Law’s Impact on Collaboration: A Three-Case Study of Federal Advisory Committees Managed by the U. S. Coast Guard

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Dissertation:

Law's Impact on Collaboration: A Three-Case Study of Federal Advisory Committees Managed by the U. S. Coast Guard

by

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A Dissertation Submitted to the Faculty of Old Dominion University in Partial Fulfillment of the Requirements for the Degree of

Doctor of Philosophy

Public Administration and Policy

Old Dominion University
May 2024

Approved by:

John R. Lombard (Director)
Ron Carlee (Member)
David Ayers (Member)
ABSTRACT

LAW’S IMPACT ON COLLABORATION: A THREE-CASE STUDY OF FEDERAL ADVISORY COMMITTEES MANAGED BY THE U. S. COAST GUARD

Brian K. McNamara
Old Dominion University, 2024
Director: Dr. John R. Lombard

Much remains to be learned about law’s impact on collaboration. Although law is one of the foundational disciplines of public administration, scholars assert that the field focuses on management principles to the detriment of law. Whether this assertion is correct as a general matter for the field, collaboration scholarship lacks empirical examination of the law’s role in collaboration processes.

This three-case study of federal advisory committees managed by the U.S. Coast Guard examines law’s impact on collaboration through the lens of Thomson and Perry’s (2006) Process Model. A qualitative method is used to capture participants’ perceptions of law and their rich descriptions of law’s impact on their work. The study uses semi-structured interviews and documents to collect data relevant to the research questions.

The findings contribute to public administration by identifying a distinction between the impact of administrative law and the impact of operational law on collaboration processes. Additionally, the study observes that practitioners perceive administrative law to inject normative values into collaboration processes. The findings suggest law and management are intertwined in collaboration processes, with implications for public administration theory and practice and for interdisciplinary scholarship at the intersection of law and public administration.

Keywords: Law, Collaboration, Mandated Collaboration
I dedicate this dissertation to my incredible spouse and partner,
Madeleine W. McNamara, Ph.D., for her wholehearted encouragement, love, and support,
and to our wonderful children Cecilia, Rosaline, Theodore, Silas, and Oliver,
for their joyful companionship.
ACKNOWLEDGEMENTS

I would like to express my sincere appreciation for the many people who made this achievement possible.

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To my committee members, Ron Carlee, D.P.A., and David Ayers, Ed.D., thank you for your detailed reviews of my draft manuscripts. Your input helped immensely in shaping the structure and execution of this study.

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To all current and former faculty of Old Dominion University’s School of Public Service, thank you for helping shape my professional trajectory for more than two decades.

To my colleagues at Tulane University’s School of Professional Advancement and the John Lewis Public Administration Program, thank you for inspiring me to make a difference every day.

To my fellow doctoral students with the School of Public Service, thank you for the support and friendship throughout this journey.
**NOMENCLATURE**

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<td>2018 CGAA</td>
<td>Frank Lobiondo Coast Guard Authorization Act of 2018</td>
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<td>APA</td>
<td>Administrative Procedure Act of 1946, as amended</td>
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<td>BSAC</td>
<td>Boating Safety Advisory Council (predecessor to NBSAC)</td>
</tr>
<tr>
<td>BSEE</td>
<td>Bureau of Safety and Environmental Enforcement</td>
</tr>
<tr>
<td>DHS</td>
<td>Department of Homeland Security</td>
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<tr>
<td>FACA</td>
<td>Federal Advisory Committee Act of 1972, as amended</td>
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<tr>
<td>FOIA</td>
<td>Freedom of Information Act of 1966, as amended</td>
</tr>
<tr>
<td>NBSAC</td>
<td>National Boating Safety Advisory Committee</td>
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<tr>
<td>NOSAC</td>
<td>National Offshore Safety Advisory Committee</td>
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<tr>
<td>NPG</td>
<td>New Public Governance</td>
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<td>NPM</td>
<td>New Public Management</td>
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<td>NTSAC</td>
<td>National Towing Safety Advisory Committee</td>
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<td>OSHA</td>
<td>Occupational Safety and Health Administration</td>
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<tr>
<td>TSAC</td>
<td>Towing Safety Advisory Committee (predecessor to NTSAC)</td>
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<tr>
<td>USCG</td>
<td>United States Coast Guard</td>
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CHAPTER ONE
INTRODUCTION

Background and Problem Statement

Collaboration is a robust topic of inquiry within public administration, but how does law impact collaboration? According to Thomson and Perry (2006), “[c]ollaboration is a process in which autonomous actors interact through formal and informal negotiation, jointly creating rules and structures governing their relationships and ways to act or decide on the issues that brought them together; it is a process involving shared norms and mutually beneficial interactions” (p. 23, citing Thomson (2001)). Despite the proliferation of theoretical and empirical collaboration scholarship, researchers continue to call for additional study to explore the structure, processes, relationships, and contexts that facilitate or hinder collaborative efforts (see Amsler, 2016; Morris & Miller-Stevens, 2015; Thomson & Perry, 2006).

Law, management, and political science are the three foundational disciplines of public administration (Wright, 2011). Some claim public administration “neglects” the law’s contribution to the field (Moe & Gilmour, 1995)(see also Amsler, 2016; Osario et al., 2021). This purported neglect carries over into the public administration collaboration literature, where scholars generally reduce the law to the mandate in “mandated collaboration” (McNamara, M., 2015b; Rodriguez et al., 2007; Caruson & MacManus, 2006; Taylor & Sweitzer, 2005) and do not account for law in research designs (Amsler, 2016).

This research takes an important step to better understand law within public administration by exploring law’s impact on collaboration processes. This study defines “impact” as the “effect that something. . . has on a situation or person” (Cambridge, n.d.). This
inquiry does not determine causation in the quantitative sense. Rather, consistent with its constructivist philosophy (Moses & Knutson, 2007) and qualitative method, this study determines how participants perceive the effect of law on the processes of their collaborations.

In addition, this inquiry uses the terms “process” and “structure” as understood by Thomson and Perry (2006). These authors, drawing on Gray’s (1985) initial work on collaboration, explain that the “process” of collaboration includes five factors: 1) governance, 2) administration, 3) organizational autonomy, 4) mutuality, and 5) norms of trust and reciprocity (p. 21). Of these factors, governance and administration relate to the structure of collaboration. Therefore, this study views collaboration structure as nested within the collaboration process.

These uses of the terms “process” and “structure” have a significant implication for this study. As the literature review explains, threads of the collaboration scholarship treat collaboration as both a process and as a structure. However, process and structure are inextricably intertwined in the practice of collaboration. Thomson and Perry (2006), for example, view collaboration as something that develops over time, and the structure of any given collaboration is nested within the temporal process. Their framework suggests that law may impact all process dimensions, including the structural dimensions nested within the process dimensions in each collaboration.

This topic is timely and relevant to advance knowledge in public administration for three reasons. First, the literature recognizes a shift in public administration’s focus from “New Public Management” (“NPM”) to other approaches including “New Public Governance” (“NPG”) (Bryson et al., 2014; Morgan & Cook, 2014; Unikowski, 2021). Two differences between NPM and NPG are the latter’s explicit recognition of “collective” responsibility across sectors to define public needs (Bryson et al., 2014) and a re-institution of democratic and other normative
values alongside the efficiency and effectiveness values that dominate the NPM approach (see Bumgarner & Newswander, 2009). With NPG’s focus on cross-sector responsibility, demand should remain high for collaboration scholarship that examines collaborative entities for collaboration’s intrinsic value (Amsler, 2016).

Second, leading scholars identify this shift from NPM to NPG and the resultant focus on values as an opportunity to incorporate law systematically into public administration research designs (Amsler, 2016). Within the public administration literature, scholarship on law and legal topics tends to be stove piped within certain themes such as “Bureaucratic Process,” “Regulatory Compliance,” and various threads of public administration theory (Osario et al., 2021, p. 108). Although these topics appear at first glance to be quite broad, Osario et al. (2021) find the literature to be “atomized,” (p. 103) with a limited number of authors, limited cross-connection and cross-citation between authors, and limited connections between the public administration literature and legal sources (Id.). This report’s study on the relationship between law and collaboration answers Amsler’s (2016) call for empirical study of law in a way that helps to bridge the scholarly gaps Osario et al. (2021) observe empirically.

Third, this study links the field’s shift to NPG and the call for empirical inquiry into law to Thomson and Perry’s (2006) original call for understanding the “doing” of collaboration. This research enters the “black box” to examine law’s relationship with the “interactive process of collaboration” (p. 21). (The researcher defines “law” in Chapter 2.) By linking NPG concepts and law with Thomson and Perry’s (2006) Process Model collaboration (hereinafter “Process Model”), this study generates relevant new knowledge in the field, builds upon prior established scholarship, and provides a foundation for a new line of empirical inquiry into the relationship of law to public administration.
Study Setting

Three federal advisory committees, managed by the U.S. Coast Guard, provide the setting for this study. The Federal Advisory Committee Act of 1972 (hereinafter “FACA”) governs how the federal government obtains advice from non-governmental sources (Bradshaw, 2019). Congress passed the FACA during an era of increased calls for government transparency (Kello, 2003). Although several previous initiatives and recommendations failed to gain traction in Congress in the prior decades (Croley & Funk, 1997), the FACA, along with the Freedom of Information Act of 1967 (hereinafter “FOIA”), represent that era’s normative ideal of open government (Kello, 2003).

The FACA generally requires that the federal government must create a FACA-certified committee to receive consensus advice from non-governmental sources. The FACA does not apply to advice from one federal agency to another, but it guards against secretive industry stakeholder takeover of regulatory agendas. FACA committee meetings generally are open to the public and announced in advance in the Federal Register. Committee members must apply to serve on the committees, and the committees must have diversity of experience and background represented in their memberships (Federal Advisory Committee Act of 1972). The U.S. Coast Guard manages many FACA Committees, including the National Offshore Safety Advisory Committee, the National Towing Safety Advisory Committee, and the National Boating Safety Advisory Committee, which are the subject of this research (see U.S. Coast Guard, n.d. (a)).

National Offshore Safety Advisory Committee

The National Offshore Safety Advisory Committee (hereinafter “NOSAC”) exists “to provide advice to the Secretary of the Department of Homeland Security on matters relating to . . . the exploration of offshore mineral and energy resources, to the extent that such matters are
within the jurisdiction of the Coast Guard” (U.S. Coast Guard, n.d. (b)). The NOSAC meets approximately twice per year, and its membership consists of a cross-section of private industry corporations and interests. Past attendees have included maritime industry leaders and consultants who work in this space. Topics addressed include legislative and regulatory updates, the proper use of regulations compared to agency policy letters as guidance, and safety issues relating to equipment used on the Outer Continental Shelf (National Offshore Safety Advisory Committee, 2020).

**National Towing Safety Advisory Committee**

The Frank Lobiondo Coast Guard Authorization Act of 2018 (hereinafter “2018 CGAA”) required the USCG to replace the former Towing Safety Advisory Committee (hereinafter “TSAC”) with the National Towing Safety Advisory Committee (hereinafter “NTSAC”). The purpose of NTSAC is to “advise, consult with, and make recommendations to the Secretary of Homeland Security on matters relating to shallow-draft inland navigation, coastal waterway navigation, and towing safety” (U. S. Coast Guard, 2021). The members, just appointed in September 2021, include two members of the public, port operators, members of the offshore towing industry (demonstrating a link to NOSAC equities), and at least one towing engineer. Recent issues considered by NTSAC include the impact of the COVID-19 pandemic (National Towing Safety Advisory Committee, 2023b), expected challenges to the industry (National Towing Safety Advisory Committee, 2023a), and how to apply the term “occasional towing” in regulatory enforcement (National Towing Safety Advisory Committee, 2022).

**National Boating Safety Advisory Committee**

The National Boating Safety Advisory Committee (“NBSAC”) advises the Coast Guard on issues relating to recreational boating safety (Boating safety website). The NBSAC has
twenty-one members, divided amongst three general categories: 1) boating manufacturers, 2) state boating safety representatives, and 3) national boating safety organization members (National Boating Safety Advisory Committee, 2023b). State boating safety representatives serve on this committee because federal law requires the federal and state governments to work together on recreational boating safety law and policy (Federal Boat Safety Act of 1971). The 2018 CGAA required the USCG to abolish the prior Boating Safety Advisory Council (hereinafter “BSAC”) and create the NBSAC.

**Purpose of the Study**

This study examines the impact of law on collaboration in the context of federally mandated advisory committees managed by the USCG. More precisely, this inquiry examines how members and managers of three federal advisory committees perceive law to impact their collaborations. This research is important for three reasons. First, the Process Model does not specifically account for the impact of law. This study therefore builds upon the Process Model in a unique, impactful, and timely way for the field of public administration.

Second, and more broadly, much remains to be learned about the role of law in collaboration. A knowledge base on the relationship of law to collaboration will give researchers an additional inflection point for further empirical inquiry into collaboration. Public administration has been transitioning to a New Public Governance era, with a focus on collective responsibility across sectors to define policy problems, identify policy solutions, and implement public policy (Bryson et al., 2014; Morgan & Cook, 2014). Collaboration is “here to stay” (Amsler, 2016). This study is an important step toward understanding the relationship between law and collaboration that, to date, has not received significant attention in the public administration literature.
Third, collaboration is interdisciplinary (see Morris & Miller-Stevens, 2015). This inquiry can help build linkages between the public administration and legal academies, fostering common terminology and empirical scholarship that advances knowledge in both fields. Future research can help public administration scholars better understand how law shapes collaboration and can help legal scholars understand how law shapes the behavior of collaboration participants.

**Research Questions**

Based on the literature review below, this study makes the following presumptions:

1) Public law impacts collaboration processes (as defined by Thomson & Perry (2006)) for three selected Federal Advisory Committee Act (“FACA”) committees managed by the United States Coast Guard.

2) Public law impacts how United States Coast Guard officials coordinate and liaise with the three FACA committees.

3) Public law impacts how FACA committee members interact within the collaboration processes of the three committees.

Therefore, this study will explore the following research questions:

1) How does public law impact the collaboration processes for three Federal Advisory Committee Act (“FACA”) committees managed by the United States Coast Guard?

2) How does public law impact how United States Coast Guard officials coordinate and liaise with the three FACA committees?

3) How does public law impact how the FACA committee members interact within the collaboration processes of the three FACA committees?

This study delimits the cases by time, beginning in 2018 and continuing to the present. Congress passed the 2018 CGAA which directed the USCG to create and manage the three
committees in their current forms. The term “collaboration process dimensions” refers to the process dimensions of Thomson and Perry’s (2006) process model of collaboration. This introduction, above, defines “impact” and how this study defines and positions “collaboration processes” to include nested structural dimensions. The literature review defines “collaboration,” “law,” and “public law.”

**Conceptual Framework**

This study’s conceptual framework builds upon Thomson and Perry’s (2006) Process Model as depicted in Figure 1.1.

**Figure 1.1**

*A Process Model of Collaboration*

Process Dimensions

Antecedents of Collaboration

![Diagram](https://example.com/diagram1.png)

Outcomes

*Administration*

*Governance*

Organizational Autonomy

Mutuality

Norms of Trust & Reciprocity

Figure 1 suggests collaboration development moves from left to right within the model, and from top to bottom within the Process Dimensions box, although Thomson and Perry (2006) argue there is interaction between all five process dimensions. The process dimensions box represents the “black box” or “interactive process” of collaboration (p. 21). The italicized dimensions are structural dimensions that Thomson and Perry (2006) nest within the “black box”
of collaboration process. Based on the literature review, this study positions law as impacting all Thomson and Perry (2006) process dimensions, including the nested structural dimensions, as depicted in Figure 1.2.

**Figure 1.2**

*A Process Model of Law’s Impact on Collaboration*

![Process Model of Law’s Impact on Collaboration](image)

**Research Design**

This research uses a qualitative three-case study design. The purpose of “qualitative research is the study of a phenomenon or research topic in context” (Hays & Singh, 2012, p. 4). This approach is distinguished from a quantitative approach in that qualitative research is “inductive” and focused on “emerging themes” and patterns (Creswell, 2009, p.4). In addition, qualitative research focuses on describing the “complexity” of participants’ experiences and situations (Id.)

In addition, a case study approach aligns with the exploratory research questions. This research examines public law’s impact on collaborations “through a variety of data sources” and “within its naturally occurring context” (Rashid et al., 2019, p. 2). Yin (2003) states that
“[h]ow . . . questions are likely to favor the use of case studies, experiments, or histories” (p. 7). A case study strategy has a “distinct advantage” as a method when, as here, an investigator asks a “how” question “about a contemporary set of events over which the investigator has little or no control” (p. 9). A three-case design, examining three different federal advisory committees, “offer[s] contrasting situations” (p. 54) and greater potential for what Yin (2003) describes as “analytic generalization” (p. 33). Although administrative law and USCG policies on advisory committee management apply equally to the three committees, each committee has its own mission focus. This research gathers more trustworthy data by examining three committees instead of one, because it would be challenging with just one case to identify whether administrative law or the committee’s specific “mission-based” (Piotrowski & Rosenbloom, 2002, p. 643) operational law requirements impact the collaboration.

**Significance of the Study**

This study holds significance for the field of public administration in five ways. First, this research answers the direct call in the literature for empirical inquiry into the relationship of law and collaboration (Amsler, 2016). To this author’s knowledge, this is the first empirical inquiry examining law within the context of the Process Model. Public administration scholars acknowledge law as one of the foundational disciplines of the field (Wright, 2011; Moe & Gilmour, 1995), yet the existing literature does not account for law’s role in collaboration.

Second, although this research seeks to tread on new scholarly ground, the study builds on the well-entrenched Process Model. The use of this model anchors this study in the existing literature. Additionally, the model provides a referent for future scholarship seeking to replicate or expand upon this study.
Third, this study aligns with the field’s continuing transition into the New Public Governance era. Cross-sector collaboration will continue to feature prominently in public administration scholarship and practice (see Amsler, 2016). As sectors work together to define public needs and to implement policy solutions, scholars and practitioners alike will benefit from an examination of how law shapes collaboration process.

Fourth, although the main purpose of this study is to build knowledge in collaboration, this research also builds linkages between the public administration and legal literature. Public administration and law share common intellectual histories, yet the two literatures are stove piped (Osorio et al., 2021). Furthermore, the legal academy traditionally eschews empirical scholarship in favor of doctrinal and normative work (Diamond, 2019). This study helps to bridge a gap between the two academies and serves as an exemplar for empirical research into law topics.

Finally, this study provides a strong foundation for future scholarship on the relationship between law and collaboration. Although this research takes a qualitative perspective, future inquiry can include both qualitative and quantitative examination of the relationship between law and collaboration. In addition, scholars may wish to examine whether administrative or operational mission-based law impact collaboration in different ways. And although this inquiry focuses on building knowledge in public administration, it supports future interdisciplinary empirical scholarship between the public administration and legal academies to advance knowledge on topics relevant and timely for both fields.

Limitations

This study has several limitations. First, this case study research focuses on three advisory committees managed by a single agency. There may be something about how the U.S.
Coast Guard manages all its advisory committees that influences these results. Selection of a three-case approach, rather than a single-case approach, may mitigate this limitation because the cases were chosen for their three divergent subject areas (Yin, 2003). Despite this potential mitigation for this specific research, researchers must exercise caution when generalizing results from a case study (see Id.).

The second limitation relates to the interactions between the researcher and the participants. Consistent with the “constructivist” methodology (Moses & Knutson, 2007), the researcher assumes that their interactions with participants will shape how participants perceive the relationship of law to collaboration. (Moses and Knutson (2007) distinguish between “method” and “methodology,” and use the term “methodology” to refer to a researcher’s broad epistemological assumptions about “the nature of the world and how it should be studied” (p. 2).) The researcher also has prior working relationships with members of these committees and Coast Guard managers of these committees prior to data collection for this study, which may impact how this study’s participants convey their experiences to the researcher. In addition, for this qualitative study there may be a difference between how law impacts the three collaborations and how the participants perceive that law impacts the three collaborations (Watkins, 2012). In other words, participants’ perceptions may be fallible.

The researcher’s own legal background may also serve as a limitation in this study. Although their legal background may provide opportunity for access and understanding (see Rosenbloom & Gould, 2021), the researcher may have a bias to identify impact. Additionally, the researcher’s trial advocacy experience may impact how they draw conclusions from the data. The researcher may unconsciously defend their interpretations as though this report were a trial motion rather than an empirical research report.
Although this study has limitations arising out of its qualitative case study method, the author takes two important steps to mitigate the impact of these limitations. First, a reflexive research journal maintained separately from the research report (see Berger, 2015) provides additional context to help other scholars evaluate this researcher’s impact on the results. Second, member-checking, or having the participants review their transcripts and provide feedback to the researcher before the data analysis stage, improves accuracy of transcripts, thereby improving the reliability of the data (see Creswell, 2009).

**Subsequent Chapters**

This introductory chapter describes the main purpose of this study, provides an overview of the research questions and method, and explains why this study is timely and relevant to advance knowledge in the field. Chapter Two reviews the literature on collaboration, the relationship of law and public administration, and New Public Governance. This review demonstrates that despite the proliferation of collaboration scholarship in public administration, much remains to be learned about how law impacts the processes and structures of collaborations.

Chapter Three describes the “constructivist” methodology and qualitative research method used for this inquiry. The choice of a three-case approach is explained and defended as a means to improve the trustworthiness of the data while also providing a foundation for future inquiry. The chapter also articulates why the qualitative approach is particularly appropriate for this study. It closes with a discussion of the substance and purpose of the interview protocol and connects the interview questions with the literature to demonstrate how this research design builds upon existing knowledge in the field.
Chapter Four analyzes the data collected from the semi-structured interviews and documents. Chapter Five provides recommendations, based on the research, for the theory and practice of public administration. The report concludes with recommendations for future empirical inquiry into the relationship of law and collaboration.
CHAPTER TWO
LITERATURE REVIEW

Overview

Existing collaboration scholarship does not account for the law’s impact on the process or structure of collaboration. And although law is a “foundational discipline” of public administration (Wright, 2011), public administration scholarship generally lacks empirical study of the law’s role in the field (see Moe & Gilmour, 1995). The emergence of “New Public Governance” (see Morgan & Cook, 2014), with its reintroduction of normative values alongside efficiency and effectiveness, provides an opportunity to link the scholarship of collaboration and law in a meaningful way that advances collaboration knowledge in the theory and practice of public administration.

The review begins by examining the relationship of law and public administration. Although law is a foundational discipline, the normative historical debate on the proper role of law in the field shapes the empirical attention, or lack thereof, that modern public administration scholars give to law today. The role of law as a source of values for the field is examined, as well as the tension between those advocating legal approaches to public administration and those advocating managerial approaches (see Zouridis & Leijtens, 2021; Wright, 2011). The scholarship of the legal academy will be examined for its treatment of public administration, and recent U.S. Supreme Court case law will be analyzed to demonstrate the relevance of appellate court opinions as independent sources of law influential to public administration scholarship and practice.
This review then turns to the collaboration literature to show that, despite the proliferation of theoretical and empirical study, no significant scholarship exists that examines the role of law in collaboration. Collaboration pre-conditions, structures, and processes will be evaluated in the literature to identify where empirical examination of the law’s impact could add to the understanding of the subject.

The collaboration literature and law literature have progressed on roughly parallel tracks, but public administration’s new emphasis on governance provides an opportunity to integrate the lines of scholarship with empirical examination of the law’s impact on collaboration. The third section of this review will examine this new “era” of public administration, known by various names such as New Public Governance (“NPG”) (see Morgan & Cook, 2014) or Public Value Governance (Bryson et al., 2014). The characteristics of NPG will be compared to those of the New Public Management (“NPM”) and traditional public administration eras. This section will also examine the notable and recent calls in the literature, based on NPG principles, for closer study of law within the field of public administration generally and closer study of the role of law in collaboration specifically.

This literature review shows that an empirical study of the role of law in collaboration is both relevant and timely for the field of public administration. The strength of law on the field of public administration has ebbed and flowed as the field has shifted emphasis from “traditional” principles to NPM and then to an NPG approach (see Zouridis & Leijtens, 2021). With the relatively recent focus on governance and the renewed emphasis on normative values, the opportunity is ripe to add to the body of knowledge with an empirical study of law and collaboration.
The Relationship of Law & Public Administration

This section examines the relationship of law and public administration. First, this section proposes a definition of “law” grounded in the literature. The discussion then turns to law as a foundational discipline of the field, a comparison of law to other foundational disciplines of public administration, and an examination of whether a legal/management dichotomy exists in the literature. Recent movements to focus on law in public administration practice and in graduate public administration education are then examined. Finally, the review examines how the legal academy treats public administration concepts and issues.

Defining “Law”

This sub-section provides an operational definition of law to support replicable empirical research into law’s impact on collaboration. After examining existing literature for a definition, this sub-section discusses the rule of law, the distinction between public and private law, and the distinction between public administrative law and public mission-focused operational law. These topics provide context for this study’s definitions of “law,” “public law,” “administrative law,” and “operational law.”

A Term in Search of Precision

An examination of the public administration literature reveals no broad operational definition for the term “law.” Scholars, however, seem to know what the law is. To borrow Thomson and Perry’s (2006) reference to practitioners and the definition of collaboration, public administration scholars “know [law] when they see it” (p. 20). In a recent work, Rosenbloom and Gould (2021) say “law includes constitutions, statutes, their equivalents such as local government ordinances, common law, and case law” (p. 1031, emphasis added). In their leading text, Rosenbloom et al. (2010) simply do not define the terms “law” and “legal” at all. Szypszak
(2011) titles their first chapter “What is Law?” The primary placement of this question in the work and its prominence as a chapter title imply its importance, yet the author provides no direct answer to their own question.

What Szypszak (2011) does provide, however, is our first glimpse that law must be defined by reference to certain characteristics or qualifications. Szypszak’s contribution is that for a rule to become law, it must have the “rule of law.” In other words, a rule alone will not become law. The public must be willing to follow the rule, or at least submit to its enforcement, because the rule reflects a pre-existing custom or possesses some other indicia of legitimacy with the public (Id.). Zalnieriute et al., (2021), within the legal academy, describe “the rule of law” as “one of the most iconic and prominent social values.” When the rule of law exists, then citizens feel bound by the law and the “legal system” itself “is free from certain threats” (p. 1068).

Another important concept in defining law for public administration is the distinction between “public law” and “private law.” In the legal literature, Levinson (1989) provides a helpful distinction by defining “public law” in the courts “as any litigation to which a government or a governmental official is a party” (1580). According to Levinson, the distinction between public law and private is significant because the concept of public law acknowledges the differences between the government as a party compared to litigation between private parties (Id.). Moe and Gilmour (1995) argue the field of public administration “neglects” “public law,” implying a distinction between “public” and “private” law, the relevance of “public law” to public administration, and the potential irrelevance of “private law.” They come close to defining “public law” by reference to “the Constitution, statutes, and case law. . .,” although it is not clear from the text whether these listed items describe the term “public law” or the “roots” of such law. Considering Levinson’s (1989) distinction and the context of Moe & Gilmour’s (1995)
work, this research adopts one of Barnett’s (1986) distinctions. Barnett identifies four ways to distinguish between public and private law, and one way is based on the subject matter of regulation. For this distinction, public law contains “laws that are meant to regulate the internal conduct of governmental authorities and that define their relationship or duties to private individuals” (p. 270). Barnett’s distinction aligns nicely with Rosenbloom et al. (2010a), who describe the relationship of law and public administration in the context of government interacting with citizens.

Another key distinction for any definition of law is between public administrative law and public “mission-based” operational law (Piotrowski & Rosenbloom, 2002, p. 643). Administrative law usually, but not always, applies equally to all agencies (Rosenbloom et al., 2010a, p. 51) at a common level of government, while “mission-based” law usually applies just to one agency and its specific mission or purpose. As Rosenbloom (2015) notes, “[o]ne of administrative law’s chief qualities is that it requires agencies to devote considerable resources to activities that have little or nothing to do with their primary missions and specialized expertise and technologies” (p. 5). Administrative law promotes “mission-extrinsic public values” with an “attenuated,” if any, connection to the “core mission” of an agency (p. 6). Any definition of law for empirical research should account for this distinction between administration and “mission-based” operational law based on the precise subject of inquiry and the research question. The researcher acknowledges that the distinction is not always perfectly clear between administrative law and operational law. For example, the researcher considers the 2018 CGAA to be administrative law even though the law only applies to the USCG because it provides administrative direction to the USCG to create the three committees in the case.

Operational Definitions
This review thus demonstrates law should be defined, as by Szypszak (2011) and Moe and Gilmour (1995), by the law’s sources, qualities, or characteristics, while accounting for the government’s role or the administrative nature of the law. This study therefore offers the following definitions for empirical research of law in the field of public administration:

**Law:** Law consists of the United States federal and state constitutions, statutes, regulations, ordinances, judicially created common law, case law, and international treaties, that have force and effect.

**Public Law:** Public law is case law in which a government is a party to the case (Levinson, 1989) or other law that prescribes or proscribes government activity or its relationship to citizens (Barnett, 1986; Rosenbloom et al., 2010a).

**Administrative Law:** Public law applying to all or most governmental agencies at a common level of government.

**Operational Law:** Public “mission-based” (Piotrowski & Rosenbloom, 2002, p. 643) law regarding a specific government agency’s unique purpose and tasks.

A Note on Law and Public Policy

Two assumptions of this study, based on the literature reviewed above, are that “the law” has its own definition and identity and that “the law” is underexplored in the public administration literature. One potential critique to these assumptions is that the field of public administration already addresses law. More specifically, public administration already accounts for the law because law is a subset of “public policy.”

This critique is grounded in definitions of “public policy” in the extant literature. Dye (2002) defines “public policy” as “whatever governments choose to do or not to do” (p. 1). Under this definition, “law” is just a subset of broader public policy. And under this reasoning
any public administration literature that addresses statutes of any type could be held out as a rebuttal to a claim that the field of public administration neglects law (see Moe & Gilmour, 1995).

It is true that law operates in many ways as a subset of public policy. For example, individual laws are policy outputs, just as regulations and discretionary choices by government actors are policy outputs. There are two potential flaws, however, to framing “law” as a mere subset of public policy. First, “the broader public policy literature eschews such a simplistic definition of public policy” (McNamara, B., 2023, p. 350). Howlett, et al. (2009), for example, define public policy more broadly as “applied problem solving” in which “constrained actors attempt to match policy goals with policy means” under imperfect conditions (p. 4). Anderson (2015) also rejects Dye’s (2002) definition and instead defines public policy as “a purposive course of action or inaction followed by an actor or a set of actors in dealing with a problem or matter of concern” (p. 7)(emphasis in original).

Second, reducing law to a mere subset of public policy may miss the point that the law itself serves as both a policy outcome and a major “constraint” on the policy process (Howlett et al., 2009, p. 4). Viewed from this perspective, a scholarly article on the implementation of any given statute may be about “a law,” but it is not necessarily about “the law.” As this literature review demonstrates, the law may animate, constrain, and inject value into the policy process. (For a graphical summation of this debate, see McNamara, B., 2023, Figures 1 through 3, pp. 151-153.)

This review notes this debate as potentially relevant to this research. For example, this study may identify that individual laws impact collaboration in a certain way based on the plain text of their statutory language. In this way, the laws operate as stand-alone public policies. Law
also may impact collaboration through participants’ perceptions of standard-setting normative principles and values in the overall structure of multiple laws. In this way, the “law” may operate to inject broad normative values greater than the sum of individual statutes and constitutional provisions. This researcher, however, does not enter this study with a pre-conceived notion of which perspective is “correct.” This study merely responds to the literature’s call for empirical examination of legal issues in public administration. This study may yield empirical data relevant to this debate on the relationship of law and public policy. However, this research does not seek to answer the broad question of the nature of law or the law’s relationship to public policy. This research appropriately leaves that issue open for further academic debate and scholarship.

Additional empirical research is warranted to address whether law should be considered more than just a subset of public policy and, if so, how to define and categorize the law for ordered inquiry within the field of public administration.

**Shared Traits of Law and Public Administration**

Before examining the relationship of the two fields, this review first examines traits shared by the fields of law and public administration. This author asserts, based on research, teaching, and practitioner experience in both fields, that the disciplines share at least four major traits. These traits enhance the potential for mutual intelligibility in research between the fields.

First, both law and public administration are applied fields. Academic training for the fields reflects a strong bias for training future practitioners rather than scholars. In both fields, the first graduate degree is a professional degree. The Association of American Law Schools identifies the Juris Doctor (J.D.) degree as “the first professional law degree required to practice law in the United States” (n.d.)(emphasis added). The Network of Schools of Public Policy, Affairs, and Administration states “[t]he Masters (sic) of Public Administration is the
professional degree for students seeking a career in public service or nonprofit management” (n.d.b).

In both fields, students may progress beyond the initial professional degree. After completing a J.D., a student may pursue a Master of Laws (LL.M.) and then a Doctor of Juridical Science (S.J.D.) (see Harvard Law School, n.d.). In public administration, students may continue their studies with a Doctor of Philosophy (Ph.D.) or a Doctor of Public Administration (D.P.A.) (Network of Schools of Public Policy, Affairs, and Administration, n.d.a).

Second, both fields value strong linkages between theory and practice, or at least implicitly assume that the scholarly fields should advance both theory and practice. Spiegel (1987) speaks to this linkage in law in the context of clinical training at law schools. In public administration, Frederickson et al. (2012) imply that development of theory advances practice by basing improvements neither on “common sense” nor “deep thinking,” but on the growth of “cumulative” knowledge (p. 3).

Third, law and public administration appear to value interdisciplinary approaches in scholarship and teaching, although ultimately this is an empirical question. In recent decades, law schools have hired more law professors who hold both a J.D. and a Ph.D. in a related field (LoPucki, 2016; McCrary et al., 2016). This may signal support for interdisciplinary scholarship. Public administration scholarship directly references the field’s strong relationship with other social science disciplines (Frederickson et al., 2012; Wright, 2011; Moe & Gilmour, 1995).

Finally, and especially relevant for this research, law and public administration both acknowledge and encourage normative values. In law, one sees this in the development and purpose of legal graduate degrees. In the United States, the law doctorate (S.J.D.) is not required for faculty positions. In fact, the Ph.D. is more likely the preferred additional degree, as
described in the preceding paragraph. Hupper (2008) notes that S.J.D. programs in the United States act as de facto teacher preparation for students who join law faculties in other nations. In this way, the legal education industry uses the doctorates to export American normative legal values abroad (Id.). Public administration scholarship acknowledges the role of normative values (see Frederickson et al., 2012). Indeed, New Public Governance represents a resurgence of normative values in scholarship and practice (see Bryson et al., 2014).

**Law as a Foundational Discipline of Public Administration**

Law, management, and politics are the three “foundational disciplines” of public administration (Wright, 2011). This sub-section examines law’s role as a foundational discipline by discussing what the law offers public administration and highlighting several specific examples of the law giving life to public administration. The discussion then turns to the historical context of law as a foundational discipline, the debate over the dichotomy between law and administration (see Beckett & Koenig, 2005), and how this study is an important step towards necessary empirical inquiry in the role of law in the public administration collaboration literature.

This research does not seek to advance the normative and “subjective” debate in the literature on the relative importance of the foundational disciplines (Wright, 2011., p. 96). Rather, this study seeks to “integrate” (Amsler, 2016) empirical research on law into the field’s scholarship, with the research question guiding the proper use of law as a frame for empirical inquiry. In other words, this inquiry is one step towards foundational heterogeneity within the field, with law taking its place alongside management and politics as co-equal objects of inquiry. In many ways, this position echoes Riccucci’s (2010) call for “heterogeneity” (p. 116) in public administration research methods.
What are law’s contributions to public administration? First, law gives public administration “legal-rational authority” (Fry, 1989, p.27) through enabling constitutions, statutes, regulations, ordinances, and case law at the federal and state levels. This enabling authority can apply generally across one or more levels of government, or the enabling authority may focus on a specific entity or agency. This enabling authority differentiates public administration from business administration (see Moe & Gilmour, 1995). Second, law provides a source of values beyond efficiency and effectiveness, including equal protection (U.S. Const. amend. V & XIV), due process (Id.), social equity (Frederickson, 1990), and transparency (see Amsler, 2016). Third, law provides a judicial forum for resolving disputes about the first two categories (U.S. Const. Art. III).

Beyond its general contributions to the field, law provides innumerable specific authority for all aspects of public administration practice. Two books on law and public administration give in-depth treatment to the myriad ways law animates public administration. Rosenbloom et al. (2010a) focus on “interactions” (p. xvii) to cover the role of law in “retrofitting the administrative state into the constitutional scheme” (p. 1-112), and then provide the legal framework for the many ways an “individual” can interact with public administration, whether as a “customer” of the government, an “employee” of the government, or as an “antagonist” of the government (pp. 115-315). Szypszak (2011) provides a more traditional, but no less thorough, coverage of the law of public administration.

Despite the law’s status as a foundational discipline for public administration, Moe and Gilmour (1995) claim scholars in the field appear to “neglect” law. A recent content analysis by Osario et al. (2021), citing to Moe and Gilmour (1995), concludes “public administration not only neglects research of law from outside its battlements, it appears to mostly overlook efforts
from within its province to understand the myriad facets of the relationship between law and governance” (p. 113). This author submits three reasons for this neglect. First, an ideological divide exists over the primacy of law or the primacy of management for public administration. This divide, with echoes of the “politics/administration” dichotomy debate (Beckett & Koenig, 2005, p. x; see Sager & Rosser, 2009), has produced normative debate but no integrated theory. As Wright (2011) observes, “the objective of either argument. . . is to redirect the efforts of the field” (p. 96). Some recent literature, however, appears to imply that law and management could exist co-equally in the field (see Amsler, 2016).

Second, NPM’s emphasis on efficiency, effectiveness, and private-sector business practices caused scholars to turn away from legal issues. The call for a renewed focus on law in public administration began, in part, due to a dearth of scholarship on law and public administration during the height of NPM. However, at least two scholars argue that law never left public administration during NPM, but rather lay dormant as the field redefined the role of law (Zouridis & Leijtens, 2021).

Third, empirical study of law can be difficult. Rosenbloom and Gould (2021) argue that legal research in public administration requires an “extensive and deep knowledge base” in both fields (p. 1047). They describe several “non-quantitative” empirical research methods to examine the role of law in public administration.

In conclusion, the acknowledged significance of law in public administration stands in contrast to the lack of empirical scholarly attention given to law within public administration. Ideological divides inhibit the development of an integrated research agenda giving the foundational disciplines co-equal worthiness and status as subjects of inquiry. The field’s traditional focus on management (Beckett & Koenig, 2005) necessarily limited inquiry and
theory building on legal issues. NPM’s emphasis on efficiency and effectiveness to the exclusion of normative values then provided no room for law to claw back into research salience. For reasons explained more fully below, however, a shift in the field’s focus has opened the door for law to regain its position alongside management and politics as co-equal foundational disciplines. This dissertation answers the call in this new era for a renewed focus on empirical observation of the law’s impact on public administration (Amsler, 2016).

How Public Administration Scholarship Discusses Law

If law is a foundational discipline of public administration, how does the public administration literature treat the law? What law topics appear in the public administration literature? This sub-section provides an overview of topical legal coverage in the peer-reviewed journal literature.

Law scholarship in public administration journals fits into one of four broad categories: 1) structure and role of government, 2) judicial oversight of administrative agencies, 3) administrative law governing agency decisions, and 4) how the government interacts with citizens. The first category, structure and role of government, is the most comprehensive of the four categories. Topics include reconciling the modern administrative state to the U.S. Constitution (Rosenbloom, 2000), separation of powers (Rosenbloom, 1983), federalism (Conlon, 2006), and the powers of specific institutional actors (Rohr, 1989). Some of the literature in this category even examines the roles of courts and judges as administrators (McDowell, 2015; O’Leary, 1997).

The second category consists of judicial oversight of public administration. In these works, scholars examine how judges make law (Cramton, 1976) and how public administrators
comply with judge-made law (Koenig, 1997a). Judicial deference to administrative discretion features prominently in this thread of the literature (Johnson, 2014).

In the third thread of law topics, scholars examine administrative law. Administrative law, with some exceptions, applies generally to multiple agencies situated at the same level of government. This research contrasts administrative law with mission-focused operational law specific to individual agencies. Administrative law includes rulemaking under the federal Administrative Procedure Act (hereinafter “APA”), open government statutes, the federal FOIA, and the FACA. This category of law drives governmental processes but can be value laden (Amsler, 2016; Piotrowski & Rosenbloom, 2002). This literature review examines administrative law in more detail below.

Finally, the public administration scholarship addresses what Rosenbloom et al. (2010a) refer to as “encounters” between individuals and the administrative state (p. xvii). The literature addresses a range of activity including search and seizure (see Nelson, L., 2004; Moe, 1987), equal protection (Rice, 1991), due process (Grumet, 1982), and administrator liability (Koenig, 1997a, 1997b). This category focuses on the duties owed by the government to individuals and how individuals can hold government accountable for breaches of those duties.

The four categories are not mutually exclusive, and some overlap can exist. For example, scholarship on judicial deference to agency discretion (Johnson, G., 2014) could fall under the category of judicial oversight of public administration and administrative law. However, these four categories best represent the themes of the law scholarship within the field of public administration.
Calls for Renewed Focus on Law

The public administration literature recently calls for renewed focus on legal issues in the field. These clarion calls fall into two broad categories. The first category consists of general calls based on ideology or empirical evidence. The second category identifies the rise of New Public Governance as an opportunity for law to reclaim its stature and relevance within the field of public administration.

Several scholars call for a renewed focus on law as a foundational discipline of public administration. Some argue from an ideological basis that law lacks the attention it deserves. Wright (2011) eschews an ideological bent but offers empirical evidence, based on journal citations, that law does not feature as prominently in the public administration literature as management and political science scholarship. Another line of scholarship implies that New Public Management took the field’s focus away from law (see Newbold & Rosenbloom, 2014), although at least one work argues that the law did not go away, but just lay dormant (Zouridis & Leijtens, 2021). Scholars also argue graduate programs should focus on law (Newbold & Rosenbloom, 2014; Newbold, 2011; Rosenbloom & Naff, 2010; Newbold, 2008) to instill appreciation for the legal foundation of public administration in the next generation of practitioners. Those scholars who argue graduate programs should focus on law appear to place law above management and politics from a normative perspective as a foundation for the field of public administration (see Newbold, 2011).

The second thread of this literature seizes on the rise of New Public Governance, either directly or by implication, to call for empirical understanding of the law’s role in public administration. As the term “governance” suggests, this literature argues that the law plays a critical, but not yet understood, role in cross-sector governance and cross-sector collaboration.
New Public Governance’s renewed focus on normative values provides an opportunity to study law’s impact on public administration in a way that integrates law into existing research streams, without forcing scholars to study law to the exclusion of management. This review examines this idea more fully below in the major section on New Public Governance.

**How Legal Scholarship Discusses Public Administration**

This study defines *legal literature* as those law reviews and law journals published by American Bar Association (“ABA”)-approved law schools in the United States, and those publications on legal issues not associated with ABA-approved law schools and not considered part of the traditional public administration field. This section identifies several themes in the legal literature’s treatment of public administration, analyzes the themes, and explains why this research fills a gap in the legal literature.

Expertise is just one topic at the boundary of law and public administration, and one thread of the legal literature addresses expertise through the lens of administrative law. Administrative law “consists of constitutional requirements, statutes, executive orders, other regulations, and court decisions that define the authority of administrative agencies and regulate their processes” (Rosenbloom et al., 2010a, p. 51).

While Rosenbloom et al. (2010a) describe administrative law as “central” (p. 51) to public administration, a minor debate exists on whether administrative law is *the* law of public administration (Fisher & Shapiro, 2021). Courts give deference to government agency interpretations of statutes, regulations, and policies (see Pierce, Jr. & Weiss, 2011), and the debate over the centrality of administrative law to public administration turns on the reason for this deference. One reason for judicial deference is democratic accountability (Shapiro, Fisher, &
Wagner, 2012). Scholars such as Shapiro and Fisher (2013) believe this deference does not reflect respect for public administration. Rather, this “rational-instrumental” deference does not appreciate the inner workings of administrative agencies (Shapiro, Fisher, & Wagner, 2012, p. 483). For this line of scholars, the legal academy must recognize public administration as more than the rote interpretation and execution of statutes (Shapiro, 2019).

Moving beyond administrative law, the legal academy publishes significant scholarship on a wide range of issues directly related to public administration. Topics include the relationship of the federal government to the state governments (see Nelson, C. 2000), the relationships between the state governments and their city governments (see Bluestein, 2021), and the due process government must afford to citizens under the 5th Amendment or the 14th Amendment to the U.S. Constitution (Williams, R. 2010). Searches, inspections, and seizures feature in the legal literature (see Johnson, J., 2021). The legal academy also publishes on topic areas such as immigration law (see Wadhia, 2017), environmental law (see Breland, 2021), and public human resources law (see Herrick, 1999). Agency and individual liability, including the concepts of sovereign immunity and qualified immunity (see Schwartz, 2020), receive significant coverage. The legal literature generally does not acknowledge the field of public administration in its scholarship on these topics, although nearly all these topics appear in the Table of Contents for Rosenbloom et al. (2010a) and, as discussed above, public administration scholarship addresses these or similar topics.

**Stove Piped Literatures with Different Scholarly Norms**

Three main themes emerge from a review of the legal literature on public administration. First, the legal scholarship is stove piped to a large degree (see Osario et al., 2021). With minor exceptions, legal academics do not cite to the public administration literature even when
discussing public administration topics. Second, legal scholarship tends to focus either at a high level of analysis, such as the agency level, or at the level of the individual administrator.

Third, and most significantly, the public administration and legal academies follow completely different norms of scholarship. Public administration, like other social sciences, builds cumulative knowledge primarily through empirical scholarship. Through a variety of research methods and methodologies, scholars develop and test theory through empirical observation. Although scholars may debate whether one research method or another is more appropriate for the field, public administration scholars appear to agree that replicable empirical observation supports theoretical development (Frederickson et al., 2012, Riccucci, 2010). Scholars who report their research must submit manuscripts for peer review prior to publication.

Legal scholarship, on the other hand, tends to be doctrinal rather than empirical (see Diamond, 2019). Although there are some exceptions, such as the *Journal of Empirical Legal Studies* (Wiley Online Library, n.d.), law reviews and law journals do not require empirical observation to support scholarly manuscripts. To be sure, some empirical pieces show up from time to time in the literature (see, e.g., Harrison & Mashburn, 2015), but this work clearly represents the minority of legal scholarship. This approach may trace its origins to Christopher Langdell, who developed the “case approach” (not to be confused with case studies in social science research) to learning law in university-based law schools while with Harvard University in the 19th century. Langdell argued that appellate court case opinions “were the law’s empirical data” upon which to build a “science” of law (Spiegel, 1987, p. 581). Under this tradition, legal scholars who do not engage in quantitative or qualitative research may at least say that legal cases represent their empirical data upon which to base scholarship. This may also explain why
Rosenbloom and Gould’s (2021) article on legal scholarship in public administration uses the term *non-quantitative* scholarship rather than *qualitative* scholarship.

By contrast to social science journals edited by experienced scholars, students select and edit law review articles prior to publication. There are two broad critiques of this process. First, the students lack experience in the law to identify good legal scholarship and as a result the students make article selections based on the prestige of the author rather than the quality of the article (Wise et al., 2015). Second, some question the “pedagogical” value of law review membership for law students given the state of the legal job market and the perceived need for law schools to provide practical rather than theoretical training for students to better prepare them for legal practice (Harrison & Mashburn, 2015, p. 48). This author also notes law students on journal editorial boards would not have the training to evaluate quantitative and qualitative empirical scholarship (see Rosenbloom & Gould, 2021).

This literature review suggests unrealized potential for interdisciplinary scholarship between the public administration academy and the legal academy. Although ultimately an empirical question, different scholarly norms may inhibit cross-pollination of ideas and furtherance of interdisciplinary scholarship between the two fields. Relevant to this research’s precise topic, neither the public administration literature nor the legal literature contains empirical scholarship examining the impact of law on the interactions of collaboration participants.

**How Appellate Courts Shape Public Administration**

Appellate opinions are, in themselves, policy outputs created by decision-makers (see Lee, 2003). The law created by appellate courts can be just as binding on public administrators as statutes or regulations. Drawing upon Kingdon’s (1984) policy streams theory, parties to
litigation can use the appellate courts to open “policy windows” and place items onto the policy agenda (Id.) without the need for legislative or regulatory action.

Federal courts shape public administration through individual opinions and through their application of certain judicial philosophies over time. As this review notes, below, federal court opinions shape the implementation of public administrative law. Rosenbloom and Gould (2021) identify analysis of individual court opinions as an acceptable “non-quantitative” type of empirical inquiry in the field of public administration.

The October 2021 term of the U.S. Supreme Court is an exemplar for how a court’s philosophy over multiple decisions can impact public administration. During this term, the Court issued a series of opinions upending well-settled administrative practice and custom across a range of policy issues. In *West Virginia v. Env’t Prot. Agency* (2022), the Court invalidated an Obama-era environmental rule based on the “major questions doctrine,” under which the Court will invalidate an agency rule if it represents a major policy shift that Congress did not delegate to the agency. This case has the potential to disincentivize bold agency action grounded in administrative expertise. In *Dobbs v. Jackson Women’s Health Organization* (2022), the Court explicitly overturned *Roe v. Wade* (1973) and its Constitutional right to an abortion grounded in the Equal Protection Clause. As a result, the issue of abortion is now left to the states with significant intergovernmental relations and administrability implications. As a final example, in *Egbert v. Boule* (2022), the Court limited the right of citizens to sue federal officials for damages in certain circumstances when federal officials violate the citizens’ constitutional rights. Taken together, these cases represent a conservative shift to the Court’s judicial philosophy and upend decades of well-settled law relevant to the practice of public administration.
What does this mean for collaboration? Appellate court opinions interpreting and resolving statutes and regulations, depending on the subject matter of the opinion (Barnett, 1986), might meet the definition of public law for the purpose of this research. The perceived impact of appellate cases on collaboration is not the specific purpose of this research, but future inquiry might examine the perceived impact on collaboration of judicial opinions as a subset of law.

**Analysis: Gaps and Shortfalls**

Two broad issues stand out from this review of law and public administration literature. First, there is a lack of empirical research at the intersection of law and public administration. This is understandable from the legal literature, as the legal academy’s scholarship leans normative rather than empirical. As previously noted, there is a whole thread of scholarship calling for greater acceptance of empirical legal scholarship in the legal academy (see, e.g., Diamond, 2019). For the public administration literature, however, the legal pieces still trend towards non-empirical, descriptive work. For example, Rosenbloom et al.’s (2010a) book describes law “from the inside-out, rather than the outside in” (p. xvii). Although the book achieves its goal in this regard, its principles are not based on a core foundation of empirical legal scholarship. One may find hope in Rosenbloom and Gould’s (2021) recent piece outlining empirical research options for legal issues in public administration.

Second, neither the public administration literature nor the legal academy’s literature examine the role of law within collaborative environments. One reason for this may be the stove-piped nature of public administration and legal scholarship. Another related reason may be that public administration treats law almost exclusively as a top-down authority irreconcilable with collaborative governance and collaborative structures. To put it another way, the legal literature
focuses on individuals and organizations, but not the law’s impact on how individuals interact across cross-sector boundaries. The recent calls for renewed focus on law offer hope for a future line of scholarship that can use law’s value propositions to connect top-down principles with horizontal structures in collaborative environments.

This study addresses both gaps in the literature. For public administration scholarship, this study uses well-entrenched methods to build our understanding of the law’s role in collaborative organizations. It answers the calls for a renewed focus on law not through doctrinal scholarship, but through empirical observation. For the legal literature, this study is an exemplar of how legal scholars can link their research to that of public administration. Legal scholars can replicate this study in other contexts in a cross-disciplinary fashion, and in doing so raise the profile of empirical scholarship within the legal academy.

As to the second gap, there remains much to be learned about the role law plays in collaborations. While the collaboration literature abounds with process and structure models (see Williams, A., 2015), only a few pieces acknowledge law and then only in the context of its mandate for collaboration (see, e.g., McNamara, 2012). No empirical study exists to examine the role of law in collaboration (see Osorio et al., 2021; Amsler, 2016).

**Collaboration**

Collaboration remains ripe and relevant for empirical inquiry in public administration. The body of knowledge is robust and growing, yet much remains to be understood about many aspects of collaboration, including the impact of law on collaboration. In addition, collaboration is central to the theory and practice of public administration (see Morris & Miller-Stevens, 2015; Larsen, 2014; Agranoff, 2006; Bryson et al., 2006; Kettl, 2006; Gray, 1985). It is “here to stay” (Amsler, 2016, p. 702). Finally, the study of collaboration can create linkages not just between
public administration theory and practice, but between public administration and other scholarly disciplines.

This section does not provide a comprehensive review of all aspects of the collaboration literature. Such an endeavor is beyond the scope of this specific project. Rather, this section builds on existing work to demonstrate that the law’s impact remains an unexplored valley of the collaboration landscape. For reasons to be discussed in a later section of this manuscript, the empirical study of law remains woefully absent from this body of literature so critical to the theory and practice of public administration.

Defining Collaboration

According to Thomson and Perry (2006), “[c]ollaboration is a process in which autonomous actors interact through formal and informal negotiation, jointly creating rules and structures governing their relationships and ways to act or decide on the issues that brought them together; it is a process involving shared norms and mutually beneficial interactions” (p. 23, citing Thomson (2001)). This provides a feasible operational definition for this inquiry. This study acknowledges, however, that neither scholars nor practitioners have settled on a common definition of collaboration. For example, a group of doctoral students in 2012 reviewed selected scholarly collaboration literature and identified “more than 60 different definitional elements” (Morris & Miller-Stevens, p. 5).

Practitioners “know collaboration when they see it” (Thomson & Perry, 2006, p. 20), and a variety of practice-oriented materials and publications discuss collaboration (Living Cities, 2021; Brown & Dewar, 2011) without a common definition. Indeed, practitioners even use different terms when discussing partnerships that fall under Thomson and Perry’s (2006) scholarly definition. Kania and Kramer (2011) describe collaboration as “collective impact” in
“cross-sector coordination” (p. 36). Gold (2013) describes “cross-sector partnerships” in an exposition of pre-conditions and success factors that rivals scholarly publications in its breadth and depth.

The federal government also does not appear to work with a common understanding of the term “collaboration.” The U.S. Government Accountability Office (“GAO”) offers several suggestions for improving government collaboration (GAO, n.d.) along with related research reports. Although the GAO references the private sector as part of the title of its main website on this topic, the reports appear to focus primarily on inter-agency partnerships within the federal government (Id.). Federal agencies generally agree that work with Federal Advisory Committee Act (“FACA”) committees counts as collaboration (see Bureau of Land Management, 2005; Environmental Protection Agency, n.d.), although at least one agency has distinguished FACA committee work and “collaborative efforts” as mutually exclusive based on lack of definitional clarity (U.S. Forest Service, n.d).

The scholarly and practical definitions share some common elements. Information sharing, mutual responsibility, collective action, joint rules, and even partnership by necessity feature in the various definitions (see Mayer & Kenter, 2015). At its core, collaboration involves reaching across boundaries (Kettl, 2006).

The lack of “definitional clarity” (Morris & Miller-Stevens, 2016, p. 5) poses hurdles to development of theory and the cross-pollination of ideas between the academy and practitioners. The multi-disciplinary roots of the collaboration literature might contribute to this lack of a common definition, but one other reason might be “the study of collaboration is still in its infancy, and . . . we still do not yet understand the behavior well enough to arrive at a clear, useful, and relatively universal definition” (Morris & Miller-Stevens, 2015, p. 6). Given the lack
of definitional clarity in theory and practice, this study of the law’s impact on collaboration may help move the field incrementally toward a common definition of collaboration.

**Mandated Collaboration**

McNamara (2012) notes “the collaboration literature assumes participants come together on a voluntary basis” (p. 68). Although she makes this observation regarding her partnership typology of “coordination,” this appears to be the case for the broader literature addressing collaboration. Not all collaboration, however, arises out of voluntary partnership. “Mandated collaboration” occurs when governmental entities require organizations to collaborate (Snyder et al., 2013; Farmakopoulos, 2002).

The literature suggests two major and related attributes exist in mandated collaborations. First, law features prominently in mandated collaboration. Some scholars refer to “legislative” mandates (McNamara, 2012) and others refer to “policy rulemaking” to include either legislation or rulemaking (Saz-Carranza et al., 2016, p. 450). The coercive role of government distinguishes this type of collaboration from voluntary partnerships. (Interestingly, the literature on this precise issue appears to use the terms “law” and “public policy” interchangeably.)

Second, mandated collaborations are formed by top-down direction. This may seem a redundant point, but it has important implications for legitimacy of a partnership. Mandated collaborations derive their legitimacy from legal-rational authority rather than bottom-up, “grassroots” initiatives (Id.; see Morris et al., 2013). Although ultimately an empirical question, this quality may impact how collaboration participants engage in the relationship.

The broader literature suggests law may play a role in every collaboration, whether as a top-down mandate, as a support for decision rules (see Siddiki et al., 2015), or as a value signal (see Amsler, 2016). Much remains to be learned, however, about how top-down mandates
impact partnerships. Of note, the three Federal Advisory Act Committees in this research are examples of mandated collaboration, as Congress required the Coast Guard to establish or re-establish their charters in 2018 (Frank Lobiondo Coast Guard Authorization Act of 2018).

Collaboration’s Relationship to “Public Participation”

This review acknowledges a strong relationship between the collaboration literature and the public participation literature. As mentioned in detail above, this research adopts Thomson and Perry’s (2006) definition of collaboration. The International Association of Public Participation (2018), by contrast, defines collaborate as “to partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.” At its core, public participation examines the way organizations engage with and seek input from the affected public in the decision-making process (Quick & Bryson, 2016; International Association of Public Participation, n.d.). The public administration literature appears to claim both concepts as central to the discipline (Hatcher, 2015; Bryson et al, 2013; Hornbein & King, 2012). At the same time, both terms are interdisciplinary in nature (Cameron et al., 2021; Triplett, 2015). Finally, both scholarly and practitioner-oriented materials and organizations advance the understanding of collaboration and public participation (Gold, 2013; Kania & Kramer, 2011; International Association of Public Participation, n.d.).

One major difference between collaboration and public participation, however, is public participation focuses on the intrinsic value of engagement with citizens for the purpose of advancing democratic values (Hatcher, 2015; Hornbein & King, 2012), while collaboration scholarship focuses on the interactions across organizational and jurisdictional boundaries (Kettl, 2006). In other words, “public participation [is] less about governmental performance and more about the potential citizen engagement has to transform our communities, our relationships with
each other, and the way we administer and govern” (Hornbein & King, 2012, p. 720). Although collaboration may involve partnerships between the public sector and community stakeholders, the focus of collaboration scholarship is on how the partnerships “advance governmental performance” (Id.) and capacity to solve public problems.

One does see a parallel, however, between the public participation literature’s notion of citizen engagement as an intrinsic value and Amsler’s (2016) argument that collaboration has unexplored intrinsic value. Amsler (2016) even acknowledges the term “public participation” lacks a clear definition (p. 707). To a certain extent, then, this research seeks to identify and explore in a collaboration setting what public participation scholars seek to explore in government-citizen interaction. Specifically, this research explores, in part, how law might inject democratic values into collaboration participants’ experiences and interactions.

In summary, this review acknowledges that the collaboration literature intersects in many ways with the public participation literature. Several terms in the public participation literature align with those of the collaboration literature, including the term “collaborate.” This inquiry, however, explicitly seeks to build on the collaboration literature rather than the public participation literature. Just as much remains to be learned about how law shapes collaboration, much remains to be learned about how law shapes public participation models. Scholars may wish to build on the instant study through similar empirical study through the lens of public participation (see Amsler (2016), p. 707). Just as law may impact collaboration, law may impact how the public sector engages with citizens by creating incentives or disincentives for such interactions, with broader implications for public participation’s concern for democratic values.
Why Collaborate?

In today’s world, public managers cannot address public problems within traditional hierarchical structures. From long-standing “wicked problems” (Head & Alford, 2015) such as climate change (see Emerson & Murchie, 2010), to emergency response (see McGuire et al., 2010; Morris et al., 2007), public managers simply cannot solve complex problems while operating within their own agencies. Managers must have the creativity and courage to span boundaries, develop relationships, and harness diverse expertise and experience to address modern problems.

Actors may collaborate for several reasons. “Institutional constraints” and “sector failure” may force actors to look outside their own organizations for solutions to problems (Bryson et al., 2006, p. 46; see also Morris et al., 2007). Actors may also need to reach across boundaries to obtain resources, or they may just develop an appreciation for interconnection they have with other organizations and desire to collaborate with the other organizations (Thomson & Perry, 2006; Gray, 1985). Additionally, problems can simply be so complex with so many stakeholders that the problems spill into an agency from the outside. The concept of “wicked problems” comes to mind (see Head & Alford, 2015).

Williams et al. (2015) propose a “life-cycle model” of collaboration and argue that “issues” drive creation of collaborative relationships. “Issue” is the first phase of their life-cycle model, and this phase begins when there is a “salient issue that has a negative impact on multiple actors” (p. 181). The authors draw a parallel to the concept of “wicked problems” and acknowledge that the level of “social capital” in a relationship may determine whether a collaboration moves past the “issue” phase (Id., citing Morris et al. (2013)).
In summary, collaboration theory and practice are important because they address problems that breach agency and sector boundaries. Collaboration research helps scholars and practitioners understand when and how to enter collaborative relationships. Collaboration practice builds expertise in harnessing “social capital” (Thompson & Perry, 2006, p. 27) to solve “wicked problems” (Head & Alford, 2015).

Structure Nested within Process

Morris and Miller-Stevens (2015) identify that “collaboration can be understood as both [an] organizational process and structure” (p. 7)(see also Williams, A., 2015; Thomson & Perry, 2006). One thread of the collaboration literature creates frameworks for and examines the relationships between various stages of collaboration, from the pre-conditions for collaboration to the termination of collaboration (Crosby & Stone, 2006; Thomson & Perry, 2006). Another thread of the literature discusses various collaboration structures and whether different structures work best in different situations (Williams, A., 2015; McNamara, 2015b & 2012).

Although the academic literature features separate process and structure threads, practitioner-oriented publications appear to integrate process and structure. For example, Kania and Kramer (2011) examine factors of successful “collective impact” efforts. Their work discusses procedural issues such as pre-conditions to collective impact and the structures needed for success. Similarly, Gold (2013) discusses both process and structure elements in a guide for “cross-sector partnership members and funders” on effective collaboration.

This review recognizes the distinct threads of collaboration scholarship related to structure and process. However, this inquiry aligns with Thomson and Perry’s (2006) perspective that structure and process both occupy the “black box” of collaboration “interactive processes”
As such, this project positions law as impacting both structure and process for collaboration.

**A Note on Collaboration and the Policy Process**

To the extent that policy scholars work from a common foundation today, that foundation appears to be the policy process model or the policy stages model (Howlett, Ramesh, & Perl, 2009; McCool, 1995). While specific descriptions of the policy process model may vary, these descriptions generally include “agenda setting, policy formulation, decision making, implementation, and evaluation” (McNamara, B., & Morris, 2020). Scholars vary in the level of weight they give the policy process model. One calls it a “framework” and a “heuristic” “in search of a theory,” (deLeon, 1999, pp. 21, 23, 26) and one even calls it a “paradigm” (Nakamura, 1987, p. 143). This policy process model was first proposed in the 1950s to “simplify” the study of public policy (Howlett, Ramesh, & Perl, 2009, p. 10). Scholars have expounded on this model over the years, and the key feature of this model is the assumption that the policy process is “sequential, differentiated by function, and cumulative” (Nakamura, 1987, p. 142).

M. McNamara and Morris (2022) note that empirical research into collaboration and the policy process focuses primarily on the policy implementation stage. They make the case for further empirical scholarship on the relationship of collaboration to the other four main stages of the policy process. As discussed more fully below, federal advisory committee work happens to touch multiple phases of the policy process, so this research relates to this gap in the literature.

**Analysis**

Despite the significant research into collaboration in the past three decades, the literature neither identifies a broad role for law in collaboration nor accounts for its potential impact on
collaboration. Although there is some mention of law in theoretical models as the mandate in mandated collaboration, collaboration scholarship in public administration appears to focus primarily on management and politics concerns to the detriment of law. As a result, much remains to be learned about the impact of law on collaboration.

**New Public Governance**

NPG offers an opportunity to address the gaps of the collaboration literature and legal literature within the field of public administration. This study explicitly uses the term NPG, although the movement is known by other names, such as “Public Value Governance” (Bryson et al., 2014). NPG, with its focus on values, opens the door for empirical examination of the law’s impact on the field of public administration and the impact of law on collaboration within the field of public administration. In fact, this study answers specific calls in the literature for this empirical examination of law (Osorio et al., 2021; Amsler, 2016; see also Rosenbloom & Gould, 2021).

**New Public Governance in Historical Context: A Reemergence of Normative Values**

Recent public administration literature recognizes a new movement within the field of public administration. A brief comparison of NPG with earlier eras of public administration helps to demonstrate the relevance of the empirical study of law in collaboration today. Bryson et al. (2014) describe the three eras of the field, in chronological order, as “traditional public administration,” “new public management,” and “public values governance” (also known as NPG). In traditional public administration, “elected officials or technical experts” define the “public interest” (p. 447). Elected politicians set the goals, public administrators work in government agencies, and these “government agencies row” by creating programs, policies, and

systems that put the elected officials’ priorities into effect. Citizens are “voter(s), client(s), and constituent(s),” while the dominant value is “efficiency” (Id.).

New Public Management emerged in the 1980s and 1990s as an effort to incorporate private-sector focus on inputs and outputs into public administration. Elected officials or “evidence of consumer choice” define the public interest. Elected officials still set the goals of government, and public administrators reside in the public sector, but public managers now “steer” instead of “row” by leveraging “markets, businesses, and nonprofit organizations” to implement policy, while monitoring “inputs” and “outputs” (Id.) Citizens are the “customer” of government (Id.) while the “key values” are “efficiency and effectiveness” (Id.).

NPG represents the next, and current, phase of public administration. In public administration today, multiple sectors “collectively” define the public good and set goals in the public interest. The definition of “public” is broad (Id.), so managers across multiple sectors may lay a proper claim to practicing public administration depending on their roles supporting the collectively defined public interest. Government “collaborates,” “partners,” “steers,” “rows,” and “sometimes stays[s] out of the way.” Under NPG, citizens are more than just voters and more than customers; through engagement and deliberation, citizens have just as much claim as public administrators to define the public good. “Efficiency, effectiveness, and the full range of democratic values” equally support public administration under NPG (Id.).

The concept of NPG has implications for the study of law’s impact on collaboration. “[B]oundaries” are a central concept in collaboration (Kettl, 2006), and these boundaries can include sector boundaries, agency boundaries, and jurisdictional boundaries. Administrators operating across boundaries must still account for top-down control within their home boundary’s hierarchical accountability mechanism. The literature recognizes this tension
between top-down control and horizontal collaboration structures (see Larsen, 2014). The concept of NPG, however, suggests that accountability is quite diffuse as the responsibility to define the public good and set goals to achieve the public good is a collective responsibility across sectors. A gap in the literature currently exists regarding the impact of law on creating and maintaining sector boundaries. In addition, the literature does not address how public law may empower or inhibit the ability of diverse stakeholders to work across traditional boundaries to define the public good (see Bryson et al., 2014).

In summary, the field of public administration appears to be moving from a focus on NPM principles to an NPG era with a focus on normative values. A full review of NPG is beyond the scope of this study. For this project, however, NPG is relevant because the renewed emphasis on normative values opens the door to examine law as a potential source of values in the field.

**Law as a Source of Public Value**

This review identifies above that the literature recognizes collaboration as both a structure and a process. The NPG movement signals an opportunity for empirical examination of collaboration not just as a structure or a process, but for the values embedded in the structure and process. Amsler (2016) makes this case, arguing that collaboration “has intrinsic value as an end to itself,” because collaboration represents broader acceptance of a policy or decision” (p. 702).

These policies and decisions emerge from interactions governed by rules (Id.). Law is one source of these rules, but public law brings much more than structural or procedural rules to a collaboration. Public law brings significant public values baked into the rules, either explicitly or implicitly (Amsler, 2016). These values include “accountability, efficiency, transparency, participation, and collaboration” (Bingham, 2010, p. 303). The impact of public law on
collaborative governance and collaboration remains an “open research question” (Amsler, 2016, p. 707). This research thus answers Amsler’s call to “build law back into our research designs in public administration” (p. 709).

Amsler’s work, on its face, does not explicitly address the NPG movement. However, her work integrates NPG’s focus on values with the call for “constitutional competence” (see Rosenbloom & Rene, 2012; Newbold, 2011) in public administration. The researcher does not view Amsler’s work as a call for law as the foundation of public administration. Rather, her work identifies, by reference to the principles of NPG, that collaboration and collaborative governance scholarship must examine the law’s impact on collaboration with the same vigor and rigor with which scholars have examined management aspects of collaboration.

Amsler’s (2016) work admittedly focuses on “collaborative governance.” However, she appears to use the terms “collaborative governance” and “collaboration” interchangeably as they relate to public law. Indeed, collaboration structures governed by public law involve at least some type of governance activity. For the purposes of this study, the researcher offers that this is a distinction without a difference, as the federal advisory committees in this study meet the scholarly definition of collaboration while engaging in governance activity.

Much is yet to be understood about public law’s impact on collaboration and “we have considerable work to do” to unpack its influence (Amsler, 2016, p. 709). The NPG movement provides an opportunity for public law, as a source of public values, to take its place alongside management and politics as a subject of empirical inquiry. This research represents one of the first scholarly steps the field should take “[t]o advance research on public administration” (Amsler, 2016, p. 704) on this issue. The impact of law on collaboration is a relevant and timely subject of empirical inquiry for our field.
The Research Context

This section provides more detailed context for the study. The administrative law governing the committees is introduced. A discussion of the committees and their operational law follows.

Administrative Law

Administrative law, at its core, is the law of how government works. In the United States, the starting point for any discussion of administrative law is the federal Administrative Procedure Act (hereinafter “APA”), described more fully below. Administrative law animates and constrains a wide range of government action, from agency rules with “general applicability and future effect” (APA) to administrative law judges applying existing law to a discrete set of facts in a trial setting (Id.).

Administrative law has five major characteristics. First, administrative law primarily focuses on procedural law. A general assumption is that strong procedural requirements create conditions under which substantive democratic values and participation thrive. In the rulemaking context, for example, the requirements for public notice of proposed rules, a public comment period, and agency consideration of comments before issuing a final rule theoretically ensure all affected communities may participate in the rulemaking by providing input and guidance to the agency undertaking the rulemaking project (see Shapiro, 2019).

Second, administrative law’s procedural requirements, if followed, insulate agencies from most legal challenges to agency action. In an ideal world, federal agencies would follow administrative procedure in all situations. However, due to constrained resources (see Simon, 1955) federal agencies frequently rely on policy guidance and policy documents to induce regulated entity behavior outside of formal administrative law channels (Walker, 2018).
Administrative law therefore provides standards for agencies to use when intentionally considering policy documents in lieu of legally binding, and legally enforceable, rules.

Third, administrative law straddles the fields of law and public administration. Law schools and graduate public administration programs teach administrative law. Law schools generally offer administrative law as an upper-level elective for second- or third-year law students (see Funk, 2000). Not all public administration programs offer courses at the intersection of law and public administration, but those that do usually offer administrative law (see Szypszak, 2011a). Of course, one main theme of this literature review is law could use more attention in the study and practice of public administration (see Moe & Gilmour, 1995; Newbold, 2001).

Fourth, administrative law suffers from a level of analysis issue. Nearly all academic writing on administrative law, and admittedly this study, focuses on the federal government within the United States to the exclusion of state-level administrative law within the United States or international and comparative administrative law. Funk (2000) notes that law schools assume state Administrative Procedure Acts are mere variations on the theme of the federal Act, and therefore only offer courses on the federal version. This author teaches a course on law in a graduate public administration program, and that course also focuses on federal law to the exclusion of state materials. But administrative law is not just a domestic legal issue within the United States. Recent literature calls for a greater understanding of and development of a global administrative law to help nation-states work together to solve cross-boundary issues (Kuo, 2011; Etsy, 2006; Stewart, 2006). Interestingly, administrative law shares this level of analysis issue with the field of public administration (Hou et al., 2011).
Finally, despite the core statute of the Administrative Procedure Act, administrative law is a rich mosaic of statutory law, judge-made law, and agency policy. This morass of black letter legal rules makes administrative law at once both “boring” to study and “fascinating” to practice (Funk, 2000, p. 247). A complex web of judicial rules governs agency actions from agency interpretations of statutes to agency interpretations of its own rules (see, e.g., Holland, 2017). Public administration practitioners without formal legal training often must interpret these complex legal standards in resource-constrained environments.

**Federal Administrative Procedure Act**

The Federal Administrative Procedure Act of 1946 ("APA") resulted from more than a decade of work, beginning with a special committee formed by the American Bar Association to study existing administrative practices in the federal government and to offer recommendations for improvements (Gellhorn, 1986). This was no mere exercise in identifying and leveraging efficiencies. Rather, the pre-deliberative study, proposals, and compromises that ultimately became the APA played out against a background of great political uncertainty in the United States. On one side, those who favored the New Deal approach to government sought to legitimize expert decision-making by expert decision-makers. On the other side, those against New Deal principles saw administrative discretion as one step towards federal government overreach and totalitarianism (Shepherd, 1996).

The APA as it exists today is the backbone of the federal administrative state. With some limited exceptions, such as for military decisions, the APA guides how most executive branch and independent agencies create binding regulations, resolve enforcement disputes with members of the public, and receive input of their procedures or on necessary regulations. The
statue promotes transparency and accountability in the federal government’s dealings with the public (see Amsler, 2016).

**Federal Advisory Committee Act**

The Federal Advisory Committee Act of 1972 (hereinafter “FACA”) creates procedural and substantive requirements for establishment, communications, and records for federal advisory committees (Bradshaw, 2019). Although it passed during an era of increased government transparency (Kello, 2003), critics note the main purpose was to improve governmental efficiency (see Amsler (2016). The FACA only governs how non-federal entities provide advice to federal agencies- it does not cover intra-federal government advice or interagency consensus recommendations (FACA).

Federal agencies bypass the requirements of FACA at their own risk. Persons, including organizations, may sue the federal government under the APA to force the government to comply with FACA requirements. For example, the NAACP Legal Defense & Education Fund successfully sued to compel the Trump administration to create a FACA charter, expand membership, and publish meeting dates for the Presidential Commission on Law Enforcement and Criminal Justice. Prior to the suit, this commission violated public notice requirements and it consisted entirely of “current and former law enforcement officials” and therefore did not have a diversity of interests. (NAACP Legal Defense & Education Fund v. Barr, p. 124).

The requirements of the FACA are not absolute for all advisory committee work. In some circumstances, even when the FACA governs the activities of an advisory committee, the FACA might not cover the activities of subcommittees. In a recent case, a federal appellate court found that the underlying public policy of transparency does not apply to subcommittee work, and the subcommittee therefore did not need to meet FACA procedural requirements, because a
subcommittee only advises the “parent” committee, not the agency itself (Electronic Privacy

**Freedom of Information Act**

Congress passed the Freedom of Information Act (hereinafter “FOIA”) in 1966 to give
“any person. . . a right, enforceable in court, to obtain access to federal agency records” unless
the “records are protected from public disclosure by one of nine exemptions” (Dept. of Justice-
Introduction, 2020, p.1). “Person” and “agency records” are terms of art for enforcing the FOIA.
Federal courts incorporate the definition of “person” under the APA into the FOIA, and this
definition includes corporations (SAE Prods., Inc. v. FBI, 589 F. Supp. 2d 76 (D.D.C. 2008)).
Congress did not define “agency record” until the 1996 amendments to the FOIA, which
clarified “agency records” broadly as “any record. . . maintained in any format” (Dept. of
Justice- Procedural Requirements, 2021, p. 11). Agencies have no obligation to create records in
response to FOIA requests (Id.). The nine exemptions to release under the FOIA relate generally
to private information, confidential business information, law enforcement information, and
records related to certain military and national security functions (5 U.S.C. 552(b) (2018)). If a
requester sues an agency for access to the records, the courts take a fresh look at the request and
the agency’s denial. Unlike in other administrative law contexts, courts do not give deference to
the agency’s action in resolving the dispute between the requester and the agency (Wald, 1984,
p. 656 (internal citations omitted)). In this sense, with the FOIA, Congress asserts power over the
Executive Branch with a presumption of disclosure coupled with *de novo* judicial review of
agency denials.

Congress passed the FOIA to promote values of democratic accountability and
transparency in government. Whether the statute truly has fulfilled its goal has been a matter of
debate. O’Brien (1979) notes the “cross-cutting” nature of the FOIA and its ideal of open government with the Privacy Act of 1974 and its focus on protecting individuals’ private information within the custody of the government. The tension between these two laws can create burden on bureaucrats and increase the costs of administering each act (Id). Pozen (2017) critiques the FOIA as furthering “reactionary transparency” at odds with the goals of normative open government advocates (p. 1100).

Despite the ongoing debate on whether the FOIA meets its goals or should be modernized, the FOIA is one of the cornerstones of public administrative law in the United States. Public administration scholarship recognizes the FOIA as a source of values for agencies and practitioners (see Amsler, 2016). Federal advisory committees create records for agencies in the course of their work, and the potential disclosure of such records under the FOIA may impact the decisions and relationships of committee participants.

**Operational Law**

This sub-section first describes the USCG as an exemplar agency. It then addresses the laws specific to the three missions supported by the work of the three advisory committees in this research. Although administrative law applies to all activities of the Coast Guard, the distinct committees work with distinct operational law.

**The U.S. Coast Guard**

The USCG is a military, maritime, multi-mission service. It operates uniquely amongst federal agencies as a military, criminal law enforcement, and regulatory agency. One of the Armed Forces (Establishment of Coast Guard, 2018), its active duty and reserve military members are subject to the Uniform Code of Military Justice (Persons subject to this chapter,
and its cutters ply worldwide waters carrying out counter-narcotics operations (see Law enforcement, 2018).

Most relevant to this research, however, the agency exercises broad regulatory authority as a major policy actor in the international-, domestic-, and port-level maritime policy arenas. Congress charges the Coast Guard to lead implementation of International Maritime Organization agreements (see Coast Guard and Maritime Transportation Act of 2006), to document (Documentation of vessels, 2022) and inspect U.S.-flagged commercial vessels (Scope and standards of inspection, 2018), and to investigate maritime casualties and accidents (Marine casualties and investigations, 2022). The breadth of the Coast Guard’s authorities and missions means the agency must work directly with many regulatory partners to carry out its missions effectively and efficiently (Cooperation with other agencies, states, territories, and political subdivisions, 2018).

**Frank Lobiondo Coast Guard Authorization Act of 2018**

The 2018 CGAA fundamentally changed how the USCG administers the three cases for this study, and therefore serves as a natural delineation for this research. The statute impacted the USCG’s FACA administration in three ways. First, it mandated, or directed, the USCG to establish the three committees. As such, the act’s mandate places this inquiry within the context of mandated collaboration. Although the committees existed prior to the 2018 CGAA, at least one, the TSAC, was a voluntary advisory committee. Second, the 2018 CGAA established clear management and administration requirements for the USCG to lead the three committees. Member appointments, meeting frequency, and term limits provide strict guardrails the agency must follow (2018 CGAA).
The Committees and Their Operational Law

The three cases for this study are the National Boating Safety Advisory Committee (“NBSAC”), the National Offshore Safety Advisory Committee (“NOSAC”), and the National Towing Safety Advisory Committee (“NTSAC”). The National Boating Safety Advisory Committee (“NBSAC”) advises the Coast Guard on recreational boating safety. The NBSAC consists of 21 members drawn equally from three appointment categories: (1) state law enforcement, (2) boating manufacturers, and (3) national boating organizations (up to two members of this category may be citizens with no connection to boating other than their work with the committee)(2018 CGAA). Current projects include recommendations for new statutory and regulatory language, recommendations for new regulations to implement recent statutory authority, and projects related to shifting resources and oversight focus from the federal government to the states for certain boating safety issues. Of note, the NBSAC appears to have a higher number of active projects than the NOSAC or the NTSAC, although the NBSAC projects may be smaller in scope and less resource-intensive than individual projects with the other two committees (Reports and Recommendations, 2022).

Recreational boating safety regulation differs from commercial offshore or towing vessel regulation in the balance of power and influence between the federal and state governments. The federal government generally has primacy over the states for regulation of maritime activity (U.S. v. Locke, 2000). Navigation is commerce (Gibbons v. Ogden, 1824), so the federal government asserts its regulatory authority under the Commerce Clause of the U.S. Constitution (art. I, § 8, cl. 3). Most federal maritime safety laws, such as Outer Continental Shelf regulations and towing vessel regulations, preempt state law (see U.S. v. Locke).
One exception to this general rule is recreational boating safety. Although the federal government could regulate boating safety extensively, federal regulations affirmatively defer to state regulation for most boating safety issues. For example, recreational boaters may choose to register their vessels with their respective state governments rather than through the Coast Guard’s National Vessel Documentation Center. In addition, although many recreational boating accidents count as federal marine casualties, the Coast Guard allows state governments to investigate most of these accidents (Vessel numbering and casualty and accident reporting, 2022). The Coast Guard appears to carry out more of a coordinative role with boating safety than with the other two mission areas.

The National Offshore Safety Advisory Committee (“NOSAC”) advises the Coast Guard on issues related to agency safety oversight of Outer Continental Shelf activity. The NOSAC consists of “no more than 15 members” (U.S. Coast Guard, n.d. (b)) with a cross-section of industry and regulatory experience (2018 CGAA). Current work of the NOSAC focuses on integrating other federal agencies into the work of the committee, reviewing marine casualties related to Outer Continental shelf activity, and reviewing policies related to unsafe working conditions (Id.)

The Outer Continental Shelf “means all submerged lands lying seaward and outside of” state territorial seas (Definitions, 2022). The “continental shelf” refers to the “natural prolongation” of the land mass of a coastal nation-state “to the outer edge of the continental margin” (United Nations Convention on the Law of the Sea, 1982, Art. 76). International law provides geographic limitations when a coastal state’s continental margin does not extend seaward by 200 nautical miles or abuts another nation’s boundary (Id.). A coastal nation-state has the exclusive right to extract mineral resources from their own continental shelf (Id.) The
United States distinguishes the Outer Continental Shelf as that part of the continental shelf not below state waters, and a series of U.S. Supreme Court cases helped the federal government establish the boundary line between federal and state control over continental shelf resources (see *Parker Drilling Management Services v. Newton*, 2019).

The Coast Guard faces multiple challenges regulating maritime safety for Outer Continental Shelf activities. For example, rapid technological advances in recent decades have led to larger, more capable mobile offshore drilling units and platforms with the capacity to operate farther offshore (Hannan, 2018). Additionally, recent caselaw defining a “vessel” and distinguishing vessels from platforms has muddied Coast Guard jurisdiction in a policy environment characterized by multiple and overlapping authority with the Bureau of Safety and Environmental Enforcement and other agencies (COMDT (CG-OES) Policy Letter 01-22, 2022).

The National Towing Safety Advisory Committee (“NTSAC”) advises the Coast Guard on all aspects of towing vessel operations and towing activities conducted by other vessels. The NTSAC consists of 18 members draft from numerous industry representative groups (2018 CGAA). Current tasks for the NTSAC include recommendations on how the agency should exercise discretion over vague regulatory definitions. In addition, the NTSAC is studying how emergent maritime technology, including autonomous vessel technology, will impact towing vessel safety regulation (U.S. Coast Guard, n.d. (c)).

Next, the Coast Guard possesses broad regulatory authority for commercial vessel oversight, including recently expanded authority over towing vessels. In *Chao v. Mallard Bay Drilling* (2002), the U.S. Supreme Court considered a case involving a barge accident related to oil and gas extraction in Louisiana state waters. The Coast Guard investigated the accident as a marine casualty but referred several issues to the Occupational Safety and Health Administration
OSHA) under the Department of Labor for potential enforcement. The OSHA issued several administrative citations to the petitioner, who ultimately challenged OSHA’s authority to regulate the vessel under the theory that Coast Guard authority over the vessel foreclosed OSHA authority. The Supreme Court upheld the OSHA penalties. In doing so, the Court noted the statutory distinction between “inspected” and “uninspected” vessels. The Coast Guard exercises comprehensive and more exclusive safety oversight for “inspected vessels” and significant, but less expansive, safety oversight for “uninspected” vessels. Congress declares by statute which categories of vessels are “inspected.” Because the barge in this case was an “uninspected” vessel, the Court held OSHA had concurrent authority to regulate workplace safety on the barge (Id.)

As a direct result of this case, the towing industry faced the real possibility of stronger regulation from both the Coast Guard and OSHA. Industry attempted to create regulatory certainty by seeking Coast Guard acquiescence to an industry-led “Safety Management System” structure (Gulf Coast Mariners Association, 2006), but could not obtain approval for this plan. Ultimately, Congress provided the regulatory certainty the industry wanted by simply adding towing vessels to the statutory list of “inspected” vessels (Vessels subject to inspection, 2018).

The Coast Guard faces several challenges related to its oversight of towing vessels. First, whether a vessel is a towing vessel is not always clear. Although companies may purpose-build many vessels for towing, some vessels engage in towing on an occasional basis. The Coast Guard faces administrative challenges in determining whether otherwise uninspected vessels should fall under the broad inspection regime of 46 C.F.R. Subchapter M (Towing vessels) depending on the frequency of towing. In addition, certain vessels might fall under other “inspected” regulatory categories, but the Coast Guard must determine whether and how to apply Subchapter M towing vessel regulations to these vessels for their towing activities.
Second, as with Outer Continental Shelf regulation, emergent technology places strain on the fit of existing regulatory structures to keep up with new practices. Sonar drones, oil and gas seafloor mapping drones, and other creative maritime activities challenge Coast Guard agency expertise for towing vessel oversight. The Coast Guard relies on industry input through the Towing Safety Advisory Committee to inform regulatory actions.

Summary

The Coast Guard, an agency with significant breadth and depth to its missions, provides an opportunity to examine gaps in collaboration scholarship through empirical examination of how public law impacts three of the agency’s mandated federal advisory committees. These three committees relate to Coast Guard missions that are quite distinct. Although the administrative law for the committee work remains the same, the different operational law contexts provide an opportunity to examine law’s impact in three different collaboration settings.

This literature review establishes both that law is relevant to public administration and that much remains to be examined about the relationship of law to collaboration. This study is an important step in exploring this relationship. The next chapter explains why a qualitative three-case study is the proper approach to use to answer this study’s exploratory research questions.
CHAPTER THREE
METHODOLOGY

Philosophical Assumptions

The researcher conducts a three-case qualitative study with a constructivist methodology. Moses and Knutson (2007) distinguish between “naturalist” (p. 15) and “constructivist philosophies of science” (p. 165). The naturalist philosophy of science presumes a researcher is a neutral, detached observer who uncovers patterns of truth, and the researcher’s activities do not affect the truth under inquiry (pp. 28-30). By contrast, constructivists “recognize the patterns we study are of our own making” (p. 165), “context matters” (p. 190), and “a variety of methods exist to seek out contextual truth” (pp. 190-193). In this sense, Moses & Knutson (2007) use “methodology” similarly to “philosophy” (see Id.)

Consistent with the constructivist philosophy, the researcher presumes the decision-making processes and interactions of the participants are “patterns of their own making” (Moses & Knutson, 2007, p. 165). The participants’ interactions with the public law and their interactions with each other inform the patterns of action and decision-making of the three advisory committees. The researcher’s interaction with the participants may affect not just their own interactions with the public law and each other, but also their descriptions of the public law’s impact on their collaboration.

The researcher recognizes that they will be involved in “constructing reality” not just during the data collection process, but also in the data analysis stage of this research (see Wallmeier et al., 2019). As the researcher interacts with the interview transcripts and documents, the coding process itself will influence the contextual meaning of the data. This will “limit the
replication and generalizability” of the study (Id. at p. 10), although the researcher will employ strategies described below to counter these limitations.

The researcher acknowledges, however, a potential philosophical tension between examining the participants’ perceptions of law and the existence of objective law. It is possible, for example, that participants’ perceptions of law may be fallible and yet still guide their actions. Triangulation of data sources helps the researcher understand how to link contextual data from participants to Thomson and Perry’s (2006) Process Model of collaboration that, in turn, includes structural components.

**Qualitative Research Approach**

Qualitative research seeks to “understand the meaning people have constructed” and “how people make sense of the world and the experiences they have in the world” (Merriam, 2009, p. 13)(emphasis in original). It “is the study of a phenomenon or research topic in context” (Hays & Singh, 2012, p. 4). Qualitative research focuses on describing the “complexity” of participants’ experiences and situations (Creswell, 2009, p. 4). The purpose is to “understand the phenomenon of interest from the participant’s perspectives, not the researcher’s” (Merriam, 2009, p. 14), although the researcher’s interactions with participants may inform the participant’s descriptions of a phenomenon (see Merriam, 2009, p. 15). A qualitative approach is appropriate for this study because of its exploratory nature; law’s impact on collaboration is a subject that has “not been investigated” empirically (Hays & Singh, 2012, p. 4). Additionally, a three-case study approach aligns with this inquiry’s exploratory research questions. A case study is appropriate when a researcher explores a phenomenon “through a variety of data sources” and “within its naturally occurring context” (Rashid et al., 2019, p. 2).
The Three Cases and Temporal Bounds

This study examines three advisory committees managed by the USCG: (1) the NBSAC, (2) the NOSAC, and (3) the NTSAC. NBSAC manages significant federalism and preemption issues because the federal and state governments hold significant overlapping authorities in this space. NOSAC discusses highly technical energy policy issues in a space with overlapping authority between two major federal agencies, the U.S. Coast Guard and the Bureau of Safety and Environmental Enforcement. NTSAC coordinates competing interests of ocean-going and inland towing vessel companies against the backdrop of a significant and recent change in towing vessel safety regulation (see 46 U.S.C. § 3301). The researcher intentionally selects these three cases “because they offer contrasting situations” (Yin, 2003, p. 54) and greater potential for “analytic generalization” (Id., p. 33). In other words, three cases with common administrative law but distinct operational law allow the researcher to explore how these types of law may impact collaboration and to offer more robust recommendations for future research than with a single case alone.

The researcher examines the cases from calendar year 2018 to present for two related reasons. First, the 2018 CGAA mandates a reorganization of how the Coast Guard manages its advisory committees, including the committees in this study. Second, participants who meet the inclusion criteria may speak to their perception of how the 2018 CGAA impacts their experience on these committees.

Participant Data Collection

Because the data collection includes human subject participant interviews, the researcher first obtains a written determination from the Old Dominion University Business Human Subjects Review Committee that this study is exempt from further Institutional Review Board
review (Appendix 1). Gender, age, and ethnicity are not criteria for identifying participants. Rather, the researcher solicits participation based on knowledge of one or more of the three committees in this study. First, participants may be appointed members of any of the three committees since the year 2018. Second, participants may be current or former employees of the USCG whose work portfolios meet at least one of two additional criteria- they either coordinate the meetings and agendas of the committees or their substantive work portfolios deal with committee matters during the time in question. Current or former members of the U.S. Coast Guard therefore may hold one of several roles. They may be the Designated Federal Official (“DFO”) for a committee, a first- or second-level supervisor of a DFO, an attorney who provides counsel for one or more committees, or a regulatory official with significant work product before a committee in the study. Individual participants may meet the inclusion criteria for more than one case- one participant meets the inclusion criteria both as a former USCG employee for NOSAC and as a current appointed member for NTSAC, and one former USCG employee meets the inclusion criteria for all three cases due to their work portfolio.

This research aspires to include five to ten participants per case (see Hays & Singh, 2012) and solicits participation through an e-mail invitation using a template tailored for that potential participant’s experience (See Appendix 2 for a representative invitation). The researcher selects potential U.S. Coast Guard members through purposive sampling using the criteria explained above. In purposive sampling, the researcher identifies the importance of selection criteria to “reflect the purpose of the study and guide in the identification of information-rich cases” (Merriam, 2009, pp. 77-78). The researcher uses their understanding of the U.S. Coast Guard marine safety program and their own professional network to invite specific individuals to participate in the research. Additional Coast Guard members are then invited through snowball
sampling. In snowball sampling, the researcher asks participants to identify other candidates for participation (Hays & Singh, 2012, p. 169). Based on this approach, the researcher is confident they invited a significant portion of the potential universe of U.S. Coast Guard participants whose work relates to at least one of the three cases and who could speak to the research questions with a high level of experience. The researcher obtains a total of six U.S. Coast Guard participants total across the three cases. The researcher uses an additional five U.S. Coast Guard participants for the pilot study, described more fully below.

The researcher invites committee members to participate through a direct email to everyone within the population of 54 members meeting the inclusion criteria. Twelve current members agree to participate, and the researcher obtains one additional former member through snowball sampling. This additional member’s service on a committee ended immediately prior to calendar year 2018, but this member continues to attend meetings in their personal capacity and is familiar with the current work of the relevant committee.

The researcher experiences significant access challenges for the NOSAC case because potential U.S. Coast Guard and committee member participants hesitate to join the research. The stated reason for the hesitation is a fear of violating committee bylaws prohibiting members from speaking on behalf of the committee. Ultimately, the Designated Federal Officer gives clearance for members to participate in their individual capacities. The researcher then obtains three committee participants out of the universe of fifteen committee members and one additional U.S. Coast Guard member meeting the inclusion criteria for the case. Although this access challenge delays participant interviews and the ultimate manuscript, the total number of participants for the NOSAC case is not appreciably different than the number of participants for the other two cases. Based on their experience, the researcher attributes the hesitance of individuals to participate to
the complexity of the work performed by NOSAC and a desire not to divulge pre-deliberative material.

Table 3.1 lists the participants for this study. The researcher describes individual participants with a high level of generality to preserve participant confidentiality. Additional participant details remain on file with the researcher.

The small sample size is a limitation for this study, although this limitation is mitigated in two ways. First, the exploratory nature of this study mitigates the small sample size limitation to a certain degree. One the main purposes of this project is to identify areas for future research. In this sense, the value of this study does not lie in its findings standing alone, but in the additional research which may flow from this inquiry. Additional explanatory or causal research will provide the field an opportunity to test findings, conclusions, and observations arising out of this project. Second, although the sample size is small, the researcher believes they were able to achieve maximum potential access to the field. Professional connections and prior working relationships likely provided a higher degree of access than other scholars might have achieved in a similar exploratory study.
Table 3.1

Participants

<table>
<thead>
<tr>
<th>Number</th>
<th>Category</th>
<th>Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>USCG</td>
<td>NBSAC</td>
</tr>
<tr>
<td>2</td>
<td>USCG</td>
<td>NTSAC</td>
</tr>
<tr>
<td>3</td>
<td>Appointed Member</td>
<td>NTSAC</td>
</tr>
<tr>
<td>4</td>
<td>Appointed Member</td>
<td>NBSAC</td>
</tr>
<tr>
<td>5</td>
<td>Appointed Member</td>
<td>NBSAC</td>
</tr>
<tr>
<td>6</td>
<td>Appointed Member</td>
<td>NOSAC</td>
</tr>
<tr>
<td>7</td>
<td>Appointed Member</td>
<td>NBSAC</td>
</tr>
<tr>
<td>8</td>
<td>USCG &amp; Appointed Member</td>
<td>NOSAC &amp; NTSAC</td>
</tr>
<tr>
<td>9</td>
<td>Appointed Member</td>
<td>NTSAC</td>
</tr>
<tr>
<td>10</td>
<td>Appointed Member(^a)</td>
<td>NTSAC</td>
</tr>
<tr>
<td>11</td>
<td>Appointed Member</td>
<td>NTSAC</td>
</tr>
<tr>
<td>12</td>
<td>USCG(^a)</td>
<td>All</td>
</tr>
<tr>
<td>13</td>
<td>Appointed Member</td>
<td>NBSAC</td>
</tr>
<tr>
<td>14</td>
<td>Appointed Member</td>
<td>NBSAC</td>
</tr>
<tr>
<td>15</td>
<td>USCG</td>
<td>NBSAC</td>
</tr>
<tr>
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<td>Appointed Member</td>
<td>NOSAC</td>
</tr>
<tr>
<td>17</td>
<td>USCG</td>
<td>NOSAC</td>
</tr>
<tr>
<td>18</td>
<td>Appointed Member</td>
<td>NOSAC</td>
</tr>
</tbody>
</table>

\(^a\)Denotes a practicing attorney or someone who reports holding a law degree.

Document Collection

The researcher collects committee documents including committee organizing memoranda, committee internet websites, and meeting reports from publicly available sources. Multiple data collection techniques help to “triangulate” the data (Creswell, 2007, p. 191; see Rhineberger et al., 2005) for improved validity (Creswell & Miller, 2000). Yin (2003) considers
documents and interviews to be two of the six main sources of evidence in case study research, and the strengths and weaknesses of these sources offset each other (pp. 83-84). These two types of data sources in combination should support a rich description of public law’s impact on collaboration.

Table 3.2 lists the documents reviewed for this study:
<table>
<thead>
<tr>
<th>Number</th>
<th>Brief Description</th>
<th>Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>March 2022 Meeting Notice</td>
<td>NBSAC</td>
</tr>
<tr>
<td>2</td>
<td>May 2023 Meeting Notice</td>
<td>NBSAC</td>
</tr>
<tr>
<td>3</td>
<td>2017 Charter (Transition Period)</td>
<td>NBSAC</td>
</tr>
<tr>
<td>4</td>
<td>Committee Recommendation</td>
<td>NBSAC</td>
</tr>
<tr>
<td>5</td>
<td>2022 Charter</td>
<td>NBSAC</td>
</tr>
<tr>
<td>6</td>
<td>August 2022 Meeting Notice</td>
<td>NBSAC</td>
</tr>
<tr>
<td>7</td>
<td>January 2023 Meeting Notice</td>
<td>NBSAC</td>
</tr>
<tr>
<td>8</td>
<td>Fall 2022 Meeting Minutes</td>
<td>NOSAC</td>
</tr>
<tr>
<td>9</td>
<td>Spring 2023 Meeting Minutes</td>
<td>NOSAC</td>
</tr>
<tr>
<td>10</td>
<td>April 2022 Meeting Agenda</td>
<td>NOSAC</td>
</tr>
<tr>
<td>11</td>
<td>2022 Committee Bylaws</td>
<td>NOSAC</td>
</tr>
<tr>
<td>12</td>
<td>Draft Committee Report</td>
<td>NOSAC</td>
</tr>
<tr>
<td>13</td>
<td>2021 Committee Charter</td>
<td>NOSAC</td>
</tr>
<tr>
<td>14</td>
<td>March 2023 Meeting Agenda</td>
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</tr>
<tr>
<td>15</td>
<td>2023 Committee Charter</td>
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</tr>
<tr>
<td>16</td>
<td>2021 Appointment Memo</td>
<td>NTSAC</td>
</tr>
<tr>
<td>17</td>
<td>2021 Committee Bylaws</td>
<td>NTSAC</td>
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<tr>
<td>18</td>
<td>April 2023 Meeting Notice</td>
<td>NTSAC</td>
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<tr>
<td>19</td>
<td>September 2023 Meeting Notice</td>
<td>NTSAC</td>
</tr>
<tr>
<td>20</td>
<td>June 2022 Meeting Minutes</td>
<td>NTSAC</td>
</tr>
<tr>
<td>21</td>
<td>September 2022 Meeting Agenda</td>
<td>NTSAC</td>
</tr>
<tr>
<td>22</td>
<td>September 2023 Meeting Agenda</td>
<td>NTSAC</td>
</tr>
<tr>
<td>23</td>
<td>2021 Committee Charter</td>
<td>NTSAC</td>
</tr>
</tbody>
</table>
Participant Interviews

The researcher conducts a pilot study with five U.S. Coast Guard participants in February 2023. The purpose of this pilot study is to determine whether the initial interview protocol elicits responses relevant to the research questions. Based on the pilot study, the researcher adds a line of questions specifically tailored for U.S. Coast Guard members whose substantive work relates to advisory committee work but who do not otherwise manage or coordinate committee work. The data from this pilot study remains on file with the researcher.

The researcher then follows the adjusted interview protocol (See Appendix 3) to conduct the semi-structured interviews for participant interviews from February to June 2023. A series of main questions and probing questions elicit participants’ perceptions of the definition of law and how law relates to the structure and work of their committees. Additionally, the protocol elicits perceptions on how law impacts the development of trust within the committees.

The researcher conducts and records the interviews via the Zoom web conferencing program. The program generates a draft transcript, which the researcher reviews, edits, and forwards to the participants for “member checking” (Hays & Singh, p. 206). Member checking helps ensure transcripts reflect participants’ intended meanings during their interviews. Not all participants provide their own edits during member checking, although one participant conducts an extensive substantive edit. The researcher maintains only the final transcript of the interview. All other video, audio, and transcript files are deleted from the researcher’s Zoom account and work files.

Data Analysis

The researcher analyzes the interview transcripts and committee documents through deductive and inductive coding processes. For the deductive coding process, the researcher
creates an initial set of codes based on the literature review and linked to the five dimensions of Thomson and Perry’s (2006) Process Model of collaboration. The researcher then enlists the help of a published collaboration scholar to test this initial code list. This scholar has an established publication record in the collaboration literature, extensive experience with qualitative coding, and no prior familiarity with the data for this study. The researcher trains the assistant on the substance of the initial codebook. The researcher and assistant independently code the first five participant transcripts as a representative sample with an inter-rater reliability of 0.94. The researcher attributes the inter-rate reliability score to the relative difference in coding experience between the researcher and the assistant. Nearly all coding differences arise from the researcher not coding a passage that the assistant coded, rather than a difference in assigning substantive codes.

Based on this test, the researcher maintains the initial deductive code list and proceeds to code all transcripts and documents. Because the researcher already groups the initial codes in themes linked to the five dimensions of the Thomson and Perry (2006) Process Model of collaboration, the researcher does not conduct a second round of coding to establish additional themes. In this way, the researcher maintains the Process Model as the foundation for this research.

For the inductive coding process, the researcher then conducts two cycles of coding. The first cycle of coding is “descriptive coding” (Saldaña, 2009, p. 70). The researcher then conducts “pattern coding” by grouping like codes into common themes (Saldaña, 2009, p. 152).

The researcher uses both deductive and inductive coding intentionally for two reasons. First, this process ensures the researcher maintains the Thomson and Perry (2006) Process Model as the conceptual foundation for this research. The deductive coding process allows the
researcher to anchor the analysis in this process model. Second, the inductive coding allows the researcher to discover additional themes within the data not otherwise captured within the deductive coding scheme. Through this inductive process, the researcher answers the call of more recent literature (see Amsler, 2016) to examine whether law might inject values into collaboration. Frequency analysis of codes provides a foundation for a qualitative rich description of emergent themes for context.

**Ethical Considerations**

The researcher addresses several potential areas of ethical concern as described by Creswell (2009, pp. 87-92). First, because this research involves interactions with human participants, the researcher first obtains approval from the Old Dominion University Business Human Subjects Review Committee. The researcher also develops an informed consent form to ensure the participants understand the voluntary nature of the study and that they can opt out at any time.

The researcher also reports their findings in a way that protects participants’ confidentiality while allowing for replicability (see Creswell, 2009, pp. 91-92). In addition, records will be retained for a period of at least 5 years, but not greater than 10 years (see Creswell, 2009, p. 91). The researcher also “release(s) the details of the research with the study design” so that other scholars “can determine for themselves the credibility of the study” (Creswell, 2009, p. 92).

**Reliability and Validity**

Reliability and validity have different meanings or different purposes in qualitative research than reliability and validity in quantitative research (Creswell, 2009, p. 190; Creswell & Miller, 2000). The purpose of this qualitative study is to explore law’s impact on collaboration in
specific contexts—typically, qualitative studies do not create generalizable results (see Creswell, 2009, p. 191). The researcher therefore follows the procedures described below to allow other scholars to replicate the study in other contexts.

In qualitative research, “reliability” means “the researcher’s approach is consistent across different researchers and different projects” (Creswell, 2009, p. 190, referencing Gibbs, 2007). Based on the literature review, the researcher perceives this inquiry to be one of the first explorations of the impact of law on collaboration. Therefore, the researcher does not have a body of existing research for comparison. However, the researcher takes steps to ensure the research process remains internally consistent. First, all interview transcripts are reviewed to ensure there are no mistakes, including typographical errors that may change the meaning of the participants’ communicated experiences. Second, participants are provided the opportunity to review their draft transcripts. Although this “member checking” is important for validity, it also helps with reliability so that members can also check for typographical mistakes that might affect the meaning of their communicated experiences. Third, the researcher guards against “a drift in the definition of codes” for the interviews, transcripts, and content analysis (Creswell, p. 190). A preliminary round of coding with selected interviews provides the opportunity to reflect on the proper codes to use for the entirety of the coding exercise. The researcher also creates a codebook containing “memos” and notes on the codes’ meanings, while “constantly compar[ing]” (Creswell, p. 190) codes to the codebook throughout the coding process to ensure consistency of approach.

“Qualitative validity means that the researcher checks for the accuracy of the findings by employing certain procedures” (Creswell, p. 190). The researcher follows Creswell’s (2009) recommended “validity strategies” (p. 191) to bolster the trustworthiness of the research. First,
Shenton (2004) states “[j]ust as triangulation via data sources can involve the use of a diversity of informants, a range of documents may also be employed as source material” (p. 66). The researcher “triangulates” their data collection techniques using both interviews and committee documents “to build coherent justifications for themes” (Id., p. 191) and to identify whether “convergent” themes emerge (Id.)

Second, and as described above, the researcher uses “member checking” (Hays & Singh, 206) extensively to ensure the materials created during this project, such as transcripts and codes, accurately capture the participants’ experiences. Third, the researcher provides “rich, thick description” (Creswell, p. 191) to convey their findings. Because the intersection of law and public administration is underrepresented in the literature, the researcher conveys as much context as possible so that other scholars can make linkages to legal and public administration topics. In other words, the researcher strives for as “realistic” a perspective as possible (Creswell, p. 192).

This is an ambitious project as it seeks to generate a new line of scholarly inquiry, and ultimately help to build theory, on the law’s impact on collaboration. The researcher takes steps to allow other scholars to replicate their work in other contexts, such as collaborations with federal government agencies other than the U.S. Coast Guard, collaborations outside the maritime industry context, or even in a variety of collaboration contexts involving state and local governments. Towards this end, comprehensive and contemporaneous field notes for each interview provide additional context (Philippi & Lauderdale, 2017).

**Potential Research Bias**

Qualitative researchers reflect on the biases they bring to their research. These biases can include the researchers’ professional and personal experiences, their prior interactions with the
participants and the subject of inquiry, and their motivations for undertaking their studies (Berger, 2015). Because qualitative researchers operating from a constructivist perspective see research as an interaction between researcher and participants, these reflections provide important context for the meaning of the researcher/participant interactions (see Creswell, p. 177).

Consistent with the concept of “reflexivity” (Hays & Singh, 2012, p. 137), the researcher accounts for “authenticity”, “unconditional positive regard,” and “empathy” throughout this study and during interactions with the participants (p. 139). This reflection helps to maintain the “credibility” and “trustworthiness” of this research (p. 137). The researcher maintains a “reflective journal” for this purpose to “document” their “internal process” and to “understand” their own influence on the research (p. 140). These procedures provide important context for the meaning of the researcher’s interactions with participants (Creswell, 2009).

The researcher does bring certain biases to this project due to their professional experience, their prior interactions with participants, and their motivations for undertaking this study. The researcher has extensive professional experience related to the Federal Advisory Committee Act and the three advisory committees that serve as cases for this inquiry. As the Coast Guard’s marine safety law practice group leader from 2018-2019, the researcher regularly advised the headquarters offices that run the National Offshore Safety Advisory Committee, the National Boating Safety Advisory Committee, and the Towing Safety Advisory Committee. Additionally, the researcher’s professional associations with many of the participants extend back to the beginning of the researcher’s prior USCG career.

The researcher also acknowledges their motivations for undertaking this study. The researcher’s joint training in law and public administration may make them uniquely suited to
pursue their desired research agenda exploring the relationship between law and public administration (see Rosenbloom & Gould, 2021). Based on their anticipated research agenda, the researcher may have an unconscious desire to see an impact from law on the management or activities of the case studies in this inquiry.

The researcher guards against this potential research bias in two ways. First, as discussed above, the researcher keeps a reflective journal documenting field inquiry activities (Hays & Singh, 2012, p. 140). Second, the researcher uses an assistant to independently code the interview data with the a priori codes during a preliminary review of a select group of interview transcripts. The researcher and assistant then compare their coding results to establish a level of “inter-rater reliability” which informs further coding within the project.

Although their professional experience, prior interaction with participants, and motivations for pursuing this research may be sources of bias, the researcher leverages these factors to gain access to the participants. The researcher’s familiarity with the organization of the Coast Guard helps to make connections and build rapport with potential participants. This also increases the likelihood of establishing an “informant,” or a participant who provides a high degree of access to contacts, interviewees, and helpful information not otherwise available (Yin, 2003, p. 90). In short, the researcher’s experience reduces the transactional cost of securing participants in the study as compared to the transactional costs other researchers might have incurred.

**Summary**

This research explores law’s impact on collaboration through the lens of Thomson and Perry’s (2006) process model. This project uses three cases, governed by common public administrative law but distinct public operational law, to increase the “analytical
generalizability” (Yin, 2003) of the results. This study explores this subject through semi-structured interviews and relevant committee documents. This chapter presents the research design, data collection steps, and procedures for data analysis. The following chapter reports the findings of this research.
CHAPTER FOUR
DATA ANALYSIS

Overview of Analysis

This Chapter analyzes the data collected in this study. Eighteen interview transcriptions and 23 documents are reviewed deductively using a coding scheme developed prior to the interviews, framed by the Process Model’s five dimensions, and augmented by additional concepts in the literature review. Emergent themes are then discovered inductively through descriptive and pattern coding (Saldaña, 2009).

This analysis examines the resulting qualitative data in several different ways to provide a rich description of law’s impact within the cases. In the first section, the analysis discusses how participants define law. The researcher discovers in this study that participants describe law in a wide variety of ways. Some participants define law narrowly by reference to certain types of laws, while other participants define law in broad, sweeping language. The literature review identifies lack of definitional clarity in law, and the participants’ descriptions of law mirror the literature’s ambiguity. The researcher offers that participants’ definitions of law are relevant and foundational to any further analysis of the research questions, and therefore are a proper starting point for this Chapter.

The Process Model is the conceptual heart of this study, and the second section examines the data by reference to the predetermined coding scheme linked to the Process Model’s five process dimensions. This section offers insights into the potential relative distribution of law’s impact across these dimensions within the cases, and whether any comparative differences exist between the cases that may call for further empirical inquiry.
The emergent and inductive themes provide additional insight into law’s relation to these cases. In the third section, the researcher analyzes several emergent themes arising from the participant interviews related to law and the cases. Through this study, the data suggest law provides structure and authority for collaboration members to exercise what the researcher labels “dual role management” while acting within “multiple regulatory pathways.” Additionally, the researcher discovers that law creates a power imbalance between the agency and committee members. This power imbalance manifests through a lack of back-end feedback from the agency and may impact the level of trust between committee members and the managing agency. These themes and others are examined for their relationship to collaboration theory and practice.

The literature review distinguishes between “administrative law” and “operational law” and explains how all three cases have common administrative law but differ in their operational law. The fourth section examines operational law. Although not all participants discuss operational law in detail, the existing data suggests surprising relationships exist between operational law and trust within the advisory committees.

The fifth section analyzes the deductive and inductive codes and themes within the committee documents. The researcher analyzes the documents in this stand-alone section for two related reasons. First, the researcher discovers the documents focus primarily on structural issues. Second, because of the focus on structural issues, incorporating this data within the participant interview analysis likely would dilute the rich descriptions of the participants’ explanations of law, particularly regarding emergent inductive themes.

The sixth section addresses the study’s three specific research questions in turn and proposes modifications to Thomson and Perry’s (2006) Process Model to account for the role of law in collaboration. The data suggest that law impacts all process model dimensions and injects
certain values into collaboration workflows. Chapter 5 provides more detailed conclusions and recommendations arising from this study.

**What is Law?**

Any analysis of the impact of law on collaboration must begin with an examination of the participants’ descriptions of law itself. As the literature review illustrates, scholarship on law and public administration lacks a precise definition of the term law. As such any empirical study of law, including this study, must rely on an informed bespoke definition of the term.

This study’s data suggest the definitional ambiguity arises as a matter of what is included in the term rather than confusion over a core definition. In other words, to borrow Thomson and Perry’s (2006) statement on collaboration, participants appear to “know law when they see it”, but they offer various examples of law to support their definitions. At first blush, this issue may seem trivial. However, the researcher offers that this lack of clarity holds significant import for the study of law and public administration. The literature review briefly discusses a minor debate over whether public administration “neglects” law (see Moe & Gilmour, 1995). Public administrators and scholars in the field who define law narrowly likely would argue that the field already considers and studies law in the form of specific statutes or programs. Those who define law more broadly likely would argue that there is greater room for values-based study of law and public administration (see Amsler, 2016). The researcher does not take a position on this debate, nor does the researcher believe this study settles the debate. However, this study’s data show that the participants lack clarity in the definition not just as an academic matter, but as a practical matter. All participants understand that law objectively exists independent of their own perceptions, but they differ on what they describe as law.
For this study, the researcher asks each participant to define what law means to them. Of the eighteen participants, eleven define law by reference to specific types of laws. Ten of those participants refer to the U.S. code and federal statutes and seven describe federal regulations, published in the Code of Federal Regulations, as law. Two respondents only mention the Federal Advisory Committee Act. One respondent includes federal agency internal policy and yet another respondent includes private industry standards within their definition of law.

The researcher is particularly surprised by the participant responses in two ways. First, only two participants identify case law as examples of law. Participant #8 not only references case law but includes private litigation as law because ongoing private litigation shapes their willingness to share information with other members of the advisory committee. Although the researcher is surprised that only two participants identify case law, the inclusion of private case law outside the scope of the literature review’s definition of “public law” suggests that this study’s definition of law could be more expansive.

Second, only participant #14 identified the U.S. Constitution as part of their definition of law. The researcher notes that this participant meets the inclusion criteria based on their civilian role as a committee member, but the participant also has active duty U.S. Coast Guard law enforcement experience which may make the U.S. Constitution more salient for this member. The fact that only one participant identifies the U.S. Constitution may demonstrate that practitioners view statutes as more salient to their everyday work than constitutional matters. In other words, public administration may be about “running the Constitution” (Christensen, 2009), but practitioners may consider public administration to be about “running statutes.”

These participant responses offer several lessons. First, the participants view federal statutes as the core of law for their work. As participant #17 states, “[l]aw is a statutory mix of
things we must do or cannot do.” Participant #7 immediately references the Federal Advisory Committee Act and the culture it incentivizes. Participant #15 also begins and ends their response with the Federal Advisory Committee Act.

Second, participants understand that statutes support regulations, but they differ in whether they describe regulations as law. As participant #6 states, “I look at law as the foundation from where we get regulations, and from there interpretive guidance.” Participant #14 responds “you’ve got law, and you’ve got regulations.” Participant #9 explains, in somewhat circular fashion, “the federal regulations are not law per se. But [law includes] all those government regulations, policies, issues that . . . [affect] the industry.”

Third, some participants describe law quite broadly in terms of what counts as law. “Law means a lot of things” to participant #4 and is “a variety of stuff” according to participant #5. Participant #8’s response alludes to the rule of law when they state “law means a few different things and has different connotations. And just because it’s a law does not necessarily mean it will be enforced.”

Fourth, some participants describe law broadly based on its societal purposes. Participant #10 explains “[s]ociety has chosen to live in a fabric of social mores and constructs, and . . . law is one more formalized method of modifying people’s behavior or providing a platform for social purpose to creating a desired outcome.” Participant #11 describes law as the “guardrail” that keeps society on track, and for participant #13 law is the “stick” that keeps people and organizations in line.

Fifth, two participants see law as foundational to their work with the advisory committees. Participant #1, a U.S. Coast Guard manager, sees law as “foundational to everything we do” with the administration of their respective advisory committee. Participant #6, although
not an attorney, starts every project related to their committee work by researching the operational law pertaining to the issue under consideration.

Finally, some participants view law as more expansive than the definitions within this study. The researcher already notes one participant considers private litigation as law when conducting their committee work. Other participants consider agency policies or even private industry standards as falling within the definition of law.

What does this mean? The findings suggest two potentially contradictory takeaways relevant to the study of law and public administration. First, although practitioners acknowledge that law objectively exists independent of their own knowledge, their perceptions of what counts as law may vary greatly. As a result, practitioners may vary in how they alter their individual behavior even in the face of the same law.

Second, practitioners may alter their behavior based not just on statutes and regulations, but on agency policy and even private industry standards. Participants in this study collectively refer to statutes, regulations, agency policies, and private standards as law. At the end of the day, if a collaboration participant alters their behavior based on an institutional norm, it may not matter whether the participant believes that norm flows from law.

These two contradictory takeaways from the data suggest that scholars may have difficulty isolating and extracting law from other institutional norms within collaboration models and in empirical research. In some cases, such as with a statute like the Federal Advisory Committee Act, the norm’s status as law is clear. In other situations, such as agency interpretive policies, the norm’s status as law may be less clear. Chapter 5 acknowledges this limitation for the instant study and provides recommendations for future research.
**Predetermined Coding Scheme**

This study selects the Process Model of Collaboration (Thomson & Perry, 2006) as its conceptual model because of the model’s status within the field and for its utility for examining law across a wide variety of collaboration factors and conditions. This section analyzes the participant interview data through the lens of this Process Model. The section first presents the overall data, then breaks the data down specifically by each of the five process dimensions.

The researcher notes two important qualifications in interpreting the tables in this report. First, the totals in the overall column nearly always are lower than the sum of the three cases. Two participants met the inclusion criteria for more than one case, so codes for those transcripts might count once for the overall total but may count for more than one case. Second, the researcher cautions against strict numerical comparisons between cases due to the variation in sample size between cases. Rather, differences in the code counts or repeated themes within the code counts serve as broad indicators that law may impact the cases differently or that law may impact the collaborations in a unique way within the context of a code. Code counts serve as signals to examine the narrative data for additional nuance and understanding. Where appropriate, the report indicates in the following sections how different code counts indicate a qualitative connection between a code theme and a concept relevant to the analysis.

The five dimensions of Thomson & Perry’s (2006) Process Model serve as the themes for the pre-determined coding scheme. Table 4.1 briefly explains these themes:
Table 4.1


<table>
<thead>
<tr>
<th>Dimension/Predetermined Theme</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governance</td>
<td>How to establish “rules that... govern behavior and relationships” (p. 24)</td>
</tr>
<tr>
<td>Administration</td>
<td>“[A]dministrative structure” and clarity of “roles and responsibilities” (p. 25)</td>
</tr>
<tr>
<td>Organizational Autonomy</td>
<td>How partners manage tensions associated with their “dual identity” (p. 26)</td>
</tr>
<tr>
<td>Mutuality</td>
<td>“[I]nterdependence” (p. 27)</td>
</tr>
<tr>
<td>Norms of Trust and Reciprocity</td>
<td>Joint “willingness” to attain mutual goals and perceptions of “honesty” in interactions (p. 28)</td>
</tr>
</tbody>
</table>

Table 4.2 reports the frequency of codes within the five themes across all eighteen participants. (For the following tables, the researcher notes that the “overall” counts may be less than the sum of the individual case counts because two participants meet the inclusion criteria for more than one case.)
Table 4.2

*Predetermined Theme Count- Interviews*

<table>
<thead>
<tr>
<th>Theme</th>
<th>Overall</th>
<th>NBSAC</th>
<th>NOSAC</th>
<th>NTSAC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governance</td>
<td>139</td>
<td>59</td>
<td>30</td>
<td>62</td>
</tr>
<tr>
<td>Administration</td>
<td>174</td>
<td>78</td>
<td>38</td>
<td>79</td>
</tr>
<tr>
<td>Organizational Autonomy</td>
<td>131</td>
<td>52</td>
<td>38</td>
<td>66</td>
</tr>
<tr>
<td>Mutuality</td>
<td>76</td>
<td>27</td>
<td>17</td>
<td>41</td>
</tr>
<tr>
<td>Norms of Trust and Reciprocity</td>
<td>127</td>
<td>44</td>
<td>43</td>
<td>61</td>
</tr>
</tbody>
</table>

**Dimension #1- Governance**

Table 4.3

*Governance Code Count- Interviews*

<table>
<thead>
<tr>
<th>Code</th>
<th>Overall</th>
<th>NBSAC</th>
<th>NOSAC</th>
<th>NTSAC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rule</td>
<td>92</td>
<td>40</td>
<td>24</td>
<td>38</td>
</tr>
<tr>
<td>Norm</td>
<td>16</td>
<td>10</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Support of Committee Decisions</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Dissent</td>
<td>8</td>
<td>1</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Conflict</td>
<td>22</td>
<td>7</td>
<td>2</td>
<td>15</td>
</tr>
</tbody>
</table>

The Process Model’s governance dimension addresses how collaboration members work to develop rules and norms governing the collaboration. Dissent and conflict occur as collaboration members carry out their work. What structures are in place so that all members are
“willing to support [a] decision once it is made” (Thomson & Perry, 2006, p. 24, citing Thomson, 2001a).

The participants report a variety of arrangements to develop consensus through committee work. For example, participant #2, a USCG employee, manages one of the committees. They intentionally develop a strong connection with both the Chair and Vice Chair of their committees to protect the deliberative process within the committee itself. Participant #2 is careful not to communicate directly with any committee member about committee work without either communicating through the Chair and Vice Chair or at least copying them on communications. Although not stated directly, the participant strongly implies that this practice protects the ability of the committee to deliberate on issues without perception of Coast Guard influence (Participant #2).

Additionally, participant #9, an appointed member, leads a vetting sub-committee for their advisory committee. This vetting sub-committee reviews all proposed work for their committee to ensure the purpose and scope of the assigned tasks are clear and understood by the broader committee membership (Participant #9). This vetting committee serves as a filter to ensure that the broader committee only receives relevant tasking and to clarify any definitional issues early in the process so that the broader committee uses its time more efficiently.

Finally, participant #11 describes how their committee will acknowledge dissenting opinions in the committee’s recommendations. They state:

[A]t the end of all of that discussion even people with very differing opinions have a reason for their differing opinions, and generally there’s respect for why opinions differ, and there’s the give and take within the formation of the committee opinion. . . because at the end of a tasking there has to be a final report and the committee as a whole has to
accept the final report. And maybe there’s a few who are dissenting, but their opinion is
given as a dissenting opinion within a final report.

Within the governance theme, most code counts relate to rules and norms. Occasionally,
participants discuss dissent and conflict but most discussions relevant to this dimension relate to
rules and norms of the groups. The NTSAC participants appear to mention conflict at a higher
rate than NBSAC and NOSAC participants.

The researcher offers two observations on the impact of law on the governance
dimension in this study. First, administrative law appears to impact the governance dimension.
Participants frequently mention how the committee bylaws help foster rules and norms for
committee leadership and workflow of decisions (Participants #2, 4, and 14). However, most
participants who mention rules and norms do so in the context of other topics. For example,
participants #2 and 9 discuss rules and norms when prompted by the researcher to discuss their
responsibilities within the committees, not in response to how they perceive law to impact their
committee’s rules and norms. And participant #11 mentions the practice of including dissenting
opinions as an example of how the committee maintains a high level of trust amongst its
members. The data therefore suggest that administrative law’s impact on the administration
dimension, discussed below, may indirectly influence the governance dimension. For example,
the 2018 CGAA which requires specific representative structure within each committee may
influence bylaws which in turn may lead the committees to establish norms such as the vetting
committee or inclusion of dissenting opinions.

Second, the data suggest a more direct linkage between operational law and the
governance dimension, at least for the NTSAC case. As Table 4.3 indicates, NTSAC participants
frequently mentioned issues related to conflict resolution. Specifically, NTSAC’s relevant
operational law creates significant overlap between the work of NTSAC and other federal advisory committees, including NTSAC (Participants #8, 9, 10, 11). This mission overlap provides the impetus for rules and norms such as the NTSAC vetting committee (Participant #9). Additionally, NTSAC’s coverage of both “blue-water” ocean towing issues and “brown water” inland towing issues (Participant #2) means the committee must reconcile divergent perspectives for many work projects (Participants #2 and 8). The practice of including a dissenting opinion in committee reports may reflect a desire to signal mutual respect between these two major industry perspectives.

**Dimension #2- Administration**

**Table 4.4**

*Administration Code Count- Interviews*

<table>
<thead>
<tr>
<th>Code</th>
<th>Overall</th>
<th>NBSAC</th>
<th>NOSAC</th>
<th>NTSAC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coordinate</td>
<td>71</td>
<td>28</td>
<td>18</td>
<td>38</td>
</tr>
<tr>
<td>Role(s)</td>
<td>62</td>
<td>33</td>
<td>15</td>
<td>22</td>
</tr>
<tr>
<td>Meeting Agenda</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Appointment to Committee</td>
<td>33</td>
<td>12</td>
<td>5</td>
<td>16</td>
</tr>
<tr>
<td>Meeting Notices</td>
<td>4</td>
<td>1</td>
<td>0</td>
<td>3</td>
</tr>
</tbody>
</table>

The administration dimension relates to the roles individuals play within the collaboration and in “finding the right combination of administrative capacity. . . and social capacity” (Thomson & Perry, 2005, p. 25). Structures for capacity create conditions under which “boundary spanners” foster strong “interpersonal relationships” (Id.)

The data relevant to this dimension suggest that USCG employees and appointed members expend significant effort on aligning “administrative capacity” with administrative law
requirements. USCG headquarters staff provides training to FACA committee members on the administrative requirements of the FACA and on federal standards of conduct to committee members (Participant #1). Although committee members are appointed based on representational categories, participants are sensitive to staying within legal requirements as they interact. As Participant #3 states:

We had a [USCG headquarters employee] who did an excellent job training us on our responsibilities and what was appropriate and not appropriate for being on a FACA committee. I though this this was great and we did it once in a while. . . I think that’s a very important thing for any FACA committee to have that type of training so people are understanding what their roles are and how they should conduct themselves.

Participant #8 echoes this sensitivity to “legal lanes” within their committee’s work. Within their committee,

there is an understanding that the Designated Federal Official and the Assistant Designated Federal Official positions are bound by a scope of law, and what these advisory committees can and cannot do. And oftentimes there are some discussions about what is within the purview of a subcommittee or an advisory committee, and what is not meant to be done by an advisory committee.

This focus on meeting administrative law’s procedural requirements may come at the expense of building relationships and “social capacity” (Thomson & Perry, 2006, p. 25).

Personal and professional relationships generally pre-date the collaboration. With some exceptions (participant #5), appointed members join these committees with prior relationships already in place with the relevant USCG employees and other appointed members. Participant #1, for example, reports they have multiple prior relationships with the appointed members of
their committee, in some cases stretching back decades. Participants interact frequently with each other in other policy arena settings, from direct individual regulatory advocacy to the USCG (see Participants #2 and 8) to legislative advocacy (see Participant #13) and professional organization meetings (see Participants #4, 10, 14). As participant #7 states, “it’s a very small community, and most of us have known each other for a long time.”

The data suggest this focus on compliance with administrative law may detract from organic opportunities to create new relationships and inject new ideas into committee discussions. USCG employees and appointed members alike appear to measure their success to a large degree on compliance with administrative law, and this focus may stifle organic opportunities to build new relationships or inject new ideas within the construct of the advisory committees. USCG members, for example, structure meeting agendas almost like a script, with a strong focus on providing an opportunity for appointed members to speak up rather than requiring appointed members to contribute to the discussion (see participants #2, 13, and 15). As participant #13 states:

[r]elative to the structure of the meetings, there are many topics that I am not a subject matter expert on, so my role during the meetings is quite passive. There are meetings where my input only comes at the end when invited by the Chair to give comment or feedback. I am not sure of the process for developing the agenda, but I am sure there are many factors that go into it including what initiatives are before [the committee]. Like many other committees, there are some changes that could be made to make committee members feel more included and to tap into their areas of expertise.

In summary, administrative law appears to impact the administration dimension directly by incentivizing procedural compliance at the expense of relationship building and social
capacity. The data strongly imply that USCG employees and appointed committee members alike rely to a large degree on pre-existing personal relationships to provide the social capacity to run the collaboration. Committee structures and practices appear to provide little space for forging new connections or injecting new ideas.

**Dimension #3- Organizational Autonomy**

**Table 4.5**

*Organizational Autonomy Code Count- Interviews*

<table>
<thead>
<tr>
<th>Code</th>
<th>Overall</th>
<th>NBSAC</th>
<th>NOSAC</th>
<th>NTSAC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Self-interest</td>
<td>25</td>
<td>10</td>
<td>7</td>
<td>11</td>
</tr>
<tr>
<td>Tension</td>
<td>57</td>
<td>27</td>
<td>10</td>
<td>24</td>
</tr>
<tr>
<td>Information Sharing</td>
<td>15</td>
<td>4</td>
<td>8</td>
<td>10</td>
</tr>
<tr>
<td>Administrative</td>
<td>17</td>
<td>4</td>
<td>11</td>
<td>12</td>
</tr>
<tr>
<td>Procedure Act</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ethics</td>
<td>17</td>
<td>7</td>
<td>2</td>
<td>9</td>
</tr>
</tbody>
</table>

The organizational autonomy dimension relates to how collaboration members balance their obligations to the collaboration and their obligations to their home organization. The literature suggests that a tension exists between these two roles (see Thomson & Perry, 2006). The pre-determined codes for this dimension reflect the limitations that administrative law places on collaboration members using their collaboration experience to advance their self-interest or their home organization’s interest.

The data suggest a relationship between this dimension of the Process Model and the emergent themes of “dual role management” and “representation.” There are two key distinctions between this pre-determined theme and the emergent themes, and the distinctions may flow from the mandated nature of the advisory committee collaborations and the unique
structure of advisory committees. First, this pre-determined theme speaks primarily to the limitations, or the guardrails, law places on individual behavior in a collaboration in which the government is a partner. By contrast, the emergent theme of “dual role management” speaks to how law empowers individuals to manage their multiple roles strategically based on their goals for any given interaction. Second, this pre-determined theme, aligned with the extant literature, assumes appointed members hold just two roles. The emergent theme of “representation,” acknowledges that administrative law actually places appointed committee members in three roles: (1) home organization representatives, (2) appointed members of the collaboration writ large, and (3) appointed members of their representative stakeholder group within the collaboration. As explained more fully below, this third role impacts collaboration member behavior and perception significantly.

Turning back to the pre-determined theme, participants perceive that administrative law places several limitations on their behavior. First, the subset of advisory committee members who represent the general public are considered special government employees. For these appointed members, the federal standards of conduct (6 C.F.R. Part 5) apply to prevent them from using public office for their own gain. Second, committee bylaws derived from administrative law prohibit appointed members from discussing committee business outside of the committee (Participants # 6, 10). This prohibition protects pre-deliberative discussion during committee work but also keeps members from using committee knowledge to advance their home organizations’ interests. Finally, the Administrative Procedure Act’s prohibition on ex parte communications during the rulemaking process prevents appointed members from holding any special status vis-à-vis the agency during an open rulemaking project, even if that project relates to a committee recommendation.
The researcher also notes participants discuss issues related to this theme in the context of appointed members. Interestingly, neither the researcher nor the participants initially perceive the organizational autonomy dimension to apply to the behavior of the USCG employees who participate in this collaboration. At first glance, this makes sense as USCG members either manage or interact with the committee while performing their USCG duties. In other words, USCG members support their home organization by managing or interacting with the collaboration. However, the data does suggest that administrative law does not create equivalent guardrails on USCG members exploiting information obtained from the collaboration to drive their own agenda. As participant #7 states:

> It comes down to the agenda of the parent agency, and the agenda of the Designated Federal Official of how the FACA is going to perform. If the agency does not care what the FACA does, or if they have a particular agenda for the FACA or the DFO has a particular agenda, then I don’t believe that complies with the intent of the FACA.

The data indicate that participants with the NOSAC and NTSAC cases discuss issues related to the APA more frequently than participants with the NBSAC case. Operational law may create conditions in which the NOSAC and NTSAC participants perceive the restrictions of the APA. The NOSAC makes recommendations on updating outdated regulations in light of overlapping BSEE and USCG authority (Participants #6 and 8). The NTSAC makes recommendations on developing agency regulation for the first comprehensive towing vessel inspection regulations (Participants #2, 8, and 10). NOSAC and NTSAC members may perceive they hold special expertise and status regarding any agency regulations being developed out of their recommendations, and therefore may perceive they are limited by the APA in dealing with the agency for rulemaking projects (see participant #17). By contrast, the NBSAC operates in a
more settled operational law environment with a well-entrenched and stable balance of authorities between the federal and state governments (FBSA, participant #13). The data suggest NBSAC participants may not feel as constrained by administrative law in carrying out their operational responsibilities.

**Dimension #4- Mutuality**

**Table 4.6**

*Mutuality Code Count- Interviews*

<table>
<thead>
<tr>
<th>Code</th>
<th>Overall</th>
<th>NBSAC</th>
<th>NOSAC</th>
<th>NTSAC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commitment</td>
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<td>6</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Group Benefit</td>
<td>22</td>
<td>10</td>
<td>5</td>
<td>12</td>
</tr>
<tr>
<td>Sharing Expertise</td>
<td>44</td>
<td>11</td>
<td>10</td>
<td>27</td>
</tr>
</tbody>
</table>

The mutuality dimension relates to “mutually beneficial interdependencies” (Thomson & Perry, 2006, p. 27) and “complementarity” (Id., citing Powell, 1990). In other words, there are benefits to each partner to remain in the collaboration and share resources that otherwise would be devoted to the benefit of the home organization. The pre-determined codes in this theme support this notion of interdependence.

The data suggest participants perceive multiple benefits from the collaborations. The Coast Guard obtains specialized expertise not available within the agency. Appointed members provide their perspective on a wide range of issues, from deep-water port regulation (participant #16) to a comprehensive list of definitions relating to towing regulation (participant #3).

Appointed members also perceive benefits associated with the collaboration. As participant #5, an appointed member of BSAC, describes, industry benefits from the opportunity
to shape consistent safety regulations. “All of those companies view boating safety as essential to our business going forward” (Participant #5). The FACA committees provide an opportunity for “two-way communications” (Participant #8) on matters of mutual concern to industry and the regulators. And industry appears to value the opportunity for access to the agency (Participant #8) and the opportunity to “help them” develop informed regulations (Participant #10).

Not all participants, however, view industry access to the USCG as normatively positive. Participant #12, a USCG member, describes the committees as “good idea fairies, or maybe bad idea fairies.” This participant implies the advisory committees promote inefficient use of time and resources unless the USCG employee overseeing the collaboration actively manages the committee’s agenda.

The data suggest administrative law and operational law impact the mutuality dimension to varying degrees. Administrative law appears to impact the mutuality dimension indirectly by providing the structure in which appointed members and the USCG may interact. Within this structure, collaboration members have the space to interact but are not necessarily required to interact.

Operational law, however, appears to drive the mutually beneficial interaction for the collaboration members. Specifically, participant perceptions about either the inadequacy of operational law or the opportunity to shape operational law induce appointed member behavior to share resources and time toward collaboration goals. Several participants imply they feel a sense of responsibility to engage the USCG through their committees to fix real or apparent problems with the agency’s regulatory scheme (see Participants #6, #7, #8, #10, #15).
Dimension #5- Norms of Trust & Reciprocity

Table 4.7

<table>
<thead>
<tr>
<th>Code</th>
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<td>Relationships</td>
<td>44</td>
<td>21</td>
<td>11</td>
<td>17</td>
</tr>
<tr>
<td>Reputation</td>
<td>20</td>
<td>8</td>
<td>10</td>
<td>7</td>
</tr>
</tbody>
</table>

While the mutuality dimension relates to benefits, the norms of trust and reciprocity dimension relate to mutual “willingness to interact collaboratively.” Thomson and Perry (2006) imply that reputation and relationships appear to be associated with this dimension (pp. 27-28). The pre-determined codes for this theme reflect this concept of mutual willingness.

The researcher notes that the participants for the NBSAC case mentioned relationships more frequently than they referenced trust issues, while the NOSAC and NTSAC case participants mentioned trust more frequently than relationships. This may reflect the long-term involvement of the specific NBSAC participants within the boating safety policy arena.

Participant #14 has worked in boating safety to some degree for nearly thirty years and has close relationships with USCG officials (Participant #15). Likewise, participant #5 reports they have known some of the appointed committee members “almost the full 38 years that [they] have been in the industry.

The findings suggest two main issues that stand in the data related to this dimension. First, collaboration members generally presume they can trust other members until proven otherwise. As participant #15 states:
[y]ou start out with a certain amount of goodwill that may be earned just by the position you are in. But then, eventually it’s your behavior that ultimately charts the course of that relationship and the trust that is established.

Participant #18, an appointed member, holds an “inherent” trust in USCG members based on the uniform they wear and the work they have completed to be able to wear that uniform, although how “they speak to the committee” can raise or lower that initial level of trust. Participant #10, however, perceives that USCG officers generally “do not stick their neck out.” Participant #17, a USCG member, determines whether all their colleagues, including collaboration members, are trustworthy based on whether they meet their deadlines and communicate regularly with their peers and supervisors.

Second, trust is personality-driven and can be developed during committee work. Participant #10, an appointed member with legal training, perceives “the law itself [is] neither an impediment nor a benefit in terms of creating trust. It [is] more my personal or collective collaboration experience that builds trust.” According to participant #9, “we have to trust. . . and understand each other, and I think that is a huge component of all of those committees, as we grow and learn from each other.” Participant #11 states “the trust within the committee is built in those instances where we can all work together, and you start forming interpersonal relationships.”

Notably, only one participant references law in the context of trust. Participant #4 credits the 2018 CGAA for requiring the USCG to formalize their committee and improve its administrative practices. According to participant #4, this law improved the USCG management of the committee leading to a higher degree of trust between the agency and the appointed members.
Emergent Themes

The predetermined coding scheme and themes in the prior section anchor this study firmly in Thomson and Perry’s (2006) Process Model of collaboration. However, because the literature review does not identify a robust body of empirical study on the relationship of law and collaboration, this study also examines the data inductively for emergent themes that provide additional rich description for the role of law in collaboration and which support proposed modifications to the Process Model of collaboration. These themes are analyzed across all three cases, but the researcher notes when certain themes stand out qualitatively for a single case.

This study uses inductive coding for two main reasons. First, inductive coding helps to “fill in the gap” for ideas and phrases in the interview transcripts which are not assigned a code through the deductive coding process. The use of both deductive and inductive coding provides more complete analysis of the transcripts. Second, inductive coding allows the researcher to identify repetitive themes in the data that may provide further insight than an analysis of deductive codes alone.

Table 4.8 lists the emergent themes and identifies their clearest analogous dimension or dimensions within the deductive coding scheme. The researcher infers these relationships in three ways. First, the emergent theme might textually relate to the deductive coding dimension. Second, the test supporting the emergent theme may be adjacent to and part of the same thought or idea as text coded within the deductive dimension. Third, the researcher may infer, based on their joint understanding of law and public administration (see Rosenbloom & Gould, 2021) that the concept identified within the emergent theme relates to a deductive process dimension.

The researcher notes these relationships between emergent themes and the deductive themes in order to show how the emergent themes help to augment the project’s proposed
adjustments to the Process Model of collaboration. However, the researcher acknowledges that these themes are not perfectly analogous to the Process Model dimensions and should not be understood as perfect fits.

**Table 4.8**

*Emergent Themes and Related Deductive Process Dimensions*

<table>
<thead>
<tr>
<th>Emergent Themes</th>
<th>Deductive Dimensions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accountability</td>
<td>Norms of Trust and Reciprocity</td>
</tr>
<tr>
<td>Transparency</td>
<td>Administration, Norms of Trust and Reciprocity</td>
</tr>
<tr>
<td>Representation</td>
<td>Governance, Administration</td>
</tr>
<tr>
<td>Power Imbalance</td>
<td>Mutuality, Norms of Trust and Reciprocity</td>
</tr>
<tr>
<td>Structure for Discussion</td>
<td>Governance, Administration</td>
</tr>
<tr>
<td>Multiple Regulatory Pathways</td>
<td>Organizational Autonomy</td>
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<td>Organizational Autonomy</td>
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<td>Management</td>
<td>Governance, Administration</td>
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<tr>
<td>Administrative Burden</td>
<td>Administration</td>
</tr>
<tr>
<td>Motivation</td>
<td>Mutuality</td>
</tr>
<tr>
<td>Expertise</td>
<td>Mutuality</td>
</tr>
<tr>
<td>Operational Law</td>
<td>Norms of Trust and Reciprocity</td>
</tr>
</tbody>
</table>

Table 4.9 lists the counts for emergent themes overall and for each case.
Table 4.9

Emergent Theme Counts - Interviews

<table>
<thead>
<tr>
<th>Code</th>
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<td>Representation</td>
<td>46</td>
<td>23</td>
<td>9</td>
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</tr>
<tr>
<td>Power Imbalance</td>
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<td>Structure for Discussion</td>
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<td>Motivation</td>
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<tr>
<td>Expertise</td>
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<td>7</td>
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<tr>
<td>Operational Law</td>
<td>39</td>
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<td>14</td>
<td>14</td>
</tr>
</tbody>
</table>

**Accountability**

Participants perceive administrative law holds them accountable in two different ways. First, participants perceive that administrative law puts a check on the agency’s management of the committees. As participant #1, a USCG employee, states:

all the guidance for the FACA committees are contained in law and you know it’s our responsibility to adhere to that as closely as we can. It sets guidance for us. It tells us you
know what we can and cannot do. And you know it pretty well puts it in black and white, if you want to say, and holds us accountable for what we do under that particular law.

Second, appointed members see administrative law as a constraint on how they engage committee work. Although it is “not at the forefront” of their mind, participant #6 knows they “have to operate within the law.” For participant #5, who does not have a legal background, law keeps the committee from “stray[ing] off a path that’s already been identified as far as the way we’re allowed to do things.”

Participants also view the 2018 CGAA as an important law that properly constrains the behavior of the agency and appointed members. Participant #2, a USCG official, states the 2018 CGAA helps the USCG better align its management practices across all USCG FACA committees, including issues such as appointment lengths and committee leadership practices. Participant #4 also references the 2018 CGAA as a watershed moment in making USCG committee management more professional and transparent for their particular committee- they imply the law’s provisions reduce the likelihood the USCG officials could favor some members over others or favor some perspectives over others.

Transparency

Participants perceive administrative law imposes transparency on the committees. Transparency arises in two contexts. First, the administrative law influences the committee bylaws that in turn require fair dealing and transparency between the agency and the appointed members and amongst the appointed members themselves when working on committee projects. As participant #1 states,

of course the sunshine laws come into you and you know they are not supposed to talk and scheme behind the scenes. . .We don’t have any evidence that that has ever happened
on our committee. Could it? Sure, but we are very cognizant that all of our committee
meetings are open to the public and our subcommittees are open. We always have a
federal employee listening in and taking notes from subcommittee meetings.

And as participant #5 notes, “I can’t talk in detail about the committee’s business unless it’s been
publicly announced.”

Second, administrative law requires transparency with the public. Participant #15
explains that the FACA requires open meetings, and the committee charter in turn requires the
agency to post the meeting minutes within a certain timeframe. Participants also perceive the
2018 CGAA improved transparency for FACA committee work. As participant #14, an
appointed member of NBSAC, states:

I do think, while having open public meetings, posting it in the Federal Register, letting
people know there’s going to be a meeting, when it’s going to be, and how they can
participate is all helpful, because it does away with that veil of secrecy and the ability to
do things sort of under the radar as we had done in the past.

Participant #9, an appointed member of NTSAC, echoes that statement, explaining that the 2018
CGAA improved transparency by requiring open meetings and implying that was not always the
case with the predecessor committee to NTSAC.

**Representation**

Representation is the third major theme to emerge from the data and it shows up in two
ways. First, the participants perceive that public law mandates representation from various
stakeholder groups within the committee. Second, the data suggest that public law incentivizes a
strong attachment between the committee members and their representative category within the
committee. The researcher is particularly intrigued by this finding, as the researcher enters the
field expecting committee members to report a tension between the committee work and their home organizations. Rather, as explained more fully below, the committee member participants report a high affinity for their representative group, even to the potential detriment of one participant’s standing with their home organization.

Both Coast Guard managers and committee members recognize public law forces the committee to be representative of the stakeholders impacted by the U.S. Coast Guard’s regulations. As participant #14 of NBSAC states, the law forces the U.S. Coast Guard to consider “diverse” ideas from “three different groups, a cross-section of ideas from manufacturers, state perspectives, and then public and boating organizations, so that everybody’s needs and thoughts and ideas are met and discussed, and worked through.” Participant #2, a U.S. Coast Guard employee, echoes this impact of law. According to participant #2, “what is really important, though, [is] FACA exists to have a collaboration of different representative groups to come up with a consensus answer that’s sensitive to lots of different perspectives.”

The data suggest, however, that public law does not create perfect representation. Participant #2 acknowledges an “imbalance” in representation for NTSAC as the committee does not require representation from “shippers and port authorities” even though the U.S. Coast Guard must be sensitive to those groups as well in developing towing vessel regulations. Similarly, participant #11 wonders “how representational” the committees are of the entire universe of affected stakeholders.

Regarding representation in the second sense, the collaboration literature suggests that collaboration members experience a tension between the needs of their home organization and the needs of the collaboration. As such, the researcher enters the field for this study expecting participants to report this type of tension. To the surprise of the researcher, the participants do
not report this type of tension, with one exception for participant #10 described more fully below. Participant #5’s home organization strongly supports their participation in the committee, and the participant believes their home organization trusts their independent judgment for matters before the committee. Participant #8 reports that their company leadership does not inquire into the participant’s work with the committee. The committee deals with significant policy issues related to safety, but participant #8 believes that safety regulations do not impact the company’s bottom line to the same extent as fuel prices or logistics issues. The researcher notes, however, that participant #8 holds an upper-level management position within the company and their own supervisors likely do not hold the same safety expertise as the participant.

The researcher does uncover one surprise in the data. Although the committee members do not experience tension from their home organizations, the members express a strong affinity for their representative sub-group. The 2018 CGAA requires each committee’s membership to reflect a cross-section of affected stakeholders. Participant #4, a state boating law representative for NBSAC, states

I have made a conscious decision that my role is the represent all the states during my tenure. . . My role and interest is to represent the states at this national level. You know I cannot say I won’t bring the biases of [my home state] into play. . . But I am conscious about my efforts to engage my fellow boating law administrators across the nation and get their insights.

Similarly, participant #11, an appointed member of NTSAC and a member of the engineer sub-group, identifies more strongly as an engineer than as a representative of their home organization for the purposes of committee work. As they state:
I see my role on the committee as being someone to represent engineers on boats. . . and I guess that sometimes that comes into conflict with having been in managerial roles with maritime companies, but I just have to put that aside when I am thinking about the committee.

According to participant #11, public law plays a role in this strong identification with their sub-group. As they state:

There is a formal structure for the committee dictating what each person is supposed to be representing within industry. And so I just default back to, well, my role is I represent credentialed engineers, period. When it comes to forming my opinion, I always default to if I asked anybody I know who is an engineer if what I am saying makes sense and they say ‘yes’ then I have performed my duty.

Only one participant reports push back from their home organization based on the participant’s work on the committee. When the TSAC, the predecessor to the NTSAC with similar representation sub-groups, considered input on implementing new towing vessel safety regulations, participant #10 exercised their independent judgment on an implementation issue that was contrary to what their home organization wanted. According to participant #10, “I did get sanctioned by my company, and there were people who gave me a lot of static about it, but I knew it was the right approach.”

The data therefore suggest that public law, at least in the advisory committee setting, incentivizes strong affinity between appointed committee members and the specific stakeholder group they represent. Committee members take their appointments to these sub-groups seriously. This finding adds nuance to the collaboration literature’s existing discussion on the tension between members’ home organizations and the needs of the collaboration.
Power Imbalance

Public law may create representation amongst stakeholders and strong identification between appointees and their representative stakeholder groups, but public law may also create an unintentional power imbalance between the U.S. Coast Guard and the committee membership. This power imbalance appears to result from the law’s front-loading of structural requirements and administrative burden without a corresponding mandate for feedback from the agency to the committee members. To be sure, any public sector member of a collaboration will hold a certain degree of relative power as a governmental entity. But in the case of these advisory committees, the public law appears to exacerbate this power differential to the point of impacting trust between the committee members and the agency.

Several participants report frustration with the lack of feedback from the U.S. Coast Guard on committee recommendations. As participant #9 states:

Sometimes I think the rules inhibit some free flow of things that can be done because a lot of times it could be just bureaucratic. So the Coast Guard asks you to do a task. They feel they have to ask you to look at this issue, and you do look through this issue and they go ‘thanks, this is great’ and there it is. Sometimes it can be done, and it’s just a little disheartening that nothing ever came of it.

Similarly, participant #15 states “when you see the Coast Guard taking your recommendations and just sitting on them, and not doing anything with them, and not really giving you any feedback on what they’re going to do with them, that hurts trust.” Participant #18 refers to a “black box” with the U.S. Coast Guard, participant #6 refers to a “wooden box” of no return, and participant #8 says recommendations go “up to the magic oracle, or, you know, headquarters, and nothing ever comes of it.”
The data suggest there may be two related reasons for this lack of feedback. First, and specific to NOSAC, participants believe the complexity of operational law might overwhelm the Coast Guard’s capacity to respond to committee recommendations in a timely manner. Participant #6, for example, discusses the complex and outdated regulations but states the U.S. Coast Guard does not communicate why the agency asks for certain recommendations or how the recommendations will be used. Participant #8 perceives a lack of willingness on the part of the agency to learn more about the offshore industry due to regulatory authority overlap with the Bureau of Safety and Environmental Enforcement, and states “this desire to collaborate, this desire to become good or knowledgeable, is not really there because there’s no impetus for the Coast Guard to do it.”

Second, public law’s administrative burdens place significant front-end requirements on the agency merely to keep the authority of the respective advisory committees in place and active. Participant #2 describes this administrative burden at great length. The FACA and related statutes and regulations create a legal environment in which they spend most of their administrative effort managing a near-constant lifecycle of committee charters, member appointments, meeting schedules, and travel arrangements for meetings.

Structure for Discussion

The fifth emergent them is structure. Specifically, the researcher identifies this theme as “structure for discussion.” This theme presents in the data in three ways. First, participants note how the Frank Lobiondo Coast Guard Authorization Act of 2018 fixes a lot of problems related to the lack of structure for the committees. Participant #2, a Coast Guard employee whose work relates to NTSAC, described the time following the act as a “transition phase” and that the act “gave us a chance to... deal with all the historical baggage associated with” the prior version of
the committee. Participant #4, a member of NBSAC, states the 2018 act “really changed the construct of the group or committee,” affecting almost every aspect of the committee from leadership elections to term limits to improved agency management. For participant #17, a Coast Guard employee who oversees committee work, the public law “forces the facilitation” of the committee meetings and “therefore. . . encourages healthy discussions.”

Secondly, public law impacts the structure for discussion as a forcing function. In other words, the public law forces the advisory committee to hold discussions and forces the Coast Guard to accept recommendations. To be sure, this is a feature of mandated collaboration. But the researcher offers that this emergent theme is more nuanced than the law simply directing the collaboration to exist. The participants in this study perceive the public law as forcing them not just to sit at the same table, but to engage in meaningful conversation. As participant #7, a member of NBSAC, states, the Federal Advisory Committee Act forces agencies to engage the public because sometimes the “agencies wouldn’t do it on their own.” A mandated advisory committee requires an agency to receive input from stakeholders outside of the notice-and-comment rulemaking process. As participant #2, a Coast Guard employee, describes, the legislative mandate to create an advisory committee “empowers private industry and entities to provide the Coast Guard with feedback. . . whether we want to hear it or not.”

Finally, public law provides guidelines and a framework to accommodate competing views to build consensus recommendations. As participant #4 states, the law allows the “pendulum” to swing for discussions and ideas, but “give[s] some of the lines to stay within, which is a good thing” while allowing for “some movement.” As participant #10 describes: the law’s framework and process [involves] listening to opposing viewpoints and coming up with an answer to them. You know, multiple interests that might have competing
interests. And so the law was the tool, in a way, that you could . . . navigate your way though a quagmire of competing tensions.

While public law provides a framework for reaching consensus, the participants also perceive the public law creates a safe space to provide dissenting views if members stay within the lanes of the advisory committees. During the data collection, the researcher provides a scenario-based question to the committee members about whether they would publicly message disagreement with a committee recommendation if they felt the recommendation was a complete mistake. The participants consistently respond they would neither publicly disparage nor publicly disagree with a committee recommendation. As participant #14 explains, they would not want to incur liability by speaking about committee work in their capacity as a committee member contrary to the committee bylaws. The implication is within the “swim lanes” (participant #17) of the committee the members are safe to discuss and debate pre-deliberative issues. And as participant #11 explains:

I find that because of the collaboration, and because of the give and take within the tasks we have, and because of the care that goes into formulating recommendations on our taskings, I would be hard pressed to come up with a time when I would feel that I need to do that, because I feel that even dissenting opinions are accepted and allowed to be expressed and are considered when making final recommendations.

Multiple Regulatory Pathways

Another major theme to emerge from the data is the concept of “multiple regulatory pathways.” The researcher places a variety of individual codes into this theme, including “ex parte communications,” “lobbying,” and “policy advocacy.” This theme captures an important aspect of public law related to the cases. Specifically, public law provides guardrails for
discussions within advisory committees and carves out one path for industry and agency stakeholders to work together within the policy process. However, participants are aware that multiple regulatory pathways exist for any given policy issue. Public law provides protections or challenges, depending on one’s position for any issue, against committee members pushing advisory committee matters into other regulatory pathways.

The researcher acknowledges some similarity between the “multiple regulatory pathways” theme and the “dual role management” theme. For both themes, the public law offers decision rules for managing behavior within the advisory committee and potential challenges for moving behavior from the advisory committee setting into other policy settings. Both themes arise from participants acknowledging that their relationships with other committee members exist within a broader set of relationship networks. However, while the dual role management theme deals with clarity of individuals’ roles, the multiple regulatory pathways theme deals with policy issues.

First, the U.S. Coast Guard employees and committee members report they do not manage advisory committee issues in a vacuum. Rather, participants constantly decide on the best course of action to achieve their policy goals. And many inflection points exist for maritime policy issues under consideration by advisory committees. In lieu of working issues through the advisory committee process, for example, participants could seek direct agency administrative review of how a regulation applies to their company’s set of facts (participant #2). Committee members also may support lobbying group efforts (albeit without directly lobbying, see 2018 CGAA) to influence legislative action directing the U.S. Coast Guard to adopt a policy position (participants #10, 13). Members may attempt to advocate for policy change at the state level, particularly with issues before NBSAC, due to the strong state role in recreational boating safety
regulation (participant #14). International organizations may also shape U.S. Coast Guard action (participant #18), and members may elect to push for private industry standards in lieu of agency regulation based on the idea that private industry standards are more flexible to keep up with the pace of technological change and innovation (see participant #18). Coast Guard employees acknowledge these multiple regulatory pathways, and within certain bounds will even counsel regulated entities on how to pick a pathway based on time and resource constraints (participant #2).

Second, despite the wide availability of alternative regulatory pathways to the advisory committee, public law places barriers on communication when an issue moves from one pathway to another. For example, participants generally express frustration when the agency will not discuss committee recommendations that have moved into a formal rulemaking process under the Administrative Procedure Act. Under the notice and comment rulemaking process, agencies generally may not discuss open rulemaking projects, and when they do the agency usually must place a record of that discussion onto the public docket for transparency purposes. This general barrier on “ex parte communications” serves to protect the public from off-the-record industry advice as the agency proposes and finalizes certain regulations.

The data suggest that the agency frequently moves policy issues from the advisory committee to the rulemaking process without clear explanation to the advisory committees and then uses public law as a shield to foreclose further discussion on the issues. The researcher notes this is related to the lack of agency feedback mentioned above but differs in that the specific issues for this theme remain under consideration by the agency, just in a way that forecloses further committee input.
The researcher notes the term “ex parte” in the public law is an adjective modifying communications in a legal process. The researcher is surprised at the number of participants who use “ex parte” as a noun in this study. Participant #8, for example, claims the agency often claims “ex parte” on policy issues. Participant #6 believes the agency does not understand when to claim “ex parte.” Participant #17, however, defends the agency’s use of this practice, noting that public law creating the committees may give advisory committee members an exaggerated sense of their own significance and right to participate throughout the policy process with the same special access to the agency they enjoy in their capacity as advisory committee members.

In summary, by creating the advisory committees public law creates a unique regulatory pathway with its own rules and requirements. The advisory committees do not, however, exist in a vacuum, and both U.S. Coast Guard and committee members understand that the advisory committees operate within a broader policy system in which actors constantly seek the best course of action and the best pathway for their preferred policy goals. Public law creates clear separation for these pathways along with challenges for committee members to participate fully in the policy process if an issue moves from the advisory committee to another pathway.

**Dual Role Management**

“Dual role management” as another theme emerging from the data. This theme is related to “multiple regulatory pathways,” discussed in the previous sub-section, but unlike the previous theme, dual role management relates to the behaviors of individuals and the relationships amongst individuals involved in the advisory committee process. Public law appears to create a framework under which individual policy actors have the authority to wear multiple “hats” within the policy arena and may switch between “hats” even when interacting with the same individuals and the same policy issue. In other words, public law creates a clear funnel for
federal advisory committee matters that results in almost a privileged status for policy actors to communicate with government officials. The public law creates a clear boundary between the inside and outside of this funnel. This delineation helps actors manage pre-existing relationships and promotes the growth of new relationships. Two examples of this theme in practice are described more fully below.

The FACA and the task statement process create a clear funnel for advisory committee members to work closely with federal officials to formulate policy or to assist with policy implementation. Within the funnel, the barrier on ex parte communications between the government and the public generally does not apply if the policy discussions do not relate to open rulemaking issues. Discussions can flow back and forth between the government and advisory committee members on a wide range of topics.

One challenge participants face is they hold multiple roles beyond their advisory committee duties. The very qualifications for service on advisory committees means the members likely have extensive experience dealing with U.S. Coast Guard regulators or dealing with the policy issues outside the context of the advisory committee structure. Toward this end, both the participants and the U.S. Coast Guard committee managers identify that public law provides a framework for deconflicting these various roles.

The data suggest that participants perceive what the researcher describes as a clear “inside” and “outside” of the advisory committee funnel, with a non-permeable boundary between. Participants note they often begin conversations with “which hat are you wearing on this call” (Participant #15)? Identification of the proper “hat” allows the participants to understand which decision rules structure their specific interactions. Conversations cannot move between the boundaries. In other words, a maritime industry executive who happens to be an
advisory committee member cannot seek an informal interpretive opinion on a Coast Guard regulation for their home organization’s use by trading on their status as an advisory committee member.

Public law therefore benefits the regulator and the affected community in two ways. First, it gives the U.S. Coast Guard managers and committee members a framework to deconflict and facilitate the multiple ways the individuals will interact with each other. Committee members may work for home organizations with multiple matters before the U.S. Coast Guard such as civil or criminal penalty proceedings, and administrative appeals related to the same. Committee members and U.S. Coast Guard members may belong to affinity groups or professional organizations which create additional interactions outside the structure of the advisory committees.

Second, although most advisory committee members join their committees with prior experience interacting with the U.S. Coast Guard, a small number of committee members do not. This appears to be a function of the different representative communities mandated within each advisory committee. For the NBSAC, for example, marine manufacturer representatives might not have familiarity with regulators (participant #5). For these members, the public law creating the advisory committee facilitates a safe space in which to develop relationships with the U.S. Coast Guard.

Participants provide two examples of this dual role management in practice. One major issue under consideration with NTSAC is the implementation of 46 C.F.R. Subchapter M for formal inspection of towing vessels. Participant #2, a U.S. Coast Guard member, describes how they counsel advisory committee members on the difference between their roles as advisory committee members and as representatives for their own companies and the different topics they
can discuss in each role. Similarly, participant #4 notes that NBSAC provides significant input into a federal boating safety grant process. This participant stresses the importance of following the advisory committee laws related the grant process because advisory committee members themselves can compete for these same grants. Care must be taken to ensure communications between advisory committee members and the U.S. Coast Guard fall clearly within the grant development process of the advisory committee or the grant application stage during which advisory committee members implicitly hold no advantaged position beyond that of general citizens in dealing with the agency.

In summary, this emergent theme relates to multiple regulatory pathways, but deals with the behavior of individuals during interactions between advisory committee members and the agency. Participants perceive that law creates a privileged communication status for certain issues before the advisory committees, but that privileged status does not exist in interactions between members and the U.S. Coast Guard when discussing matters related to their home organizations or related to outside affinity groups or professional organizations.

Management Admin Burden

The researcher describes the next emergent theme as “management admin burden.” Administrative law and related administrative policies place high burden on USCG managers. The USCG participants report this burden distracts their focus from substantive matters before the committees.

First, administrative law places procedural burdens on the USCG managers of advisory committees. The USCG must solicit membership for the committees, create slates of prospective members, and obtain Department of Homeland Security approval of proposed memberships slates on strict timelines. As participant #2 states,
It can be complicated just in the idea of having to submit charters every two years, having to have limitations on membership slates, and what positions they can fill. . . So that administration just takes a lot of time. . . If you have a charter lapse then suddenly you are resetting the whole committee, your membership no longer exists, and there’s some complications there.

Additional requirements compound the legal burden placed on managers. The DFOs coordinate their committees on a part-time basis (Participants #1, 2, 15). DFO duties are collateral to other agency regulatory responsibilities, and two participants estimate they spend “15-20%” of their overall time on DFO responsibilities (Participants #1, 15). Furthermore, DFOs are responsible for budget, travel, and finances for committee member travel to and from meetings. Although the COVID-19 pandemic resulted in increased use of virtual meetings, in-person meetings still occur with much higher administrative and financial burden (Participants #1, 2). The USCG administrative responsibilities increase significantly as the agency finalizes preparation for meetings, whether remote or in-person (Participants #1, 2, 14, 17).

Relevant to this research, the administrative burden, including the administrative law burden, pulls USCG attention away from the substantive issues of the committees. As participant #2 states, “there are times when the process of doing those tasks can take away from other things the committee could be doing.” Administrative law may impact the collaborations by inducing USCG members to focus on legal requirements rather than the substance of the committee work or on providing meaningful feedback to the appointed members (see Participants #6, 8, 18).

**Motivation**

The theme of motivation arises from the interview transcripts in three ways. First, agency officials report a high degree of motivation and commitment from the appointed committee
members. As participant #1 states, “you get to meet some very interesting individuals who are very concerned about the recreational boating world.” Participant #2 also speaks highly of the appointed members and their sense of responsibility to the operational law. Overall, the data suggest USCG officials believe appointed members apply to join the committees with some desire to effect positive change beyond representing their home organizations or representative groups.

Second, appointed committee members report a strong motivation to shape consistent, uniform, and manageable regulations. This motivation might arise purely out of a business interest in consistent regulations (see Participant #5). However, the data suggest that appointed members who previously served on active duty with the USCG appear to want to fix regulatory gaps they first noticed while they served on active duty (Participants #6 and 8).

Finally, other appointed committee members apply for committee appointments to serve a public interest more broadly. Participant #18, who has no prior USCG experience, serves to help the USCG anticipate regulatory changes based on technological changes in the maritime industry. As they state:

I believed that there’s got to be a way to fix this and I soon realized that the only way to fix these issues is to participate in the rulemaking process. As long and slow as the process is that doesn’t change the importance of participating in it. It’s playing the long game when you start participating in FACAs and other industry groups that play a role in the regulatory process.

Participant #14 considers it “an honor” to hold an appointment to the committee from the Secretary of DHS. Additionally, participant #16 reports a sense of public responsibility in members that may equal their self-interests by stating “I think most of the people, most of the
members of the committee, represent their industry well and are loyal to their industry first but they all want to do what’s right for safety and environmental protection.” The researcher notes participant’s reference to “industry” in context likely refers to the members’ respective industry stakeholder groups within the committee, not a general dedication to their home organization.

So how does public law impact this motivation? For each of the various ways motivation comes up in participant discussions, usually the participants reference a desire to adjust or change the operational law of their respective industries. In other words, the administrative law may provide the structure for discussions, but the substantive operational law motivates members to apply. It may be that appointees perceive a need to change to law, or they may perceive the agency does not properly anticipate technological change in the current agency regulations. Whatever the precise motivation, appointed members want to effect substantive change.

Expertise

The final emergent theme is expertise. Nearly all participants identify that public law supports the U.S. Coast Guard obtaining specialized industry experience for use in developing agency regulations and policies. This appears in the data in three main ways. First, and specific to NOSAC, participants note that specialized industry expertise is necessary because the agency struggles to keep its regulations up to date for current technology. In this sense, law impacts participant behavior because they want to help the agency improve the operational law for their industry. As participant #18 notes:

... we need to find a means of closing the gap between innovation and regulation.

Working on NOSAC, that’s kind of what I see as pulling us along. We see innovation in my particular area of expertise, which is [redacted by the researcher for confidentiality]. There still isn’t a while lot of regulation in the industry for [my area of expertise]. There
are a lot of standards that have been set by (industry organizations). When I approach my work on NOSAC, it’s with the idea that we need to improve the law. We need to improve regulations in order to keep pace as best we can with innovations that are in the industry. Additionally, participant #6 states:

The regulations [for the Outer Continental Shelf] were written when Eisenhower was President, and they were updated in Reagan’s second term. So that’s what we have to deal with, and then for floating units [the U.S. Coast Guard] just cherry picks certain regulations, not the full suite, but certain regulations from 46 Code of Federal Regulations, which is for mobile offshore drilling units or vessels, but we’re not vessels.

Second, participants reference expertise not just for shaping new or improved operational law, but for providing general industry perspective to the agency. As participant #10 describes, public law provides the opportunity for the committee to “formulate particular areas of advice for the Coast Guard” for implementing new towing vessel regulations. Participant #9 further explains that although the Coast Guard might choose not to follow all recommendations, the committee helps the U.S. Coast Guard to “learn new things, different things” the agency would not otherwise bring to bear in decision-making. Participant #14 echoes this position by stating:

Our primary overarching thing is to get together, work on the strategic plan, and give the Coast Guard some direction and some good counsel on a way forward for boating safety for them to determine which way they want to go, instead of just kind of weighing things and making policy in a vacuum if that makes sense.

Finally, participants also recognize public law facilitates industry feedback to the agency after maritime disasters or emergencies. In this sense, public law allows the committee to serve as an “expert witness” to help the agency better understand the context of specific incidents.
Participant #3, for example, describes leading a sub-committee to provide input to the agency after a high-profile towing vessel accident involving a grounding in a remote location. The participant was able to marshal the help of several subject matter experts for various related towing issues to provide a high-quality report to the agency. Participant #11, a Coast Guard employee, describes this role in a normative negative sense, but understands the committees are “reactionary to whatever is happening at the time. So if it’s COVID, then all they can think about is COVID. If it’s the supply chain and bottlenecks, then all they can think about are supply chains and bottlenecks.”

**Operational Law**

The literature review defines and distinguishes between public administrative law and public operational law. The researcher selects three cases for the study with common administrative law but distinct operational law to explore, in part, how operational law may impact collaboration processes differently between the cases. The NBSAC’s operational law is boating safety regulation, the NOSAC’s operational law relates to maritime issues for outer continental shelf resource extraction such as oil & gas, and the NTSAC’s operational law relates to towing vessel regulation.

The data suggest a surprising potential relationship between operational law and the Process Model. While administrative law appears to impact the governance, administration, and organizational autonomy dimensions of the Process Model, operational law appears to impact the mutuality and norms of trust & reciprocity dimensions of the process model. Specifically, the data suggest that a high complexity of operational law relates to a lower level of trust between collaboration partners.
This phenomenon is particularly apparent for the NOSAC case. The NOSAC’s operational law is especially complex, as the USCG struggles to keep pace with emergent technology in the offshore maritime industry (Participant #18), using 40-year old regulations (Participant #6) and a mix of policy documents while negotiating interlocking and overlapping regulatory authority with the federal Bureaus of Safety and Environmental Enforcement (hereinafter “BSEE”) (Participant #8). As participant #18 states in detail,

[the operational law of NOSAC] is all very convoluted and complex to get through.

When it comes to trusting the USCG in our work on NOSAC, it’s a demonstration of the knowledge of those laws. The more complex and convoluted the laws get the more difficult it is for the USCG to do their job and the more difficult it is for them to speak with confidence about what regulations apply to certain things in the industry. And if the USCG can’t speak with confidence about a lot of those laws then our confidence in those individuals or in the USCG in general can kind of waver a little bit as they try to stumble through some of the same things we stumble through.

Participant #8 is similarly direct in linking trust to the complex operational law. Participant #8 questions whether the USCG is dedicated to learning the needs of industry when the number of offshore industry operators is low compared to the number of commercial operators in other maritime industry sectors and the USCG can rely on BSEE to a large degree to regulate the offshore space. Notably, participant #6 does not perceive that law impacts trust at all within NOSAC but follows this declaration by stating that the USCG does not provide a feedback loop for complex NOSAC recommendations. The frequency count of emergent themes in the NOSAC interview data reflects this lack of trust, as participants often mention words and phrases related to the “power imbalance” between the USCG and appointed members.
The researcher considers the NTSAC operational law to be less complex than the NOSAC operational law, but more complex than the NBSAC operational law. The most challenging operational law initiative in NTSAC’s portfolio is the implementation of “Subchapter M,” or the ongoing development of new safety regulations and associated policies arising out of Congress designating towing vessels as “inspected vessels” nearly two decades ago (Participants #2 and #8). Participants report varied degrees of trust with the USCG but speak highly of two different agency officials whose management styles foster strong two-way communications with the committee’s appointed members (see Participants #8, 10).

The operational law for NBSAC is more settled than that of NOSAC and NTSAC. State boating law administrators are one category of membership on the NBSAC, and the USCG and state boating law administrators have a well-established working relationship that mitigates federal-state tension in this space (Participants #1, 4, 14). Notably, NBSAC participants frequently mention words and phrases associated with the emergent theme of representation in the transcripts.

What does this mean for the study and practice of collaboration? The findings suggest two main takeaways from this apparent relationship between operational law and the Process Model dimensions of mutuality and norms of trust and reciprocity. First, leaders and managers should be mindful not to focus exclusively on legal compliance in mandated collaborations. Administrative law may mandate front-end structure for collaboration, but leaders and managers who focus on the front-end legal mandate may forget to build in practices to support mutuality and trust on the back end, especially for collaborations with complex operational law. Second, law and management principles are not mutually exclusive in the theory and practice of public administration.
Perception of Law’s Impact

Having examined the deductive and inductive codes, this report now turns to a brief discussion of the participants’ direct perception of law on their collaboration. During the data collection, the researcher directly asks sixteen of the eighteen participants to explain how law impacts their work or how they think about the law in their committee work. As with the definition of law, the participants communicate a variety of ways they perceive or think about the law during their work, with some participants flatly denying they consider law at all and other participants extolling the virtues of law in shaping their work with the committees.

This chapter analyzes law’s impact on participants through the lenses of the deductive and inductive codes in the preceding sections, but it is worth pausing to examine the participants’ own perceptions of the law’s impact as a foundational issue. As discussed in Chapter 3, this study takes the philosophical position that law and its impact may objectively exist outside the participants’ own perception. In other words, participants may express their perceptions of how law impacts their behavior and work, and that perception may be fallible. As such, it is relevant to this study to examine the participants’ perceptions in a stand-alone section.

The researcher also notes that this section only analyzes participant responses to the direct question of how they perceive the law to impact their work. This section therefore represents the initial or “gut reaction” of participants to this specific question which the researcher usually, but not always, asks toward the beginning of each interview. The participants respond to several questions throughout each semi-structured interview. Some participant responses later in their interviews provide additional nuance or even unconsciously contradict their initial responses analyzed in this section. (To be sure, participant responses to this question also contribute data to the earlier analyses through the lenses of deductive and inductive coding.)
Table 4.10 provides the code frequency for the deductive themes for participant answers to this direct question, and Table 4.11 provides the code frequency for the emergent themes for participant answers to this direct question.

**Table 4.10**

*Predetermined Theme Count- How Does Law Impact Your Work?*

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<tr>
<th>Theme</th>
<th>Overall</th>
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<th>NTSAC</th>
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<td>Mutuality</td>
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<td>Norms of Trust and Reciprocity</td>
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Table 4.11

*Emergent Theme Count- How Does Law Impact Your Work?*

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<tr>
<th>Code</th>
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<td>Transparency</td>
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<td>0</td>
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<tr>
<td>Representation</td>
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<td>1</td>
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<td>2</td>
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<td>Structure for Discussion</td>
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<td>Operational Law</td>
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</table>

The participants give a variety of responses to this question, and all answers fall into one of five general themes. First, many participants explain that law provides the structure for their committee or for discussions within the committee. Several of these responses specifically mention the statutory requirements for diversity of background within the committee membership.

Second, three participants specifically mention the 2018 CGAA which reorganized the Coast Guard’s operation of the three advisory committees comprising this study. Participant #4
believes this new law is a normatively positive change for their committee, because the new law forces the committee to operate more transparently with open meetings while “reducing management oversight” that existed prior to the new law. Two other participants, also committee members, spoke positively about how this specific statute creates boundaries both for the committee members and for the agency managers.

Third, both agency managers and committee members express frustration at the administrative burden the law places on their committee work. For one Coast Guard member, the law’s requirements for committee appointments and the two-year charter renewal cycle place a high demand on their time and pull their attention away from coordinating the substantive work of the committee. Two committee members express frustration with law. Participant #7 notes that agency managers sometimes use the law as a tool or a cudgel to drive the committee in the direction the agency wants the committee to go. Participant #8 expresses frustration with information sharing restrictions in federal law and complains that the agency appears to interpret ex parte communications during open rulemaking processes much more broadly than the agency needs to interpret those restrictions.

Fourth, although most participants respond to this initial question by discussing structural or administrative items, multiple respondents immediately discuss operational law issues. Participant #14 discusses the many different types of boating safety laws, including statutes and regulations at the federal and state levels. Participant #18 discusses how the law allows them to make substantive legal changes to help the U.S. Coast Guard modernize its regulations to match technological advances in maritime industry.

Interestingly, two participants initially deny that they consider law to have an impact on their work. Participant #3 “[does not] ever put the law at the top of [their] list” of considerations
“other than to do the right thing.” The researcher notes participant #3 does not have any formal legal training but prefers to work with clear rules for discussion and participation in advisory committee settings and other professional environments. According to participant #5, law “does not impact” their work with the committee, although the participant then proceeds to describe how the law limits their ability to speak about pre-deliberative committee work outside the scope of the committee.

The researcher notes three major takeaways from this analysis of participant responses to the specific question. First, participants’ experience with law and their legal training may influence their perception of the law’s impact on their advisory committee work. In other words, more experience with the law may make participants more attuned to spot where the law influences and shapes administrative processes and substantive policy recommendations. Notably, the participant who responds most strongly that law impacts their work holds a law degree. The two participants who initially deny that they perceive law to impact their work have no formal training in law and their professional backgrounds differ in significant ways from the backgrounds of other participants. Rosenbloom et al. (2021) discuss how scholarship at the intersection of law and public administration requires a deep understanding of both law and public administration. Similarly, practitioners in collaborative settings may not identify the ways that law shapes their work without prior legal training or experience.

Second, the participants primarily describe law’s impact on the front end of the collaboration. In other words, most participants immediately think of law’s requirements for establishing the committee, appointing members, and providing public notice for meetings. The participants speak of law as impacting the beginning of the collaboration rather than the end work product or substantive recommendations of the advisory committees. The researcher notes
that participants’ responses to this initial question align with the observations related to the broader data from the full participant transcripts.

Finally, Coast Guard members identify a tension between the administrative hurdles imposed by law and a desire to focus on communication and substantive work with the committees. Participant #2 states that although their committee oversight responsibilities are a part-time role, they still must devote approximately nine months of committee work effort within each two-year charter cycle in order to update their committee charter, seek approval of committee appointments, and establish meeting dates and agendas. They believe at least some of that time should be spent instead on building relationships with committee members and reviewing the substantive work of the committee.

Documents

In addition to interview transcripts, this study uses committee documents to triangulate data and improve qualitative trustworthiness and reliability of results. The researcher intentionally chooses to examine the data related to documents in a stand-alone section for two related reasons. First, the data suggest that the committee documents relate primarily to structural issues within the collaborations. Second, analyzing the document data along with the participant interview data would risk skewing the data, in a qualitative sense, such that the study might focus too heavily on structural issues already apparent in the participant interview transcripts. This section therefore examines the document data standing alone. Table 4.9 lists the frequency counts within the committee documents for the pre-determined codes, and Table 4.10 lists the frequency counts within the committee documents for the emergent themes.
Table 4.12

*Predetermined Theme Count- Documents*

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Table 4.13

*Emergent Theme Count- Documents*

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Charters, bylaws, and meeting agendas are the most accessible documents for these three cases, and the researcher retrieves these documents from the committees’ public-facing websites managed by the USCG. The documents frequently reference administrative law such as the FOIA, the APA, and the 2018 CGAA. Additionally, the documents reference standards of conduct regulations and restrictions on lobbying activities by members of the committees.

The documents suggest that administrative law primarily impacts the governance and administration dimensions of the Process Model, with lesser impact on the organizational autonomy dimension and no impact on the mutuality and norms of trust and reciprocity dimensions. This finding aligns with the analysis of the data for the participant interviews. Furthermore, the emergent themes in the documents strongly align with the purposes and values of the administrative law referenced in Chapter 2.

**Analysis of Research Questions**

**Research Question #1**

*How does public law impact the collaboration processes for three Federal Advisory Committee Act ("FACA") committees managed by the United States Coast Guard?*

The data suggest public administrative law and public operational law both impact the collaboration processes for the three advisory committees. However, public administrative law and public operational appear primarily to impact different process dimensions within Thomson and Perry’s (2006) Process Model. Administrative law provides front-end structure to the committees and primarily impacts the governance and administration process dimensions, with some impact on the organizational autonomy dimensions. Emergent themes in the data suggest that both USCG and appointed members of the collaborations perceive administrative law to
embed certain values in the collaborations such as representation, accountability, and transparency.

Operational law primarily impacts the mutuality and norms of trust and reciprocity dimensions within the Process Model. The three cases have common administrative law but different operational law, allowing for qualitative comparison across cases (see Yin, 2003). Of the three cases, the NOSAC case participants describe their operational law as particularly challenging and complex, and these participants also describe a lack of trust between the appointed members and the USCG members within the collaboration. This study suggests there may be a correlation between the complexity of a collaboration’s operational law and the presence or absence of perceptions of mutual benefit and trust. Emergent themes related to these discussions for the NOSAC case, and to a certain extent for the other cases, include perceptions of a power imbalance between the agency and the appointed members and a related lack of feedback from the agency to the appointed members. This finding has implications for how the agency officials coordinate and liaise with the three committees.

**Research Question #2**

*How does public law impact how United States Coast Guard officials coordinate and liaise with the three FACA committees?*

The distinction between administrative law and public has implications not just for the Process Model, but for agency management of the committees. Across all three committees, administrative law appears to focus agency managers’ attention on coordinating structural and front-end matters for the committees to the potential exclusion of creating back-end feedback loops and other efforts that could build trust and social capital with the collaboration. Agency officials coordinate the committee work as just one part of their overall work portfolios, and the
emergent themes suggest the agency officials feel significant burden simply to meet legal requirements to maintain the committees’ legal authorities and membership slates. Administrative law such as the APA also creates strict procedural requirements for announcing meeting times and agendas, and agency officials create highly structured meeting agendas with script-like precision to be accountable and transparent to the public. The data suggest administrative law may create one of two situations for the agency officials: (1) either they want to focus on the full temporal process of collaboration management, but they choose to focus on the front end because they view front-end legal requirements as the most important of their responsibilities to which they devote their limited resources, or (2) administrative law makes agency officials equate procedural compliance with successful management.

To be sure, agency managers perceive operational law as important to the committee work, and they recognize that substantive committee recommendations carry the legitimacy of industry buy-in when the agency considers regulatory courses of action (see Participants #1, 2, and 15). However, the agency managers view administrative law as more relevant to their management duties, and they do not appear to give as much weight to providing substantive feedback to the committees as they place on receiving information from the committees. Because neither administrative law nor operational law require agency feedback to the committees, whether agency officials expend effort to provide two-way communications structures appears to depend on the given agency official’s own discretion and leadership style. When this occurs, however, it appears to build trust with the appointed members and they work harder to provide helpful information to the agency.

Indeed, the data suggest that agency officials rely on pre-existing professional networks and social capital to fuel the success of the collaborations. The data indicate that most appointed
members of the committees are well-known to the USCG and to each other prior to their respective appointments. Agency officials might therefore place a low priority on building trust and social capital within the collaboration itself. One agency official specifically describes a need to place a “certain distance” between themselves and the appointed members to maintain impartiality (Participant #1). To the extent that agency officials assume “all is well” within the collaboration, the officials might inadvertently neglect the appointed members and signal a lack of interest in the members’ interests and perspectives.

**Research Question #3**

*How does public law impact how the FACA committee members interact within the collaboration processes of the three FACA committees?*

Public administrative law and public operational law impact committee member interaction in a variety of ways. First, the data suggest administrative law impacts the structure of how committee members relate to each other and to the agency. Administrative law such as the FACA drives committee rules and bylaws that govern member roles and meeting schedules. Ethics rules and prohibitions on lobbying activities create clarity for appointed members on how they can interact with each other. Participants generally report they must think about which “hat” they are wearing when interacting with each other and the agency. FACA work is usually just one of the ways the appointed members interact with each other- the administrative law creates the space for the collaborative FACA work but restricts members from leveraging their FACA member status when acting in their own capacity or on behalf of their home organization before the agency.
Interestingly, administrative law also creates a strong sense of attachment and responsibility for each appointed member toward their representative group on the committee. When the researcher inquires about potential tension between their home organization and the goals of the committee, several participants express their strong sense of loyalty to their “group” as a third entity. For example, a state representative on NBSAC expresses a loyalty to states in general before loyalty to their own state, and an engineering representative on NTSAC expresses loyalty to engineers in general before a loyalty to their home organization. One participant even gets sanctioned by their home organization for exercising their own judgment for their representative group and taking a position contrary to the home organization’s public position on the issue in question.

Operational law appears to serve as a motivation for member participation on the committees. Specifically, appointed members report a high degree of motivation to serve on the committees to shape the law and policy governing their highly regulated industries. Some participants appear motivated to serve out of a business interest in fostering consistent uniform regulation, while others express a generalized sense of public service.

The researcher notes one surprise within this study. Although the research focuses on public law, one participant reports that private litigation has a chilling effect on their ability to share relevant information within the committee about workplace safety and workplace injury. The researcher did not consider this issue prior to the research - there may be other situations in which private civil litigation impacts information sharing.

Process Model Adjustments

Thomson and Perry’s (2006) Process Model of Collaboration forms the conceptual core of this study. The data suggest that law impacts the Process Model in two ways: (1) analysis of
deductive pre-determined codes suggests that public law impacts all five process dimensions of the Process Model, and (2) analysis of inductive emergent themes suggests that administrative law injects certain values, at least for mandated collaboration, in a way not previously accounted for in the Process Model. The researcher updates the Process Model in Figure 4.1 based on the results of this study.

**Figure 4.1**

*Updated Process Model*

As with the original Process Model in Figure 1.1, and consistent with Thomson and Perry’s (2006) original view of the Process Model, the researcher envisions collaboration to move from left to right within the figure (and generally from top to bottom within the Process Dimensions box). The “incl. legal mandate” in the Antecedents box denotes that law may serve as one antecedent or as the sole antecedent for a mandated collaboration. For this study, the 2018 CGAA serves as the legal mandate.

In Figure 1.2, and prior to data collection, the researcher positions public law between the Antecedence box and the Process Dimensions box. Based on the data collection and analysis, the
researcher makes four modifications to update the model for Figure 4.1. First, the researcher splits “Public Law” into “Admin. Law” and “Ops Law” to reflect administrative law and operations law, respectively, and to note the finding that administrative law and operations law impact collaboration processes differently. Second, the researcher places “& Values” alongside Admin. Law to note that participants perceive administrative law to inject normative values such as transparency and representation into the collaborations. Third, the dashed line between “Admin Law & Values” and “Ops Law” indicates that administrative law may permeate that boundary to impact the organizational autonomy process dimension. Fourth, the angle of the dashed line indicates that administrative law primarily impacts the governance and administration dimensions, operations law primarily impacts the mutuality and norms of trust and reciprocity dimension, and both administrative law and operations law appear to impact the organizational autonomy dimension.

Summary of Observations

This chapter explores the three research questions by analysis of textual data from seventeen interviews and 23 documents across three cases. Three major observations are drawn from this analysis of both deductive a priori codes and inductive emergent themes: (1) public law impacts all process dimensions within the Thomson and Perry (2006) Process Model of collaboration, and injects certain values into mandated collaboration that are not accounted for explicitly in Thomson and Perry’s (2006) model, (2) public law places significant burden on federal administrative officials to manage the front-end structure and initiation of collaboration processes within these advisory committees, but the lack of mandated feedback and performance metrics create a power imbalance that negatively impacts trust of the agency, and (3) public law impacts member interaction as the public law is reflected in bylaws and other norms of behavior,
although committee members vary in the extent they directly perceive the law to impact their behaviors.

Several additional observations are also drawn related to the major observations listed above: (1) public law provides a structure and a pathway for federal managers and advisory committee members to manage and deconflict their own multiple roles, or “hats,” within the maritime policy arena, (2) public law provides clear guidance and lanes for multiple regulatory pathways within the maritime policy arena, each with its benefits and drawbacks for policy advocates, (3) public law injects representation into advisory committee proceedings and projects, not as a matter of racial, ethnic, or gender representation but as a matter of impacted stakeholder and affected industry representation, (4) an advisory committee’s public operational law may impact the relationship between advisory committee members and the committee managers, (5) public law forces the agency to seek and receive specialized industry expertise to inform the agency’s policy decisions, and (6) public law injects accountability and transparency into advisory committee proceedings.

Taken together, the limited participant sample size and the potential researcher bias caution against drawing definitive conclusions from this inquiry. The observations listed above represent reasonable inferences drawn from the qualitative data. Additional research is warranted to test the validity and generalizability of these observations using a variety of research methods and a variety of research contexts. With that qualification in mind, the next chapter provides conclusions and recommendations for further research based on this study.
CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

Overview

This research focuses on the impact of law within three federal advisory committees managed by the U.S. Coast Guard. This final Chapter offers reflections and thoughts naturally flowing from the prior chapter’s analysis and findings. Contributions to scholarship and practice are discussed, and limitations of the study are acknowledged.

Reflection on Law & Public Administration Scholarship

Two scholarly works primarily motivate this study. Moe & Gilmour (1995) review the public administration literature and argue that the field “neglects” law. Two decades later, Amsler (2016) issues a call for research designs based on law. These two works roughly bookend the era of New Public Management, characterized in part by a turn away from law (see Chapter Two). Although no reasonable scholar would describe 1995 as recent, Osario et al. (2021) conduct an analysis of law and public administration scholarship and find, *inter alia,* that Moe & Gilmour’s (1995) proposition largely stands and legal scholarship within public administration remains largely stove piped.

Moe & Gilmour’s (1995) proposition represents one side of the debate the researcher references in Chapter Two about whether public administration neglects law. As mentioned in Chapter Four, the researcher does not take a position on this debate nor does the researcher believe that this study settles the debate. What the researcher offers, however, is this study’s findings are relevant for the related debate of whether law should be the primary foundation for the study of public administration.
Based on the study, the researcher offers that the ideological debate only hinders advancement of knowledge at the intersection of law and public administration. As this study shows, collaboration participants have varying degrees of legal training and express varying levels of legal awareness. Participant #3, for example, expressly goes out of their way to avoid law, relying instead on their own fundamental sense of right and wrong. Similarly, participant #5, who comes from a business background, states that they do not understand law. Both members, however, favor formal decisions rules currently existing with their respective committees, even if they do not understand the connection between law and the decision rules in place. Participant #17 disavows any attempt to answer about law’s impact on their work as too “philosophical” but notes that they supervise an attorney who provides them with detailed legal advice when needed.

The researcher’s point is this- just as collaboration is “here to stay” (Amsler, 2016), the law is “here to stay” and in fact has always been present. It may be that practitioners and scholars lack the training to distinguish between law and other decision rules (see Rosenbloom et al., 2021), but the law nonetheless impacts the practice of collaboration specifically and public administration generally. This study’s data suggest that empirical research of statutes and their impact may provide a viable path forward for theory building at the intersection of law and public administration.

What does this look like? Legal scholarship leans normative, ideological, and “doctrinal” rather than empirical (see Diamond, 2019). This researcher’s scholarly publications with the legal academy (see Vita) fall into this category. Legal scholars write about great ideas and values such as transparency and representation, but most of the time they do not need to support their claims with empirical evidence beyond existing case law.
By contrast, public administration scholarship builds knowledge cumulatively through empirical testing. Public administration scholars likely are comfortable researching issues involving individual statutes, as those statutes represent the operationalization of broad legal values. As Rosenbloom et al. (2021) imply, however, public administration scholars may lack depth in legal training to research law in a meaningful way beyond examining a statute or two at a time.

Interdisciplinary research, therefore, offers a path out of the ideological swamp toward a more complete understanding of the role of the intersection of law and public administration. Legal and public administration scholars, working in tandem or in review of each other’s work, can mitigate scholarly blind spots and help generate new knowledge at the intersection of the fields. Legal scholars can help public administration scholars understand broad legal principles and philosophies linking constitutions, statutes, and regulations into a cohesive legal framework. Public administration scholars, likewise, can help the legal academy better understand, based on empirical observation, how constitutions, statutes, and regulations impact society in practice. After all, it is not the law as written that matters. What matters is the law as perceived and implemented by non-attorneys in practice and as experienced by citizens in their interactions with government agents.

**Contributions to Collaboration Scholarship**

This study makes three main contributions to collaboration scholarship. First, this study distinguishes between administrative law and operational law, and finds that both types of law impact participants’ perceptions of the law within collaborations. This is important as most scholarship at the intersection of law and public administration focuses on administrative or procedural law. There may be something about variations in “mission-based” (Piotrowski &
Rosenbloom, 2002, p. 643) operational law from agency to agency or setting to setting that impacts collaborations just as much as administrative law.

Second, this study finds that participants do perceive administrative law to inject normative values in collaboration practice, which was not expected at the outset of this research. Amsler (2016), in one of the works motivating this study, argues that there is an “intrinsic value” to collaboration. Participant #4, a non-attorney, echoes this statement almost verbatim when they speak about the “intrinsic value of collaboration.” Participant #4 plans to create voluntary advisory committees in their own jurisdiction to harness the power of collaboration they experience at the federal level. Several other emergent themes, including but not limited to representation, transparency, and accountability also reflect normative values in the APA, the FOIA, and the FACA.

Third, and perhaps most importantly, this study shows that law and management appear to be interconnected. One main theme running through the findings is that administrative law’s front-end requirements may inadvertently cause agency officials to neglect back-end social capital and trust-building practices essential to the maintenance of collaboration, especially when the collaboration is responsible for highly complex operational law or regulatory issues. Agency officials may lean on compliance with administrative law’s structural components as a leadership crutch or, even worse, as a measure of success, and assume that prior relationships amongst collaboration participants will continue to fuel the social capital necessary for effective operation of the advisory committees. This study suggests that scholars may want to examine further how law not only animates collaboration but how law might exacerbate power imbalances in relationships or induce gaps in processes that leaders and managers must identify and fill in to maintain trust and social capital in collaboration. Such scholarship could add to the existing
literature on social capital as both a requirement and an output of collaboration (see Morris et al. (2013), and on the differences between leadership and management skills in traditional top-down organizations compared to horizontal collaborative environments (see McNamara, M., 2015a).

Contributions to Practice

The findings suggest that law places significant front-end structure on advisory committees along with high administrative burden on agency managers simply to maintain the legal authority and existence of the committees. Under conditions with scarce resources of time, energy, and budget, committee members and agency managers may be tempted to focus their efforts on sustaining the structure of the committees at the expense of the substantive work of the committees and the creation and maintenance of trust within the committees. For example, law may require the agency to create and administer the committees, but the law does not mandate the agency provide standardized feedback to the committee members on their recommendations. Multiple participants report this lack of feedback erodes trust of the agency and, in one case, makes members question the agency’s dedication to the subject area of their industry work. Advisory committee managers should identify where law leaves gaps in an advisory committee’s workflows and institute agency practices and feedback mechanisms to ensure proper respect and time are given to the committee members to maintain trust necessary to sustain the collaboration.

Second, as the list of participants in Table 3.1 indicates, not all committee members have formal legal training. Just as Rosenbloom et al. (2021) argue, inter alia, that deep knowledge of law is necessary to research law within the field of public administration, practitioners might need some baseline legal awareness in order to understand and spot how law impacts their work. The law already mandates federal standards of conduct training for a limited subset of advisory committee members (Participant #9) and some type of administrative law training for all
members (Participant #7). Agency managers and committee members should develop similar materials to raise all members’ legal awareness of both administrative law and operational law for their respective committees.

Third, the findings suggest that most, but not all, advisory committee members have experience operating in the maritime policy arena and interacting with the managing agency of the advisory committee. This makes intuitive sense as members with experience operating in the maritime policy arena are more likely than members of the general public to meet the appointment criteria for the respective committees. The data suggest that public law provides a benefit to the agency and advisory committee members by creating clear boundaries for these multiple regulatory pathways and multiple roles for individuals. The findings also suggest that committee member trust of the agency can be eroded when the agency works with the advisory committee for an issue within the advisory committee’s regulatory pathway, but then moves that policy issue into another regulatory pathway without clear notice to the advisory committee. The researcher recommends that the agency establish clear communications practices so that advisory committee members better understand when and how the agency will move issues out of the advisory committee’s lane, and how that movement impacts free and open discussion of that policy issue between the advisory committee members and the agency.

Limitations of the Study

The researcher identifies four limitations to this study. First, this inquiry only examines three federal advisory committees managed by the U.S. Coast Guard. The findings may be specific to this context. Although the research design results in rich description of this study’s context, the design necessarily limits generalizability of this inquiry’s findings. The researcher
mitigates this limitation by fully describing the case setting so other scholars may consider the transferability of this study’s results and attempt to replicate it in other settings.

Second, the small sample size of participants for each case limits the trustworthiness of the findings and conclusions. The researcher includes both Coast Guard members and committee members in each case. For this study, however, the universe of potential participants in either category is small. The researcher mitigates this limitation through detailed description of the inclusion criteria so other scholars would be able to replicate these criteria for similar studies in different contexts. The researcher also seeks opportunities to obtain Coast Guard members who meet the inclusion criteria for more than one case. The researcher is able to obtain one Coast Guard member who meets the inclusion criteria for all three cases and one individual who meets the inclusion criteria for one case based on their prior Coast Guard work and based on their current committee appointment for another case. For committee members, the researcher somewhat mitigates this limitation by including one former TSAC member identified through snowball sampling who has deep knowledge of the current NTSAC and the transition from TSAC to NTSAC required by the Frank Lobiondo 2018 Coast Guard Authorization Act.

Although the researcher acknowledges this second limitation, the researcher also notes the challenges in entering the field for this type of study. The committees comprising the three cases manage sensitive and pre-deliberative maritime policy issues, and multiple potential participants across all three cases elect not to grant an interview for this inquiry. The researcher encounters significant challenges in accessing participants for the NOSAC case. The researcher believes they access NOSAC participants at all due to the researcher’s practical experience with the managing organization. In other words, the researcher understands how to engage with specific agency personnel to drive the agency’s ultimate acquiescence to voluntary NOSAC
interviews. The researcher appreciates the important work and dedication of all who meet the inclusion criteria for this study, whether they elected to participate in a voluntary interview.

Third, the researcher acknowledges the data and findings are based largely on the perceptions of the participants and the interviewer. The researcher mitigates this limitation through detailed description of the research steps, including the data analysis. Additionally, there may be something about the researcher’s legal training that leads the researcher to analyze data in a certain way. The researcher addresses this issue through a detailed description of potential research bias.

Finally, another limitation of this research design is the breadth with which law is discussed in the interviews. In other words, participants are invited to discuss their thoughts on law, but they are not necessarily asked about individual statutes unless those statutes arise organically in the flow of the discussion. As a result, the interview data does not necessarily reflect how an individual statute impacts the collaborations. As with the limitations mentioned above, the detailed description of the research process and potential research bias provide guideposts to future researchers who wish to study the impact of specific statutes on collaboration.

Recommendations for Future Research

Based on the findings of this study, the researcher offers the following recommendations for future research. First, the three-case qualitative case design necessarily limits the generalizability of the results. As such, the researcher recommends replicating this study in additional contexts across the federal government and at the state level. There may be something about the U.S. Coast Guard as an agency that impacts these findings and replicating this study in additional contexts would help build a body of work with transferable findings. Replication of
this study in additional settings within the same level of government would have the added benefit of researching the impact of law across a wide range of operational law settings, allowing scholars to explore in much greater detail the difference in impact, if any, between administrative law and operational law on mandated collaboration. Additionally, the researcher acknowledges the United States-centric position of this study and encourages scholars to identify and examine law’s impact on mandated collaborations in other nations.

Second, the researcher recommends expanding the use of mixed-methods and quantitative approaches to studying the impact of law on collaboration. Qualitative studies are appropriate and particularly suited for exploring new areas of inquiry. Mixed-methods and quantitative approaches would build on this study with results that, by design, are generalizable across multiple contexts.

Third, the researcher recommends examining the impact of law on voluntary collaborations in which a public sector entity is a participating member. The data for this study suggest a legal mandate to collaborate may create a power imbalance that may impact trust between private sector members and public sector members. It would be interesting to examine whether this type of power imbalance arises between public sector actors and private sector actors within voluntary collaborations.

Fourth, this study suggests that both public and private law may impact the behavior of actors within a collaboration. As participant #8 notes, pending civil litigation has a chilling effect on their willingness to share information and advance policy discussions related to maritime safety during committee meetings. One underlying assumption of this study is that public law primarily impacts collaboration in an advisory committee setting. However, much remains to be learned about how private legal disputes incentivize or disincentivize the work of collaborations.
Finally, although this study does not position law as a broad theoretical concept, this inquiry is broad enough to capture the impact of several statutes operating together. Further study is warranted on the impact of specific statutes on both mandated and voluntary collaborations. Additional inquiry into the specific impact of statutes such as the federal FOIA and the federal APA would help build knowledge at the intersection of law and public administration.

Conclusion

This three-case study examines the impact of public law on the management and operation of three federal advisory committees managed by the U.S. Coast Guard. The researcher uses Thomson & Perry’s (2006) well-entrenched Process Model of Collaboration as a conceptual foundation to explore how the collaboration participants perceive public law to impact their work. Based on deductive analysis of pre-determined codes and inductive analysis of emergent codes and themes, the researcher proposes adjustments to the Process Model to account for law’s influence in collaboration.

The findings suggest that public law impacts collaboration across all five process dimensions of the process model, but the public operational law of a collaboration may influence the distribution of law’s impact across the five process dimensions for any given collaboration. The findings also suggest that public law creates front-end structure and significant ongoing administrative management burdens that may pull collaboration members’ attention and resources away from other important tasks vital to sustaining trust within a collaboration. Collaboration members may also vary in the degree they perceive law to impact their work within a collaboration, although law nonetheless may objectively exist and impact their work.
To the best of this researcher’s knowledge, this is one of the first empirical examinations of the impact of law on collaboration. Much remains to be learned about the impact of law on collaboration. Ideological debate over the role of law in public administration likely impedes progress in building empirical knowledge about the role of law in collaboration specifically and in public administration generally. The researcher offers that inter-disciplinary research between the legal and public administration academies would advance common knowledge while mitigating the implied concerns of Rosenbloom et al. (2021) that deep knowledge in both fields is required to research in this shared space.
REFERENCES


https://www.jstor.org/stable/3525819


https://doi.org/10.1093/ppmgov/gvab007


Berger, R. (2015). Now I see it, now I don’t: Researcher’s position and reflexivity in qualitative research. *Qualitative Research, 15*(2), 219-234.

https://doi.org/10.1177/1468794112468475


COMDT (CG-OES) Policy Letter 01-22 (2022, Feb 4), Determination of whether a floating outer continental shelf facility (FoF) is a vessel.


Definitions, 33 C.F.R. § 140.10 (2022).


https://www.justice.gov/oip/page/file/1248371/download


Environmental Protection Agency (n.d.). Collaboration and FACA at EPA.


Gibbons v. Ogden, 22 U.S. 1 (1824).


Harvard Law School (n.d.). Graduate Program. [https://hls.harvard.edu/graduate-program/](https://hls.harvard.edu/graduate-program/)


Herrick, R. W. (1999). While citizens’ complaints may be frivolous, unfounded or exonerated, are they enough to deny a peace officer a promotion? *McGeorge Law Review, 30*, 759-768.


https://ssir.org/articles/entry/collective_impact


https://www.jstor.org/stable/976646


Nastasi, B. (no date). Study notes: qualitative research: sampling & sample size considerations. On file with the author.

National Boating Safety Advisory Committee. (2023a). [Link to website]

National Boating Safety Advisory Committee. (2023b, Sep 23). How to apply to NBSAC. [Link to website]


National Transportation Safety Advisory Committee. (2023a). Draft report on the anticipated challenges expected by the towing vessel industry. [Link to report]

National Towing Safety Advisory Committee. (2023b). Draft report on the challenges faced by the towing industry because of the COVID-19 Pandemic. [Link to report]

National Towing Safety Advisory Committee. (2022). Recommendations for the criteria used to apply the term “occasional towing.”
https://uscgboating.org/NBSAC/index.php


https://www.jstor.org/stable/3542591


https://www.jstor.org/stable/23036122

https://www.jstor.org/stable/40215821


https://doi.org/10.1093/ppmgov/gvaa026


Persons subject to this chapter, 10 U.S.C. § 801 (2018).


https://www.jstor.org/stable/977104


https://doi.org/10.4324/9781315718958


https://www.jstor.org/stable/40984150


U. S. Coast Guard (2022, March 2). National Boating Safety Advisory Committee charter.
U. S. Coast Guard (2021, October 15). National Towing Safety Advisory Committee charter.

https://www.dhs.gov/sites/default/files/publications/n_tsac_charter_renewal_cmomm_file

d_15oct2021_0.pdf

U. S. Coast Guard (n.d.(a)). Coast Guard committee management.

https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/COMMITTEE%20MANA

GEMENT%20INFORMATION.pdf?ver=2017-06-26-141840-167

U. S. Coast Guard (n. d.(b)). National offshore safety advisory committee.

https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-

Policy-CG-5P/Commercial-Regulations-standards-CG-5PS/Office-of-Operating-and-

Environmental-Standards/vfos/NOSAC/

U. S. Coast Guard (n. d.(c)). National towing safety advisory committee.

https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-

Policy-CG-5P/Commercial-Regulations-standards-CG-5PS/Office-of-Operating-and-

Environmental-Standards/vfos/TSAC/

U. S. Const., art. I, § 8, cl. 3.

U. S. Forest Service (n.d.). FACA and collaboration primer.

https://www.fs.fed.us/emc/nfma/collaborative_processes/documents/FACAandCOLLAB

ORATIONV8March2013.pptx


694.


https://doi.org/10.1111/puar.13005


https://onlinelibrary.wiley.com/journal/17401461


APPENDICES

Appendix A: Human Subjects Research Exemption Determination Letter

OFFICE OF THE VICE PRESIDENT FOR RESEARCH

Physical Address
4111 Monarch Way, Suite 200
Norfolk, Virginia 23508

Mailing Address
Office of Research
1 Old Dominion University
Norfolk, Virginia 23529
Phone (757) 683-3460
Fax (757) 683-5002

DATE: January 24, 2023

TO: John Lombard, PhD

FROM: Old Dominion University Business Human Subjects Review Committee

PROJECT TITLE: [2009771-1] Law's Impact on Collaboration: A Qualitative Study of Three Federal Advisory Committees

REFERENCE #: 2009771-1

SUBMISSION TYPE: New Project

ACTION: DETERMINATION OF EXEMPT STATUS

DECISION DATE: 01/24/2023

REVIEW CATEGORY: Exemption category # [2]

Thank you for your submission of New Project materials for this project. The Old Dominion University Business Human Subjects Review Committee has determined this project is EXEMPT FROM IRB REVIEW according to federal regulations.

We will retain a copy of this correspondence within our records.

If you have any questions, please contact Haiwen Zhou at (757) 683-5785 or hzhou@odu.edu. Please include your project title and reference number in all correspondence with this committee.

This letter has been electronically signed in accordance with all applicable regulations, and a copy is retained within Old Dominion University Business Human Subjects Review Committee's records.
Appendix B: Representative Invitation to Participate in Research

Attachment: Informed Consent Document

Good morning [Recipient],

I hope this email finds you well.

**Bottom Line Up Front:** I request to interview you as part of my dissertation research. Details are below and attached. If you are interested, please email me back!

My name is Brian McNamara. I am Professor of Practice with Tulane, a retired Coast Guard officer, and a doctoral candidate with Old Dominion University. My teaching and research interests include cross-sector collaboration, public policy, and law. For my dissertation, I am exploring the impact of law on collaboration through a three-case study of the National Offshore Safety Advisory Committee, the National Boating Safety Advisory Committee, and the National Towing Safety Advisory Committee. Based on your background and current position, I am interested in interviewing you.

Although I have a background as an attorney, this is **not** a study into whether any individual, agency, or committee “follows the law.” Rather, this is an exploration of how individuals think about the law as they conduct their work. I am not interested in any pre-deliberative material. The main purpose of this dissertation is to fill a gap in the academic literature regarding cross-sector collaboration.

I received approval for my study through the Old Dominion University Institutional Review Board process. Your participation is entirely voluntary- please see the attached for a required description of the study and information to support your informed consent. I would be happy to answer any questions you may have.

Sincerely,

Brian
Appendix C: Interview Protocol

Pre-Interview

Thank you for taking the time to speak with me today. As I mentioned in my email to you, and as stated in the informed consent form, this interview is entirely voluntary. You may choose to stop this interview and leave at any time up to and during the interview.

I am a doctoral student at Old Dominion University in Norfolk, Virginia. My research focuses on cross-sector collaboration, maritime policy, and the intersection of law and public administration. I developed these interests based on my service as an officer and a judge advocate with the U.S. Coast Guard, my doctoral studies in public administration, my work as a Professor of Practice in Public Administration with Tulane University, and my work as an adjunct faculty member with Tulane Law School.

This interview is part of my data collection for a study on the impact of law on collaboration. Specifically, I am studying the impact of law on three Coast Guard Federal Advisory Committee Act committees: (1) the National Towing Safety Advisory Committee, (2) the National Offshore Safety Advisory Committee, and (3) the National Boating Safety Advisory Committee. It is important to me that this interview is a comfortable experience for you. If you have any questions at any time, please do not hesitate to ask me. I would be happy to pause the interview to answer your questions.

Do you mind if I record this interview? Do you mind if I take notes while we talk?

[START THE RECORDING!]

Interview

[Introduce the topic in plain English.]
Topic: Collaboration involves organizations and individuals working across agency and sector boundaries to solve problems that one organization or sector could not solve on its own. There is a large body of academic study on how organizations and practitioners approach collaboration. However, the academic literature lacks an empirical study on the impact of law on collaboration. Therefore, I am interested in addressing the following research questions from a qualitative social science perspective:

1) How does public law impact collaboration processes?

2) How does public law impact Coast Guard management of Federal Advisory Committee Act committees?

3) How does public law impact the participation of and interaction of the members of Federal Advisory Committee Act committees?

[Note→ The wording of these questions does not match precisely the research questions earlier in the proposal, but I will use these questions because I believe they describe the study in plain English for interview participants.]

Questions for Members of the Committees

[Note→ These questions align with the Thomson & Perry (2006) process dimensions.]

Tell me about your experience with this committee.

- Probe→ Describe how you became interested in serving on this committee.
- Probe→ Describe your appointment process to this committee.

Please describe how you understand law to impact your committee work.

- Probe→ Describe what the term “law” means to you.
- Probe→ Describe your legal training, if any.
• Probe ➔ Describe how you perceive law relates to your committee responsibilities.

Please describe the structure of the committee.

• Probe ➔ What role does law play, if any, in your committee’s structure?

• Probe ➔ How, if at all, does the committee structure impact your interactions with other committee members or the U.S. Coast Guard members?

Please describe your professional work outside the scope of this committee.

• Probe ➔ Describe how your professional work outside the scope of this committee aligns or does not align with your committee work.

• Probe ➔ Describe how, if at all, law impacts your sense of belonging to your home organization or your sense of belonging to this committee.

Please describe the role of trust in this committee.

• How do members of this committee establish trust with each other and with the U.S. Coast Guard coordinators?

• What role, if any, does law play in developing or inhibiting trust amongst the members?

Questions for U.S. Coast Guard Members

Tell me about your experience and work responsibilities with this committee.

• Probe ➔ What percentage of your work focuses on this committee?

• Probe ➔ Describe how you interact with committee members.

Please describe how you understand law to impact your committee work.

• Probe ➔ Describe what the term “law” means to you.

• Probe ➔ Describe any legal training you have had.

• Probe ➔ Describe how you perceive law relates to your committee responsibilities.

Please describe the structure of the committee.
• Probe→ What role does law play, if any, in your committee’s structure?

• Probe→ How, if at all, does the committee structure impact your interactions with committee members?

Please describe how you perceive committee members to reconcile their duties to their home organizations with their duties to the committee.

• Probe→ Describe how, if at all, law requires committee members to act in the interest of the committee.

Please describe the role of trust in this committee.

• How do you establish trust with the members of the committee?

• What role, if any, does law play in developing or inhibiting trust amongst the members or between the members and the U.S. Coast Guard (or your organization)?

Post-Interview

Thank you again for your participation today. I will analyze this information to present my research findings on the impact of law on collaboration. I will transcribe this interview and send you a copy for your review. I ask that you make any corrections or notes on the transcript to ensure I understand the context or meaning of your responses.

Do you have any questions for me about the purpose of this interview, the purpose of the research, or how I intend to use the transcript?

[Thank the participant again for their time and conclude]
VITA
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EDUCATION

Old Dominion University, 2018-Present
Ph.D. Public Administration and Policy

Tulane University, 2009-2011
Master of Laws (LL.M.), Admiralty

William & Mary Law School, 2005-2008
Juris Doctor

Old Dominion University, 2002-2004
Master of Public Administration

U.S. Coast Guard Academy, 1996-2000
Bachelor of Science, Government

PROFESSIONAL EXPERIENCE

2021- Present  Associate Director & Professor of Practice, John Lewis Public Administration Program, Tulane University
2013-2023  Adjunct Associate Professor of Law, Tulane University
2021  Adjunct Professor of Law, Stetson University College of Law
2000-2021  Commissioned Officer, U.S. Coast Guard

SELECTED PUBLICATIONS