# Infanticide and Potentiality

# Introduction

The ethical permissibility of infanticide has been a topic of considerable debate in the field of bioethics. Infanticide is roughly the act of killing infants or newborns. The position that infanticide is ethically permissible states that no serious wrong tantamount to murder occurs when one ends the life of at least a disabled newborn, or perhaps even a healthy one.

Some of the most proponent defenders in their ethical theories for the permissibility of infanticide are utilitarians or consequentialists such as Peter Singer[[1]](#footnote-1), Jeff McMahan[[2]](#footnote-2), Michael Tooley[[3]](#footnote-3) and most recently Alberto Giubilini and Francesca Minerva[[4]](#footnote-4). Even though not all agree on what exactly bestows significant moral status on human beings – thus making them human persons -, nevertheless they all agree that neither the unborn or newborn adequately satisfies the necessary and sufficient conditions for personhood. Critics of the permissibility of infanticide – pro-life advocates – include figures such as Robert P. George[[5]](#footnote-5), Christopher Kaczor[[6]](#footnote-6), and others[[7]](#footnote-7). Hassoun’s and Kriegel’s argument for the permissibility of infanticide somewhat resembles Michael Tooley’s argument without being as elaborative.

In this paper, I will outline and briefly summarize Hassoun’s and Kriegel’s argument for the permissibility of infanticide. However, my primary focus will be on their handling of the potentiality principle and its relationship to moral status. Finally, I will argue that their handling of the potentiality principle provides some justification for enslaving actual persons. I will use *newborn* and *infant* interchangeably. My goals are both modest and bold. My modest goal is to articulate a sound argument containing most premises that an infanticide proponent would accept. If my argument is indeed sound, then I will have succeeded my goal. My bold goal is to demonstrate that the logic of the position that Hassoun and Kriegel espouse principally supports the ethical permissibility of some form of slavery. At different points in the paper, I will utilize certain principles, broadly falling under a natural law Metaethic, that hopefully will illuminate certain criticisms I make of Hassoun’s and Kriegel’s argument.

Thus, if Hassoun and Kriegel wish to avoid the undesirable conclusion that some form of slavery might be ethically permissible, then they must either abandon their conception of personhood or attempt to show that their case for infanticide does not principally make some form of slavery morally permissible. I am not convinced that the latter goal can be achieved. Here is my central criticism of Hassoun’s and Kriegel’s argument for infanticide as follows: *If the newborn’s potential for possessing a self-concept does not bestow adequate value to render infanticide as seriously immoral, then neither does a toddler’s potential – while having a self-concept – for possessing the desire for significant freedom from being enslaved from others bestow adequate value to render enslavement as seriously immoral.*

# Hassoun’s and Kriegel’s Argument

1. It is impermissible to intentionally kill a creature T only if T is a person.
2. T is a person only if T is creature-conscious.
3. T is creature-conscious only if T is capable of having mental states that are state-conscious.
4. A mental state M of T is state-conscious only if T is aware of M.
5. T cannot be aware of M without being aware that she herself is in M
6. T cannot be aware that she herself is in M without possessing a concept of self.
7. It is reasonable to believe that there is some age at which human infants do not possess a concept of self
8. Therefore,
9. It is reasonable to believe that there is some age at which it is permissible to intentionally kill human infants.

The authors argue that creature-consciousness entails state-consciousness by saying that if T is capable of having mental states that are state-conscious, then T is creature-conscious. As we’ll see later, the authors can only justify the claim, that some infants are not persons in virtue of lacking a self-concept, is by equating *capability/capacity* with *actuality*. Second, the authors argue that it is permissible to kill some human infants because they are “incapable of having the sort of awareness of their own mental states that is *necessary* to render those states conscious – which means that they are never conscious, hence are not conscious creatures, not persons.”[[8]](#footnote-8)

Now what about the claim that the newborn has the potential to develop actual self-consciousness, thus making it impermissible to kill it? In my view, Hassoun and Kriegel do not provide an adequate response to this issue even though they grant this to be an important consideration. They speculate about the possibility of discovering that oysters could be transferred to Mars through a space elevator and acquire self-consciousness along the way[[9]](#footnote-9). Would that entail that it is impermissible to kill them? Perhaps not. There is another version they offer with regards to potentiality and moral status.

1. “If something is potentially conscious, then it has moral standing.
2. If something has moral standing, then it is impermissible to cause it serious harm.
3. Intentionally bringing about the death of an innocent human being causes it serious harm.
4. Neonates are potentially conscious and innocent human beings. Therefore,
5. It is impermissible to intentionally bring about the death of a neonate.”[[10]](#footnote-10)

Hassoun and Kriegel assert that no particular correlation exists between being potentially conscious and having the kind of moral standing that would make it wrong to seriously harm it. As I hope to show, this backfires against them. Before I proceed, it should be clear that I do not accept Hassoun and Kriegel’s or any other infanticide proponent’s understanding of personhood. I am proposing a reductio ad absurdum. Even though my criticisms are primarily targeted at their argument, it principally could be equally leveled at any other account of personhood that has any relevant similarity to the one I am criticizing here.

# Enslaving potential persons is morally permissible

Most people would regard treating actual human persons as non-persons by attempting to categorize them as property or subhuman as deeply wrong. However, it also seems plausible to many bioethicists that one can tinker with early embryonic human development for some overarching purpose. That purpose may be for the curing of diseases, prolongation of human life, etc. However, it is also possible that a potential purpose, that is not currently actualized, or discovered is one in which certain human beings are created for the sole purpose of being owned in order to perform certain tasks that accompany the ownership. The latter assertion seems to echo common sentiment most of us probably share: the evil of slavery. However, as I attempt to show, at least some form of slavery is ethically permissible if there are some carryover implications, for what is permissible to do to a mere human being that is potentially a person versus a human being that is actually a person, that seem present in both infanticide and some form of slavery. By slavery, I am referring to the owning of black slaves in the Southern states prior to, during and briefly after the Civil War.

Ablack 2-day old human infant lacks the immediate-exercisable potential to desire significant freedom because it also lacks a self-concept. It has the natural potential for significant freedom because of its essential nature that it possessed from conception and will only lose if it dies. However, it is doubtful that Hassoun and Kriegel would accept this notion of potentiality because it presupposes the idea that species-membership has a morally relevant connection to personhood. They ultimately reject this understanding of potentiality but do not fully explain why.[[11]](#footnote-11) Desiring to be free from being enslaved by others implicitly involves having a self-concept, which includes distinguishing oneself from others. *But if one lacks the capability to distinguish himself from others, then he cannot actually entertain a desire to be significantly free from them*. These notions already assume a self-concept. Thus, one cannot desire to be free from being enslaved by others or exercise independence from them if he cannot *at least* distinguish himself from them (e.g. Self-concept). Having a self-concept may not be a sufficient condition for these actions, but it's a necessary one. Thus, preventing a black 2-day old infant from becoming a person (having a self-concept) will also prevent it from becoming free. If manipulating an embryo’s development to prevent it from forming a self-concept is morally permissible, then so is manipulating its development such that – at any postnatal period of development - it fails to form the desire or the capacity necessary for the desire to be significantly free from being owned or enslaved by others.

One might respond to this counter-example by saying that it is impossible for a human being to lack a self-concept and yet perform all the necessary functions that a slave can. This objection, even if true, misses the point. The point is not whether we could create such human beings but whether it would be morally permissible *if it occurred*. This is a thought experiment. In fact, thought experiments are intended to target the *peoples’ intuitions about opposing points of views* and to explore the *logical and ethical* ramifications of certain states of affairs *supposing they were realized*. Thus, the objection that the scenario I proposed is impossible to bring about misses the point and fails to serve as a counterexample to my argument. While the following suggestion admittedly could have overtly disastrous economical outcomes on ordinary citizens, nevertheless consider the following scenario.

Imagine that we (1) had enough technological equipment to create human-like robots that acted humanly in almost every way we’re familiar with, (2) could dramatically enhance their rational and intellectual capabilities through genetic enhancement, (3) but could have complete control over which desires they could form either from the beginning or at a certain point when they have acquired some form of personhood. They would accordingly be persons in every sense of the word but would lack the capacities to desire freedom and independence.

Would it be permissible to create these human-like robots that would-be persons but would lack the capacity to desire freedom? They would be full persons but would lack the desires and the technological & genetic conditions to desire freedom. While one might suggest that this scenario would be ethically impermissible on certain grounds, it seems unlikely that one could condemn this practice because it violates robotic rights. This practice does not seem to principally differ from the act of enslaving actual human persons because both suggest that personhood *as the infanticide proponent sees it* is insufficient to ground a right to life & not to be enslaved.

One might also object that deliberately creating human non-persons is more seriously wrong than simply ending a human being’s life before it reaches personhood because in the former, *the human being must continue living in suffering with an extreme low-quality of life.* In the case of the latter, the human being simply ceases to exist. Thus, in the case of infanticide, it is less bad to end the human being’s life as opposed to prolonging it in the face of terrible suffering. This response is incoherent because it suggests that the human being might be aware of his or her suffering and thus it would be terrible to keep that suffering human being in existence. However, the human being cannot have any awareness of his own suffering if his mental capacities have been severely impaired or destroyed by the surgery. But still, the critic might maintain, we should try lessening the human being’s suffering even if he has no awareness of it.

This intuition, however, affirms the value of the human being and its quality of life *regardless of its lack of or level of self-awareness*. Moreover, having a self-concept is precisely what bestows significant value for the human being per the infanticide proponent. Second, it only aids the infanticide critic because it provides an intuition that plausibly belongs in respecting human beings’ value *regardless of their* *lack of or level of self-awareness.* If one has no life because life was taken from them, then it has suffered a greater loss than another who merely lost good quality of life. A low, medium or high quality of life presupposes having life. Thus, losing the necessary condition for any quality of life is worse than the sufficient condition for life.

## Enslaving actual persons is morally permissible

So why is it wrong to enslave human beings that are persons? At least three possible reasons could be given: (1) Because these persons desire to be free (2) These persons have the intention to live a life of freedom *and* (3) Because these persons have reached a certain level of brain development that is necessary for the possibility of having desires and interests for a life of freedom. If having conditions 1-3 are necessary for the serious moral wrongness of enslaving a human person, then it appears that merely being a human person is not a sufficient condition for the wrongness of enslaving him. If one wants to claim that there’s nothing merely about being a human being that provides a substantial reason not to kill it, then one might also claim that there is nothing about merely being a human person that provides a substantial reason not to enslave it. If we can deliberately create human beings in such a way that they never become persons by lacking the developmental feature that would grant them personhood, then we can deliberately create human beings in such a way that they can be enslaved.

If Hassoun and Kriegel’s account of personhood is correct, then two distinct but related claims seem to follow. First, it is not wrong to enslave human beings that will never become human persons: who lack the capacity for personhood or the conditions for personhood. These would be having the immediate-exercisable capacity for a self-concept, an occurrent/dispositional desire for a right to life[[12]](#footnote-12) and the right level of brain development necessary for the realization of a self-concept or any desire for a right to life. Second, it is not wrong to enslave human persons who will not become human free persons because they lack the capacity for the conditions that make enslavement morally wrong.

Even though I do not claim to have provided a complete list of alternatives to what I just said, one might object to what I just said on two grounds. First, it is wrong to enslave human persons who have the potentiality to be free either because (1) They have the developmental potential to acquire the right level of brain complexity for these desires for freedom and (2) They have the potential to acquire these desires for freedom because they have the right level of brain complexity. I do not claim to have considered all the possible reasons to justify the wrongness of enslaving actual persons. Thus, one is welcome to add others to the list. Second, being a human person is a sufficient condition for the moral wrongness of enslaving that human person because the trajectory, from being a mere human person to a human person that will acquire the right level of brain complexity - necessary for desires for freedom - including the occurrent and dispositional desires for freedom, is a natural one. Given due time, the human person will become one such that it would be wrong to enslave him because he will be able to exercise those desires.

 I have two responses. First, the progression from (1) Human Being > Human Person *and* (2) Human Person > Human Free Person are both dynamic and part of its natural trajectory. So, if the potentiality principle is dynamic and proper to both subjects of moral concern but the infanticide proponent thinks the principle does not bestow adequate value on the unborn and newborn to render infanticide morally wrong, then we get the following results:

Second, the infanticide proponent cannot appeal to the potentiality principle to render enslavement of human persons as morally wrong because the potentiality principle invoked on behalf of the potentially free human person is essentially no different from the potentiality principle invoked on behalf of newborn. Both essentially have the same trajectories. Second, if the potentiality for the human being to acquire personhood can be justifiably eliminated because either it completely lacks the potential or it having potentiality does not sufficiently confer on it the kind of moral status that would make it wrong to kill it, then the potentiality for the human person to acquire desires freedom (thus from enslavement) can also be justifiably eliminated. It seems to me that Hassoun and Kriegel cannot say that its potentiality does sufficiently confer on it the kind of moral status that would make it wrong to enslave it.

It is admittedly difficult to understand how potentiality only has serious moral merit once we arrive at personhood and that it is personhood, above all else, that serves as the morally relevant demarcation on whether we should consider these beings as seriously morally valuable because of their potential *as persons*. It seems to me that drawing the line at personhood is a bit arbitrary. One might raise the question on why personhood is valuable without the additional features that are arguably necessary for slavery being immoral. Perhaps it’s because personhood is a threshold property that once had, can never be lost. Per this view of personhood, however, this seems false. It could be argued that personhood is connected to one’s developmental stages of life which can experience progress and regress. Thus, if development is always a continuum and one can lose one’s developmental characteristics during his life, then presumably he may lose his personhood. Thus, personhood is a contingent, degreed and episodic property. However, the critic might say, he at least has *some* personhood at every point. But *how much personhood* must he possess before it is wrong to tinker with his development in such a way that his personhood is lost or temporarily malfunctioned?

Perhaps one might say that a very minimal amount of personhood must be present for the subject to be entitled for its developmental processes to not be tinkered with. Possibly, this standard could be a certain level of brain complexity that establishes either the potential or actuality of a self-concept. However, is the human being entitled to have a self-concept? If so, then infanticide is unjustified. If it is not, then it cannot be seriously harmed in a morally significant way. One possible response is that once the human person has a self-concept, he is entitled to the capacity to have desires particularly for freedom, and thus it is wrong to manipulate his development in such a way as to prevent him from realizing his immediate-exercisable capacity for freedom. However, if he is entitled to those capacities because it is part of his potential, then the newborn is also entitled to a right to life.

Thus, if one wishes to dismiss the potentiality principle for the unborn and newborn but wishes to preserve it for the human infant that is a person *must* argue that *either* we are dealing with two different trajectories here, thus two different kinds of potentialities, or we’re dealing with two identical trajectories but utilize different principles that will produce different outcomes. What makes these principles justified? Is it because they reflect the interests of certain scientists that have little to nothing to do with the entity itself as far as what it is by nature? Then they seem subjective and a bit capricious. These principles thus cannot be based on anything particularly true about both human beings because there is no essential difference between them.

It seems to me there are at least two different kinds of potentiality: active and passive. Something has active potential to be something when its potential is built-into the very thing that it is by nature. An acorn has the active potential to be an oak tree since becoming an oak tree is part of its natural trajectory without any particular assistance to provide that potentiality. Whether the acorn *actually* becomes an oak tree depends on its environmental conditions but those conditions do not determine whether it has that kind of potential. By contrast, something has passive potential to be something when its potential must be supplied by an external source or agent perhaps. I do not have the natural capacity or potential to become Superman but if some operation were performed that enabled me to fly and have superhuman strength, I would have the potential or capacity to be like Superman. However, ordinary human beings in their natural trajectories will not develop Superman-like abilities. It must be noted that I am using Aristotelian concepts of potentiality and it is beyond the scope of this paper to give a full defense of these concepts. Nevertheless, it seems prima facie correct to say that this distinction is not foreign to our commonly held intuitions about what is possible for human beings or any beings in general.

Both human beings’ potential is active. If the potentiality was active for one but merely passive for another, then there would be a substantial reason for making that a morally relevant distinction. Cats only have a passive potential for personhood but humans have an active one. Plants have only a passive potential for being animals but no active one. Thus, it seems reasonable to say that one can see that as a morally relevant distinction because both entities’ natural trajectories are very distinct which include their potentialities. But what if one said that we do not have active potential with the human embryo, fetus and newborn because their potentials are dependent on their environment and the health conditions supplied by those in care of them. Even internal conditions apply to them since their potentials are tied to how their brain develops. If one were to alter their brain chemistry or development, then one could alter their potential. Thus, their potential is both internal and external to them in developmental ways. Likewise, a human infant that is a person but has not reached the point of acquiring the capacity for desires and interests for freedom - thus the direct exercise of freedom - has the active potential to reach that point. Thus, it would be immoral to deprive him of that realization of freedom from enslavement.

There are two problems here. First, in the first case there is a failure to distinguish between the possession of potentiality and the realization of that potentiality. There is a fundamental difference between having capacities that are unfolded through the process of development and development itself. Development is related to capacities being unfolded or realized or bringing one a few steps closer to realizing those capacities. A human being’s environment and his health conditions supplied by his parents are necessary to realize his potential or innate capacities. They are not necessary for the possession of those innate capacities because those capacities are built-in and thus do not depend on the mother for them to exist. But they do depend on the mother for them to be actualized or realized. Such a distinction is crucial.

Second, there are just as much internal conditions that determine the extent of the human person’s potential for acquiring the capacity for exercising freedom and not being enslaved. Even though there may not be any external conditions that are relevant for determining whether one has the capacity for exercising one’s freedom in not being enslaved from others, one could certainly look for behavioral indications as to whether one acts as if he or she is exercising their freedom or if they desire freedom. For example, suppose one were trained to act in robotic manners and to only respond to orders dictated, then in a sense, he would not be exercising his freedom because he has been trained to act as one who is owned. However, there are internal conditions that are necessary for that realization to occur. At least one notable example is the brain. If one’s brain suffers from malfunction whether by defect, disease or even some operating procedure that tinkers with its development, then one will not realize his potential.

Thus, if potentiality is not seriously morally relevant for the unborn and newborn but it is for the infant *despite* the fact they both share the same trajectory *conjoined with* the claim that some scientists have the right and power to control the internal and external conditions for both, then the right not to be enslaved is not a guarantee for either the newborn or infant since the conditions are up to some powerful human beings to decide. It essentially becomes a consequence of subjective whims. I have attempted to show that at least Hassoun’s and Kriegel’s account for personhood being grounded in having a self-concept and actual consciousness is problematic on several grounds. For the sake of space constraints, I have attempted to focus on one aspect of their argument; namely, their interactions with the potentiality principle and have tried to demonstrate a serious flaw in their understanding of it. Additionally, I have argued that some forms of slavery for both human non-persons and human persons – on their notion of personhood – might be morally permissible. I am convinced that at least some of my criticisms plausibly make it difficult for any personhood theorist – that grounds personhood in some developmental feature or characteristic – to consistently defend abortion and infanticide and condemn slavery or other heinous acts which were partly presented as justifiable on an account of personhood that seems remotely similar, if not identical to the one I have critiqued here.

## Concluding Thoughts

This paper is not a full-blown critique of infanticide in any of its current versions. However, there are some lingering questions that are not directly related to this discussion but do deserve some consideration. First, will the margins for personhood become narrower and narrower over time as humanity progresses? Personhood seemed to be much more primitive than what it seems to be now. Since there is a widespread assumption – which I think is mistaken but do not have the space to discuss – that human beings are qualitatively no different from other animals and thus they are only more complex organisms, it seems plausible to assume that as more knowledge is gained about human behavior and potential and ways to advance human abilities, there will be a lower common denominator for all human beings. In other words, we will share less in common with each other than originally thought. It seems possible that this could result in an elitist view of certain classes of human beings. Namely, some human beings which are more developed and powerful than others set the standard for who measures up to the level of personhood.

Second, since my analysis is premature and has yet to be applied to cases of rape, incest and even the Holocaust, does this in any way imply that some might have to think about those issues contrary to widely held beliefs about dignity and respect for bodily autonomy? On what grounds are victims of rape, incest, child molestation and the Holocaust entitled to not have been treated accordingly? It seems to me there are only two options available to any personhood theorist that defends infanticide but condemns these practices. One can say that respect for bodily autonomy and desires to not be harmed are built into the very concept of the infanticide proponent’s concept of personhood; therefore, it is only a matter of time for these potentialities to be unfolded since personhood is a threshold which secures full rights even for lesser developed persons. Or one can also say that the infanticide proponent’s concept of personhood is mistaken, fails to ground full equal rights for any person, and that the substance view of persons is a more plausible view for grounding human rights and value[[13]](#footnote-13).

Lastly, will personhood itself be enough to grant sufficient moral status? Even though one can charitably say that at least some infanticide proponents want to widen the scope of who can be described as persons, it seems to me that the sort of rights they wish to secure for others will require more than mere personhood as they understand it. Some will try, in my opinion unsuccessfully, to secure full human rights for human persons while admitting that not all human persons are developmentally equal. What else is their personhood or rights based on? Is it being a member of a certain species? Is it having the right set of psychological traits or a particular trait? It is very doubtful there will be any equal representation or distribution of these traits for anyone. If that is the case, it is unlikely there will be any justification for securing rights to individuals who – by consistently applied standards – do not measure up. Just as it’s claimed that human species membership is not sufficient to ground rights or personhood, it seems that human personhood – as it has been critiqued – will not be sufficient.

# References

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