

EDITORIAL

“After birth” abortion: a biomedical and conceptual nonsense

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Abstract

Recently, two authors suggested that killing a healthy newborn might be morally permissible, subsuming it under the heading of ‘after birth abortion’. Their proposed new definition implies that infanticide should be permitted whenever II trimester abortion for social reasons is. The suggestion stirred public outcry; nonetheless it needs to be analyzed since some 20% of countries allow II trimester abortion for social reasons and 5% do this on demand. A proper delimitation of the definition of “abortion” is thus very important to ensure careful application; for this reason we have attempted a critical analysis of their arguments. In the area of pregnancy termination different moral standards are apparently applied in different countries, but many reasons exist why the equation between II trimester abortion for social reasons and the killing of healthy neonates is to be morally rejected in all cases. The “inversed reification” of the concept of infanticide as a more abstract, euphemistic ‘after birth abortion’ blurs the fundamental difference between a non-viable fetus and a viable neonate. The best-known and most widely utilized (although illegal) “social reason” for “late abortion” and “infanticide” is a pregnancy with a female fetus or neonate. If infanticide for neonates were to be considered morally permissible, specifically it is this practice that would be applied. And this should be rejected on two levels: conceptual, through a critique of the exclusive use of one specific notion of personhood, and pragmatic through refusal of gender-discriminatory forms of infanticide (the killing of female neonates). In conclusion, having investigated the new concept we have concluded that the term “after birth abortion” is biologically and conceptually nonsensical.

Keywords

Infanticide, medical ethics, personhood, potentiality, second trimester abortion, sentence

History

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Introduction

In their recent paper “After-birth abortion: why should the baby live?” Giubilini & Minerva (G&M) [1] advance moral arguments in favor of a legalization of infanticide for social reasons, calling it “after birth abortion”.

At the time of on-line publication (March 2012), the paper caused major reactions in the lay press and among the public and Authors even received threats. Comments and criticism quickly appeared: in parallel with G&M’s essay, three comments were published [2–5]. Then Ainsworth [6] pointed out: “while no one may ever intend to kill babies, they still die”, because resources and facilities for the premature are finite. This however is a far cry from the deliberate suppression of a healthy neonate. Hauskeller [7] on the other hand, argued that while G&M have presented a “well-reasoned argument based on widely accepted premises”, it does not necessarily follow that the conclusions are justified, since it may very well be that there is something wrong with the premises. Rebutting the “after birth

abortion” theory from the point of view of the Judeo-Christian tradition, Camosy [8] claimed that “all members of the species *Homo sapiens* are persons with an equal right to life”. In favor of G&M, The Italian association Consulta di Bioetica issued a communiqué indicating its concern that the violent reactions to the publication of the article on the legitimacy of infanticide may signal a tentative “to go back to ancient and remote (at least in the Western world) situations whereby persons were tried and even sentenced to death for having advanced new ideas within the academic world. Against such tentative we remind everyone concerned that an old tradition guarantees academics the freedom to frankly debate even the most delicate and awkward theme . . .” [9]. In this spirit, although we do not support G&M’s claim, we do respect their freedom to publish their views, in order for them to be critically examined within academic discourse. As Mori [10] argued: “it should be clear that wrong theses are to be severely criticized with solid arguments, not with preventive censorship”. Following his advice, we will try to refute the new notion with what we hope will be “solid arguments”. We will not mention any theistic argument against infanticide and will only discuss issues related to ethics of abortion as far as it is relevant to G&M line of argument and the flaws in it we perceive. Our strongest arguments concern G&M’s too

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narrow restriction to one concept of worthiness of protection (namely sentience) in the neonate – in a moral, medical and judicial sense – and the overly simplified restriction of “worthiness of protection” on the basis of that narrow conception of personhood.

Finally, a rebuttal of criticism was published by G&M in September 2012 [11]. After this, the controversy subsided and the issue seemed to have been shelved; however, at the beginning of 2013, the already-mentioned Consulta di Bioetica organized a series of meetings to discuss the issue and – at least in Italy – the debate flared-up again.

This prompted us to carry out an analysis of the concepts exposed by G&M, also in the light of certain biological and social realities. In our view, G&M show a flaw implicit in bioethics in general, since this renaming only serves to weakly hide the extremity of their position.

Clearly, we do not believe that the implied practice of infanticide will truly become legalized anywhere on the basis of G&M’s arguments; yet, we believe that it is important to defuse the specific type of reasoning that lies at the basis of their arguments and conclusions, since, peer criticism is of the highest importance to protect the quality of academic reflection on an topic as important and controversial as abortion for social reasons. G&M’s views seem flawed on several levels: there are biological facts involved in the wording “after birth abortion”; there are important conceptual bioethical issues related to G&M adherence to a consequentialist approach; and practical medical ethics problems related to the lack of respect for well-established definitions in medicine, that have both a scientific and a moral historical background.

G&M did not build up their argument for mere rhetorical reasons, since their thinking is inspired by the views of philosophers like Tooley [12] and Singer [13], who take similar views. Tooley argues for a specific criterion for allowing infanticide, namely, the stages before an infant is able to experience complex desires, such as the desire for its continued existence. In a similar vein, Singer and his followers have taken the position that a person does not exist until sometime after birth, when *sentience* steps in. Sentience is defined by the Collins English Dictionary [14] “*the state or quality of being sentient; awareness; sense perception not involving intelligence or mental perception; feeling*”. On this basis, Singer defends the notion that a healthy great ape has more right to existence than a human newborn. Apart from moral objections, we have great difficulty in understanding biologically and conceptually how, using this definition, a newborn can be considered as not having “awareness”, “sense perception” and “feelings”.

In this paper, we will critically examine their “statement of fact”, namely that because a newborn is not sentient it therefore does not have a right to full moral status and legal protection. This will be done on the basis of an analysis of:

- (1) Biomedical conventions, practice and ensuing definitions.
- (2) G&M’s philosophical and bioethical type of approach with regard to the justification of sentience as an ethical absolute from which to derive moral criteria, and the deductive consequentialist methodology applied to this absolute.

- (3) The hypothetical practical outcome of their principles, specifically with regard to women’s rights.

The difference between nonviable fetuses and newborn babies: a biomedical conceptual counterargument

Our first counterargument centers on the problematic treatment by G&B of biomedical conventions, practice and ensuing definitions. Their central strategy consists in an attempt to create a “new definition of abortion”.

The term “voluntary abortion” refers to the termination of a pregnancy, be it for medical or social reasons. In some countries and worldviews abortion, under certain conditions, is considered permissible and even a woman’s right. In others it is equated with murder. G&M’s strategy is an inversion of this latter view: they invert the argument “abortion is wrong since it is to be equated with infanticide” to “wherever abortion is right (i.e. when it is allowed for social, psychological or economic reasons) there is nothing wrong with infanticide either”. Apart from whether abortion is a moral wrong or not (and when), the equation of abortion and infanticide is biologically flawed, be it to defend infanticide or to criticize abortion.

G&B affirm: “*we claim that killing a newborn could be ethically permissible in all the circumstances where abortion would be*” [1]. It may appear that their agenda is to stir debate over abortion to pinpoint the contradiction they observe in the fact that some countries allow abortion of the healthy unborn, with or without restrictions, whilst no country allows post-birth infanticide. In terms of development, there is no difference between a fetus one minute before birth and a neonate one minute after. But, this is one of the most important reasons why late abortions are biologically and morally distinguished from early abortions.

Over one third of the countries allow for “medically motivated” abortion during the II trimester (2TAs) when the fetus is malformed. These practices are guided by a variety of regulations based on meticulously drafted definitions [15]. These definitions are of the utmost importance and they are based on sound medical expertise. They are not merely scientific in nature; their drafting holds its own discipline-internal moral relevance. In a few countries, 2TAs are permitted even up to the ninth month; in others, until viability is reached. In both cases the fetus is usually killed *in utero* with various modalities and then expelled or extracted. It is noteworthy that in the rare instances when the fetus is still alive after the procedure, the neonate is not killed. This demonstrates that even in countries where 2TAs are allowed, viability and physical non-dependence of the mother’s uterus are taken to be a guiding criterion for considering a neonate a person.

In the majority of countries 2TAs are restricted to specific indications, usually to protect the life or the physical or mental wellbeing of the mother [15]. Given this reality, G&M clearly embrace an ethical pluralist standpoint since, according to their definition, infanticide should be legally banned whenever abortion is not permitted on general socio-economic grounds, whilst it should be considered permissible

when this is allowed. It follows that it depends on a country’s current legislation whether infanticide on social ground should be allowed or not. This uncovers a hidden argument in G&B reasoning: whatever a country’s legislation is, its basis should either allow for infanticide for social reasons when it allows for abortion for the same reasons, or ban infanticide for social reasons when it does so for abortion for the same reasons. Thus, the equation between the two options is presented as a *fait accompli*, whilst it is exactly this point that deserves much more attention.

With the onset of the third trimester the fetus has reached a stage of development that makes survival outside the uterus a reality. For many countries where abortion is legal, this is a concerned reason not to allow for abortion at that stage. Although, while remaining in the uterus, the fetus continues to depend on the maternal supply, after birth any person can take the responsibility to care for the infant. At the same time, the threshold of viability is being continuously moved-up and is today (at least, in fully equipped neonatology units) centered around 23 weeks. For this reason, it has been argued that the concept of “viability” has become fuzzy because, depending on whether a baby is born in an African rural area or in a Western tertiary hospital, viability is reached within a range of at least 1 month. We will dispute this argument later in the paper.

The situation around the world concerning induced abortion is very diverse, especially when dealing with 2TAs. Boland [15] has recently reviewed the laws regulating II trimester abortion in 191 countries around the world for which information is available. In general, national legislations make a clear difference between I and II trimester abortions: during the first 90 days in a number of countries pregnancy termination is unrestricted, whereas limitations are common after the 90th day. Boland points out that, although wording is often not clear and many laws are silent as to the upper limit and the conditions under which 2TAs can be performed, almost all countries allow abortion when the life of the pregnant woman is in danger. In addition, two thirds of all countries allow it *only* for this indication, whereas approximately 50% of them allow it for health reasons, with 25% including mental health in this category. Over 25% of countries allow 2TAs when pregnancy is a consequence of rape and only 20% on broad socio-economic grounds, with a bare 5% (including China) allowing it on demand.

Although the line of viability is blurry as is the line at which some countries allow for 2TAs, this does not modify our argument: according to the definition proposed by the Authors of the new theory, “after birth-abortion” implies the positive killing of a baby who would otherwise survive, whatever the medical or natural conditions for such viability may be. In our view, viability is a strong medical criterion that covers both the issue of future health of a new-born that would otherwise become severely problematic and the need of a criterion to guide the stage at which we become obliged to protect a fetus. Abortion is a medical term and philosophers must not “bend it” to fit their theories.

Reconceptualizing infanticide as abortion is nothing more than a semantic trick that distorts current moral frameworks and the careful medical definitions on which these are based. Intrauterine life is a continuum. As stated before,

there can be little difference (except in size) between a fetus of 21 weeks and a premature baby of 25 weeks. But, if the first is delivered (after induction, or spontaneously) we have an *abortion*; if the second is delivered we have a *pre-term birth*. The medical and moral difference is enormous: the former is *not viable*, the latter is. In other words, in the case of an abortion, the fetus is either dead or dies immediately or soon after it is delivered (or extracted); with infanticide the baby is killed after delivery. If such practices would be allowed for on the basis of the argument that a newborn is not sentient (something we dispute, as mentioned earlier), and thus not worthy of protection, the same would be valid for any person in a coma (be it temporary or not) or indeed, any person sleeping. But, if one grants a perfectly viable human being the same moral status of a non-viable fetus, this should also be valid for such cases. The reality of countries where abortion is legally permitted during the second trimester and induced premature delivery even during the third one, far from contradicting this concept reinforces it, because the interruption of gestation is mostly carried out to save the life of the mother, or because the fetus is affected by important malformations. Since it renders all existing conventions invalid, the semantic move to equate abortion with infanticide sets into motion a slide down a slippery slope.

The irrelevance of whether a newborn is sentient: a philosophical and bioethical counter-argument

Our second counterargument deals with the justification of sentience as an ethical absolute and the deductive consequentialist methodology used to define practical moral guidelines for the new notion of infanticide. Debate over the legitimacy of abortion is widespread and gives rise to strong moral dispute. But neither pro- nor anti-abortionists consider abortion to be something that should become normalized. The termination of a pregnancy whether for medical or other reasons will always remain a sensitive issue. This is one of the reasons why even those with a liberal attitude towards abortion prefer to draw a line at late abortions. From both pro- and anti-abortionist perspectives, abortion remains a morally sensitive issue: the choice for abortion will never be an easy one.

Philosophers show large differences of opinion concerning the moral status of the embryo and the fetus [16]. Apart from theistic arguments [8], membership of the human community can be derived from sentience, the ability to suffer, or personhood (and potential to these). G&M opt for a criterion based on sentience, but they do so in a dogmatic embrace of “sentience” as fundamental criterion for moral status and their deductive consequentialist approach to its interpretation in practice.

A deductive consequentialist interpretation of sentience as a moral criterion renders it impossible to distinguish between the moral status of a human neonate and that of a great ape. Similarly, most animals have the ability to suffer, which, for society is not a sufficient reason to attribute animals the same moral status as a human being. Sentience, in our view, cannot count as a moral criterion. Sentience may be limited in those with a (severe) mental disability or Alzheimer’s disease,

which – in most people’s eyes – is no reason to strip them of their basic human rights, although indeed, Singer *cum suis* would beg to differ.

The problem with consequentialist deductivism is that it starts from a dogmatic assumption (here, a specific and scientifically unsound definition of sentience) and, without regard for any moral intuition, deduces rules for practice from that position. The question should be posed whether the initial axioms are valid in the first place, and whether the argumentative method of deduction is morally sound. At least since the early 1990s, the problem of deductivism in bioethics has been acknowledged [17]; the problem is in the justification of a moral ground, such as, in this case sentience, as absolute on the one hand, and the methodology of deducing rules for practice from such ground on the other. The debate arose over the classical principle-based medical ethics approach developed by Beauchamps and Childress [18]. Their method posed an intuistic derivation of moral principles, but appeared handicapped in its deductivist application. On the one hand, the problem is why any person’s intuition for a moral grounding should be sufficient justification for their acceptance; on the other, is why would any counter-intuitive derivations for practical implementation of such moral ground need to be forcibly accepted [17].

In current medical practice, viability is taken as a guiding criterion for abortion, be it by pro- or anti-. Attempts to give more restrictive criteria are under pressure of not only moral criteria, but also of the consequences of advances in medical science. Other criteria have proven to be controversial: in the US there have been attempts – such as that of Mississippi – to pass legislation that simply declares “*The term ‘person’ or ‘persons’ shall include every human being from the moment of fertilization, cloning or the functional equivalent thereof*” [19]. The attempt failed, but efforts in this direction continue. In theory, the concept that human life begins at fertilization is self-evident, but Mother Nature makes numerous errors and in the natural process of growing perhaps half of all fertilized oocytes do not become born babies because of major anomalies [20]. Such highly abnormal fertilized oocytes cannot and should not be protected: their elimination is part of the natural mechanism of safeguarding the species. Even for those zygotes that start “on the right foot”, there is a long process: initially all blastomers are totipotent; therefore, during these early stages there is no “individuality”, because several individuals can develop from one early embryo; then the container separates itself from the content and the germinal plaque begins to form; this is followed by organ and structure formation. Scientific evidence therefore cannot identify when in this continuum a “new human life” becomes a “new human person”. Yet, those who hold that even an embryo at its earliest stages deserves full protection, do so because they believe that it is a person [21].

Adhering to the consequentialist theories of authors such as Singer [13], G&M build-up their argument on the basis of a criticism of one very specific version of the potentiality argument. Derived from Aristotelian philosophy, the argument implies that if a subject is a person in potentiality, it has a right to protection. Aristotle stated: “...when we are dealing with definite and ordered products of Nature, we must not say each *is* of a certain quality because it *becomes* so, but

rather that they *become* so and so because they *are* so and so, for the process of Becoming or development attends upon Being and is for the sake of Being, not *vice versa*” [22]. Today, not only fertilized human oocytes have the potential to become a baby, but any cell that can be made into a totipotent stem cell. Advances in science have thus complicated the frameworks and paradigms by which to decide on worthiness of protection. This presents major problems when dealing with the morality of abortion, as documented by the Hippocratic Oath.

In the context of G&M’s argumentation, what is important is whether it is viable, and likely to live a life without severe disabilities. *Per se*, determining when human life begins does not provide for specific moral guidelines, since what is at stake here is not when human life begins, but when this new human life requires protection. In this connection, the shifting of paradigms and cultural frameworks that affect people’s views on the protection of prenatal human life should not lead to an overly relativistic attitude in which new human life in general loses its right to protection and dismisses us from taking up responsibility for such protection.

The ethics of sex-selective infanticides; a pragmatic counter-argument

The third counterargument addresses the hypothetical practical outcome of G&M’s views, specifically with regard to women’s rights.

Exactly 20 years ago, the Nobel laureate for Economics Amartia Sen [23] carried out a comparative demographic analysis of actual sex ratios in various populations, versus the expected ratios if these societies had offered equal access to healthcare to both males and females; he then updated his calculations [24] and reached the conclusion that up to some 100 million females were “missing” in the world. Also Mahmoud Fathalla [25,26] has strongly denounced this widespread killing. He wrote: “*In Europe, USA and Japan, there are 95–97 males for every 100 females, reflecting the biological advantage of females, while in Asia there are 105 males per 100 females reflecting the social disadvantage of the females*”. Other demographers used different methods and got somewhat different numbers, but all very large. The reason is simple: the best known and most widely utilized (although illegal) “social reason” for “late abortion” and “infanticide” is a pregnancy with a female fetus or neonate. G&M do not provide for concrete examples of – in their view – legitimate forms of socially motivated infanticide, but on the basis of their criteria, the practice of gender-discriminatory infanticide should be considered legitimate. We believe this is the most obvious pragmatic argument against G&M claim.

Male preference currently probably comprises 90% or more of the cases of socially motivated infanticide, but G&B ignore the problematic nature of this consequence of their stating that killing a newborn could be ethically permissible in “cases where the newborn has the potential to have an (at least) acceptable life, but the well-being of the family is at risk” [1]. Clearly, the birth of a baby girl in many parts of the world (especially, but not exclusively, in South and East Asia) represents a burden for her family and – given the legal and

social pressure for small families – deprives them of the possibility of a male heir. Thus, whilst abortion is often defended on the basis of women's right to self-determination, G&M's extension of the concept of abortion to include infanticide may well lead to a condoning of practices that run counter to women's very right to existence.

According to Eberstadt [27], sex-selective abortion is by now so widespread and so frequent that it has come to distort the population composition of humanity. He calls it a "*new and medicalized war against baby girls*". According to the United Nations Development Programme [28] and the US Census Bureau's International Programs Center [29] by the year 2010 there was a global excess of over 55 million males under the age of 20.

When not manipulated by human intervention, both the sex ratio at birth and the population sex ratio remain remarkably constant, with small imbalances occurring naturally under specific circumstances; for example, a small excess of male births has been reported to occur during and after war. The tradition of son preference, however, has distorted these natural sex ratios in several countries in East and South Asia, the Middle East and North Africa [30]. Paradoxically, technical advances, such as ultrasound technology, have exacerbated sex imbalance by allowing reliable prenatal sex determination. This phenomenon is particularly evident in the two most populous countries: China and India.

It is noteworthy that China, being one of the few nations where second trimester abortion on demand is available, should be the most visible "beneficiary" of the "new ethical stand", making the situation even worse than it is today. Indeed, in some rural areas of China, up to 140 male births occur for every 100 females, thanks to the widespread utilization of prenatal sex determination, especially for second and higher-order pregnancies. Interestingly, in these areas, increased awareness that the practice would lead to a future marriage squeeze did not affect the demand for sex-selective abortion, at least up to ten years ago [31]. In China, this large surplus of young men is now reaching reproductive age, with consequences yet to be ascertained, because failure to marry and have children inevitably affects a man's social status and acceptance in society. These young men have low self-esteem, feel marginalized, lonely, withdrawn and depressed [32], leading the government to make efforts to reduce sex selection with some degree of success, since – according to recent surveys – there is a significant decline in son preference in East Asia [33,34].

The United Nations have taken a strong stand against this detrimental practice. Indeed, a recent interagency document [35] stressed the negative consequences of practices associated with a systematic preference for boys, such as prenatal sex detection and selective abortion, infanticide and neglect of the girl child still rooted in many cultural traditions. The statement also reminded Member States of their obligation under human rights laws to respect, protect and fulfill the human rights of the infant girl; an obligation that exists for the more than 180 States signatories to the 1994 Programme of Action of the International Conference on Population and Development. These States have agreed to "*eliminate all forms of discrimination against the girl child and the root causes of son preference, which result in harmful and*

unethical practices regarding female infanticide and prenatal sex selection" (paragraph 4.16) [36]. The joint interagency statement reaffirms the commitment of the UN to uphold these principles and to provide recommendations on how best to tackle this issue.

As it always happens, even when there is widespread rejection of a given practice, there is always someone who favors it. For instance, Williams [37] has argued that, those who favor a eugenic stand (selective abortion of disabled fetuses to ameliorate the perceived average genetic quality of our offspring), cannot consistently accept the prohibition of sex-selective abortion, since a woman's right to choose pregnancy termination should not be limited. From a feminist theoretical perspective, it would of course be paradoxical to allow women to terminate pregnancy to prevent the birth of a female neonate, but if one takes the point of view that women have a right to abortion whatever the motivation, Williams would be right.

In some countries and cultures, the selective abortion or infanticide of a girl is usually motivated by the socio-economic problems consequent to having a daughter: the birth of a baby girl in many parts of the world represents a liability for the family, because it will cost money and effort to bring her up and there will be no return from the social, economic and cultural investment in her education, since in these areas a girl gets married early and goes out to support her new family and her husbands' parents, not her own. In addition, the girl's parents have to find the money for the dowry, a sort of "double jeopardy".

The selective killing of baby girls has been unanimously condemned and a petition is posted in the Web to help stopping it [38]. The International Convention on the Rights of the Child [39], an internationally binding document, states in Article 6: (1) States Parties recognize that every child has the inherent right to life and (2) States Parties shall ensure to the maximum extent possible the survival and development of the child. There is no distinction in this Article between a "neonate", an "infant" and a "child".

Seen the fact that G&M embrace an ethically pluralist point of view to infanticide on the basis of the existing pluralism between countries *vis-à-vis* abortion, they would also need to embrace an ethically pluralist view on the variance of individuals', communities' cultures' or societies' reasons for infanticide. So, if they do not want to pay the price of inconsistency, G&M would need to justify the selective abortion or infanticide of a girl.

Conclusion

G&M's argument is based on a gross caricature of the pro-choice view and in this context, we have tried to explain that our argument against their position neither derives from a pro-life, nor from a pro-choice viewpoint: it is a criticism of the biological and conceptual mistakes from which, in our view, this caricature is deduced. Our position against their views should, therefore, be kept totally distinct from these two opposed positions and should be taken as a criticism of G&M's conclusions based on more fundamental scientific, empirical, moral and conceptual arguments. Indeed, we hope to have shown that there is no biological basis for the claim

that a non-viable fetus is identical to a viable neonate, since the first inevitably dies if extracted from the uterus, whereas the second survives after birth relying on its own strength. There are, of course intermediate stages when a premature baby may die unless intensive neonatal care is applied. This case, however, does not enter in a discussion on infanticide; rather it belongs to arguments in favor or against reanimation.

If one does not accept a foundationalism argument, be it theistic or naturalistic, all moral decisions are based on conventions and therefore the distinction between a neonate and a fetus can also be considered a convention. However, biologically speaking, the difference is factual: the former has reached the stage of independent life, the latter has not. For this reason, we believe that when viability is achieved the fetus or newborn has become a member, although still very frail, of the human society. Biologically, and therefore ethically, there is no “uncertainty” and – in our view – there is no need for any philosophical investigation into whether a newborn is indeed a member of the human society. All metaphysical viewpoints on what defines a “human” have their merits and their drawbacks and we expect them to remain part of a vivid debate without definite end. But, interesting as the debate on “defining a human being” may be from a metaphysical point of view, if one deductively applies ready-made solutions to this age-old discussion within a narrow moral consequentialist criterion, one invites any layman who pertains to hold the solution to this debate to decide upon who may live and who may die, be it from a “conservative” or a “progressive” attitude, such as that taken by G&M. In this respect, it is better to embrace the Diogenean skeptical attitude to not know the answer and look for humans in broad daylight on the city square with a lit lantern in the one hand, and without weapons in the other.

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