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EVIDENCE OF THE MILITARY'S SEXUAL ASSAULT BLIND SPOT

Eric R. Carpenter[*]

ABSTRACT

In response to the American military's perceived inability to handle sexual assault cases, many members of Congress have lost confidence in those who run the military justice system. Critics say that those who run the military justice system are sexist and perceive sexual assault cases differently than the public.

This article is the first to empirically test that assertion. Further, this is the first study to focus on the military population that matters—those who actually run the military justice system.

The study finds that this narrow military population endorses two constructs that are associated with the acceptance of inaccurate rape schemas—traditional gender role beliefs and conservatism—to a much higher degree than the general population. Regression models based on these findings predict that in a test rape case, 54% of the general public would find the man guilty while only 41% of this narrow military population would do so.

This suggests that, at the macro-level, those who run the military justice system may be honestly committed

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[*]Assistant Professor of Law, FIU College of Law. I thank Dan Kahan and Jason Dempsey for sharing their data with me; Dale Williams, Stephanie Garcia, and the FIU Department of Biostatistics, with a special thank you to Tan Li; Asia Eaton; Matthew Mirow, Joelle Moreno, Howard Wasserman, Corey Yung, James Clark, Deborah Becher, Chris Jenks, Barbara O'Brien, Benjamin Edwards, and Michael Carpenter for reviewing earlier drafts; and, my research assistant, Rachel Parra. This article benefited from comments provided at workshops at the Michigan State University College of Law, Albany Law School, and the Stetson University College of Law.

> *to resourcing the fight against sexual assault and to finding a solution to the problem, but that at the micro-level, when looking at a particular case, they have an unconscious cognitive process that interferes with their ability to accurately resolve it.*

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INTRODUCTION

In response to the American military's perceived inability to handle sexual assault cases, many members of Congress have lost confidence in those who run the military justice system. Senator Kristen Gillibrand, a leading reformer, recently expressed her frustration:

> For the past 25 years, going back to when Dick Cheney was defense secretary, we've had the military telling us that there's zero tolerance for sexual assault . . . [a]nd all we've seen is zero accountability . . . [T]here's a climate where everything is shoved under the rug and people are actually punished for reporting sexual assault.[1]

Behind this criticism is an assumption that those who run the military justice system perceive sexual assault cases differently than the public and that this affects how they process these cases. Critics say that the difference is related to high levels of sexism within the military.[2] The argument is that those who run the military justice system have trouble recognizing that a good soldier can be a rapist[3] and believing female soldiers who have engaged in behavior that they disapprove of.[4] For the critics, the solution is to take these cases away from the current decision makers and give them to somebody else.

This article is the first to empirically test that assumption. Further, this is the first study to focus on the military population that matters—

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[1] Robert Draper, *The Military's Rough Justice on Sexual Assault*, N.Y. TIMES MAG. (Nov. 26, 2014), http://www.nytimes.com/2014/11/30/magazine/the-militarys-rough-justice-on-sexual-assault.html?_r=1.

[2] *See generally* Regina F. Titunik, *The Myth of the Macho Military*, 40 POLITY 137, 144–45 (2008).

[3] *See* COMM'N OF CIVIL RIGHTS, 2013 STATUTORY ENFORCEMENT REPORT: SEXUAL ASSAULT IN THE MILITARY 64–65 (2013).

[4] *See id.* at 31–39.

those who actually run the military justice system.

In *The Military's Sexual Assault Blind Spot*,[5] I theorized that those in the military who handle sexual assault cases are more likely than those in the general public to use an impaired cognitive reasoning process—one that relies on inaccurate rape schemas. More so than the general public, this military population does not fully comprehend what is happening in these cases. They have a large cognitive blind spot. To support that claim, I used the reports from two studies that compared broader samples from military populations and various non-military populations.

Here, I work with the underlying data from those studies and narrow the military samples to just the people who run the military justice system. Within those two samples, I then measure two important constructs—traditional gender role beliefs and conservatism—that are associated with both the acceptance of inaccurate rape schemas and outcome judgments in rape cases that favor the man. I also measure those constructs within comparable samples of the general public.

The data suggests that, when compared to the general public, a higher percentage of those who run the military justice system endorse some type of traditional gender role belief. For example, 60% of a sample of high-ranking officers—the population that supplies the people who exercise prosecutorial discretion—agreed that the proper gender role for women is for them to stay at home, while only 35% of the general public sample agreed.[6] A higher percentage of those who run the military justice system also identify themselves as conservative: 67% of those high-ranking officers identified themselves as being politically conservative, while only 43% of the general public sample did so.[7]

I then test whether any of that matters in rape case processing. Say, for example, we give the same rape case to 100 members of the group who run the military justice system and to 100 members of the general public.

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[5] Eric R. Carpenter, *The Military's Sexual Assault Blind Spot*, 21 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 383 (2015).

[6] *See infra* Part IV.A.

[7] *See infra* Part IV.B.

Would these large differences in belief systems and political identifications translate into a difference in outcome judgments? Would the people who run the military justice system be more likely to side with the man?

I ran a model based on a third data set that comes from a study on a dorm room rape scenario. I found that those who endorse traditional gender role beliefs or label themselves as conservative are 50 to 100% more likely to endorse certain inaccurate rape beliefs and to resolve the case in favor of the man.[8] As just noted, the military decision makers appear to be over-populated with people like that. The model then predicts that if these samples were given the same rape case, 54% of the general public would find the man guilty, while only 41% of the military decision makers would view the man as culpable.[9]

The critics' assumption appears to be correct. The population that runs the military justice system is different from the general population—it has a larger sexual assault blind spot. And this difference likely affects how the members of that population process sexual assault cases.

I. USING MEANINGFUL POPULATION SAMPLES

A. OVERVIEW OF THOSE WHO RUN THE MILITARY JUSTICE SYSTEM

For the purposes of this study, I am interested in learning about the people who run the military justice system—the investigators, the lawyers (called judge advocates), the commanders, the military judges, and the jurors (called panel members). These actors are mid-level or senior officers and noncommissioned officers.

To start, sexual assault allegations are investigated by the military's version of detectives: investigators in the Army's Criminal Investigation Command (CID), the Air Force's Office of Special

[8] *See infra* Part V.C.

[9] *See id.*

Investigations (OSI), and the Navy's Naval Criminal Investigative Service (NCIS).[10] These agents are generally more senior noncommissioned officers, and the agent in charge is often a warrant officer.[11] The prosecutor (called a trial counsel) is a judge advocate. Each accused is entitled to a free military defense counsel.[12] These attorneys play roles similar to those of the trial attorneys in civilian courts and are mid-level officers and above.

The military system also has an additional actor not found in civilian systems—unit commanders. In the military, the ultimate decisions to prosecute cases are made by non-lawyers. Company commanders make decisions on minor misconduct and forward more serious charges to more senior commanders with a recommendation on what should happen with the case.[13] These more senior commanders are called convening authorities because they can convene a court-martial.[14] For less serious misconduct, battalion-level commanders can convene a summary court-martial that can give up to thirty days of confinement.[15] For misdemeanor types of offenses, brigade-level commanders can convene a special court-martial that can give up to one year in confinement.[16] For the most serious offenses, like sexual assaults, commanding generals can convene a general

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[10] *See* LAWRENCE J. MORRIS, MILITARY JUSTICE: A GUIDE TO THE ISSUES 47–48 (2010).

[11] *See Warrant Officer Prerequisites and Duty Description,* UNITED STATES ARMY WARRANT OFFICER RECRUITING (March 13, 2016, 11:54 PM), http://www.usarec.army.mil/hq/warrant/prerequ/WO311A.shtml. Warrant officers are a class of officers that fall between enlisted service members and traditional commissioned officers. *See id.* They often have technical expertise in a particular field, like aviation or communications. *General Information – Warrant Officer MOS List,* UNITED STATES ARMY WARRANT OFFICER RECRUITING (March 14, 2016, 12:08 AM), http://www.usarec.army.mil/hq/warrant/WOgeninfo_mos.shtml.

[12] *See* MORRIS, *supra* note 10, at 92–93.

[13] *See id.* at 52–53.

[14] *See id.* at 41.

[15] *See id.* at 41–44.

[16] *See id.* at 41, 44.

court-martial that can give up to the maximum punishment authorized for the offense.[17]

While these convening authorities play a role that would be similar to that of a district attorney or attorney general, they are not lawyers. They are, however, distinguished officers. While most officers have the opportunity to command at the company-level, in order to command at the higher levels—and so to be a convening authority—these officers must have been carefully selected and have proven themselves to be the best of their peers.

All of these convening authorities get advice from judge advocates on how to handle the cases. The general officers get advice from a staff judge advocate. Before the general court-martial convening authority can refer a case to a general court-martial, the staff judge advocate has a statutory requirement to certify that certain legal requirements have been met and to then give the general court-martial convening authority a recommendation on what action to take.[18] These commanders do not have to follow their staff judge advocate's recommendation. However, they usually do. These staff judge advocates are accomplished, senior officers.

If the convening authority sends the case to a court-martial, then the military judge takes control of the case. The military judge plays a role similar to that of a trial judge in the civilian courts.[19] The military judges are judge advocates[20] and senior officers.

The last group to look at is the military panel, which serves the same function as a jury. If the accused chooses to have a panel, that panel is not selected at random from the military population. The members of the panel are personally selected by the convening authority. The convening authority has to use certain factors, set out in Article 25 of the Uniform Code of Military Justice, when choosing the members. These factors—age, education, training, experience, length of service, and

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[17] *See id.* at 41, 45.

[18] *See id.* at 58–59.

[19] MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 801 (2012).

[20] MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 503(b) (2012).

judicial temperament—generally lead convening authorities to select senior members of his command as panel members.[21] Members are generally mid- to senior-ranking officers—often, at a general court-martial, all of the members are senior—and if an enlisted accused chooses to have enlisted members on the panel, those members are generally senior noncommissioned officers. Warrant officers also serve on panels.

That, then, is the narrow part of the overall military population that I am interested in: the mid-level or senior officers and noncommissioned officers.

B. EXISTING STUDIES ON THE MILITARY POPULATION OF INTEREST

Two studies exist that allow us to look at this narrow military population. First, the Triangle Institute for Security Studies (TISS) conducted the Survey on the Military in the Post Cold War Era in 1998 as part of a larger research project on civil-military relations.[22] The researchers sought to identify and measure differences in belief systems held by the elite military population, the elite civilian population, and the general population[23] in order to explore whether there was a gap in beliefs and then to determine whether any gap harmed military effectiveness or civil-military relations.[24] The general concern was that the military—

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[21] UCMJ art. 25(d)(2) (2015).

[22] The primary research based on this survey was published in SOLDIERS AND CIVILIANS: THE CIVIL-MILITARY GAP AND AMERICAN NATIONAL SECURITY 1–6 (Peter D. Feaver & Richard H. Kohn eds., 2001) [hereinafter SOLDIERS AND CIVILIANS]. The RAND Corporation also published a study based on the data. *See* THOMAS S. SZAYNA ET AL., THE CIVIL-MILITARY GAP IN THE UNITED STATES: DOES IT EXIST, WHY, AND DOES IT MATTER? (2007). The original researchers also published a codebook. *See* JANET NEWCITY, DESCRIPTION OF THE 1998–1999 TISS SURVEYS ON THE MILITARY IN THE POST COLD WAR ERA (1999). *See also CM Method*, TRIANGLE INST. FOR SEC. STUDIES, http://tiss-nc.org/research/tiss-civil-military-relations/cm-method/ (last visited Jan. 30, 2016) (providing overview of methodology) [hereinafter *CM Method*].

[23] *See* NEWCITY, *supra* note 22, at 1.

[24] *See CM Purpose*, TRIANGLE INST. FOR SEC. STUDIES, http://tiss-

particularly the officer corps—was becoming increasingly conservative and aligned with the Republican Party and might otherwise hold contempt for civilian society.[25]

The TISS project gathered data from certain military leaders: mid-career officers who were attending staff colleges; more senior officers who were attending war colleges; and, general officers attending a required course, called Capstone.[26] The researchers also gathered data from selected groups of civilian leaders and the general civilian population.[27]

The military schools targeted by the TISS project house the potential pool of convening authorities and staff judge advocates. When this sample was taken, attendance at the staff colleges was competitive. The staff colleges produce those who will later be selected for battalion-level commands (summary court-martial convening authorities) and staff judge advocates at smaller units. Attendance at the war colleges is extremely competitive, and this population produces brigade-level commanders (special court-martial convening authorities) and the staff judge advocates for larger units. While attendance at Capstone is mandatory, these students have been promoted to general officer, which is extraordinarily competitive. The Capstone population produces the general court-martial convening authorities.

The data set included variables that allowed me to reduce the sample to active-duty American military officers attending these schools. This reduced sample allowed me to focus on an important subset of my population of interest: potential convening authorities (CA) and staff judge advocates (SJA). This is the narrow population that makes the decisions on whether to court-martial an accused for a sexual assault offense. I will

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nc.org/research/the-civil-military-gap/cm-purpose/ (last visited Jan. 30, 2016); *CM Method*, *supra* note 22.

[25] *See* SOLDIERS AND CIVILIANS, *supra* note 22, at 1–2.

[26] *See* NEWCITY, *supra* note 22, at 3–4. The researchers also gathered data on ROTC and service academy cadets. The sample included active and reserve duty officers, as well as civilians and foreign officers who were attending these schools. *See id.*

[27] *See id.* at 4–5.

refer to this reduced sample as the "CA/SJA" sample.[28]

In the second study—conducted in 2004—Jason Dempsey surveyed the active-duty Army population looking for answers to the same basic questions posed by the TISS researchers.[29] Unlike the TISS survey, which only looked at selected ranks, Dempsey surveyed the entire rank population, with only a few minor exceptions.[30] Another significant difference between his study and the TISS study is that he only looked at the Army population, while the TISS survey looked at all branches of service.

This data set also included variables that allowed me to reduce the sample to something very close to the ideal military population of interest: mid-level or senior officers and noncommissioned officers. From this, I can learn about the population that makes up the investigators, trial lawyers, staff judge advocates, commanders and convening authorities (apart from the general court-martial convening authorities), military judges, and panel members.

Dempsey's sample includes many who have not actually served—and may never serve—in these roles, but it does represent the population of *potential* actors; everyone that serves in those roles was equally likely to be selected for the study. I will call this reduced sample the "UCMJ Administrators" sample.[31]

C. THE COMPARISON POPULATION

Simply measuring that target military population is not enough,

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[28] For a discussion of the TISS survey methodology and my data reduction, data screening, and weighting decisions, see app. at 206–21. All results that I report for the TISS study come from unweighted data.

[29] *See* JASON K. DEMPSEY, OUR ARMY: SOLDIERS, POLITICS, AND AMERICAN CIVIL-MILITARY RELATIONS 3–5 (2010).

[30] *See id.* at 6.

[31] For a discussion of Dempsey's survey methodology and my data reduction, data screening, and weighting decisions, see app. at 221–30. All results that I report for the Dempsey study come from unweighted data, except for Table 9.

however. The focus of the current policy debate is whether authority over these cases should be taken away from military commanders and given to a different population that is perceived as capable of handling them.

A key assumption is that the military population is more biased than these other populations. However, it might turn out that these other populations—state and federal law enforcement, from the police officers to the judges—are equally or more biased. Many other law enforcement jurisdictions are also under serious criticism for their handling of sexual assault cases,[32] and it might be that giving the cases to other jurisdictions would not improve anything.

In an ideal research design, I would find a sample that measured other law enforcement populations. Moreover, in order to see if both the target military population and the law enforcement populations were different from the general population and to measure potential jurors, that sample would also include observations from the general population.

However, no studies that I know of allow me to compare the military justice population to other law enforcement agencies. In addition, the studies that I have found of gender role beliefs and rape myth acceptance in other law enforcement communities have not included comparisons to the general public.[33] Even assuming that other law

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[32] *See, e.g.*, HUMAN RIGHTS WATCH, CAPITOL OFFENSE: POLICE MISHANDLING OF SEXUAL ASSAULT CASES IN THE DISTRICT OF COLUMBIA (2013), *available at* https://www.hrw.org/report/2013/01/24/capitol-offense/police-mishandling-sexual-assault-cases-district-columbia; Cassia Spohn & Katharine Tellis, *Justice Denied? The Exceptional Clearance of Rape Cases in Los Angeles*, 74 ALB. L. REV. 1379 (2011); Corey R. Yung, *How to Lie with Rape Statistics: America's Hidden Rape Crisis*, 99 IOWA L. REV. 1197 (2014) (highlighting Baltimore, New Orleans, Philadelphia, St. Louis, Atlanta, Dallas, Milwaukee, Mobile, Oakland, and Washington, D.C.).

[33] One study came close. *See* Hubert S. Feild, *Attitudes Towards Rape: A Comparative Analysis of Police, Rapists, Crisis Counselors, and Citizens*, 36 J. PERSONALITY AND SOC. PSYCHOL. 156 (1978). This study—which included samples of police officers and the general public—administered the Attitudes Toward Women Scale (AWS), as well as a rape myth acceptance scale. *See id.* at 158. There is no baseline for the gender role item, however, as the author did not report the results of the AWS and only reported the rape myth results. *See id.* at 162 Table 1. Feild reported that, for six of

enforcement communities are more conservative than the general public or endorse traditional gender role beliefs at a higher rate, I cannot draw non-statistical inferences about whether the military's belief systems are farther from—or closer to—the general public's than these other law enforcement communities' belief systems.

My available comparison population is the general public. For this target population, I use data from the General Social Survey (GSS)[34] and Dempsey's study.

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his eight rape factors—which have some problems of their own—police officers were not significantly different from the general public. *See id.* at 170 Table 3. *See also* Rebecca Campbell, *The Role of Work Experiences and Individual Beliefs in Police Officers' Perceptions of Date Rape*, 23 AM. J. COMMUNITY PSYCHOL. 249 (1995); Shirley Feldman-Summers & Gayle C. Palmer, *Rape as Viewed by Judges, Prosecutors, and Police Officers*, 7 CRIM. JUS. & BEHAV. 19 (1980); Barbara Krahe, *Police Officers' Definitions of Rape: A Prototype Study*, 1 J. COMMUNITY & APPLIED SOC. PSYCHOL. 223 (1991); Amy D. Page, *Behind the Blue Line: Investigating Police Officers' Attitudes Toward Rape*, 22 J. POLICE & CRIM. PSYCHOL. 22 (2007); Amy D. Page, *Gateway to Reform? Policy Implications of Police Officers' Attitudes Toward Rape*, 33 AM. J. CRIM. JUST. 44 (2008); Ericka Wentz & Carol A. Archbold, *Police Perceptions of Sexual Assault Victims: Exploring the Intra-Female Gender Hostility Thesis*, 15 POLICE Q. 25 (2012).

[34] The GSS is a national survey run by the National Opinion Research Center and funded by the Sociology Program of the National Science Foundation. Additionally, "[e]xcept for the U.S. Census, the GSS is the most frequently analyzed source of information in the social sciences." *About the GSS*, GENERAL SOC. SURVEY, http://gss.norc.org/About-The-GSS (last visited Jan. 30, 2016). For the GSS survey methodology, see NAT'L OP. RESEARCH CTR., GENERAL SOCIAL SURVEYS, 1972–2006: CUMULATIVE CODEBOOK (2008), *available at* http://publicdata.norc.org:41000/gss/Documents/Codebook/FINAL%202006%20CODEBOOK.pdf. For single year comparisons, weighting was not necessary for the years I looked at (1998 and 2004). *See id.* at app. A, at 2108. Therefore, when reporting results from these individual years, I report unweighted data. When comparing GSS data across years, weighting is often necessary to adjust for changes in sampling methodology. *See id.* When I report the GSS data in the appendix to this article, that data is weighted. *See* app. at 62–63.

II. USING MEANINGFUL CONSTRUCTS

Having found data on my populations of interest, the next step was to find items within the survey instruments that measured constructs relevant to how people solve rape[35] problems.

Deciding what happened in a sexual assault case is a social cognition problem. In a rape case, the legal problem solver has to make sense of the social actions of unfamiliar people and a social situation for which there are probably no outside witnesses.

People identify with groups that share norms about social behavior.[36] These broader norms are associated with more discrete generalizations and social schemas about human behavior.[37] When presented with a problem in a limited information environment, people use those schemas to arrive at outcome judgments that are consistent with their group identities and world views.[38]

Social science research has shown that certain constructs are associated with particular beliefs about rape and, ultimately, with the outcome judgments in rape problems.[39] Two of these constructs are the acceptance of traditional gender role beliefs[40] and identification as a

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[35] Throughout this article, I use the terms "rape" and "sexual assault" interchangeably; however, when I use those terms, I am focusing in on a subset of rapes and sexual assaults. In particular, I will be focusing on the sexual assault of an adult woman by an adult man where society would recognize that consensual sex between those two could be plausible. For a more complete discussion of this term, see Carpenter, *supra* note 5, at 388–89.

[36] Namoi Ellemers & S. Alexander Haslam, *Social Identity Theory*, *in* 2 HANDBOOK OF THEORIES OF SOCIAL PSYCHOLOGY 379–80 (Paul A. M. Van Lange et al. eds., 2012).

[37] SUSAN T. FISKE, SOCIAL BEINGS: CORE MOTIVES IN SOCIAL PSYCHOLOGY 155, 420 (3d ed. 2014).

[38] *See id.* at 249–55, 426–27. For a complete discussion of social cognition and legal problem-solving in rape cases, see Carpenter, *supra* note 5, at 390–401.

[39] *See infra* notes 40–41.

[40] Those with traditional gender role beliefs tend to endorse certain rape schemas more than those with non-traditional gender role beliefs. *See* Dominic Abrams et al.,

conservative.[41] The traditional gender role construct has many potential

Perceptions of Stranger and Acquaintance Rape: The Role of Benevolent and Hostile Sexism in Victim Blame and Rape Proclivity, 84 J. PERSONALITY & SOC. PSYCHOL. 111 (2003); Kathryn B. Anderson et al., *Individual Differences and Attitudes Toward Rape: A Meta-Analytic Review*, 23 PERSONALITY & SOC. PSYCHOL. BULL. 295, 312 (1997); Gordon B. Forbes et al., *First—and Second—Generation Measures of Sexism, Rape Myths and Related Beliefs, and Hostility Toward Women*, 10 VIOLENCE AGAINST WOMEN 236, 250 (2004); Barbara E. Johnson et al., *Rape Myth Acceptance and Sociodemographic Characteristics: A Multidimensional Analysis*, 36 SEX ROLES 693, 704 (1997); Laura L. King & Jennifer J. Roberts, *Traditional Gender Role and Rape Myth Acceptance: From the Countryside to the Big City*, 21 WOMEN & CRIM. JUST. 1, 9, 12 (2011); Eliana Suarez & Tahany M. Gadalla, *Stop Blaming the Victim: A Meta-Analysis on Rape Myths*, 25 J. INTERPERSONAL VIOLENCE 2010, 2022 (2010); Lynda A. Szymanski et al., *Gender Role and Attitudes Toward Rape in Male and Female College Students*, 29 SEX ROLES 37 (1993); G. Tendayi Viki & Dominic Abrams, *But She Was Unfaithful: Benevolent Sexism and Reactions to Rape Victims Who Violate Traditional Gender Role Expectations*, 47 SEX ROLES 289 (2002). Studies have also found that acceptance of these rape schemas is associated with siding with the man in the ultimate normative judgment about blame. *See, e.g.*, Barbara Krahe, *Social Psychological Issues in the Study of Rape*, 2 EUR. SOC. PSYCHOL. 279 (1991); Charlene Muehlenhard, *Misinterpreting Dating Behaviors and the Risk of Date Rape*, 6 J. SOC. & CLINICAL PSYCHOL. 20 (1988); G. Tendayi Viki et al., *Evaluating Stranger and Acquaintance Rape: The Role of Benevolent Sexism in Perpetrator Blame and Recommended Sentence Length*, 28 L. & HUM. BEHAV. 295 (2004). Other studies have found a connection directly between the acceptance of traditional gender role beliefs and the ultimate judgment. *See, e.g.*, Rosanne Proite et al., *Gender, Sex-role Stereotypes, and the Attribution of Responsibility for Date and Acquaintance Rape*, 34 J.C. STUDENT DEV. 411 (1993). Still other studies have found connections across the entire pathway, from traditional gender role beliefs, to acceptance of the rape schema, to the ultimate judgment. *See, e.g.*, Abrams et al., *supra*; Viki & Abrams, *supra*; Szymanski et al., *supra*; Niwako Yamawaki, *Rape Perception and the Function of Ambivalent Sexism and Gender-Role Traditionality*, 22 J. INTERPERSONAL VIOLENCE 406 (2007).

[41] Conservatism has been found to be positively related to rape myth acceptance. *See* Anderson et al., *supra* note 40, at 312; William D. Walker et al., *Authoritarianism and Sexual Aggression*, 65 J. PERSONALITY & SOC. PSYCHOL. 1036, 1038 (1993) (using the "Right Wing Authoritarianism" scale). Studies have found that acceptance of these rape schemas is associated with siding with the man in the ultimate normative judgment about blame. *See, e.g.*, Krahe, *supra* note 40; Muehlenhard, *supra* note 40; Viki et al., *supra* note 40.

facets: beliefs that men should be in charge of the family unit; that women should remain at home rather than work outside the home; that men should pursue women, while women should be passive; and that women should behave in sexually conservative ways.[42] Conservatism has three major facets: status-quo conservatism, laissez-faire conservatism, and social conservatism, which includes anti-hedonism or female sexual conservatism.[43]

These two larger constructs share conceptual common ground. Social conservatism likely includes traditional gender role beliefs and may serve as a composite or emergent variable that has traditional gender role beliefs as a facet.[44] Both share the facet of female sexual conservatism.[45] We should also expect that these two constructs will be correlated, and they are: conservatism has been found to be highly correlated with traditional sex role beliefs.[46]

The TISS survey instrument included a gender role item that asked the respondent's position on whether mothers should be encouraged "to stay at home with their children rather than working outside the home."[47] This item—or a very similar one—is part of several scales that measure traditional gender role beliefs,[48] and these scales are associated with the acceptance of inaccurate rape schemas[49] as well as outcome judgments that favor the man.[50] The gender role item in the TISS survey was not given to the general public sample, so I used the GSS for a sample of the

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[42] For a discussion of these facets, see Carpenter, *supra* note 5, at 390–92.

[43] *See id.* at 393–94.

[44] *See id.*

[45] *See id.* at 394.

[46] *See* Knud S. Larsen & Ed Long, *Attitudes Toward Sex Roles: Traditional or Egalitarian?*, 19 SEX ROLES 1, 10 (1988); Walker et al., *supra* note 41, at 1037–38 (using the Right Wing Authoritarianism scale).

[47] NEWCITY, *supra* note 22, at 10.

[48] Carpenter, *supra* note 5, at nn.33, 35.

[49] *Id.* at n.57.

[50] *Id.* at n.84.

general population with which to compare the TISS sample. The Dempsey study did not include a gender role item that I could use with confidence in this study.[51]

Both the TISS study and the Dempsey study used an item that asked the respondents to label themselves along a liberal-to-conservative spectrum.[52] The TISS conservatism item was given to the TISS general public sample, so I can make a direct comparison of the CA/SJA sample to the general population sample. To compare the Dempsey conservatism item responses from the UCMJ Administrator sample to a general public sample, I used data from the GSS.

III. THE MILITARY AND GENERAL POPULATIONS ARE VERY DIFFERENT

A. DIFFERENCE IN GENDER ROLES BELIEFS

I hypothesized that the military populations hold the stay-at-home gender role belief to a greater degree than the civilian population. I formed this hypothesis because the stay-at-home gender role belief tends to be held in higher proportions by men, and the military is overwhelmingly male.[53] Additionally, the TISS researchers reported that a military sample broader than the one I am using held this belief to a higher degree than a sample of civilians (which is also different from the one I am using).[54]

As discussed above, the traditional gender role item used in the TISS study asked the respondent to indicate his or her position on "[e]ncouraging mothers to stay at home with their children rather than working outside the home." The item used a four-point response measure which I reverse-coded so that the responses would flow from left to right

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[51] For a discussion of this decision, see *infra* Part VI.B.

[52] *See* DEMPSEY, *supra* note 29, at 220; NEWCITY, *supra* note 22, at 10.

[53] *See* Kimberly A. Lonsway & Louise F. Fitzgerald, *Rape Myths: In Review*, 18 PSYCHOL. WOMEN Q. 133, 148–49 (1994).

[54] *See* Carpenter, *supra* note 5, at 411.

(1 = disagree strongly, 2 = disagree somewhat, 3 = agree somewhat, and 4 = agree strongly).[55] The comparison item from the 1998 GSS asked the respondent to indicate his or her position on whether "It is much better for everyone involved if the man is the achiever outside the home and the woman takes care of the home and family." Again, the item used a four-point response measure which I reverse-coded so that the responses would flow from left to right (1 = strongly disagree, 2 = disagree, 3 = agree, 4 = strongly agree).[56]

The difference in item-wording could make a comparison of these items problematic. For example, the TISS question only focuses on the woman's gender role, while the GSS question also introduces the man's gender role. However, I believe both items tap fairly well into the beliefs about this traditional gender role (the woman works at home while the man works outside the home); therefore, comparing the items is valid.

The results are displayed below:

[55] The item also had a "no-opinion" option. I coded those responses (n = 77, or 13.9% of the total responses) as missing so that they would not affect the mean.

[56] The item also had "do not know" and "no answer" responses. I coded those responses (n = 53, or 2.8% of the total responses) as missing so that they would not affect the mean.

Figure 1: Gender role item comparison between GSS general population sample and TISS CA/SJA sample, by percent

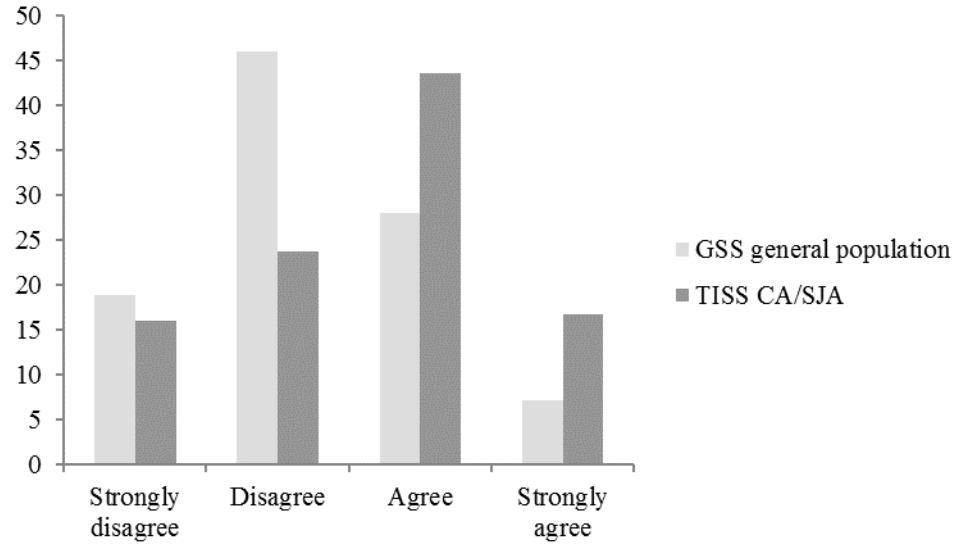


Table 1: Gender role item comparison between GSS general population sample and TISS SJA/CA sample

GSS Gender Role Item (Woman Takes Care of Home and Family)		TISS Gender Role Item (Encourage Moms to Stay Home)	
Response	*Percent*	*Percent*	*Response*
Strongly disagree	19	16	Disagree strongly
Disagree	46	24	Disagree somewhat
Agree	28	44	Agree somewhat
Strongly agree	7	17	Agree strongly

Data unweighted

For the CA/SJA sample, the mode was "agree somewhat" and that response was chosen nearly twice as often as the next highest response.[57] Unlike the mode for the TISS item, the mode for the GSS item was "disagree" and that response was chosen 64% more often as the next highest response.[58]

Comparing the two samples, the ratio of means for the CA/SJA and general public was 1.17, signifying that the mean for the CA/SJA sample was 17% higher than mean for the general public sample.[59] Importantly, the means are on opposite sides of an important threshold—agreement or disagreement. The difference is not simply in the strength of agreement (or disagreement) with the item.

Consistent with my hypothesis, the CA/SJA sample holds traditional home-work gender role beliefs to a much greater degree than the general public sample.[60]

B. DIFFERENCES IN CONSERVATISM

I hypothesized that there would be a higher degree of conservatism in the CA/SJA sample and the UMCJ Administrators sample than in the general population samples. I based this hypothesis on findings from existing research. When looking at the TISS data, researchers from the RAND Corporation found that the elite military population—as defined in

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[57] The mean for this item (n = 469) was 2.61, SD = .95, SEM = .04. Using a single-population t-test and setting H_0 at 2.5, the mean was statistically significant (p = .01).

[58] The mean for this item (n = 1818) was 2.23, SD = .84, SEM = .02. Using a single-population t-test and setting H_0 at 2.5, the mean was statistically significant (p < .01).

[59] I conducted an independent-samples t-test to compare the gender role item scores for the CA/SJA sample and the general population sample. There was a statistically significant difference in the scores for the CA/SJA (M = 2.61, SD = .95) and the scores for the general public (M = 2.23, SD = .84; t (669) = -7.88, p < .01, two-tailed). The magnitude of the differences of means (means difference = -0.38, 95% CI: -.42 – -.28) was small to moderate (eta squared = .03).

[60] The Dempsey study did not include a gender role item that I could use with confidence. *See infra* Part VI.B.

that study—was more conservative than the general public,[61] and that should carry over to the more refined sample of CA/SJA officers. Similarly, the sample of UCMJ Administrators includes a higher proportion of officers than the general Army population, and Dempsey found that the officer population was more conservative than the general population.[62] The UCMJ Administrators sample is moderated by the inclusion of enlisted soldiers, so the degree of conservatism should not be as high as that found in my CA/SJA, which is composed only of senior officers.

Looking at the TISS data, the political self-label item asked the respondent, "How would you describe your views on political matters?" The item used a seven-point response measure (1 = far left, 2 = very liberal, 3 = somewhat liberal, 4 = moderate, 5 = somewhat conservative, 6 = very conservative, 7 = far right).[63] The TISS researchers included this item in the survey instrument that was used with the general population sample, so a direct comparison is possible. The results are displayed below:

[61] *See* SZAYNA ET AL., *supra* note 22, at 83; Ole R. Holsti, *Of Chasms and Convergences: Attitudes and Beliefs of Civilians and Military Elites at the Start of the New Millennium*, *in* SOLDIERS AND CIVILIANS, *supra* note 22, at 33.

[62] Carpenter, *supra* note 5, at 413–14.

[63] The item also had "no-opinion" and "other" options. I coded those responses (n = 2, or 0.2% of the total responses) as missing so that they would not affect the mean.

Figure 2: Political self-label comparison, TISS general population sample and CA/SJA sample, by percent

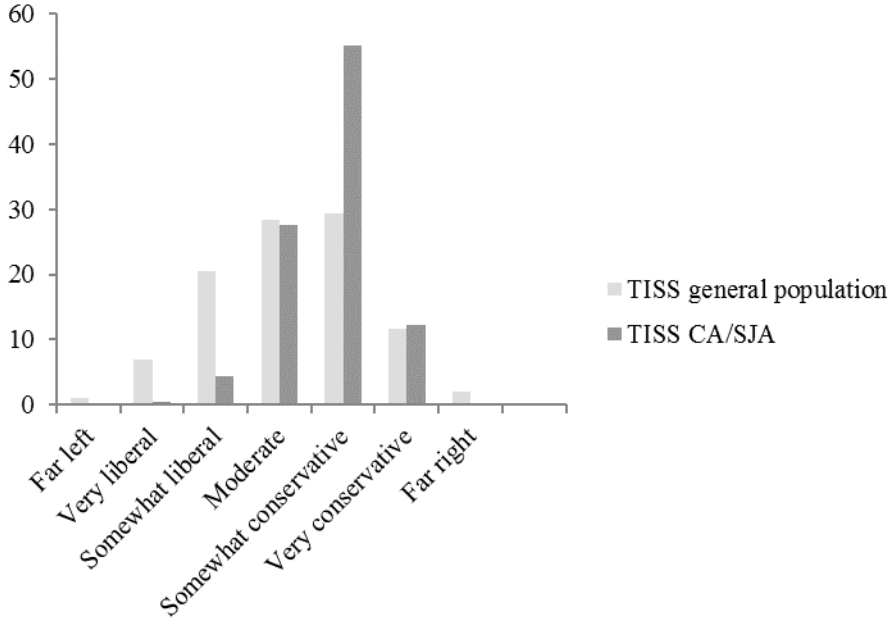


Table 2: Political self-label comparison, TISS general population sample and CA/SJA sample by percent

Response	*General public*	*CA/SJA*
Far left	1	0
Very liberal	7	0
Somewhat liberal	20	4
Moderate	28	28
Somewhat conservative	29	55
Very conservative	12	12
Far right	2	0

Data unweighted

For the CA/SJA sample, the mode was "somewhat conservative" and that response was chosen nearly twice as often as the next highest

response. Less than 5% labeled themselves as some degree of liberal, while 67% labeled themselves as some degree of conservative.[64] For the general population sample, the mode was "somewhat conservative,"[65] but that response was nearly equal to "moderate." There, 28% labeled themselves as some degree of liberal (up from less than 5%), while 43% labeled themselves as some degree of conservative (down from 67%).

Comparing the two samples, the ratio of means for the CA/SJA and general public is 1.12, signifying that the mean for the military was 12% higher (towards conservatism) than the mean for the general public.[66] The data suggests that the CA/SJA population is substantially more conservative than the general population.

Looking now at the Dempsey data of the UCMJ Administrator sample, the political self-label item in that study asked the respondent, "In terms of politics and political beliefs, where would you place yourself?" The item used a seven-point response measure (1 = extremely liberal, 2 = liberal, 3 = slightly liberal, 4 = moderate, 5 = slightly conservative, 6 = conservative, 7 = extremely conservative).

The comparison item from the 2004 GSS asked the respondent, "We hear a lot of talk these days about liberals and conservatives. I'm going to show you a seven-point scale on which the political views that people might hold are arranged from liberal – point 1 – to extremely conservative – point 7. Where would you place yourself on this scale?" The item used the same seven-point response measures used in the

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[64] The mean for this item (n = 543) was 4.75, SD = .75, SEM = .03. Using a single-population t-test and setting H_0 at 4, the mean was statistically significant ($p < .01$).

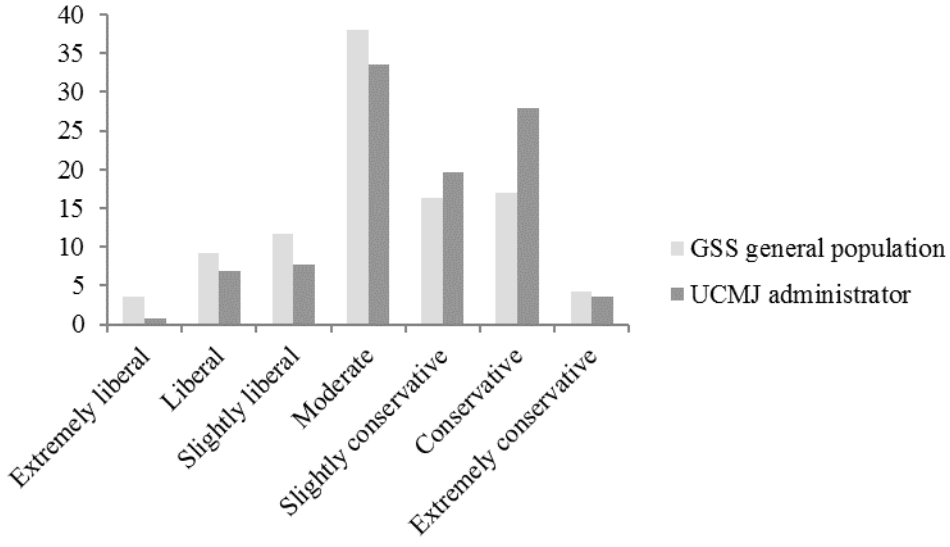
[65] The mean for this item (n = 941) was 4.22, SD = 1.21, SEM = .04. Using a single-population t-test and setting H_0 at 4, the mean was statistically significant ($p < .01$).

[66] I conducted an independent-samples t-test to compare the political self-label item scores for the CA/SJA population and the general population. There was a statistically significant difference in the scores for the military (M = 4.75, SD = .75) and the scores for the general public (M = 4.22, SD = 1.21; t (1476) = 10.44, $p < .01$, two-tailed). The magnitude of the differences of means (means difference = .53, 95% CI: .43 – .63) was moderate (eta squared = .07).

Dempsey study.[67]

The results are displayed below:

Figure 3: Political self-label comparison between GSS general population sample and UCMJ Administrator sample



[67] The item also had "no-opinion" and "no answer" responses. I coded those responses (n = 31, or 2.3% of the total responses) as missing so that they would not affect the mean.

Table 3: Political self-label comparison, GSS general population sample and UCMJ Administrator sample, by percent

Response	*General public*	*UCMJ Adm.*
Extremely liberal	4	1
Liberal	9	7
Slightly liberal	12	8
Moderate	38	34
Slightly conservative	16	20
Conservative	17	28
Extremely conservative	4	4

Data unweighted

The UCMJ Administrators sample has a higher percentage of minorities,[68] and we should expect to see a more moderate demographic. And that is what we find. For the UCMJ Administrator sample, the mode was "moderate."[69] For this sample, 15% labeled themselves as some degree of liberal (compared to 5% of the CA/SJA sample), while 51% labeled themselves as some degree of conservative (compared to 67% of the CA/SJA sample).

For the GSS general population sample, the mode was "moderate,"[70] and that response measure had more than twice as many responses as the next highest measure. There, 25% labeled themselves as some degree of liberal—more than the 15% found in the UCMJ Administrator sample—while 38% labeled themselves as some degree of conservative, less than the 51% found in the UCMJ Administrator sample.

Comparing the two populations, the ratio of means for the UCMJ

[68] *See* app. at 44–46, 51–52.

[69] The mean for this item (n = 756) was 4.62, SD = 1.29, SEM = .05. Using a single-population t-test and setting H_0 at 4, the mean was statistically significant ($p < .01$).

[70] The mean for this item (n = 1309) was 4.23, SD = 1.41, SEM = .04. Using a single-population t-test and setting H_0 at 4, the mean was statistically significant ($p < .01$).

Administrator sample and the general public sample is 1.09, signifying that the mean for the UCMJ Administrators was 9% higher than mean for the general public.[71] The data suggests that the UCMJ Administrator population—potential investigators, judge advocates, commanders and convening authorities, military judges, and panel members—are more conservative than the general population, although not as conservative as the CA/SJA population.

The data suggests that the populations are very different, which is consistent with my hypothesis. It appears that the CA/SJA population has more traditional gender role beliefs and is more conservative than the general population. Additionally, it appears that the UCMJ Administrator population is more conservative than the general population.

IV. THE DIFFERENCE MATTERS

The data suggests that the military population that handles rape cases is very different from the general population on two important constructs that are related to how people resolve rape cases. The next questions are: "Does that matter?" and "Would those differences actually affect rape case processing?" Fortunately, data exists that I can model to answer those questions.

A. THE MODELING DATA SET

In 2010, Dan Kahan published a study related to a dorm-room sexual assault.[72] In this study, Kahan used an online research agency to

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[71] I conducted an independent-samples t-test to compare the political self-label item scores for the UCMJ Administrator sample and the general population sample. There was a statistically significant difference in the scores for the military (M = 4.62, SD = 1.29) and the scores for the general public (M = 4.23, SD = 1.41; t (2063) = 6.35, p < .01, two-tailed). The magnitude of the differences of means (means difference = .40, 95% CI: .27 – .52) was small to moderate (eta squared = .02).

[72] Dan M. Kahan, *Culture, Cognition, and Consent: Who Perceives What, and Why, in Acquaintance-Rape Cases*, 158 U. PA. L. REV. 729 (2010).

survey 1,500 Americans.[73] Kahan was primarily interested in the relationship between the respondents' worldviews and their interpretations of a dorm-room sexual assault.[74] He gathered information that would constitute his independent variables, had the respondents read a sexual assault scenario, gave them a legal condition, and then used the respondents' views on the case as dependent variables.[75]

For use as his independent variables, Kahan collected, among other things, demographic information on the subjects. Two of these—gender and race—I will include in the models. He also used a scale called the Cultural Cognition Worldviews Scale[76] to collect information on the subjects' cultural worldviews, measured on one subscale from hierarchical to egalitarian and on another subscale from individualistic to communitarian.[77] Within the hierarchy scale are several items related to gender role beliefs, one of which[78]—"[a] lot of problems in our society today come from the decline in the traditional family, where the man works and the woman stays home"—matches fairly well with the gender role item used in the TISS survey and the GSS. Kahan also used an item to measure conservatism[79] that is essentially the same as the TISS, Dempsey, and GSS items.

Kahan then provided all of the subjects with a vignette of a dorm-

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[73] *Id.* at 765.

[74] *Id.* at 733.

[75] The entire survey instrument minus the independent variables is available in the appendix to Kahan's article. *See id.* at 807–13.

[76] *See Cultural Cognition Worldview Scales (CCWS)—Long and Short Forms*, SOC'Y FOR JUDGMENT AND DECISION MAKING, http://www.sjdm.org/dmidi/Cultural_Cognition_Worldview_Scales.html (last visited Jan. 30, 2016) [hereinafter *Cultural Cognition Worldview Scales*].

[77] Kahan, *supra* note 72, at 769–70. Kahan was interested in a different construct than I am exploring.

[78] The variable name is "HTRADFAM."

[79] The variable name is "IDEO5."

room sexual assault based on the case *Commonwealth v. Berkowitz*.[80] In the fact pattern, Lucy and Dave are college students and casual acquaintances who may have once engaged in a sexual conversation.[81] One day, when Lucy was looking for her boyfriend in the dorms, she stopped by Dave's room to see his roommate.[82] She had had a drink beforehand.[83] She went into the dorm room but the roommate was not there; however, Dave was.[84] At this point, Lucy's testimony is that she tried to leave but that Dave blocked the door, pinned her down, and sexually assaulted her by inserting his penis into her vagina.[85] Dave's testimony is that she consented.[86] During the assault, Lucy said "No" repeatedly, although Dave said that she said it in a sexual way.[87] Lucy did not otherwise physically resist.[88]

Kahan then randomly divided the subjects into five groups of 300 and gave each of them one of five legal conditions.[89] I was concerned that these legal conditions would unnecessarily complicate my project so I decided to only use the observations that were assigned to one of the first three conditions.[90] The basic legal problem that the respondents had to solve was whether Dave penetrated Lucy by force or threat of force, without her consent, and without a reasonable mistake as to her consent.[91]

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[80] 641 A.2d 1161 (Pa. 1994); *see also* Kahan, *supra* note 72, at 735, 765.

[81] Kahan, *supra* note 72, at 807.

[82] *See id.*

[83] *See id.* at 808.

[84] *See id.* at 737.

[85] *See id.* at 808–09.

[86] *See id.* at 809.

[87] *See id.* at 808–09.

[88] *See id.*

[89] *See id.* at 767–78.

[90] For a discussion of this decision—along with more information on my data screening and reduction, as well as Kahan's methodology—see app. at 231–33. For all of my uses of the Kahan data, the data was unweighted.

[91] *See* Kahan, *supra* note 72, at 767–69.

Kahan then tested thirteen dependent variables. He did not include a rape myth acceptance scale; however, his items did test agreement with certain rape schemas, statements about certain legal elements, and two outcome judgments.[92]

This study has several important features. First, the observations come from a sample that is representative of the general public. Kahan avoids the non-probability sampling problem found in many psychology studies that have to use students as subjects because of resource constraints.[93] Second, the study's fact pattern matches both the type of case that those in the military have to deal with on a routine basis and that the critics have in mind. This is the type of fact pattern where the problem solver will have to rely on social schemas to make sense of what happened. Third, and most importantly for me, the study has two predictor variables—a gender role item and a conservatism item—that allow me to connect the CA/SJA and UCMJ Administrators samples to the Kahan data.

B. HYPOTHESIS

My hypothesis was that a regression model would predict that those in the military samples would endorse certain rape beliefs that favor the man and would side with the man on the legal elements and outcome judgments to a greater degree than those in the general public sample. As discussed above, both traditional gender role beliefs and conservatism have been associated with greater rape myth acceptance and outcome judgments that favor the man, and both of the military samples have a higher percentage of people who endorse those constructs than is found in the general population.

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[92] *See id.* at 769–70, 812–13.

[93] *See* Joseph Henrich et al., *The Weirdest People in the World?*, 33 BEHAV. & BRAIN SCI. 61, 76–78 (2010).

C. MODELING THE DATA

In *The Military's Sexual Assault Blind Spot*, I develop the cognitive pathway that people use when solving rape problems within a legal framework. Generally, in rape cases, the central legal issues are whether the woman consented, and if not, whether the man was mistaken as to her consent.[94] People belong to social groups—say, groups who share worldviews on gender role beliefs or conservatism—and have social schemas that are consistent with these group identities.[95] When asked to solve a legal problem with limited and conflicting information, people use these schemas to make sense of the problem in front of them.[96] They then resolve legal elements and choose outcome judgments that will minimize dissonance with their worldviews.[97]

If we organize Kahan's dependent variables into a cognitive flow—social schemas or generalizations, then resolution of legal elements, and then outcome judgments—we see that four are generalizations, five are factual conclusions that satisfy a particular legal element,[98] and two are outcome judgments.[99] The other two, which I am not considering, deal

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[94] *See* Carpenter, *supra* note 5, at 389.

[95] *See id.* at 388.

[96] *See id.* at 387–88.

[97] *See id.*

[98] Albert J. Moore, along with others, uses the term "factual proposition" for this concept. *See, e.g.*, ALBERT J. MOORE ET AL., TRIAL ADVOCACY: INFERENCES, ARGUMENTS, AND TECHNIQUES 11 (1996) ("A 'factual proposition' is simply an abstract element restated as the specific event or condition in [the] case which satisfies that [legal] element.").

[99] If the items "NOTLEAVE" and "NORESIST" had used "women" and "men" rather than "Lucy" and "Dave," those items could have been variables that tested rape schemas. Likewise, if the item "NOMEANSNO" had used "women" and "men," that item could have tested the rejection of the miscommunication or "no means yes" rape schemas. The "TRUECHARGE" item that tests the schema that women commonly lie about rape is trickier. A respondent could have believed that many women do lie about rape, but the respondent might not have found the facts in this case to support a factual

with force. I have organized the remaining variables in Table 4. The variable name is in parentheticals.

conclusion that Lucy lied on this occasion. However, I will treat it as a generalization.

Table 4: Kahan's Dependent Variables

Generalizations	*Elemental Factual Conclusions*	*Outcome Judgments*
Lucy would have tried to leave the dormitory room if she had really meant not to consent to sexual intercourse. (NOTLEAVE)	Consent: Despite what she said or might have felt after, Lucy really did consent to sexual intercourse with Dave. (CONSENT)	Not Guilty: It would be unfair to convict Dave of a crime as serious as rape. (UNFAIR)
Lucy would have tried to push Dave off of her if she had really meant not to consent to sexual intercourse. (NORESIST)	Lack of Consent: Dave engaged in sexual intercourse with Lucy without her consent. (NOCONSENT)	Guilty: Dave should be found guilty of rape. (GUILTY)
There is no reason to believe Lucy would falsely accuse Dave of rape. (TRUECHARGE)	(Dis)honest mistake: Dave knew that Lucy had not consented to sexual intercourse with him. (DISHONEST)	
By saying "no" several times, Lucy made it clear to Dave that she did not consent to sexual intercourse. (NOMEANSNO)	Reasonable mistake: Given all the circumstances, it would have been reasonable for Dave to believe Lucy consented to sexual intercourse. (REASONABLE)	
	Honest mistake: Dave believed that Lucy consented to sexual intercourse. (HONEST)	

I report the correlations of those criterion variables and the predictive variables below in Table 5:

Table 5: Correlations of Predictive and Criterion Variables

Variables	1	2	3	4	5	6	7	8
1. Sex	-							
2. Race	-.07*	-						
3. HTRADFAM	-.02	-.08*	-					
4. IDEO5	-.09**	-.19**	.40**	-				
5. NOTLEAVE	.01	.03	.08*	.12**	-			
6. NORESIST	-.04	.01	.14**	.14**	.71**	-		
7. TRUECHARGE	.01	.01	-.03	-.05	-.25**	-.33**	-	
8. NOMEANSNO	-.01	.02	-.05	-.05	-.32**	-.35**	.38**	-
9. CONSENT	.02	-.01	.09**	.06	.50**	.52**	-.38**	-.46**
10. NOCONSENT	.01	.03	-.08*	-.08*	-.38**	-.37**	.37**	.52**
11. DISHONEST	.06	.01	-.04	-.08*	-.36**	-.37**	.38**	.50**
12. REASONABLE	.03	-.03	.10**	.10**	-.50**	.55**	-.39**	-.49**
13. HONEST	.00	.02	.08*	.07*	.33**	.33**	-.25**	-.30**
14. UNFAIR	.04	-.03	.12**	.09*	.49**	.55**	-.34**	-.48**
15. GUILTY	.00	.03	-.08*	-.18*	-.47**	-.52**	.43**	.56**

Table 5 *Continued*

Variables	9	10	11	12	13	14	15
1. Sex							
2. Race							
3. HTRADFAM							
4. IDEO5							
5. NOTLEAVE							
6. NORESIST							
7. TRUECHARGE							
8. NOMEANSNO							
9. CONSENT	-						
10. NOCONSENT	-.52**	-					
11. DISHONEST	-.46**	.54**	-				
12. REASONABLE	.64**	-.51**	-.50**	-			
13. HONEST	.37**	-.29**	-.43**	.47**	-		
14. UNFAIR	.58**	-.50**	-.48**	.59**	.37**	-	
15. GUILTY	-.60**	.56**	.59**	-.66**	-.40**	-.74**	-

Spearman's rho correlation (two-tailed) is significant at *p < .05, **p < .01. All variables are converted to binary except the political self-label item, which is converted from five-point (very liberal, liberal, moderate, conservative, very conservative) to three-point (liberal, moderate, conservative). Race is white and other than white.

The gender role item and the political self-label item had a strong positive relationship (.40). The race and sex predictive variables had no or negligible relationships with the other variables. While the correlations between the gender role item and the criterion variables and between the political self-label item and the criterion variables were often statistically significant, those relationships were negligible to weak.

Next, I ran logistical regressions using Kahan's data and used the regression coefficients from Kahan's data to predict the likelihood that the respondents in the TISS CA/SJA sample and the Dempsey UCMJ Administrators sample would agree with the criterion variables.

1. The TISS CA/SJA Sample

The TISS data has four predictive variables that I can match to the Kahan data: sex; race (reduced to a binary variable of "white" and "other"); the gender role item (reduced to a binary variable of "agree" or "disagree"); and, conservatism (reduced to three responses by combining "liberal" and "very liberal" into one category and "conservative" and "very conservative" into one category). All criterion variables were converted to binary.

The models for TRUECHARGE, NOMEANSNO, NOCONSENT, and DISHONEST were not statistically significant at $p < .10$, meaning that we cannot reject the null hypothesis that a model without these predictive variables would have the same predictive value. Overall classification for the models that were statistically significant or marginally significant was not overly impressive.

Table 6: Models Predicting Agreement with Criterion Variables (for use with CA/SJA Sample)

	NOTLEAVE***			NORESIST***			CONSENT*		
	β	SE	Expβ	β	SE	Expβ	B	SE	Expβ
Gender Role Item	.20	.16	1.22	.52***	.17	1.69	.40**	.16	1.49
Political		**			**				
Moderate	.22	.19	1.25	.43**	.19	1.54	.05	.19	1.05
Conservative	.59***	.20	1.81	.53**	.21	1.70	.14	.20	1.14
Sex	.03	.15	1.03	-.13	.16	.88	.11	.15	1.11
Race	.28	.18	1.32	.16	.18	1.18	-.01	.18	.99
Nagelkerke R^2			.03			.05			.02
N			785			788			787

Table 6 *Continued*

	REASONABLE***			UNFAIR***			GUILTY*		
	β	SE	Expβ	β	SE	Expβ	B	SE	Expβ
Gender Role Item	.38**	.16	1.46	.50***	.16	1.66	-.35**	.16	.71
Political									
Moderate	.12	.19	1.13	.14	.19	1.15	-.20	.19	.82
Conservative	.35	.20	1.41	.22	.20	1.24	-.23	.20	.80
Sex	.20	.15	1.22	.17	.15	1.19	-.06	.14	.94
Race	-.02	.17	.98	-.04	.17	.96	.04	.17	1.04
Nagelkerke R^2			.03			.03			.02
N			788			789			789

Gender item reference category = egalitarian; Political self-label reference category = liberal; sex reference category = man; race reference category = white. *p < .10, **p < .05, ***p < .01.

The gender role variable had a statistically significant main effect in five of the six models. A respondent with a traditional gender role belief is 69% more likely that a respondent with a non-traditional belief to agree that the woman would have tried to push the man away if she did not really consent; 49% more likely to agree that the woman did consent; 46% more likely to agree that the man could reasonably believe that she consented; 66% more likely to agree that it would be unfair to convict the man of rape; and, 29% less likely to agree that the man should be found

guilty of rape.

The political identification variable had a statistically significant main effect in two of the models. A respondent with a self-label of moderate is 54% more likely that a respondent with a liberal label to agree the woman would have tried to push the man away if she did not really consent. A self-label of conservative makes it 70% more likely that the respondent would agree with the aforementioned statement than one with a liberal self-label, and 81% more likely that the respondent would agree that the woman would have tried to leave if she really did not consent. Controlling for those other factors, the sex and race variables did not contribute to the models with statistical significance.

Earlier, data suggested that the CA/SJA population was more conservative and more traditional than the general population. I ran the CA/SJA sample through the models for each variable, and the models generally predicted that the respondents in the CA/SJA sample would endorse a rape schema, side with the man on a legal element, and side with the man on the outcome judgment at a higher percentage than the general population sample. Six models were statistically significant but three (NOTLEAVE, NORESIST, CONSENT) predicted either 100% or 0% of respondents would agree.

Three of the models provided useful information.

Table 7: Model Predictions for Criterion Variables – CA/SJA Sample

	Actual Kahan Sample	*Predicted Kahan Sample*	*Predicted CA/SJA Sample*	*Model Fit*
Given all the circumstances, it would have been reasonable for Dave to believe Lucy consented to sexual intercourse. (REASONABLE)	48	39	48	.58, SE .02 (.54, .62)
It would be unfair to convict Dave of a crime as serious as rape. (UNFAIR)	48	50	59	.59, SE .02 (.548, .63)
Dave should be found guilty of rape. (GUILTY)	54	54	41	.56, .02 (.52, .60)

Percentages are those agreeing with that variable. Model fit = ROC area under curve, SE, and 95% CI (lower, upper). All model fits are statistically significant at $p < .01$. Data unweighted.

While the predictive models reported above were statistically significant, they were not powerful—all had low ROC areas under the curve. The REASONABLE model did not closely predict Kahan's sample but did predict a degree of difference between the Kahan sample and the CA/SJA sample that is consistent with the last two models, UNFAIR and GUILTY. The difference in percentages between the predicted CA/SJA sample and predicted Kahan sample for REASONABLE (Pearson's chi-square = 9.25, df = 1, $p < .01$), UNFAIR (Pearson's chi-square = 9.39, df = 1, $p < .01$), and GUILTY (chi-square = 19.32, df = 1, $p < .001$) were statistically significant.

Assuming that those in the CA/SJA sample have the same logistic regression model as those in the general population sample, these models suggest that if the CA/SJA sample had been given the Kahan instrument,

the percentage of the sample that would have sided with the man on one legal element (mistake of fact as to consent) and the two outcome judgments (guilty or not guilty) would have been around 9 to 13% higher than Kahan's general population sample. For the people in the military who make the ultimate decisions on these cases, the difference in belief systems and political identification matters.

2. The Dempsey UCMJ Administrators Sample

The predictive variables were the same as above, except that I was able to match the Kahan data more closely with a four-point race item[100] and I did not include a gender role item because the Dempsey data did not have a matching gender role item. This left three predictive variables for the following models.

The models for TRUECHARGE, NOMEANSNO, CONSENT, NOCONSENT, UNFAIR, and GUILT were not statistically significant at $p < .10$, meaning that we cannot reject the null hypothesis that a model without these predictive variables would have the same predictive value. Overall classification for the models that were statistically significant or marginally significant was not overly impressive.

[100] The four-point race variable correlated to the other variables as follows (Spearman's rho correlation (two-tailed) is significant at *$p < .05$, ** $p < .01$): SEX -.07*; IDEO5 -.18**; NOTLEAVE .03; NORESIST .00; TRUECHARGE .00; NOMEANSNO .03; CONSENT -.02; NOCONSENT .03; DISHONEST .02; REASONABLE -.03; HONEST .01; UNFAIR -.04; GUILTY .03.

Table 8: Models Predicting Agreement with Criterion Variables (For Use with UCMJ Administrators Sample)

	NOTLEAVE**			NORESIST***			DISHONEST*		
	β	SE	Expβ	B	SE	Expβ	β	SE	Expβ
Political		***			***				
Moderate	.24	.19	1.28	.52***	.19	1.67	-.24	.19	.78
Conservative	.68***	.19	1.98	.78***	.19	2.18	-.39**	.19	.68
Sex	.04	.16	1.04	-.13	.16	.88	.23	.15	1.26
Race									
Black	.24	.25	1.27	.18	.25	1.20	-.01	.24	.99
Hispanic	.21	.28	1.24	.22	.28	1.24	-.31	.27	.73
Other	.38	.36	1.47	-.01	.36	.99	.56	.38	1.75
Nagelkerke R^2			.02			.03		.02	
N			786			789		789	

Table 8 *Continued*

	REASONABLE*			HONEST*		
	B	SE	Expβ	β	SE	Expβ
Political		**			**	
Moderate	.18	.19	1.19	.30	.19	1.35
Conservative	.52***	.18	1.68	.48**	.19	1.62
Sex	.20	.14	1.22	.08	.15	1.08
Race					*	
Black	.06	.24	1.06	.47*	.26	1.60
Hispanic	-.15	.27	.86	.42	.29	1.53
Other	-.06	.34	.94	-.45	.34	.64
Nagelkerke R^2			.02			.02
N			789			788

Political self-label reference category = liberal; sex reference category = man; race reference category = white.
*p < .10, **p < .05, ***p < .01.

The political label variable had a statistically significant main effect in four of the models, two more than when I ran the regressions with the gender role variable included in the models. This is likely because the

gender role variable and the political self-label variable contain significant covariance and removing the gender role variable allowed that shared variance to be attributed to the political self-label variable.

Without the gender role item, fewer models were statistically significant, to include UNFAIR and GUILT. The CA/SJA models used the traditional gender role item, and that item is probably highly correlated with what is likely to be the most powerful latent variable: sexual conservatism. The UCMJ Administrator models use political conservatism, which is farther removed from that variable. Political conservatism is a more global variable with three sub-facets, one of which is social conservatism.[101] Social conservatism, in turn, includes traditional gender role beliefs, and among those traditional gender role beliefs is sexual conservatism.[102] When we remove the gender role item from the model and rely on the political label item, we should expect that there will be more unexplained variance and that the models will not perform as well.

The data does suggest that moderates and conservatives are more likely than liberals to agree with an important legal reasoning chain—that the woman would have fought back or left the room if she did not really consent and that, because she did not do those things, the man could honestly and reasonably believe that she did consent.

A respondent with a self-label of moderate is 67% more likely that a respondent with a liberal label to agree that the woman would have tried to push the man away if she did not really consent; a self-label of conservative makes it 118% more likely. Similarly, a respondent with a self-label of conservative is 98% more likely to agree that the woman would have tried to leave; 68% more likely to agree that the man could reasonably believe the woman consented; and, 62% more likely to agree that the man honestly believed the woman consented.

Earlier, the data suggested that the UCMJ Administrator population is more conservative than the general population. I ran the

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[101] *See supra* note 43 and accompanying text.

[102] *See supra* note 44–45 and accompanying text.

UCMJ Administrator sample through the models for each variable. Two models, DISHONEST and HONEST, were not statistically significant; two of the models that were—NOTLEAVE and NORESIST—predicted that 100% of respondents would agree. The model for REASONABLE predicted that the UCMJ Administrator sample would side with the man on a legal element at a higher percentage than the general population sample.

Table 9: Model Predictions for Criterion Variables – Kahan Sample and UCMJ Administrators

	Actual Kahan Sample	*Predicted Kahan Sample*	*Predicted UCMJ Adm.*	*Model Fit*
Given all the circumstances, it would have been reasonable for Dave to believe Lucy consented to sexual intercourse. (REASONABLE)	48	37	47	.57, SE .02 (.53, .61)

Percentages are those agreeing with that variable. Model fit = ROC area under curve, SE, and 95% CI (lower, upper). The model fit was statistically significant at $p < .01$. Data weighted for race and rank.

As with the TISS CA/SJA data, the predictive model reported above was statistically significant but it was not powerful—it had a low ROC area under the curve. While the REASONABLE model did not closely predict Kahan's sample, it did predict a degree of difference between the Kahan sample and the UCMJ Administrators sample that is consistent with the TISS CA/SJA data. The difference in percentages for REASONABLE was statistically significant (Pearson's chi-square = 4.21, df = 1, p = .04).

Assuming that those in the UCMJ Administrators sample have the same logistic regression model as those in the general population sample, that model suggests that, if the UCMJ Administrators sample had been

given the Kahan instrument, the percentage of the UCMJ Administrators that would agree that the man could reasonably believe that the woman consented—a critical legal element—would have been around 10% higher than in the general population sample. The data suggest that those in the military who run the UCMJ look at these cases differently than those in the general population.

D. DISCUSSION AND LIMITATIONS

I hypothesized that the model would predict that the military samples would agree with rape schemas and side with the man on legal elements and outcome judgments in a higher proportion than the general population sample. The models suggest that if the CA/SJA sample, the UMCJ Administrators sample, and the general public sample had all been given the *Berkowitz* fact pattern, the proportion of the military samples that sided with the man would be 9 to 13% higher than the general population sample.

This analysis has several limitations. Some—including the difference in the wording of some of the items that I compared and the fact that the entire survey instruments given to the different samples were different—are not comparatively important.

A larger issue is the weakness of the models that I used to generate log odds and make predictions about the military samples. These models had limited predictive variables. I only tested race, sex, a gender role item, and a political label item for one set of models, and race, sex, and a political label item for the other set of models.[103]

I reported some models that were not statistically significant at the $p < .05$ level but were at $p < .10$, meaning there is a greater probability that the results that I am reporting would be seen in the population even if the predictive variables had no effect on the dependent variables. What I report from those models is consistent with the other models, so I am not

[103] In his study, Kahan ran several independent variables. *See* Kahan, *supra* note 72, at 779 Table 1.

overly concerned about that issue. The predictive value of the models was low, and the results from that part of the study are limited by that consideration. The models had low classification percentages and low areas under the ROC curve, meaning that they were not very sensitive or specific.

Next, a potential critique of my use of the TISS and Dempsey data is that the data sets are somewhat old; the TISS researchers measured in 1998, and Dempsey measured in 2004. The argument would be that we cannot make an inference about the current CA/SJA population and UCMJ Administrator population based on what we learned about a 1998 population and a 2004 population because both the population demographics and the gender role belief or political identification levels may have changed within those populations.

I analyzed this issue and found that the demographics of the targeted military populations have not changed in a statistically significant way since the data was collected.[104] I was also able to measure these belief systems and political identification within the general population over this period, and neither had changed in any meaningful way.[105] However, I was unable to measure whether the belief systems or political identification within those targeted military populations had changed over time.

To extend the inference to the current military populations, we would need to assume that these beliefs systems and political identifications remained stable within the military populations as they did with the civilian populations. To the extent that this assumption is faulty, the inferences in this study are limited to the 1998 and 2004 military populations. This study would still provide a historical explanation for what critics observed about those populations and how they treated sexual assault cases.

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[104] *See* app. at 233–38.

[105] *See id.* at 238–40.

V. POLICY REFINEMENTS

A. INDEPENDENCE IS NOT THE ISSUE

In *The Military's Sexual Assault Blind Spot*, I outlined the three options that Congress is considering: giving the cases to civilian law enforcement; giving the cases to someone in the military that is independent of the chain of command; or, keeping the status quo. I argued that the real issue is not which organization the decision maker belongs to, but rather whether that decision maker has a blind spot—whether that decision maker relies on inaccurate rape schemas.[106]

The findings from this study further inform the second option—giving the cases to a staff judge advocate from outside the chain of command, or an independent convening authority, or an independent director of prosecution with the Department of Defense—and support my argument.

We now know from the CA/SJA sample that the population that makes up the convening authorities and staff judge advocates is traditional, conservative, and likely to use inaccurate rape schemas. This group includes those that would be the independent military lawyers. Those independent judge advocates may know the law, but this study suggests that they would still apply inaccurate schemas when deciding whether the facts satisfy the law. Giving the cases to them probably would not change anything.

This population also includes those that would be the independent convening authorities. This study suggests that they, too, would apply inaccurate schemas. Giving the cases to them probably would not change anything either.

The issue is not independence; it is belief systems. We will see change if we select the right people. We will not see change if we just shuffle the groups. The key is to select individuals that we know are free from inaccurate rape schemas—through training and certification—rather

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[106] *See* Carpenter, *supra* note 5, at 420–22.

than to create groups by pulling from the larger conservative and traditional population and then giving them the label "independent" without knowing if we pulled people who would use inaccurate rape schemas. This study suggests the people we pull would very likely use them.

Having traditional gender role beliefs or being conservative is not, by itself, something negative. The key is to break the link between those underlying constructs and the schemas and outcome judgments that flow from them. People who are traditional and conservative can sit in judgment on these cases. They just need to recognize that many of the rape schemas that they would otherwise use are inaccurate and that they need to set them aside when working on these types of cases.

One related potential criticism of this study is that current commanders, staff judge advocates, and UCMJ administrators (particularly, law enforcement) might have already received training on how to handle sexual assault cases. The Department of Defense began to formally address the sexual assault issue in 2004,[107] and training requirements have continued to increase since.[108] The argument would be that the current population has been "treated" or "debiased," while the older populations that were directly measured by the samples in this study were not. If the current individuals had received effective training, that could break the link between the predictive variables and the criterion variables. Reformers could not point to this study as evidence of a current problem; in fact, there may not be a problem anymore.

The evidence on the effectiveness of these training requirements is still out, though. The Department of Defense reports that the trend since

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[107] *See Mission and History*, DEP'T OF DEF., SEXUAL ASSAULT PREVENTION PROGRAM AND RESPONSE, http://www.sapr.mil/index.php/about/mission-and-history (last visited Jan. 30, 2016).

[108] *See* RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT CRIMES PANEL, REPORT OF THE RESPONSE SYSTEMS TO ADULT SEXUAL CRIMES PANEL app. G, at 74–75 (2014), *available at* http://responsesystemspanel.whs.mil/Public/docs/Reports/00_Final/RSP_Report_Annex_Final_20140627.pdf.

2009 is that investigators and commanders are substantiating more of these types of cases[109] and commanders are sending more of them to courts-martial,[110] but that report is, at its best, difficult to interpret and, at worst, misleading.[111]

Even if we did have evidence that this treatment has an effect, then that would support my larger policy argument. If treatment can break the inaccurate reasoning chain, then we need to focus on selecting "treated" individuals rather than pulling "untreated" people from groups that we think might be more independent. And if we did have evidence that the treatment has an effect, that should cause us to remain vigilant. These belief systems appear stable. If we relax the treatment, the inaccurate reasoning chain will return.

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[109] DEP'T OF DEF., ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY app. A Figure 12 (2014), *available at* http://sapr.mil/public/docs/reports/FY14_Annual/FY14_Annual_Report_Appendix_A.pdf [hereinafter 2014 ANNUAL REPORT ON SEXUAL ASSAULT].

[110] *See id.* at app. A Figure 13.

[111] The Department of Defense did not report the trends of other similar crimes during the same period, so we do not know if these trends are unique to rape or exist within other similar crimes. For example, during this period, the Army was taking all misconduct more seriously. *See generally* DEP'T OF THE ARMY, ARMY 2020: GENERATING HEALTH AND DISCIPLINE IN THE FORCE (2012), *available at* http://www.patriotoutreach.org/docs/army_gold_book.pdf.

Further, when reporting trends on law enforcement's founding decisions, the department reports the substantiation of *any* misconduct, even if the sexual assault offense is dropped. *See* 2014 ANNUAL REPORT ON SEXUAL ASSAULT at app. A, at 24. When reporting trends on commanders' disposition decisions in substantiated sexual assault cases, the Department does not report a category of "no action taken." *See id.* at app. A Figure 13. That category represented 24% of those founded cases that the commander received from law enforcement in 2014. *See id.* at app. A Figure 12. By excluding this large category—effectively removing the bad news—and then reporting the remaining three categories as portions of 100%, the department exaggerates the trends.

B. TRAINING MUST ADDRESS SEXISM RELATED TO SEXUAL CONSERVATISM

The training that we select should address the right kind of sexism. Looking at an item from the Dempsey study,[112] it appears that those who run the military justice system are not overtly hostile toward women who join the military.

Dempsey included this item of his sample of the broad Army population: "Some people feel that women should have an equal role with men in running business, industry, and government. Others feel that the woman's place is in the home. Where would you put yourself on [a scale of 1 to 7, with 1 being an equal role for women and 7 being a woman's place is in the home]?"[113] Dempsey took this item from the National Annenberg Election Survey so that he could compare his population of interest to the general population.[114]

I did not use the Dempsey gender role item in my main study because I felt that it had two problems. First, I was concerned that the item was complex. Complex items are ones that "convey two or more ideas so that endorsement of the item might refer to either or both ideas."[115] This item tapped into beliefs about whether a woman should work in or out of the home—similar to the TISS and GSS items—as well as beliefs about the role of women who work outside the home once they have made the choice to do that. A respondent might read this item and think, "When making the decision about whether to work at home or outside the home, I would rather that a woman choose to work at home, but if she chooses to work outside the home, she should have equal opportunities when she gets there." Because the item is complex, I am not sure what the responses to it mean.

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[112] *See* DEMPSEY, *supra* note 29, at 218.

[113] *Id.*

[114] *See id.* at 6 n.19.

[115] ROBERT F. DEVELLIS, SCALE DEVELOPMENT: THEORY AND APPLICATIONS 82 (3d ed. 2012).

Further, the item might also be influenced by social desirability bias. Social desirability bias occurs when respondents answer an item in a way that "presents themselves in the most favorable manner relative to prevailing social norms."[116] This item uses the word "equal." To answer the item with anything other than a "1," the respondent has to vote against one of the strongest American social norms—equality. The respondent has to say, "Women should not have an equal role," and that can be difficult, even if the respondent believes in traditional gender roles.

While I was not comfortable using the item in the main study, the responses to this item are still helpful when identifying the type of sexism that is at work. Below are the results:[117]

[116] Maryon F. King & Gordon C. Bruner, *Social Desirability Bias: A Neglected Aspect of Validity Testing*, 17 PSYCHOL. & MARKETING 79, 80 (2000).

[117] The data was highly skewed, making means analysis inappropriate. The median (n = 787) was 1. The mode (n = 787) was 1 (equal) and that response measure accounted for over half of all responses. To provide readers with an inferential statistic, I ran a bootstrap. The 95% CI = 1.00, 1.97; the median was 1.00 with bias = .03 and SE .16; SD = 1.32 with bias = .00 and SE = .04, 95% CI = 1.24, 1.41.

Figure 4: UCMJ Administrator sample (gender role item)

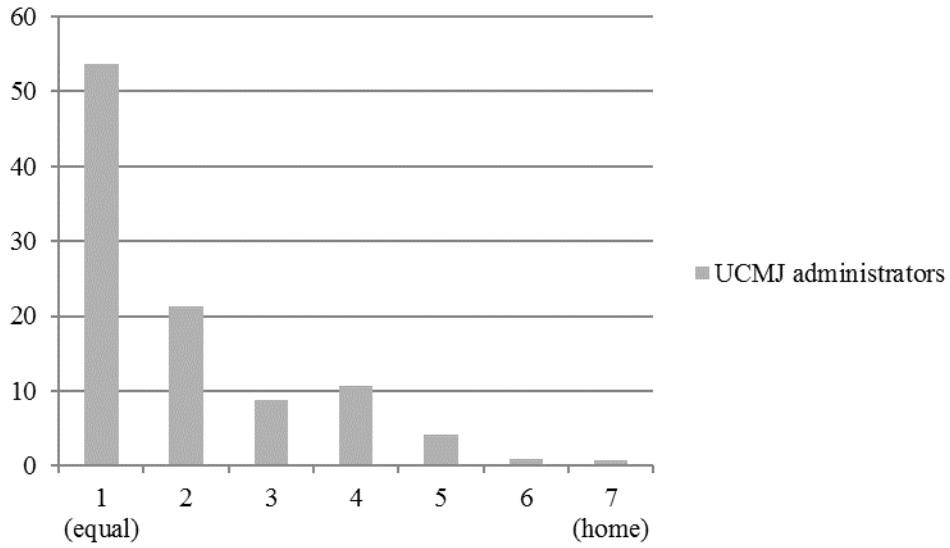


Table 10: Dempsey Gender Role Item (Equal Role or Stay at Home)

Response	*Frequency*	*Percent*
1 (equal)	422	54
2	167	21
3	69	9
4	84	11
5	32	4
6	7	1
7 (home)	6	1

Data unweighted

Within this sample of those who run the military justice system, the vast majority fully or strongly agreed that women should have an equal role in the workplace. Hardly anyone responded with 6 or 7, and response measures 5, 6, and 7 combined for fewer responses than the next lowest

response measure.

This item likely taps into the construct of "equality at work." The other non-complex items which we have looked at that relate to whether a woman "should . . . work inside the house or outside the house" had normal distributions. Had this item tapped into the home/work construct, we should have seen a normal distribution; instead, we see a skewed distribution. It appears that, when faced with a complex item, the respondents prioritized the two constructs and valued the equality construct over the home/work construct. The respondents then overwhelmingly chose equality.

The data suggests that, in their personal lives, those in the military—and the general population, for that matter—might choose to have the man at work and the woman at home. However, once the woman makes that choice and goes to work outside the home—say, by joining the military—then it appears that those in the military who run the military justice system strongly believe that she should be treated equally when she gets there.

In other words, the men in the military do not want to "punish" the women who break into their ranks.[118] Thus, to the extent that feminist theory suggests that the men in male-dominated professions—like the military—would punish women who join by not extending them the full protection of the law when they are sexual harassed or assaulted,[119] that theory might not be right.

Instead, the likely culprit is sexism related to sexual conservatism. Sexual conservatism is a facet of both conservatism and benevolent sexism, and most of the inaccurate rape schemas are based on sexual

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[118] *See* M.L. Dantzker & Betty Kubin, *Job Satisfaction: The Gender Prospective Among Police Officers*, 23 AM. J. CRIM. JUST. 19 (1998). In that study, the authors wanted to know if male hostility in police departments would manifest in job dissatisfaction among female officers. *See id.* at 22–23. They found that gender did not have a relationship with job satisfaction, suggesting that, having broken into the ranks, women had proven themselves and men had accepted them as equals. *See id.* at 29.

[119] *See* Martha R. Burt, *Rape Myths and Acquaintance Rape*, *in* ACQUAINTANCE RAPE: THE HIDDEN CRIME 26, 35 (Andrea Parrot & Laurie Bechhofer eds., 1991).

conservatism.[120] It may be that women are welcome in the military—provided that they behave in a sexually conservative way. If a woman acts in a sexually liberal manner and is then assaulted by a man who is "just doing what boys do," those who are responsible for solving that legal problem may be influenced by schemas that cause them to side with the man. In doing so, they would not be extending the full protection of the law to the woman. The message of social control is: behave the way we want or you are on your own.

Training needs to address that facet of sexism and work to end that method of social control.

CONCLUSION

At the macro-level, those who run the military justice system may be honestly and fully committed to finding a solution to the sexual assault problem. But, at the micro-level, when deciding a particular case, those who run the military justice system may unconsciously rely on a cognitive process that interferes with their ability to accurately perceive the relevant information, more so than we see with the general population. Those who run the military justice system have a larger sexual assault blind spot than the general population. And when those cases are aggregated, we see a system that is not taking the sexual assault problem seriously.

To solve the military's sexual assault problem, we need to ensure that the people working on the problem are free from this blind spot. They need to be able to see the offenders for who they are. And they need to process the cases without being blinded by how the victims may have behaved.

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[120] Carpenter, *supra* note 5, at 391–94.

APPENDIX

A. THE TISS DATA

I used the general population sample data without modifying the TISS sample parameters. I was not interested in the observations from the elite civilian sample and so did not use any of that data.

I first reduced the TISS elite military sample data set to those observations from my population of interest: active-component American military officers. I kept the observations from the Army War College (observations 9000–9071), Naval War College (10000–10333), Capstone (11500–11567), National Defense University (12000–12155), the Army Command and General Staff College (14500–14592).

The elite military sample now included only students at these schools. However, some of these students were civilians, some were foreign officers, and many were reserve component officers who spent that year on active duty while attending the school.[121] The items related to military service were generally vague or compound, and I had to work through many variables to determine if an observation represented an active component American military officer.

I started by sorting the military respondents from the civilian respondents. I sorted using item Q68 ("Have you ever served, or are you currently serving, in the U.S. military?") and deleted all observations that responded "no."[122] I then sorted by item Q68TO, where the respondent would mark the end date of his or her service.[123] If the service ended before 1998, I deleted the observation because that indicated that the respondent was no longer serving. I kept those that were missing data. I then sorted by item Q71 ("What is the highest rank/rate you reached?")[124] and deleted all that responded that they had never served, or the highest

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[121] *See* NEWCITY, *supra* note 22, at 22–25.

[122] *Id.* at 23.

[123] *Id.*

[124] *Id.* at 24.

rank reached was enlisted or cadet. This left commissioned and warrant officers. I sorted by Q72 ("If you are or were an officer, what was the source of your commission?")[125] and none responded that they had never been an officer. I then sorted by item Q66 ("What is/was your primary occupation?").[126] I kept those that responded "military officer." For those observations with another response, I thought that some of these observations might have responded with their military specialty (lawyer or communications, for example). If the observation was missing data for Q66 or had responded with another occupation, I looked to item Q68TO to see if there was a date range that indicated that the person was a military officer. If the data was missing or was coded as another occupation but had a military period of service (because of an earlier criterion, all were 1998 or better), then I kept the observation; if the observation had missing data in the service range, I deleted the observation.

To remove the foreign officers, I sorted by item Q81 ("Are you a foreign officer?").[127] The responses that indicated "yes" appear to be errors. These respondents also identified with American political parties and did not otherwise appear different than the other respondents so I did not use this as a deletion criterion.

I then removed the reserve component officers. I had to use several items to figure out whether the observation was an active component or reserve component officer. I started by sorting item Q68PS.1 (if you had or were serving, "what is/was your primary service?").[128] Several observations had no data that I could use to identify whether the person was active duty or reserves. I deleted those observations. I then sorted by item Q69 ("Have you ever served, or are you currently serving in the Reserves or National Guard without active duty time?").[129] A "yes" response should indicate that the respondent was in the reserve

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[125] *Id.*

[126] *Id.* at 22.

[127] *Id.* at 25.

[128] *Id.* at 23.

[129] *Id.*

component; however, some officers join the active component after having served in the reserve component. I deleted all observations that responded "yes" and also responded in item Q68PS that a reserve component was their primary branch of service. I kept those with missing data in Q69 if they had otherwise marked "military officer" in Q66 and an active component in Q68. I then sorted 68PS.6 (Army National Guard). If the observation did not have any other active component marked in item Q68, I deleted the observation. I did the same through the rest of items Q68PS7-12. When I completed that process, only one "yes" to item Q69 remained. There is a chance that this observation (14511) was not active component. That respondent was a major at CGSC which is consistent with being active duty and had also marked an active component in item Q68, so I kept that observation.

After that process, there were still 31 observations that were missing data in the sub-items for Q68, meaning that these observations did not indicate their primary service. I decided that these observations were likely from active component officers, so I kept them. These observations otherwise marked their primary occupation as military officer; had the appropriate rank; had served in the in the military; indicated that they had not served in the reserve component without also having active-component time; and, were at the active component's schools.

I then kept the dependent variables of interest and deleted the rest.

1. Data screening

I screened the remaining observations to see if any were missing data over 10% and deleted four observations (12098, 10250, 14523, 14556). I further screened the data for unengaged respondents by running the standard deviation for each respondent's data and looking for low standard deviations. I did not find any. I screened the variables for outliers and did not find any. No variable had missing data over 2.2%.

After data screening, I had a military elite sample size of n = 546.

I then looked at the sample from the general population. I deleted the variables I was not interested in. I screened the observations to see if any were missing data over 10% and I did not find any. I further screened

the data for unengaged respondents by running the standard deviation for each respondent's data and looking for low standard deviations. I did not find any. I screened the data for outliers and did not find any. No variable had missing data over 2.6%. The general population sample size was n = 1001.

2. Survey methodology

My sources for the TISS methodology are Janet Newcity's *Description of the 1998-1999 TISS Surveys on the Military in the Post Cold War Era*[130] (the document that was prepared by the research team) and RAND's *The Civil-Military Gap in the United States*.[131] These contain much more extensive discussions of the methodology. I will focus on the issues with the methodology that could impact this project.

For the survey of the general public, the TISS researchers used a private survey firm.[132] I reviewed the methodology[133] and did not see any issues.

This survey of the general public did not use all of the items that were used in the survey of the military officers, but the items that were used were the same. The survey was also administered in a different manner for the general public (by telephone) than for the military (by mail).[134] The RAND authors note the problems inherent in comparing data that is collected in different ways[135] and where the instrument is not exactly the same.[136] The RAND research design did not include a need for the general population sample data and that resolved these problems for them. I do use that data, and I caution the reader to keep those issues in

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[130] *See* NEWCITY, *supra* note 22.

[131] SZAYNA ET AL., *supra* note 22.

[132] *See* NEWCITY, *supra* note 22, at 5.

[133] *See id.* at app. 2, at 26–29.

[134] *See id.* at 3–5.

[135] *See* SZAYNA ET AL., *supra* note 22, at 61–62.

[136] *See id.* at 60–61.

mind when drawing inferences from the data.

For the survey of military population, the TISS researchers used different sampling methodologies for the different sub-populations.[137] I used the survey data that was collected from the Army War College, Naval War College, Command and General Staff College (CGSC), Capstone, and the National Defense University (NDU). Here are the collection methods, number sent and received, and response rates:[138]

[137] *See infra* Table 1.

[138] *See* NEWCITY, *supra* note 22, at 3, 6.

Table 1: TISS Response Rates

Population	*Collection Method*	*Sent/ Received*	*Response Rate*
Army War College	Surveys were administered to the entire class and returned in bulk.	325/72	0.22
Naval War College	Surveys were administered to the Senior and Junior classes and returned in bulk.	425/334	0.79
CGSC	Surveys were given to a representative sample and respondents filled them out at their convenience and returned them individually by mail.	250/93	0.37
Capstone	Surveys were given to those taking a course in December, 1998, and respondents filled them out at their convenience and returned them individually by mail.	157/68	0.43
NDU	Surveys were given to the National War College and the Industrial College of the Armed Forces and respondents filled them out at their convenience and returned them individually by mail.	575/156	0.27

Low response rates can present issues. The Office of Federal Statistical Policy and Standards encourages response rates of 80% or higher but recognizes that response rates of 60% may be sufficient.[139] That standard, however, may be unrealistic. A recent study on the response rates for surveys used in organizational research found that the average

[139] *See* OFFICE OF INFO. & REGULATORY AFFAIRS, QUESTIONS AND ANSWERS WHEN DESIGNING SURVEYS FOR INFORMATION COLLECTIONS 60–61 (2006), *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/pmc_survey_guidance_2006.pdf.

response rate was 52.7 percent.[140]

Low response rates may be an indication of nonresponse bias because answers to survey items may differ substantially between responders and nonresponders. Here, the Army war college, the Navy war college, and the National Defense University (other war colleges) had low response rates. However, this population is fairly homogenous to start with—as compared to the general population—which would tend to lessen the potential that respondents and nonrespondents would be different. The targeted military population are all employed at the same place at the same time, and have similar income, age, and education levels. However, it is possible that liberal members of the target population did not respond at the same rate as conservative members, and I accept that risk in this study.

3. Weighting

For the general population survey, the survey firm weighted the data to adjust for variations in response rates related to residence, sex, age, race, and education;[141] however, the weights were not included in the data set. Where I use this data, I am using unweighted data.

For the military population, I analyzed whether the data needed to be weighted on any of four dimensions: branch of service, rank, race, or sex. After analysis, I concluded that I did not need to weight the data for the population comparison or modeling portions of my project. All results reported based on the TISS data are unweighted.

a. Branch of Service Dimension

Starting with the branch of service dimension, I am interested in the students at all of these military schools, across all services. However, not every student at these schools had an equal probability of being

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[140] *See* Yehuda Baruch & Brooks C. Holtom, *Survey Response Rate Levels and Trends in Organizational Research*, 61 HUM. REL. 1139 (2008).

[141] *See* NEWCITY, *supra* note 22, at app. 2, at 27.

selected in the TISS study. The Chief of Staff of the Air Force denied access to students attending the Air University, which includes the Air Force staff college and war college;[142] this resulted in an underrepresentation of Air Force officers in my sample, as the Air Force officers in my sample were students at the other services' schools or at the joint schools. The Commandant of the Marine Corps also denied access to Marine Corps schools.[143] Naval officers are slightly overrepresented.

Table 2: Distribution of Services Within Entire Officer Corps and My Sample

Branch	*Entire officer corps*[144]	*My sample*[145]	*Weight*
Army	35.2	37.9	0.93
Navy	24.6	33.9	0.72
Air Force	32.2	18.4	1.75
Marine Corps	8.0	9.8	0.82

If one branch drew more officers who were liberal or conservative or had disproportionately non-traditional gender role beliefs, then this may have had some impact on the inferences drawn from the data. Looking first at the political self-label item, it turns out that the Marine Corps officers in my sample were more conservative than those from the other services. However, the variables were not statistically dependent. I

[142] *See id.* at 2.

[143] *See id.*

[144] *See id.* at 8. Newcity did not calculate the Coast Guard into the data for the entire officer corps, and I am not sure how the TISS dealt with the Coast Guard data.

[145] This is the percentage of only the Army, Navy, Air Force, and Marine Corps officers in my sample. In my sample, 2.3% were Coast Guard officers and 6.0% were missing data or had multiple data. For this weighting exercise, I assumed those 6% were distributed between those services by proportion of those services and that the Coast Guard data would be inconsequential. For this exercise, I coded both of those categories as missing. In my sample, if I include the Coast Guard and missing data, Army officers made up 34.6%; Navy, 31.0%; Air Force, 16.8%; Marine Corps, 9.0%; Coast Guard, 2.3%; missing or multiple data, 6.0%.

weighted the data, and the distribution of the weighted data was not statistically dependent. Therefore, this data does not need to be weighted on this dimension for this item.

Table 3: Responses to Political Self-Label, All Services by Percentage

	Very liberal	*Somewhat liberal*	*Moderate*	*Somewhat conservative*	*Conservative*	*Very conservative*	*n*
Unweighted	0.4	4.2	27.8	54.5	12.9	0.2	497
Weighted by Service	0.4	4.4	27.9	53.9	13.0	0.4	499
p > .999.							
Unweighted, by Service							
Army	0.5	4.2	25.9	56.1	13.2	1.1	189
Navy	0.6	4.7	30.8	50.9	11.8	0.0	92
Air Force	0.0	5.4	28.3	52.2	13.0	0.0	169
Marine	0.0	0.0	22.4	63.3	14.3	0.0	49

Pearson's chi-square = 10.49, df = 15, p = .788.

Looking at the gender role item,[146] the variables were not statistically dependent. I weighted the data and the distribution of the weighted data was not statistically dependent. Therefore, this data does not need to be weighted on this dimension for this item.

[146] The TISS Survey gender role item states: "This question asks you to indicate your position on certain domestic issues: Encouraging mothers to stay at home with their children rather than working outside the home." *See* NEWCITY, *supra* note 22, at 10.

Table 4: Responses to Gender Role Item, All Services by Percentage

	Agree strongly	*Agree somewhat*	*Disagree somewhat*	*Disagree strongly*	*No opinion*	*n*
Unweighted	14.5	37.4	20.4	13.8	13.9	498
Weighted by Service	14.6	36.9	20.8	14.6	13.0	499
p = .998.						
Unweighted, by Service						
Army	11.6	42.9	17.5	15.9	12.2	189
Navy	16.6	36.7	18.9	11.8	16.0	91
Air Force	15.4	33.0	24.2	16.5	11.0	169
Marine Corps	20.4	28.6	26.5	10.2	14.3	49
Pearson's chi-square = 11.63; df = 12, p = .476.						

b. Rank Dimension

The rank distribution in my sample is also different than that of the overall military population at those ranks. The survey did not have an item that directly measured whether the respondent was still serving and what the respondent's current rank was. By looking at the response sets, though, I can get a sense of the ranks of those that are in my sample. Students at CGSC were likely O4s.[147] Students at the senior service colleges were O5s (soon to be promoted) or O6s. Students at capstone were O7s.

[147] I will use pay grades instead of ranks. The different services have different names for the same level of rank. When I report pay grades, "E" equals "enlisted," "W" equals "warrant officer," and "O" equals "officer." For a chart that converts enlisted pay grades to enlisted ranks, see *Enlisted Rank Insignias*, U.S. DEP'T OF DEF., http://www.defense.gov/about/insignias/enlisted.aspx (last visited Jan. 30, 2016); for warrant officer and officer pay grades to officer ranks, see *Officer Rank Insignias*, U.S. DEP'T OF DEF., http://www.defense.gov/about/insignias/officers.aspx (last visited Jan. 30, 2016).

Table 5: Distribution of Rank within O4-O7 in Entire Officer Corps and My Sample by Percentage

Rank	*Military population 1998*[148]	*My sample*	*Weight*
O4	51	13	3.92
O5/O6	47	76	0.62
O7	1	11	0.09

If more junior officers were more liberal or had disproportionately non-traditional gender role beliefs, then this may have some impact on the inferences we draw from the data. Looking first at the political self-label item, it turns out that the majors in my sample were *more* conservative than the lieutenant colonel officers. However, the variables were not statistically dependent. I weighted the data, and the distribution of the weighted data was not statistically dependent. Therefore, this data does not need to be weighted on this dimension for this item.

Table 6: Responses to Political Self-Label, All Ranks by Percentage

	Very liberal	*Somewhat liberal*	*Moderate*	*Somewhat conservative*	*Conservative*	*Very conservative*	*n*
Unweighted	0.4	4.4	27.6	55.1	12.3	0.2	543
Weighted by Rank	0.4	4.7	23.5	56.8	14.6	0.1	533
p = .940.							
Unweighted, by Rank							
O4	0.0	4.3	18.8	59.4	17.4	0.0	69
O5/O6	0.5	5.1	28.1	54.2	11.9	0.2	413
O7	0.0	0.0	34.4	55.7	9.8	0.0	61

Pearson's chi-square = 9.14; df = 10; p = .519.

[148] *See* SZAYNA ET AL., *supra* note 22, at 57.

Looking at the gender role item, the variables were not statistically dependent. I weighted the data, and the distribution of the weighted data was not statistically dependent. Therefore, this data does not need to be weighted on this dimension for this item.

Table 7: Responses to Gender Role Item, All Ranks by Percentage

	Agree strongly	*Agree somewhat*	*Disagree somewhat*	*Disagree strongly*	*No opinion*	*n*
Unweighted	14.5	37.4	20.4	13.8	13.9	545
Weighted by Rank	14.7	39.2	19.0	13.4	13.7	532
p = .995.						
Unweighted, by Rank						
O4	14.5	42.0	17.4	13.0	13.0	69
O5/O6	14.9	36.1	20.7	13.7	14.5	415
O7	11.5	41.0	21.3	14.8	11.5	61

Pearson's chi-square = 2.0; df = 8; p = .980.

c. Race Dimension

For the baseline distribution, I chose to use the data for the entire officer corps. I could have used my estimate of the distribution of minorities within this elite population;[149] however, I chose to use the larger number because that was a fixed point—not an estimate—and because it erred on the side of exposing issues. Looking first at race, minorities are underrepresented in my sample.

[149] *See infra* Part VI.

Table 8: Distribution of Race within Entire Officer Corps and My Sample by Percentage

	Entire officer corps, 1998[150]	*My Sample*[151]	*Weight*
Minority	15.2	7.8	1.949
White	84.8	92.2	.920

If minority officers were more liberal or had disproportionately non-traditional gender role beliefs, then this may have some impact on the inferences drawn from the data. Looking first at the political self-label item, it turns out that the minority officers in my sample were more liberal and moderate than the white officers. The variables were also statistically dependent. However, I weighted the data, and the distribution of the weighted data was not statistically dependent. Therefore, this data does not need to be weighted on this dimension for this item.

Table 9: Responses to Political Self-Label, All Races by Percentage

	Very liberal	*Somewhat liberal*	*Moderate*	*Somewhat conservative*	*Conservative*	*Very conservative*	*n*
Unweighted	0.4	5.2	28.3	53.9	12.0	0.2	534
Weighted by Race	0.6	4.8	28.4	53.8	12.1	0.2	538
$p > .999$.							
Unweighted, by Race							
Minority	2.4	9.5	42.9	38.1	7.1	0.0	42
White	0.2	4.0	25.8	56.9	12.9	0.2	496

Pearson's chi-square = 15.29; df = 5; $p = .009$.

Looking at the gender role item, the variables were not statistically dependent. I weighted the data, and the distribution of the weighted data

[150] *See* NEWCITY, *supra* note 22, at 8 Table 2; SZAYNA ET AL., *supra* note 22, at 57 Table 3.3.

[151] If a respondent replied "refused," then I coded that response as a non-entry.

was not statistically dependent. Therefore, this data does not need to be weighted on this dimension for this item.

Table 10: Responses to Gender Role Item, All Races by Percentage

	Agree strongly	*Agree somewhat*	*Disagree somewhat*	*Disagree strongly*	*No opinion*	*n*
Unweighted	14.5	37.4	20.4	13.8	13.9	539
Weighted by Race	14.1	36.7	20.0	14.6	14.6	540
p = .998						
Unweighted, by Race						
Minority	7.1	31.0	16.7	23.8	21.4	42
White	15.3	37.8	20.5	13.1	13.3	497

Pearson's chi-square = 7.58; df = 4; p = .108.

4. Sex Dimension

For the baseline distribution, I chose to use the data for the entire officer corps. I could have used my estimate of the distribution of women within this elite population;[152] however, I chose to use the larger number because that was a fixed point—not an estimate—and because it erred on the side of exposing issues. Looking at sex, women are underrepresented in my sample.

[152] *See infra* Part VI.

Table 11: Distribution of Sexes within Entire Officer Corps and My Sample, by Percentage

	Entire officer corps, 1998[153]	*My Sample*[154]	*Weight*
Female	13.9	8.1	1.716
Male	86.1	91.9	.937

If female officers were more liberal or had disproportionate non-traditional gender role beliefs, then this may have some impact on the inferences we draw from the data. Looking first at the political self-label item, it turns out that the female officers in my sample were more liberal and moderate than the male officers. These variables were statistically dependent. However, I weighted the data, and the distribution of the weighted data was not statistically dependent. Therefore, this data does not need to be weighted on this dimension for this item.

Table 12: Responses to Political Self-Label, All Sexes by Percentage

	Very liberal	*Somewhat liberal*	*Moderate*	*Somewhat conservative*	*Conservative*	*Very conservative*	*n*
Unweighted	0.4	4.4	27.5	54.9	12.3	0.2	539
Weighted by Sex	0.4	5.2	28.8	53.6	11.9	0.2	539
p = .999.							
Unweighted, by Sex							
Female	0.0	15.9	47.7	29.5	6.8	0.0	44
Male	0.4	3.4	25.7	57.6	12.7	0.2	495

Pearson's chi-square = 28.45; df = 5; p < .001

[153] *See* NEWCITY, *supra* note 22, at 8 Table 2; SZAYNA ET AL., *supra* note 22, at 57 Table 3.3.

[154] If a respondent replied "refused," then I coded that response as a non-entry.

Looking at the gender role item, the results are interesting, but likely not surprising; the female officers were much more likely to disagree with the traditional gender role statement. These variables were statistically dependent. However, I weighted the data, and the distribution of the weighted data was not statistically dependent. Therefore, this data does not need to be weighted on this dimension for this item.

Table 13: Responses to Gender Role Item, All Sexes by Percentage

	Agree strongly	*Agree somewhat*	*Disagree somewhat*	*Disagree strongly*	*No opinion*	*n*
Unweighted	14.4	37.5	20.5	13.5	14.0	541
Weighted by Sex	13.7	36.0	21.2	14.9	14.2	542
p = .992.						
Unweighted, by Sex						
Female	2.3	11.4	31.8	38.6	15.9	44
Male	15.5	39.8	19.5	11.3	13.9	497

Pearson's chi-square = 39.17; df = 4; p < .001.

B. THE DEMPSEY DATA

1. Data reduction and screening

I reduced the observations to those that came from the population I was interested in: E6-E8, WOs, and O3-O6. Unlike the TISS data, the Dempsey data had a clear variable for rank and all of his respondents were active-duty. One observation did not include rank and I deleted it.

I screened the observations to see if any were missing data over 10% and deleted observations 595, 647, 693, 1795, 2016, 2274, 2461, 2547, 2580, 2913, 2966, 3060, 3196, 3246, and 3424. I further screened the data for unengaged respondents by running the standard deviation for each respondent's data and looking for low standard deviations. I did not find any. I screened the data for outliers and did not find any. None of the variables had missing data over 0.6% except the political self-label, which was missing 4.1%. This left me with n = 788.

2. Survey methodology

My source for Dempsey's methodology is Appendix A of his book, *Our Army*. I did not see any issues with his methodology. The survey was conducted in 2004 and administered primarily by mail.[155] He selected respondents at random from the Army's personnel database, with a few exceptions that were discussed above.[156] He conducted extensive response rate analysis and weighted the data to correct for nonresponse rates for his analysis.[157]

3. Weighting

Dempsey was studying the entire Army population and weighted his data to match that target population. He also oversampled Hispanic and black enlisted Soldiers and white, black, and Hispanic officers because he was researching differences in rank and race and needed sample sizes for subcategories that would be large enough to be studied.[158] He did not oversample women, but women responded at a higher rate than men.[159] My target population has a different composition, so I could not use his weights. I looked at the dimensions of rank, sex, and race to see if weighting was necessary. I decided that weighting was not necessary for the population comparison portion of my project, but I did weight along race and rank for the model prediction portion of my project. The only results reported using weights are found in Table 9 of the main study.

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[155] *See* DEMPSEY, *supra* note 29, at app. A, at 207 (2010).

[156] *Id.*

[157] *Id.* at app. A, at 212.

[158] *Id.* at app. A, at 209.

[159] *Id.* at app. A, at 209 n.7.

a. Rank Dimension

Below are the percentages of the ranks in my target population in relation to each other; the 2004 percentages are not the percentages in the whole Army. The enlisted ranks were underrepresented in my sample, particularly at E6, while the officer ranks were overrepresented.

Table 14: Distribution of Rank within E6-E8, WO, O3-O6 in the Army and My Sample by Percentage

	2004[160]	*My sample*	*Weight*
E6	34.5	13.8	2.50
E7-E8	28.5	18.9	1.51
W1-W5	7.2	11.4	0.63
O3	13.8	24.7	0.56
O4	8.3	15.2	0.55
O5	5.4	11.4	0.46
O6	2.2	4.4	0.50

If enlisted Soldiers were more liberal or had disproportionate non-traditional gender role beliefs than higher ranking Soldiers, then this may have some impact on the inferences drawn from the data. Looking first at the political self-label item, it turns out that the E6 Soldiers were much more moderate than the other ranks. The variables were statistically dependent. I weighted the data, and the distribution of the weighted data was not statistically dependent.

[160] U.S. DEP'T OF DEF., 2004 DEMOGRAPHICS: PROFILE OF THE MILITARY COMMUNITY 9 (2004).

Table 15: Responses to Political Self-Label, All Ranks by Percentage

	Extremely liberal	*Liberal*	*Slightly Liberal*	*Moderate*	*Slightly Conservative*	*Conservative*	*Extremely Conservative*	*n*
Unweighted	0.8	6.9	7.7	33.6	19.6	27.9	3.6	756
Weighted by Rank	1.3	9.1	8.6	37.3	17.1	22.2	4.3	756
p = .792.								
Unweighted, by Rank								
E6	1.0	14.1	10.1	47.5	9.1	13.1	5.1	99
E7-E8	2.1	8.6	8.6	34.3	20.7	20.0	5.7	140
W1-W5	1.1	9.2	4.6	41.4	23.0	18.4	2.3	87
O3	0.5	5.2	7.3	29.3	22.5	31.9	3.1	191
O4	0.0	2.6	6.1	30.4	18.3	40.0	2.6	115
O5	0.0	3.3	11.1	23.3	20.0	38.9	3.3	90
O6	0.0	5.9	2.9	32.4	23.5	35.3	0.0	34

Pearson's chi-square = 73.29; df = 36; p < .001.

Looking at the gender role item,[161] these variables were not statistically dependent. I weighted the data, and the distribution of the weighted data was not statistically dependent. Therefore, this data does not need to be weighted on this dimension for this item.

[161] The Dempsey gender role item states: "Some people feel that women should have an equal role with men in running business, industry, and government. Others feel that the woman's place is in the home. Where would you put yourself on [a scale from 1 to 7, with 1 being an equal role for women and 7 being a woman's place is in the home]?" *See* DEMPSEY, *supra* note 29, at 218.

Table 16: Responses to Gender Role Item, All Ranks by Percentage (1 = equal, 7 = home)

	1	*2*	*3*	*4*	*5*	*6*	*7*	*n*
Unweighted	53.6	21.2	8.8	10.7	4.1	0.9	0.8	787
Weighted by Rank	52.7	20.5	9.9	11.6	4.1	0.8	0.5	790
p > .999.								
Unweighted, by Rank								
E6	52.8	19.4	11.1	13.9	2.8	0.0	0.0	108
E7-E8	51.0	20.1	12.1	10.7	5.4	0.7	0.0	149
W1-W5	48.9	27.8	4.4	14.4	3.3	0.0	1.1	90
O3	56.4	20.5	4.1	10.3	4.6	2.6	1.5	195
O4	49.2	18.3	15.0	11.7	3.3	0.8	1.7	120
O5	58.9	23.3	7.8	5.6	4.4	0.0	0.0	90
O6	65.7	22.9	5.7	2.9	2.9	0.0	0.0	35

Pearson's chi-square = 43.87; df = 36; p = .172.

b. Race Dimension

Below are the percentages by race[162] within the E6-E8, WO, O3-O6 population in the Army—not the overall Army population—and my sample. As expected, because Dempsey oversampled, blacks and Hispanics are overrepresented, and whites are under-represented.

[162] The source of this data is the Army personnel database. Dempsey obtained this data from the Army and shared it with me. These figures also include data from E5s and E9s. For race, I categorized Dempsey's observations into white (1); black (2); Hispanic (3); and other (4). If more than one race was checked, I put the observation into other (4) unless both white and Hispanic checked, in which case I coded as Hispanic; if black and white, then black; if black/Hispanic, then black. Fourteen observations had no codes in question 59. Dempsey had analyzed these using other parts of his data and labeled them with c = black, d = white, e = Hispanic, and a = other. I used his codes to label these observations under my categories.

Table 17: Distribution of Race within E6-E8, WO, O3-O6 in the Army and My Sample by Percentage

	2004[163]	*My sample*	*Weight*
White	57.8	38.1	1.52
Black	25.7	25.8	1.00
Hispanic	9.5	29.6	0.32
Other	6.9	6.6	1.04

If enlisted soldiers were more liberal or conservative or had disproportional gender role beliefs than higher-ranking soldiers, then this may have some impact on the inferences drawn from the data. Below are the responses for the political self-label. It turns out that Hispanics were more likely to be liberal or moderate and that they were overrepresented. These variables were statistically dependent. I weighted the data, and the distribution of the weighted data was not statistically dependent.

Table 18: Responses to Political Self-Label, All Races by Percentage

	Extremely liberal	*Liberal*	*Slightly Liberal*	*Moderate*	*Slightly Conservative*	*Conservative*	*Extremely Conservative*	*n*
Unweighted	0.8	6.9	7.7	33.6	19.6	27.9	3.6	756
Weighted by Race	0.7	5.0	7.2	28.7	21.9	32.5	4.1	755
p = .862.								
Unweighted, by Race								
White	0.3	4.2	6.6	24.0	24.0	36.1	4.9	288
Black	1.0	4.1	8.2	30.6	18.9	34.2	3.1	196
Hispanic	1.3	12.9	8.9	48.7	12.9	13.4	1.8	224
Other	0.0	6.3	6.3	33.3	27.1	20.8	6.3	48

Pearson's chi-square = 85.31; df = 18; p < .001.

[163] The source of this data is the Army personnel database. Dempsey obtained this data from the Army during his research and shared it with me.

Looking at the gender role item, the variables were not statistically dependent. I weighted the data, and the distribution of the weighted data was not statistically dependent. Therefore, this data does not need to be weighted on this dimension for this item.

Table 19: Responses to Gender Role Item, All Races by Percentage (1 = equal, 7 = home)

	1	*2*	*3*	*4*	*5*	*6*	*7*	*n*
Unweighted	53.6	21.2	8.8	10.7	4.1	0.9	0.8	787
Weighted by Race	50.6	22.1	8.8	11.6	4.7	1.1	1.1	787
p = .998								
Unweighted, by Race								
White	46.3	22.3	9.3	13.0	5.7	1.7	1.7	300
Black	55.2	22.2	8.4	10.3	3.4	0.5	0.0	203
Hispanic	61.2	18.1	9.5	8.2	2.6	0.4	0.0	232
Other	55.8	25.0	3.8	9.6	3.8	0.0	1.9	52

Pearson's chi-square = 26.12; df = 18; p = .097

c. Sex Dimension

Below are the percentages by sex within the within E6-E8, WO, O3-O6 population in the Army—not the overall Army population—and my sample. The proportions are pretty close.

Table 20: Distribution of Sexes within E6-E8, WO, O3-O6 in the Army and My Sample by Percentage

	2004[164]	*My sample*	*Weight*
Female	16.8	18.8	0.89
Male	83.2	81.2	1.02

Below are the responses for the political self-label. Women tended to be more liberal and moderate. The variables were statistically dependent. However, I weighted the data, and the distribution of the weighted data was not statistically dependent. Therefore, this data does not need to be weighted on this dimension for this item.

Table 21: Responses to Political Self-Label, All Sexes by Percentage

	Extremely liberal	*Liberal*	*Slightly Liberal*	*Moderate*	*Slightly Conservative*	*Conservative*	*Extremely Conservative*	*n*
Unweighted	0.8	6.9	7.7	33.6	19.6	27.9	3.6	756
Weighted by Sex	0.7	6.7	7.3	33.4	19.6	28.7	3.7	766
p > .999								
Unweighted, by Sex								
Female	2.2	10.1	12.2	36.7	20.9	15.8	2.2	139
Male	0.5	6.2	6.6	32.9	19.3	30.6	3.9	617

Pearson's chi-square = 21.62; df = 6; p = .001.

Looking at the gender role item, women were much more likely to express maximum support for equality, and the variables were statistically dependent. However, I weighted the data, and the distribution of the weighted data was not statistically dependent. Therefore, this data does not

[164] *See supra* note 159 and accompanying text.

need to be weighted on this dimension for this item.

Table 22: Responses to Gender Role Item, All Sexes by Percentage (1 = equal, 7 = home)

	1	*2*	*3*	*4*	*5*	*6*	*7*	*n*
All unweighted	53.6	21.2	8.8	10.7	4.1	0.9	0.8	787
Weighted	52.2	21.8	9.0	11.0	4.1	1.0	0.8	797
p > .999.								
Unweighted, by Sex								
Female	77.7	12.2	4.1	4.7	1.4	0.0	0.0	148
Male	48.0	23.3	9.9	12.1	4.7	1.1	0.9	639

Pearson's chi-square = 43.73; df = 6; p < .001.

4. Another Look at Rank and Race

When looked at separately, rank and race were both statistically dependent on the political self-label item, but the weighted and unweighted percentages were not statistically dependent. However, several of the response rates varied by as much as 5% between the weighted and nonweighted data. As a result, I was concerned that when I reported those percentages and used them in the Kahan model, some readers would not be comfortable with the results.

To assuage that concern, I constructed a weight table with cells for each rank by each race. Using Dempsey's Army personnel data, I was able to calculate the actual 2004 population proportion for each rank that I was interested in by race. I multiplied the rank weights by the race weights for each cell. I then created a weight variable, assigning the resulting weight to each case. Essentially, the weights turned this sample into an almost exact replica for race and rank of the 2004 Army population.

Below are the responses for the political self-label. It turns out that the unweighted and weighted by rank and race are almost the same and are not statistically dependent.

Table 23: Responses to Political Self-Label Weighted by Race and Rank by Percentage

	Extremely liberal	*Liberal*	*Slightly Liberal*	*Moderate*	*Slightly Conservative*	*Conservative*	*Extremely Conservative*
Unweighted	0.8	6.9	7.7	33.6	19.6	27.9	3.6
Weighted by Rank and Race	1.1	7.0	7.5	33.2	19.6	26.8	4.9

p = .998

Below are the responses for the gender item. The variables are not statistically dependent.

Table 24: Responses to Gender Role Item by Sex by Percentage (1 = equal, 7 = home)

	1	*2*	*3*	*4*	*5*	*6*	*7*
All Unweighted	53.6	21.2	8.8	10.7	4.1	0.9	0.8
All Weighted by Rank and Race	48.9	21.3	10.0	13.5	4.9	0.8	0.7

p = .970

Therefore, I reported unweighted data for population comparisons. Last, in the portion of my project where I used a regression model to predict how the UCMJ administrator population would respond to one item, I weighted the data so that the prediction from the sample would reflect the target population.

C. THE KAHAN DATA

1. Data screening

I screened the observations to see if any were missing data over 10%. I deleted observations 640, 649, 1319 because they were missing data in 10% of the variables. I further screened the data for unengaged respondents by running the standard deviation for each respondent's data and looking closely at those with low standard deviations. I found thirteen that were clearly unengaged (24, 61, 224, 488, 534, 897, 1446, 1513, 1758, 1898, 1930, 1935, 1964) and deleted them. I screened the variables for outliers and found one in the variable EROUGH (observation 1254). I deleted that data point but retained the observation. Variable "pid7" (7-point party ID) was missing data at 3.7%. No other variable had missing data over 0.6%. This left n = 1487.

Kahan randomly divided his sample into five sub-groups of n = 300 each.[165] He then assigned each a condition.[166] The first was not given any legal standard; they would solve the problem without formal legal guidance.[167] The other four groups were given one of four different legal standards.[168] The respondents would use these standards when evaluating the vignette.[169] For each, the *actus reus* was the insertion of the penis into the vagina.[170]

For his study, Kahan reported that the first four conditions were not statistically or meaningfully significant.[171] I was concerned that these legal conditions would impact or unnecessarily complicate my project, so I ran a cross-tabulation of these conditions against two dependent

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[165] *See* Kahan, *supra* note 72, at 765, 767.

[166] *See id.* at 767.

[167] *See id.* at 767–69.

[168] *See id.* at 810–12.

[169] *See id.* at 729, 767–68.

[170] *See id.* at 807–10.

[171] *See id.* at 779 Table 1, 781.

variables.[172] The treatment condition was statically dependent on each of the two dependent variables. Looking at the cross-tabulations, the first three conditions were very similar, and the fourth and fifth were much different. This is consistent with the conditions. The second and third legal conditions are very similar and basically restate the common law—rape is sexual intercourse by force and without consent with the mistake of fact defense available.[173] The respondents who were not given a legal condition likely solved the problem based on those common law elements that are themselves rooted on common rape beliefs,[174] which would explain why the results were so similar. The fourth and fifth conditions involved significant departures from those other legal definitions. I ran a cross-tabulation on the first three conditions only, and those conditions were not statistically dependent on the dependent variables.[175] As I was modeling his data, I also included the conditions as an independent variable, and the variable that represented those three legal conditions was never significant in those models. Based on that, I decided to only use the observations from first three conditions.

This left n = 894.

2. Methodology

My source for Kahan's methodology is his article, *Culture, Cognition, and Consent*.[176] The survey was administered in 2009.[177]

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[172] I used "UNFAIR" and "GUILTY," recoding both from six-point response measures to binary response measures. The Pearson's chi-square for UNFAIR was 21.57; df = 4, p < .001. The Pearson's chi-square for GUILTY was 14.67; df = 4; p = .005.

[173] *See id.* at 767–68.

[174] *See generally* Burt, *supra* note 119; Susan Estrich, *Rape*, 95 YALE L.J. 1087 (1986).

[175] I used "UNFAIR" and "GUILTY," recoding both from six-point response measures to binary response measures. The Pearson's chi-square for UNFAIR was 3.19; df = 2, p = .203. The Pearson's chi-square for GUILTY was 0.31, df = 2; p = .855.

[176] Kahan, *supra* note 72, at 765.

Kahan used a private firm to administer the survey.[178] The survey was conducted online, using a pool of over one million Americans who are paid to participate in these surveys.[179] The firm uses a demographic-matching methodology that ensures that the sample is representative of the general population so weighting is not necessary.[180]

D. EXTENDING THE INFERENCE TO 2015

I could not find demographic information on the precise population that represents the elite military sample, but I did find demographic information on comparable populations: the entire officer corps from 1995-2012, and the grades of O4-O6 from 2003-2012. Trends in my target elite military population would very likely track any trends found in those populations.

Looking first at the demographics of the entire officer corps:[181]

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[177] *See id.* at 765.

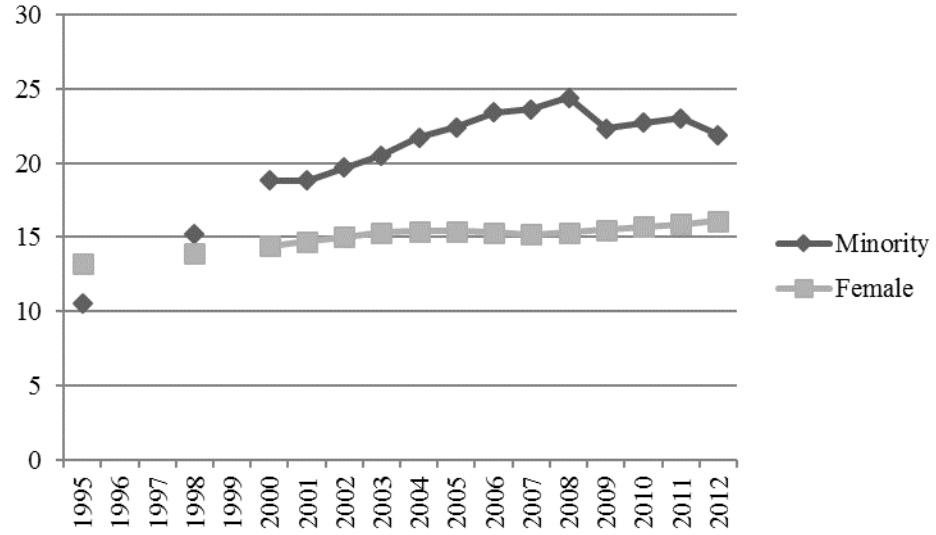
[178] *See id.*

[179] *See id.* at 765, 765 n.140.

[180] *See id.* at 765 n.140.

[181] The data for 1995 comes from U.S. DEP'T OF DEF., 2006 DEMOGRAPHICS: PROFILE OF THE MILITARY COMMUNITY 13, 18 (2006) [hereinafter 2006 DEMOGRAPHICS]. For 1998, the data comes from NEWCITY, supra note 22, at 8 Table 2 and SZAYNA ET AL., *supra* note 22, at 57 Table 3.3. For 2000–06, the data comes from 2006 DEMOGRAPHICS, *supra*, at 13, 18. The data for 2007 comes from U.S. DEP'T OF DEF., 2007 DEMOGRAPHICS: PROFILE OF THE MILITARY COMMUNITY 13, 18 (2007) [hereinafter 2007 DEMOGRAPHICS]. For 2008, the data comes from U.S. DEP'T OF DEF., 2008 DEMOGRAPHICS: PROFILE OF THE MILITARY COMMUNITY 18, 23 (2008) [hereinafter 2008 DEMOGRAPHICS]. The data for 2009 comes from U.S. DEP'T OF DEF., 2009 DEMOGRAPHICS: PROFILE OF THE MILITARY COMMUNITY 18, 24 (2009) [hereinafter 2009 DEMOGRAPHICS]. For 2010, the data comes from U.S. DEP'T OF DEF., 2010 DEMOGRAPHICS: PROFILE OF THE MILITARY COMMUNITY 19, 24 (2010) [hereinafter 2010 DEMOGRAPHICS]. The data for 2011 comes from U.S. DEP'T OF DEF., 2011 DEMOGRAPHICS: PROFILE OF THE MILITARY COMMUNITY 21, 27 (2011) [hereinafter 2011 DEMOGRAPHICS]. For 2012, the data comes from U.S. DEP'T OF DEF., 2012 DEMOGRAPHICS: PROFILE OF THE MILITARY COMMUNITY 23, 29 (2012) [hereinafter 2012

Figure 1: Percentage of minorities and females in US officer corps (1995-2012)



Hispanics were counted as a minority from 1990 to 2008. In 2009, the Department of Defense excluded Hispanics from its definition of minority.[182] This accounts for the drop in 2009.

The basic trend in the entire officer corps is an increase in the percentage of minorities from 1995 through the year the TISS data was collected and then leveling off in the mid-2000s. If we add back in the two percentage points lost when the definition of minority changed, then the percentage of minorities increased from 1998—when the TISS data was collected—to 2012 by around 9%. The population of women has increased by about 2%.

The population represented by my targeted elite military population may not have changed much. My sample comes from the more senior officers, and in general, the higher officer ranks tend to be more

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DEMOGRAPHICS].

[182] *See* 2006 DEMOGRAPHICS, *supra* note 189, at 24.

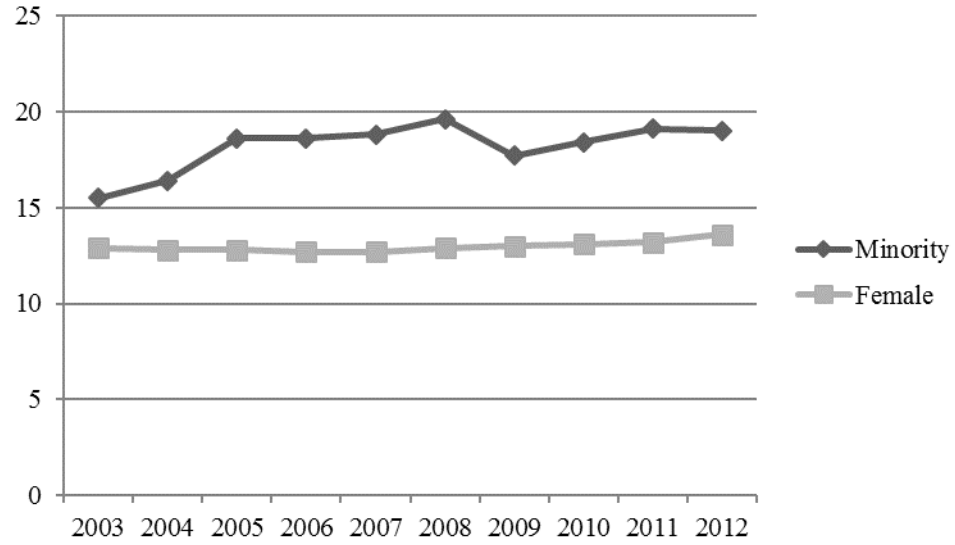
white and more male than the entire officer population.[183] The best data I could find of a similar population is the O4-O6s that were in the entire military population from 2003 to 2012.[184] This population is still broader than the one that I am studying; it includes all officers at these ranks, not just the ones who are being groomed for important leadership positions. I do not have data on just O7s, but O7s are part of my TISS dataset.

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[183] *See id.* at 21, 28.

[184] The data for 2003 comes from U.S. DEP'T OF DEF., 2003 DEMOGRAPHICS: PROFILE OF THE MILITARY COMMUNITY 9, 11, 13 (2003) [hereinafter 2003 DEMOGRAPHICS]. For 2004, the data comes from U.S. DEP'T OF DEF., 2004 DEMOGRAPHICS: PROFILE OF THE MILITARY COMMUNITY 9, 11, 13 (2004) [hereinafter 2004 DEMOGRAPHICS]. The data for 2005 comes from U.S. DEP'T OF DEF., 2005 DEMOGRAPHICS: PROFILE OF THE MILITARY COMMUNITY 9, 11, 15 (2005) [hereinafter 2005 DEMOGRAPHICS]. For 2006, the data comes from 2006 DEMOGRAPHICS, *supra* note 163, at 9, 12, 15. The data for 2007 comes from 2007 DEMOGRAPHICS, *supra* note 189, at 9, 12, 15. For 2008, the data comes from 2008 DEMOGRAPHICS, *supra* note 189, at 13, 17, 20. The data for 2009 comes from 2009 DEMOGRAPHICS, *supra* note 189, at 13, 17, 21. For 2010, the data comes from 2010 DEMOGRAPHICS, *supra* note 189, at 13, 17, 21.The data for 2011 comes from 2011 DEMOGRAPHICS, *supra* note 189, at 15, 19, 26. For 2012, the data comes from 2006 DEMOGRAPHICS, *supra* note 189, at 17, 21, 28.

Figure 2: Percentage of minorities and females in US officer corps grades O4-O6 (2003-2012)

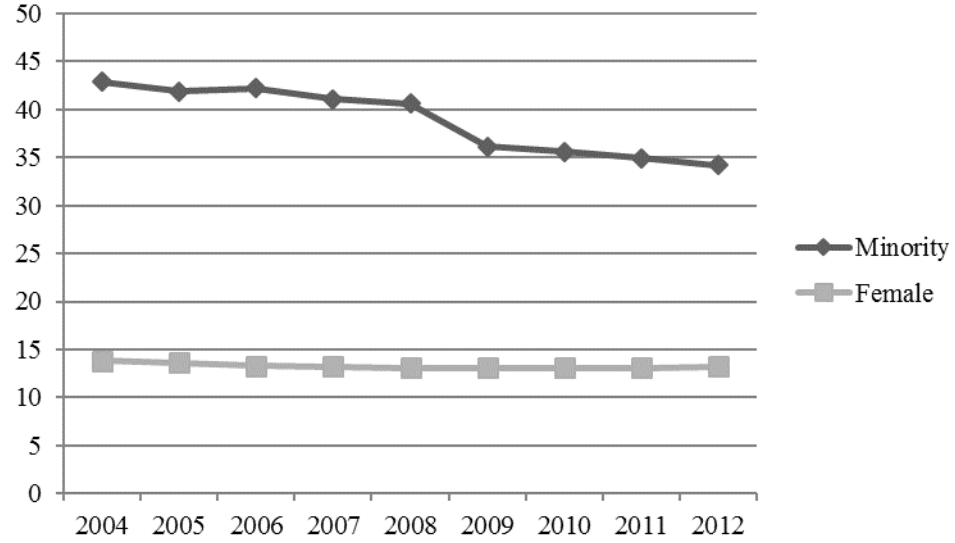


Within this population, we still see a trend toward more minorities of about the same magnitude found in the entire officer corps. Over this period, this population averaged 4.4% fewer minorities than the larger officer corps. If we continue this trend to 1998, then in 1998, we should have expected that the O4-O6 population would have been about 10.8% minority. If we add the drop caused by the change in the definition of minority in 2009 back into to the minority population in 2012, we can roughly estimate that the minority population increased by 11% from 1998 to 2012. The population of women in the O4-O6 cohort is about 2% fewer than in the total officer population. We should expect that in 1998, this cohort would have had a female population of around 11%, so the female population in the O4-O6 range is likely to have increased by 2% over the 1998 to 2012 period.

Turning now to the UCMJ Administrators population, I could not exactly match up the historical demographic data to the UCMJ administrator population because of the way the Department of Defense

reports its data. The data below[185] covers a larger population than my sample. It covers O1-O6 (my sample only has O3-O6); all WOs (same as my sample); and E5-E9 (my sample is E6-E8). Trends in the population below very likely would represent trends in my target population.

Figure 3: Percentage of minorities and females in US Army grades E5-E9, WO, O1-O6 (2004-2012)



[185] The data for 2004 comes from 2004 DEMOGRAPHICS, *supra* note 192, at 9, 11, 13. For 2005, the data comes from 2005 DEMOGRAPHICS, *supra* note 192, at 9, 11, 13 (2005). The data for 2006 comes from 2006 DEMOGRAPHICS, *supra* note 189, at 9, 12, 15. For 2007, the data comes from 2007 DEMOGRAPHICS, *supra* note 189, at 9, 12, 15 (2007). The data for 2008 comes from2008 DEMOGRAPHICS, *supra* note 189, at 13, 17, 20. For 2009, the data comes from 2009 DEMOGRAPHICS, *supra* note 189, at 13, 17, 21. The data for 2010 comes from 2010 DEMOGRAPHICS, *supra* note 189, at 13, 17, 21 (2010). For 2011, the data comes from 2011 DEMOGRAPHICS, *supra* note 189, at 15, 19, 26. The data for 2012 comes from 2012 DEMOGRAPHICS, *supra* note 189, at 17, 21, 28.

If we add back in the 4% lost with the change in the definition of minority in 2009, we see a downward trend in the minority population of about 5%. The female population remained stable.

Assuming these changes are reflected in the elite military population and UCMJ administrator population, I analyzed the impact of race and sex on the gender items and conservatism measure and found that much larger differences were not statistically significant. These population changes should not impact our ability to make inferences from this older data.

The other critique is that the belief systems—particularly gender role beliefs—and political labels across the population may have changed so that, even if the population of interest has not changed demographically over time, the people within the target population may have changed how they think or how label themselves. The independent variables would have remained constant, but the dependent variables may have changed.

One way we can test this is by looking at these belief systems and self-identifying labels over time in the general population. The GSS has asked questions about gender roles and political labels over the period we are interested in (i.e., 1998 and onward). The political label is the same as discussed above. The comparable GSS gender item FEFAM reads: "It is much better for everyone involved if the man is the achiever outside the home and the woman takes care of the home and family."[186]

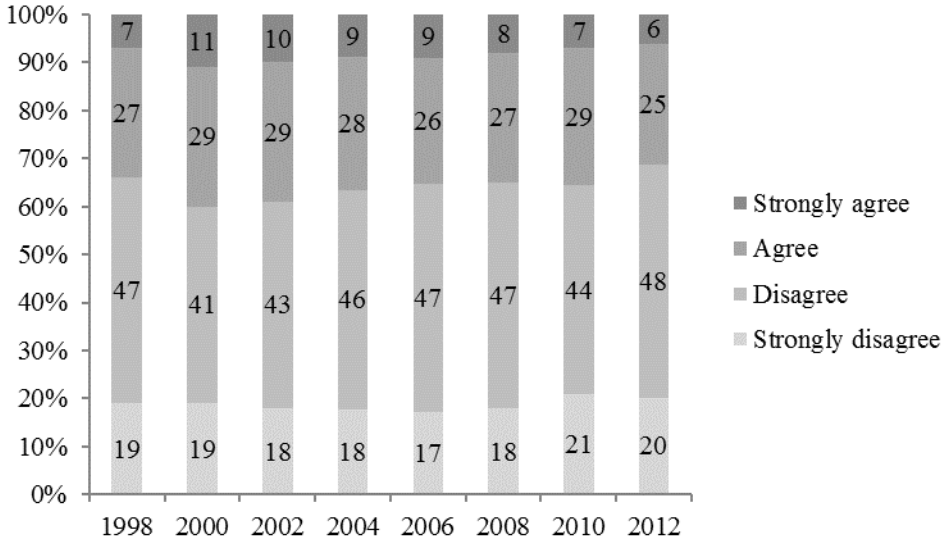
I expected that a substantially higher percentage of people would disagree with the traditional gender role belief in 2012 than did in 1998. I was surprised to see that this belief has remained stable. Here is the response rate in the general population:[187]

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[186] The GSS has also used other gender items. You can find these other variables (for example, FEHELP, HUBBYWRK, HUBBYWK1, TWOINCS, TWOINCS1) in the index to the GSS Codebook. *See* NAT'L OP. RESEARCH CTR., CUMULATIVE CODEBOOK 2550 (2012). The GSS stopped collecting data on most of these variables before 1998 or only gathered data on them infrequently.

[187] For this data, I used the Survey Documentation and Analysis (SDA) software, available at http://sda.berkeley.edu. I used the "COMPWT" variable to weight the data.

Figure 4: GSS gender item from 1998-2012 by percentage (agreement with man at work, woman at home)

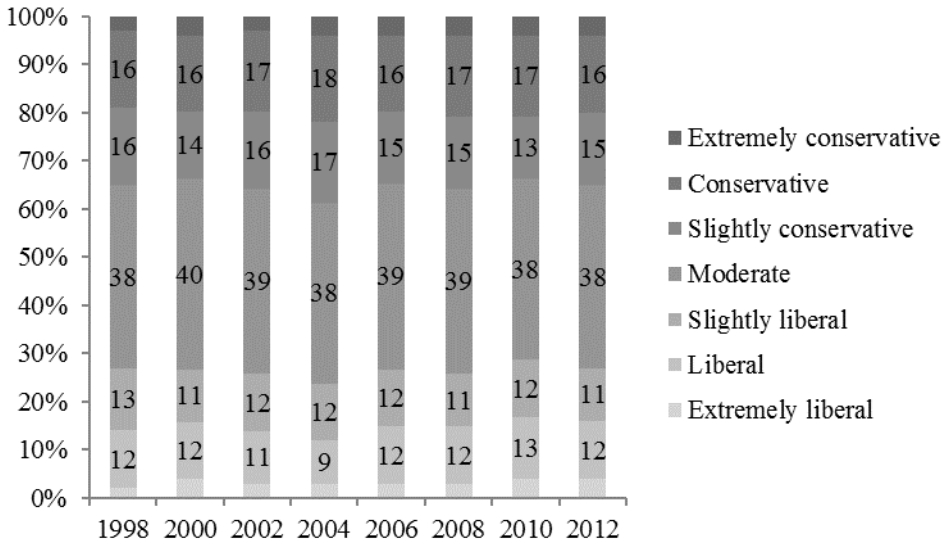


The differences between years are statistically significant (Pearson's chi-square = 69.41, df = 21, $p < .001$); however, the differences are not practically significant. This belief system is largely held by the same proportion of the population now as in 1998.

Looking now at the political self-label item, I expected that the responses to this item would remain stable over the period and that is what we find:[188]

[188] *See supra* note 195 and accompanying text.

Figure 5: GSS political self-label from 1998-2012 by percentage



Again, the differences across years were statistically significant (Pearson's chi-square = 59.46, df = 42, $p < .001$) but the differences are not practically significant.

This gender-role belief and the political self-label remained stable in the general population through this period, and I believe it is reasonable to assume that they remained stable in the military population, too. Thus, it is reasonable to estimate the current population based on these older samples.