rochester, NY 1990-91

Referee, peer-reviewed journals:

Journal of Law, Economics & Organization
American Journal of Political Science
Public Administration Review
Cambridge University Press
Journal of Public Administration Research and Theory
Western Political Science Quarterly
Journal of Legal Studies Education
American Business Law Journal

Other Professional Service

University of Texas Representative, Board of Directors, The Washington Campus, 2008-present. Chair, Curriculum Committee, 2010-present.
Co-Director for Regulation and Policy, Energy Management & Information Center, McCombs School of Business, 2009-present.
University Committee to develop new Bachelor of Arts in Sustainability Studies undergraduate degree program, 2012-present.
Board of Advisors, Deloitte Business Ethics Program, McCombs School, 2011-12.
MBA Programs Committee, 2010-present
MBA Working Professionals Curriculum Review Committee, 2012-present
Faculty Recruitment Committee, Business Government and Society Department, McCombs School, 2000-present
Faculty Advisor, UT Net Impact organization, 2003-present
Faculty Advisor, Business, Industry & Government, McCombs MBA student organization, 2010-present
Faculty Advisor, Energy & Earth Resources Graduate Student Group, Jackson School of Geoscience, 2011-present
Faculty Advisor, Texas Journal of Oil, Gas & Energy Law, UT School of Law, 2005-present
Member, Graduate Studies Committee, Energy & Earth Resources Program, Jackson School of Geoscience, 2011-present
Dean's Advisory Committee on Compensation, McCombs School, 2012
Various Ph.D and Masters project student committees, 1997-present (LBJ School, Jackson School, Communications School, McCombs School)
BGS Department P&T review committees, McCombs School, 2001-present.
Univ. of Texas Faculty Council Member, 2002-2004.
Univ. of Texas Faculty Grievance Hearing Officer, 1997-2005.
Blackstock-McGinnis Scholarship Committee (1998-2005).