

Cross Cultural Conversation II

Decolonising the Reasonable Person Test: A Transformative Constitutional Imperative.

Wednesday, 31st May 2023 was our second Cross Cultural Conversation for which **Professor Desan Iyer** for the University of Zululand and **Professor Mátyás Bódig** from the University of Aberdeen were invited. The conversation focused on the topic of 'Decolonising the Reasonable Person Test: a Transformative Constitutional Imperative,' a thesis worked on by one of Professor Desan Iyer's doctoral students. **Dr Elimma Ezeani** moderated the Conversation.

Professor Desan Iyer started off by describing the Reasonable Person Test, an objective test for determining whether a hypothetical person could exercise reasonable skill and knowledge. This test is used in various aspects of law, although his student's thesis focused on the Reasonable Person Test found in delict and criminal law. He argued that this test was Eurocentric and should instead, in African countries like South Africa, focus on African law and African jurisprudence. An example case was given, where the accused was convicted for killing a 9-year-old child who he mistakenly believed to be a supernatural being. He was convicted, through the Reasonable Person Test, without having regards to his background, beliefs or mental state. Another case was also mentioned, where the circumstances were similar, but the judgment decided differently, because the accused did not have the intention to kill a human being. In other words, the required *mens rea* was not present. In mentioning these two cases, it was argued that the Reasonable Person Test should not just take objective standards into consideration, but should instead be developed into a test where all circumstances are taken into consideration, such as the accused's background, beliefs, circumstances and other unique characteristics. To do this, it was argued that South African judges should develop a test that would take the South African Constitution into consideration, as well as bring South African customary law to the forefront.

Professor Mátyás Bódig was invited to review this paper and he responded in a critical manner. He argued that making the Reasonable Person Test partly subjective would lead to injustice. After all, how would that ensure equality under the law? Furthermore, it was argued that this would lead to the problem of 'hindsight law.' In other words, people could be convicted of crimes that were, at the time of them committing them, not illegal, if the test became partly subjective. This would go against various democratic principles. Professor Bódig further argued that the Reasonable Person Test is not necessarily too strict; it has always been designed as flexible and with the intention of taking community standards into consideration. For example, when determining whether a reasonable person would have acted similarly, the judges generally regard what a person in similar circumstances would have done. Furthermore, the Reasonable Person Test is already flexible in a way that is shown in negligence, for example. For instance, professionals, such as doctors, are held to a higher standard when it comes to care when compared to someone from another profession or work environment.

Interesting points were brought up by both parties and caused an interesting conversation among participants. At five minutes past two, the conversation ended, with further discussions going on online. The JVI Forum remains unrelenting in its effort to be a positive driver in the promotion of cross-cultural conversations in the realm of jurisprudence. **Here is the link to the live coverage of the maiden conversation:**

https://rgu-ac-uk.zoom.us/rec/share/VSUHtN01x3GyvWPYyH4OIHzBuwG8MWaJhhoa3dGxSj8uKowBvnt5QKBRW/KgaFJfS.d7uxV7IVj22_zl-g

Passcode: jMe1.Mmp

Conversation Reporters: Oladimeji Olaloye, Blessing Ayodele and Mary Omoifo-Egbeyon and Chantal Mather

