The Reasonable Racist’s case hinges, therefore, on whether he can establish that typical beliefs are reasonable beliefs. The notion that typical beliefs are reasonable finds legal expression in certain familiar personifications of the reasonableness requirement, such as “the ordinary prudent man,” “the average man,” “the man in the street,” and “the man who takes the magazines at home, and in the evening pushes the lawn mower in his shirt sleeves.” The layreader must understand that “reasonableness” in legal discourse is a term of art, that is, a word whose legal usage differs markedly from that of ordinary language. A “reasonable” attitude or belief in legal discourse is not necessarily rational or right from some objective, eye-in-the-sky point of view. Instead, as the “average man” formulation of the reasonableness standard suggests, courts tend to equate reasonable beliefs and attitudes with typical beliefs and attitudes.

In the words of one criminal law expert, the Reasonable Man “is more appropriately described as the Ordinary Man (i.e., a person who possesses ordinary human weaknesses).” Moreover, in practically applying the reasonable person standard, the jurors—themselves typical people holding typical beliefs—ordinarily judge the reasonableness of the defendant’s beliefs by projecting themselves into the defendant’s situation and asking whether they would have shared his beliefs under similar circumstances. If the answer is yes, the Reasonable Racist maintains, the defendant should prevail.

**How We Know What We Know: The Typical, the Reasonable, and the Accurate**

Typical beliefs may be considered reasonable for two very different reasons. First, they are presumed to be accurate. Most
of our claims to knowledge about the world rest on typical beliefs; we assume that the propositions about the world that “everyone knows” (propositions often equated with “common sense”) are true unless we have reason to doubt them. Of course, common sense may reflect and perpetuate oppressive myths and expedient misconceptions. Many women died excruciating deaths several hundred years ago because of the typical belief that witches cast spells that poisoned well water and caused crop failures. To see the disturbing implications for self-defense doctrine of the deep-seated assumption that typical beliefs are accurate, we need only make a few modifications in our earlier hypothetical situation and place it in the first half of the seventeenth century, the height of witch burnings in Europe:

The owner of a general store is counting his lucre at day’s end when out of the corner of his eye he suddenly notices a figure approaching his store. Focusing his full attention on the approaching figure, he notes that the person is an old woman (at least 65); that she is wearing a black dress and a cone-shaped black hat; and that she has a wart on her nose. As the old woman crosses the threshold, she reaches toward a pouch on a string around her neck (where she keeps her money, to buy something from the storekeeper) but which the storekeeper thinks is a pouch for potions. Panic-stricken and conscious of the bad graces he is in with the old women of the town (he has never passed up an opportunity to bilk or insult one he came across), he pulls a crossbow from under his counter and levels it at the entering figure. Seeing the crossbow trained on her, the woman thrusts her right hand in front of her while shouting at the man not to release the arrow. Perceiving spell-inducing gesticulations and
unintelligible incantations, the storekeeper shoots and kills the old woman, who dies clutching a gold ducat.

However disturbing it may seem, in a seventeenth-century court that indulged the still prevalent presumption of accuracy for typical beliefs, there is no reason to think the storekeeper’s self-defense claim would not pass muster. Yet, despite the long and deplorable litany of injustices that historically have sprung from blind faith in conventional wisdom, conservatives continue to tout the sovereignty of “common sense” (Oliver North calls his syndicated talk show “common sense radio—for all America,” and Philip Howard’s book, *Death of Common Sense*, has been celebrated by conservatives for its catchy title, even though its substance does not necessarily bolster the conservative agenda).

American courts have shown undue deference to typical beliefs even in the case of scientific knowledge, an area where one would hope for a more searching truth-seeking methodology than mere nose counting. Until very recently, the test courts adopted for determining whether an expert could give an opinion on a scientific matter was whether the expert’s methodology and conclusions were consistent with the consensus of the scientific community. In other words, courts would not permit experts to talk about theories and findings that were not typical for the scientific community. The courtroom doors were closed to cutting-edge iconoclasts—contemporary counterparts of Copernicus and Galileo were denied a voice in the high halls of justice. Opinions that did not conform to prevailing scientific paradigms and practices were essentially treated as “junk science.” Such judicial genuflection to scientific orthodoxy has abated somewhat following the Supreme Court’s 1993 *Daubert*
decision, in which the Court rejected the “general acceptance” test for scientific evidence in federal courts. Nevertheless, the pitfalls of relying too heavily on conventional wisdom, “common sense,” and hoary tradition in the search for truth can hardly be overstated.

Whether the reference group for determining what is typical is society at large (as in the case of the witch burnings) or some privileged subgroup within society (as in the case of the scientific community for purposes of expert testimony), our legal system tends to reward conformity and penalize nonconformity with the majority. Certainly the reasonableness standard, in its classic legal formulations (e.g., the “average man”), privileges the perspective of the majority. This approach to reasonableness might be equated to the problem of the Procrustean bed. In Greek mythology, Procrustes was a highwayman who waylaid unsuspecting travelers and dragged them to his lair, where he bound them to his bed. Although the abducted travelers came in many different sizes, Procrustes’ bed came in only one. If a hapless traveler proved too short for his host’s bed, Procrustes racked and stretched him into conformity; too long, Procrustes lopped of the offending extremities. In the end, the diversity of dimensions that the different travelers embodied was reduced to bland uniformity—a consummation devoutly sought by current proponents of Procrustean legislation that is fashioned to force the body politic to speak only one language, form only one kind of sexual union, worship only one god, and embrace only one worldview.

Procrustean beds abound in the law, but perhaps nowhere more than in the legal definition of reasonableness, which figures centrally in such areas as torts, contracts, criminal law, and
criminal procedure. The legal definition of reasonableness is uniquely insidious in that it takes the merely typical and contingent and presents it as truth and morality, objectively construed. For example, according to legal usage, the “objective” standard of reasonableness encompasses those beliefs and attitudes that are shared by most people. In those limited instances in which a court instructs a jury to look at a situation from the standpoint of an actor’s atypical beliefs and attitudes, it is said to apply a “subjective” standard of reasonableness. Thus, a battered woman may believe that calling the police or attempting to separate from her batterer will only put her in greater danger. Accordingly, she may shoot him in his sleep. In judging the reasonableness of her belief, typical jurors may believe that calling the police or walking out would have prevented further harm. Some courts would characterize the jurors’ beliefs in this case as the “objectively” reasonable ones, while they would admit evidence of the battered woman’s atypical beliefs (especially expert testimony about those beliefs) only under the “subjective” test of reasonableness.

The problem with this approach is that the battered woman’s beliefs may be decidedly more rational and accurate than the jurors’. The beliefs of ordinary jurors about battering relationships are often based on inexperience and naivety, or on ideological suppositions that women who remain in battering relationships masochistically enjoy being beaten, deserve to be beaten, or at least assume the risk of beatings. Saying that the wrongheaded beliefs of typical jurors meet the “objective” standard of reasonableness, while the atypical but accurate and rational beliefs of the battered woman are only relevant under a “subjective” standard of reasonableness, disparages the woman’s beliefs and wrenches all recognizable meaning from the term “objective.”