Consciousness and the Moral Permissibility of Infanticide

NICOLE HASSOUN AND URIAH KRIEGEL

ABSTRACT In this paper, we present a conditional argument for the moral permissibility of some kinds of infanticide. The argument is based on a certain view of consciousness and the claim that there is an intimate connection between consciousness and infanticide. In bare outline, the argument is this: it is impermissible to intentionally kill a creature only if the creature is conscious; it is reasonable to believe that there is some time at which human infants are not conscious; therefore, it is reasonable to believe that it is permissible to intentionally kill some human infants.

Introduction

In this paper, we present a conditional argument for the moral permissibility of some kinds of infanticide. Although we do not believe our argument will appeal to everyone, we do believe it presents a problem for people with certain antecedent moral commitments. The argument is based on a certain view of consciousness and the claim that there is an intimate connection between consciousness and infanticide. In bare outline, the argument is this: it is impermissible to intentionally kill a creature only if the creature is conscious; it is reasonable to believe that there is some time at which human infants are not conscious; therefore, it is reasonable to believe that it is permissible to intentionally kill some human infants. In the first part of the paper, we will develop this argument in greater detail. In the second part, we will address a battery of (possible) objections, both to the argument and to its conclusion.

The view that infanticide is permissible is not new, nor is a consciousness-based argument in its favour. Here, however, we hope to string together steps that meticulously and unequivocally lead to this conclusion, and which are grounded in a robust conception of human consciousness. Fleshed out, the argument we will present is this:

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; therefore,
8) It is reasonable to believe that there is some age at which it is permissible to intentionally kill human infants.
The argument proceeds slowly, via numerous stages, because we want to cover explicitly every step in the reasoning. There are certainly more economical ways to develop the argument, but the purpose of the present exercise is precisely to do the opposite. The next ten paragraphs are devoted to explicating the steps in the argument — in particular, to the elucidation of the technical concepts, and to argumentation in support of the inference, involved in each.

**Part I: The Argument**

1. **It is Impermissible to Intentionally Kill a Creature only if that Creature is a Person**

   At least since the work of Mary Ann Warren, it has been customary to hold that all and only those creatures it is impermissible to intentionally kill qualify as persons. Persons are the sort of thing whose deaths are inherently or non-derivatively deplorable. There is a way of understanding personhood on which this is more or less trivially true: if something is not a person we have no obligations to avoid bringing about his or her death. Persons in this sense could turn out to include some animals.

2. **Personhood Entails Creature Consciousness**

   A more difficult question is how to define personhood. It seems that one necessary condition for personhood is consciousness: if a creature is not conscious, then it is not a person, not the sort of thing whose death is intrinsically or non-derivatively deplorable. Although there are a variety of theories of consciousness, most philosophers will agree that consciousness is necessary for personhood, and in any case, this is where we shall begin. Let us say, of a creature T that is conscious, that T is creature-conscious. Since it is a necessary condition for a thing's being a person that it be conscious, it is a necessary condition that it be creature-conscious. Thus, instantiation of the property of personhood entails instantiation of the property of creature consciousness.

3. **Creature Consciousness Entails State Consciousness**

   A distinction is sometimes drawn between creature consciousness and state consciousness. The former is a property of creatures, the latter of particular mental states — thoughts, feelings, etc. Thus, we can say, on the one hand, that Jim is conscious but Jill isn't. We can also say, on the other hand, that Jim's current thought that oysters taste good is conscious whereas his standing belief that pearls come from oysters is not. Let us say, of a mental state M that is conscious at a time $t$, that M is state-conscious. Philosophers of mind commonly analyze creature consciousness in terms of state consciousness. Perhaps the most natural way of doing so is as follows: a creature or thing T is creature-conscious just in case T is capable of entering mental states that are state-conscious. In any case, the possibility of state consciousness is certainly a necessary condition for creature consciousness. It is impossible that there should be a conscious creature that not only is never in a conscious state, but also is incapable of being in a conscious state. In other words, for T to be creature-conscious, T must be capable of being in state-conscious mental states.
4. State Consciousness Entails Awareness of a Conscious State

According to a family of views on consciousness, a mental state’s being conscious involves the subject’s awareness of it. It would be odd to say of Jim that he thinks that \( p \) consciously — as opposed to unconsciously — if Jim is completely unaware of his thought that \( p \). It is part of the very notion of a conscious thought or feeling that one is aware of one’s thought or feeling. One cannot have a conscious thought or feeling while remaining completely oblivious to the thought or feeling in question. That is, a mental state \( M \) of a creature \( T \) is state-conscious only if \( T \) is aware of \( M \).

5. Awareness of a Conscious State Entails Awareness of Self

Is it possible for one to be aware of one’s conscious state without being aware of oneself? If not, awareness of a conscious state implies awareness of self. David Rosenthal, for instance, argues for this implication. Rosenthal’s argument is two-stepped. First, one’s awareness of one’s conscious state is always awareness of it as a token mental state, not merely awareness of the type of mental state it is. That is, for a token mental state \( M \) of \( T \) to be a conscious state, \( T \) must be aware of \( M \) itself, not just the \( M \)-type. Second, for one to be aware of a mental state as a particular token state, one must be aware of it as someone’s state. That is, \( T \) must be aware of \( M \) as a state of whoever \( M \) in fact is a state of. Since \( M \) is \textit{ex hypothesi} a state of \( T \), this means that \( T \) must be aware of \( M \) as her own. As Rosenthal puts it, the awareness must have a content of the form ‘I myself am in \( M \).’ The ‘I’ in this content refers to oneself. It follows that the sort of awareness of \( M \) that is necessary for \( M \)’s being conscious is the sort that also involves awareness of \( T \).

6. Awareness of Self Entails Possession of a Concept of Self

Another thesis Rosenthal defends is that awareness of oneself requires a minimal concept of self. This is quite plausible: self-awareness requires self-conception. Rosenthal emphasizes that the requisite concept of self need not have the characteristic sophistication of a normal adult’s self-concept. It only requires an ability to distinguish oneself from anything that is not oneself. Some may object that the ability to distinguish \( x \) from anything else, while perhaps a necessary condition for possession of the concept of \( x \), is by no means a sufficient condition. However, this issue is immaterial for the present argument. All we need for our argument at this stage is the thesis that awareness of self requires an ability to distinguish oneself from anything else. This is the ability we intend to pick out by the phrase \textit{concept of self} in this paper.

7. Plausibly at Some Age Human Infants do not Possess a Concept of Self

It is an entirely empirical issue at what stage a human develops a concept of self — an ability to distinguish itself from anything that is not itself. One possibility that is empirically improbable is that all humans acquire a self-concept instantaneously the moment they are delivered. Thus the view that abortion is morally permissible but infanticide is not is improbable. Likewise, it is improbable that the foetus possesses
a self-concept upon conception. So the view that abortion is never permissible is just as improbable. As things stand, it seems to us that if we treat the empirical evidence regarding whether or not day-old human neonates possess a self-concept in the same way we treat empirical evidence regarding whether or not other animals possess a self-concept, it is reasonable to conclude that a day-old human neonate does not possess a self-concept. At least this is so as long as one understands the self-concept in the way explicated above, that is, in terms of the ability to distinguish itself from anything that is not itself. The fact that there is no evidence, behavioural or neurophysiological, that some animals possess this self-concept despite extensive testing makes it reasonable to believe that such animals lack such a concept. Similarly the fact that there is no behavioural or neurophysiological evidence that day-old humans possess this self-concept despite extensive testing makes it reasonable to believe that day-old humans lack such a concept. We will expand on this in the second half of the paper. Here, we merely want to emphasize that lack of evidence supporting a scientific hypothesis after sustained inquiry is usually sufficient reason to reject the hypothesis.

8. It is Permissible to Intentionally Kill Some Human Infants

The line of argument we have pursued leads up to the proposition that there is some age at which it is permissible to intentionally kill human infants. Premises 1 through 6 entail that it is permissible to intentionally kill a creature T if T does not possess a concept of self. Premise 7 claims that there is some age at which human infants do not possess a concept of self. It follows that it is permissible to intentionally kill some human infants. This is because, lacking a self-concept, 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. The argument admittedly has many steps, most of which are not trivial and can be rationally denied. At the same time, none of these steps is grounded in a highly controversial claim. None is a minority view among philosophers. The burden of this first part of the paper has been to show that there is a string of inferences, each highly plausible in its own right, that leads to the unintuitive, indeed disturbing (though not altogether new), conclusion that it is permissible to kill infants of a certain age.

Part II: Objections and Replies

We will now consider eight objections to the argument just offered. In many instances (though not all), the general form of the response will be that the only alternative to permitting infanticide is an equally unintuitive position; the more intuitive middle ground, where most people are comfortable, is indefensible. For instance, most people do not believe it is morally wrong to eat meat and believe it is acceptable to have an abortion under at least some circumstances. Many of the main objections to our argument cannot be sustained if one is committed to these theses. In other words, though infanticide’s permissibility may be counter-intuitive, the opposing view is saddled with at least as many counter-intuitive consequences.
1. There is Reason to Believe that Human Infants Possess Self-Awareness

This objection denies the seventh premise of the argument. Its plausibility depends on two factors: the definition of self-awareness and the relevant empirical facts. We maintain that, on any relevant construal of self-awareness, the objection is not borne out by the empirical evidence.

The empirical index of self-awareness preferred by cognitive scientists draws on J. J. Gallup’s work on mirror self-recognition in primates. Gallup showed that chimpanzees and orangutans can recognize themselves in the mirror, whereas gorillas cannot (Suarez & Gallup, 1981).\(^\text{11}\) Gallup proceeded to offer mirror self-recognition as the operational definition of self-awareness. Now, although it is extremely implausible to treat mirror self-recognition as a definition of self-awareness, it is quite plausible to take mirror self-recognition to be evidence for the presence of self-awareness.

The question we want to ask ourselves is at what age humans develop the ability for mirror self-recognition. The evidence suggests that humans develop the capacity for mirror self-recognition between the ages of eighteen months and twenty-four months (Amsterdam, 1972).\(^\text{12}\) This certainly does not suggest that a day-old human has self-awareness.\(^\text{13}\) The evidence, rather, suggests that a day-old human does not have self-awareness; that self-awareness only develops later.

To be sure, there are laxer tests of self-awareness that would yield a different understanding of the experimental data. But even on the most generous approaches to self-awareness, one-day old humans appear to lack it. Consider Meltzoff’s view, based on his findings regarding facial imitation, that there are signs of a rudimentary self-awareness already 12–14 days after birth.\(^\text{14}\) This still leaves at least a good week in which the neonate lacks self-awareness. Pending other objections, this would permit infanticide in week-old neonates.

We have thus far focused on behavioural evidence. As for neurophysiological evidence, it is more difficult to obtain.\(^\text{15}\) But if one were to guess, it is reasonable to expect that the seat of self-awareness would be found in the prefrontal cortex and/or the anterior cingulate cortex. The important fact for our present purposes is that these brain areas, like many others, are not yet fully formed at birth. We cannot rule out at present that these areas are formed just well enough to enable self-awareness. Still, the fact that they are not fully formed casts doubt on the proposition that humans are capable of self-awareness at birth.

Some may not want to conclude that neonates probably lack a self-concept immediately after birth. After all, a mistake regarding this fact may have devastating moral consequences. That may be fair enough. But, to be consistent, one should be equally hesitant to conclude from the lack of evidence that many other animals have a self-concept that it is acceptable to eat them. Few will accept this general principle.

2. Membership in the Species Homo Sapiens is Sufficient to Make it Impermissible to Intentionally Kill a Creature — Consciousness is not Required

This objection denies either Premise 1 or Premise 2 of our argument. Recall that Premise 1 was ‘it is impermissible to intentionally kill a creature T only if T is a person’, while Premise 2 was ‘T is a person only if T is creature-conscious’. The thesis that a creature’s being human is sufficient to make it impermissible to intentionally kill
it is similar to a view suggested by Jean Blumenfeld, among others.\textsuperscript{16} The objection might be formulated as follows:

1. An infant is an innocent human being (a member of the species Homo sapiens). Therefore,
2. Infanticide is the killing of an innocent human being.
3. One should not kill an innocent human being. Therefore,
4. One should not commit infanticide.

We reject Premise 3, understood as the claim that one should not kill an innocent member of Homo sapiens. A variety of counter-examples suggest themselves. Euthanasia is a case in point. The fact that someone will probably never regain consciousness, is ‘permanently brain dead’, is often cited as a reason for discontinuing life support, despite the fact that the ‘brain dead’ might still be an innocent Homo sapiens.\textsuperscript{17} Many also believe that abortion likewise kills innocent human beings but can be morally acceptable.

3. \textit{Personhood Does Not Require Consciousness but is by itself Sufficient to Make it Impermissible to Intentionally Kill a Creature}

This objection denies the second premise of our argument. While it might require a strange view of persons to deny that consciousness is essential to personhood, such a move is possible. One could contend that the essence of personhood is that an organism is capable of acting, learning, perceiving the world, and organizing information. On this view, the essence of personhood consists in the possession of certain cognitive abilities and agency, not consciousness. Infants are able to process information in an organized way, perceive the world around them, learn about and act in the world. Thus one might conclude that it is not acceptable to intentionally kill even very young infants.

However, the proposed notion of personhood is too liberal. Most animals are capable of acting, learning, perceiving the world, and organizing information. Even some invertebrates exhibit the mentioned cognitive and agential capabilities and would therefore count as persons. Thus, we would not only need to stop eating animals, but we would need to drastically change the way we live in order to stop inadvertently killing many invertebrates and other small animals. Furthermore, if one did accidentally kill such an invertebrate, this would be killing a person and \textit{ceteris paribus} one would have committed manslaughter. Though we realize that there are many animal rights activists who believe that it is wrong to kill or eat most animals, few people believe that accidentally killing an invertebrate is akin to manslaughter. Once again, we are most concerned to address those who think both abortion and eating meat can sometimes be acceptable.

4. \textit{The Ability to Feel Pain is Sufficient to Make it Impermissible to Intentionally Kill a Creature, Again Making Consciousness Unnecessary}

This view is not as overly morally demanding as the view that we should not kill organisms that are capable of acting, learning, perceiving, and organizing information. But, it does face a dilemma, regarding whether or not pain implicates consciousness. If the ability to feel pain requires consciousness, then the view would not challenge the
Conclusion of our argument. Contrariwise, if feeling pain does not require consciousness, then again too many creatures will qualify as persons. According to Peter Singer, for instance, all organisms more complex than molluscs are capable of feeling pain. Note the way in which our response to this and the previous objection illustrate how the unintuitive consequences of permitting infanticide are matched, upon reflection, by equally unintuitive consequences of prohibiting infanticide.

The question, then, is whether particular pain states are necessarily conscious. If they are, then again the objection is ineffectual. If they are not — if, that is, there can be unconscious pains — then it is not clear that we are morally obligated to take such pains into account. If we were to find a race of zombies on Jupiter that had unconscious pains, we would probably not believe it was wrong to harm them.

5. The Potential to Develop Consciousness is Sufficient to Make it Impermissible to Intentionally Kill a Creature, Making Actual Consciousness Unnecessary

This objection is perhaps the most difficult one to meet. Consider, however, what we would say if we found out that oysters could be made conscious upon being transported to Mars. This would probably not convince most of us to stop eating oysters, on Earth. Perhaps rocks could become conscious on Alpha Centauri, but it does not seem to follow that we should stop walking on them here. If so, the potential to develop consciousness is not sufficient to make it the case that it is impermissible to intentionally kill a creature.

A more sophisticated form of this objection is possible. One might suggest that it is wrong to kill human infants because most will develop consciousness in the absence of intervention. This is in contrast with the oysters, which would not develop consciousness in the absence of intervention.

There are two possible responses here. First, consider the following variation on the Martian oyster case. Suppose that many years from now, a space elevator is installed between Earth and Mars, and that an oyster finds its way to the elevator. At this point, the normal course of events should lead to that oyster’s becoming conscious in the absence of intervention. The oyster on the elevator is thus potentially conscious in the sense in which foetuses and neonates are — it is, so to speak, en route to consciousness. Yet it still seems intuitively permissible to kill the oyster.

Second, for those who like more realistic examples, it is also important to note that many people believe it is sometimes legitimate to kill potentially conscious humans. In fact, many believe that abortion of potentially conscious foetuses is acceptable under at least some circumstances. At least for those who accept this much, the objection under consideration will not go through. The reasoning at work in this objection appears to prohibit all forms of abortion, including abortion of minute-old foetuses, since in the normal course of events these would eventually gain consciousness. Thus this reasoning cannot be accepted by anyone inclined to permit at least some kinds of abortion.

6. Consciousness Does Not Require Self-Awareness; T Can Be Aware of the Qualitative Feel of State M Without Realizing That She Herself is in State M

Some philosophers have argued that there are conscious experiences — especially absent-minded perceptions — that occur in the absence of self-awareness. Charles
Siewert (1998, ch. 7) offers the following example. Suppose you read a mystery novel, and there is ‘silent speech’ taking place in the back of your mind. This episode of silent speech appears to have a phenomenal character, a conscious feel. But suppose now that you decide to turn your attention away from the tales you read and onto your silent speech episode. Some psychologically real event takes place. How are we to understand this psychologically real event? According to Siewert, the only plausible way to construe this event is as follows: upon turning your attention to the silent speech episode, you become aware of something of which you were previously unaware, namely the episode. This means that before thus turning your attention, the episode had a phenomenal character of which you were unaware. That is, it was a conscious episode of which you were unaware. So there are such.

There are two responses to this objection. The first is to deny that the episode had a phenomenal character prior to the attention turning. That is quite implausible, however. We do not naturally think of phenomenal character as produced by attention, but rather as revealed by it. The second is to deny that you were unaware of the episode before the attention turning. That is plausible. Siewert claims that the only way to construe the psychological event that takes place when you turn your attention to your episode is to say that you become aware of something of which you were previously unaware. But there is an alternative construal of this event: upon turning your attention, you become attentively aware of what you were previously inattentively aware of. Arguing for this position would take us too far afield, so we will assume here that the position carries intuitive consequences.

7. Indirect Consequences of Permitting Infanticide May Justify its Prohibition

A consequentialist might argue that the indirect consequences of permitting infanticide will be so bad as to justify its prohibition. There are at least three pragmatic considerations that tell in favour of prohibiting infanticide. First, one might worry that if people start killing day-old infants this will make it more likely that they will kill or harm other infants or adults. Second, if people kill day-old infants they may suffer psychological harm. Finally, if people kill day-old infants this will almost certainly upset many other people who do not accept the argument we have offered.

We are most sceptical of the first line of argument. We think it highly unlikely that people who kill day-old humans will be more likely to kill or harm others. People offer similar arguments against everything from masturbation to pornography. Furthermore, what will actually happen in any particular case is an empirical question. Still, even if these arguments go through, they do not provide reason to believe that infanticide is in itself morally unacceptable. At most, these objections show that we should have legal prohibitions against infanticide despite the fact that we have reason to believe it is in itself morally acceptable.

8. The Potential for Members of the Species (And Genus) Homo Sapiens to Develop Consciousness is Sufficient to Make it Impermissible to Intentionally Kill Such Creatures, Making Actual Consciousness Unnecessary

This objection simply merges the second and fifth objections above. It might be formulated as follows:
1. Infanticide is the killing of an innocent human being with the potential to become conscious.
2. One should not kill an innocent human being with the potential to become conscious. Therefore,
3. One should not commit infanticide.

Somehow the combination of consciousness and humanity is supposed to be more morally important than either alone. We see a few plausible ways to argue for this claim. First, following Elizabeth Harman\(^2\) one might argue as follows:

1. If something is an innocent human being, 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 something that is potentially conscious causes it serious harm.
4. Neonates are innocent human beings and potentially conscious. Therefore,
5. It is impermissible to intentionally bring about the death of a neonate.

The problem with this argument is in the combination of its first and second premises. One must argue that because something is an innocent human being it has the kind of moral standing that makes serious harms to it impermissible. Our argument above implies that this is not the case. Without a convincing reason to reject our argument this way of framing the argument implicitly begs the question against our view.

A different plausible way to cash out this objection might be this:

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.

Again, the problem with this argument is in the combination of its first and second premises. The problem is this: One must argue that because something is potentially conscious, it has the kind of moral standing that makes serious harms to it impermissible. Our argument above implies that this is not the case. Without a convincing reason to reject our argument, this way of framing this objection implicitly begs the question against our view.

### Conclusion

After defending each step of the argument for the moral permissibility of infanticide, we have considered and criticized a number of objections to the argument. The argument both (i) is valid and (ii) does not include any easily discardable premise. Although our level of confidence in the truth of the conclusion is limited, and there may be other compelling objections to our argument, we think that our argument presents a formidable challenge to those who (a) believe eating meat is morally acceptable, (b) believe that abortion can sometimes be justified, (c) endorse self-representational or higher-order theories of consciousness, but (d) would like to deny that infanticide is permissible.
Nicole Hassoun, Philosophy Department, Carnegie Mellon University, Pittsburgh, PA 1213—3890, USA. kikseven@gmail.com

Uriah Kriegel, Department of Philosophy, University of Sydney, Sydney, NSW 2006, Australia. theuriah@gmail.com

NOTES

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4 We say ‘intrinsically’ because there could be situations in which the death of a non-person is derivatively deplorable. Thus, if an old widower’s only plant, which has meant much to him over the past decade, dies, this can very well be deplorable. But here the plant’s death is not deplorable in and of itself, in abstraction of any of its consequences. That is, it is merely derivatively deplorable.


7 Elsewhere, one of us has argued in some detail for the thesis that a mental state M is conscious only if the subject is aware of M. See: U. Kriegel, ‘Consciousness and self-consciousness’, The Monist 87 (2004): 185–209.

8 Rosenthal 1997 op. cit.

9 Kriegel 2004 op. cit.

10 On Michael Tooley’s rights-based argument creatures must posses a concept of self to have a right to life. Because young infants lack such a concept, he concludes that they do not have a right to life. See: M. Tooley 1986 op. cit. Our argument stems from a conception of personhood independent of any conception of rights. We believe this is an advantage of our argument as Tooley’s conception of rights is controversial. For discussion see: Alan Carter, ‘Infanticide and the right to life’, Ratio (New Series) 10 (1997): 1–9.

Plausibly, the possession of a self-concept requires the ability to distinguish oneself from any other things. This ability presupposes the more general ability to distinguish some pairs of objects. There is some evidence that the general ability to distinguish a given pair of objects is not innate but develops after birth. See M. Tooley, *Abortion and Infanticide* (Oxford and New York: Oxford University Press, 1983), pp. 367–368.


When we want to check which areas of the brain are responsive to red, for example, we flash red in front of a subject and see which parts of the brain get activated in the presence of red but not in its absence. This method is obviously very hard, perhaps impossible, to employ with the self: you cannot flash the self in front of a subject.


See also: Tooley 1983 op. cit., ch. 4. Here Tooley claims that a foetus’ being human does not show that we should not kill it.


For the distinction between attentive and inattentive self-awareness see: Kriegel 2003a op. cit. Also see: Kriegel 2004 op. cit.

Rosenthal writes: ‘Independent considerations point to the same conclusion. One cannot think about a particular mental-state token, as opposed to thinking simply about a type of mental state, unless what one thinks is that some individual creature is in that mental state. So [our awareness of our conscious states] will not be about mental-state tokens unless [its] content is that one is, oneself, in the mental state’ (Rosenthal 1997 op. cit., p. 741).