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The wrong guy

THE MORALIST

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So, you shot the wrong guy and killed him. Apart from any legal responsibility you may have, are you to blame? Many people's legal and moral intuitions line up pretty closely on this one.

But the whole question just makes me uneasy.

In moral defense of the police, many people reason like this: If you are a law enforcement officer charged with protecting the public and you reasonably believe an individual is about to cause devastating loss of human life, you are both legally and morally justified in the use of lethal force.

Indeed, the argument continues, you'd be remiss if you used anything less than deadly force against an apparent suicide bomber. Stun guns, mace and shooting to maim are not real options. Kindly efforts to subdue rather than kill might not do the trick. And then what? Under the circumstances of our times, the police cannot wait for proof beyond a shadow of doubt before they act.

Bravo, then, for the London police officers who recently gunned down an innocent man. It ultimately doesn't matter that the unfortunate Brazilian wasn't a terrorist, if the police had reason to suspect that his evasive behavior and unseasonably bulky coat cloaked the tools of a suicide bomber. The city had just been through a series of bomb attacks on the subways and buses. Something decisive had to be done to disable a man who could have been the city's next underground attacker.

Still, something about this familiar analysis doesn't sit right with me.

In American law, if an ordinary person - not a police officer - reasonably but mistakenly believes that someone is imminently about to kill her, she can respond with deadly force, without fear of civil or criminal liability. If, however, she is acting to protect a third party, she would be civilly liable for any injurious mistake, however reasonable her beliefs.

"I thought Murphy's gun was loaded and that he was going to shoot Jones" isn't a defense, even if Murphy was waving a gun around.

The purpose of this peculiar set of rules is to allow for instinctive self-defense, while discouraging dangerous meddling with strangers. Or, at least, that's what we teach law students.

Like British law, American law permits dangerous meddling with strangers by the police, however. That's one of their jobs. I'm sure American police officers would have acted as the officers in England acted under similar circumstances, and that most people would want them to.

But it's hard not to be a bit queasy about the authority we award to the police to act on the basis of "reasonable" beliefs as well as solid facts. That authority at times results in tragedies: The man the English cops shot four times in the back was an illegal immigrant running from plainclothed officers who may have looked to him like a common street gang.

Years ago, when Ronald Reagan was president and the District of Columbia police were

trying to clean up the thriving prostitution and adult entertainment industries that blighted the neighborhood around the White House, I found myself in a situation not unlike the dead Brazilian.

I was a twenty-something professor strolling up 15th Street in broad daylight with a thirty-something professor friend, when a strange car suddenly pulled up beside us.

Two men jumped out. My immediate response was to run. I was fairly new to Washington and to the whole concept of urban living, but I knew the area around the White House could be dangerous. I ran for about a block before my male companion, who had not run, yelled for me to come back. "They're cops!" he shouted.

The officers asked us a lot of questions and made me show photo ID proving that I worked and lived in the area. We were stopped because they thought I was a (black) prostitute who had just picked up a (white) john.

I often wonder what would have happened if I had kept running.