

Construction, Development, and Revelopment

Richard Stith

ABSTRACT

If a claim that appears utterly convincing to the speaker is treated as absurd by others, the speaker is likely to think those others willfully perverse. But perhaps those others simply fail to grasp some background truth that the speaker has assumed to be obvious. Rectification of their mistake can then provide a basis for unexpected agreement and for isolating those respondents who are in fact deeply hostile to the speaker's claim. This Article suggests that many of our fellow citizens find the pro-life argument against lethal embryo research to be absurd simply because they mistakenly treat gestation as a process of construction rather than as a process of development. Only an isolated segment of those who favor such research may have abandoned our traditional shared belief in human equality and dignity. The contrast between construction and development is also used to illuminate our disagreements over abortion and euthanasia.

IN DECEMBER OF 2005 an op-ed piece by sociologist Dalton Conley appeared in *The New York Times*, stating that “most Americans...see a fetus as an individual under construction.”¹ This widespread vision of the embryo and fetus as “under construction” is the key to understanding why good people may find our pro-life arguments to be absurd or otherwise non-rational, e.g., religious, particularly with regard to embryonic stem cell research.

Just think of something being constructed (fabricated, assembled, composed, sculpted—in short, made), such as a house, or a scholarly article—or take a car on an assembly line. When is a car first there? At what point in the assembly line would we first say, “There’s a car”? Some

¹ Dalton Conley, “A Man’s Right to Choose,” *The New York Times*, op-ed section (December 1, 2005). Professor Conley is University Professor of the Social Sciences and Chair of Sociology at New York University.

of us would no doubt go with appearance, saying that there is a car as soon as the body is fairly complete (in analogy to the fetus at 10 weeks or so). I suppose that most of us would look for something functional. We would say that there is a car only after a motor is in place (in analogy to quickening). Others might wait for the wheels (in analogy to viability) or even the windshield wipers (so that it's viable even in the rain). And a few might say, "It's not a car until it rolls out onto the street" (in analogy to birth). There would be many differing opinions.

However, one thing upon which we'll probably all agree is this: Nobody is going to say that the car is there at the very beginning of the assembly line, when the first screw or rivet is put in or when two pieces of metal are first welded together. (You can see how little I know about car manufacturing.) Two pieces of metal fastened together doesn't match up to *anybody's* idea of a car.

I think that this is exactly the way that many people see the embryo, like the car-to-be at the very beginning of the construction process. In the first stages of construction you don't have a house, you don't have a car, you don't have a human individual yet. You don't ever have what you're making when you've just started making it. This does not mean that our "constructionist" friends are anti-life. They may believe that a baby should have absolute protection once it has been fully fabricated. But until that point, for them, abortion just isn't murder.

What happens when a constructionist hears a pro-lifer argue that a human embryo has the same right to life as any other human being? Let's listen to a couple of commentaries on President Bush's opposition to embryonic stem cell research, a form of research in which human embryos are killed in order to obtain stem cells. Journalist Michael Kinsley, writing in the *Washington Post*, expressed his utter bewilderment: "I cannot share, or even fathom, [the pro-life] conviction that a microscopic dot—as oblivious as a rock, more primitive than a worm—has the same rights as anyone reading this article."²

Law professor Geoffrey Stone, writing shortly thereafter, took a common next step, the accusation of the imposition of a religious doctrine:

² Michael Kinsley, "False Dilemma on Stem Cells," *The Washington Post* (July 7, 2006).

In vetoing the bill that would have funded stem-cell research, President Bush invoked what he termed a “conflict between science and ethics.” But what, exactly, is the “ethical” side of this conflict? Clearly, it derives from the belief that an embryo smaller than a period on this page is a “human life”—indeed, a human life that is as valuable as those of living, breathing, suffering children. And what, exactly, is the basis of this belief? Is it Science? Reason? Logic? Tradition? Morals? None-of-the-above? What the President describes neutrally as “ethics” is simply his own, sectarian religious belief.³

I doubt very much that Professor Stone actually investigated the President’s Methodist faith and discovered that its creed included the protection of embryos. His allegation of a religious doctrine appears to come, fairly enough, at the end of a process of elimination. If science, reason, and the like cannot begin to explain the President’s action, are we not justified in thinking that he must be basing his decision on some sort of supernatural belief, e.g., that God has inserted a soul into that little embryonic dot?

There’s a deep truth at the base of Kinsley’s puzzlement and Stone’s leap to faith. Nothing can be a certain kind of thing until it possesses the form of that kind of thing, and the form of a thing under construction just plain isn’t there at the beginning of the construction process. It isn’t there because that form is being gradually imposed from the outside and the persons or forces doing the construction have not yet been able to shape the raw material into what it will eventually be. The only way the form or essence of a human being could be there at the beginning of a gestational construction process would be if that form were completely spiritual and inserted whole into the newly conceived embryo, like a Platonic sort of soul, disconnectable from the body.

Dalton Conley, by the way, did not argue that the fetus had no value because it was still under construction. He claimed, rather, that the fetus

³ Geoffrey Stone, “Religious Rights and Wrongs,” *The Huffington Post* (blog posted July 22, 2006), accessible at http://www.huffingtonpost.com/geoffrey-r-stone/religious-rights-and-wron_b_25594.html (last visited June 1, 2007); see also *Chicago Tribune* (July 26, 2006).

has some value, precisely as an individual under construction.⁴ We might say that it has value as an important work-in-progress. Abortion may not be murder because a human individual hasn't yet been constructed, but it's not good to destroy anything well on the way to being something that we really care about. If the entity on the assembly line were, say, a Corvette-To-Be and if we really loved Corvettes, we would feel bad about destroying it even part-way through the construction process. Suppose (before the days of computers) a colleague were composing an article and I destroyed it after he was a third of the way through. It might be true that no one would have called it an "article" yet, but I still did something bad because it was a meaningful work-in-progress. I think that this explains much about the feelings of those who say that there is something wrong with abortion but that it still isn't murder.

Constructionism may well be a sensible surmise, especially for those unfamiliar with modern science.⁵ Its pedigree is certainly impressive. For example, Thomas Aquinas (following Aristotle) was a constructionist as to early pregnancy, imagining the embryo to be formed by outside forces during that first period. He opposed early abortion but did not consider it

⁴ Conley wrote that "most Americans...do not think that a fetus is the same as a person, but neither do they think of it as part and parcel of a woman's body like her appendix, her kidney, or a tumor. They see a fetus as an individual under construction."

⁵ Studies have shown constructionism to be natural in young children. Children at the "artificialism" stage of cognitive development have been called "manufacturers" in that they tend to think of reproduction in terms such as these: "You just make the baby first. You put some eyes on it. You put the head on, and hair..." A.C. Bernstein & P.A. Cowan, "Children's Conceptions of Birth and Sexuality" in *Children's Conceptions of Health Illness, and Bodily Functions*, ed. R. Bibace & M.E. Walsh (San Francisco CA: Jossey-Bass, 1981), p. 14. A subsequent study found this tendency to hold across four cultures, with Jesus, God, the doctor, or the father doing the manufacturing. See R.J. Goldman & J.D.G. Goldman, "How Children Perceive the Origin of Babies and the Roles of Mothers and Fathers in Procreation: A Cross-National Study," *Child Development* 53 (1982): 491-504, at p. 494. While the researchers in the first study asked carefully "How do people get babies?" (p. 13), the later researchers themselves seem to have fallen into constructionist thinking, for they asked the children "How are babies made?" (p. 493).

murder.⁶ Even today, many believing Christians and Jews may base their aversion to abortion on a kind of reverence for God's work-in-progress rather than on the idea that abortion is actually murder. After all, the Bible speaks many times about God forming us in the womb, which is a construction idea. Job exclaims, for example, "Didst thou not pour me out like milk and curdle me like cheese? Thou didst clothe me with skin and flesh, and knit me together with bones and sinews."⁷ It might be very wrong ever to interrupt God's awe-inspiring construction project, but it can't count as murdering a human being who hasn't yet been knitted together.

Of course, a constructionist observer, whether secular or religious, might see the essential bodily form as having been assembled early in pregnancy, perhaps by ten weeks or so, when all organs are in place. That is, a constructionist could consider the early stages of gestation to amount to sufficient construction. After those stages, the child would have been assembled into a human form, and so abortion would indeed count as homicide.

There is a special relevance of the construction idea to the embryonic stem cell debate. The peculiar intermediate sort of dignity of a work-in-progress, e.g., of a Corvette-To-Be, comes from the fact that it is being formed from the outside, that it is on the way to becoming something that we care about. In its early stages, it has no intrinsic value. It gets its definition and meaning not from its own form but from the form in the mind of its maker. Thus, if our colleague decides early on not to complete that article, of what value are the first few sheets of paper upon which he has written? They just become scrap; we can turn them over and use the back of the sheets for grocery lists, or fold them into paper airplanes. If the factory making the Corvette-To-Be shuts down, those two pieces of

⁶ For a fine survey of the (often constructionist) ideas of human development held throughout history, see David Albert Jones, *The Soul of the Embryo* (New York: Continuum, 2004).

⁷ Job 10:10-11 (Revised Standard Version). See also Psalm 139: 13-14. But God elsewhere reveals that He knew us *before* He formed us in the womb (Jeremiah 1:5.), so the Bible could be taken to say that we exist in some way prior to God's construction of our body, perhaps as the Platonic sort of soul mentioned above.

metal left at the beginning of the assembly line likewise become scrap. You can use them for whatever you want, for the simple reason that they are not a Corvette-To-Be any more. An embryo conceived outside the womb—with no plans to implant it so that it could be born—is even worse off. It gains little or no work-in-progress dignity to begin with, and work-in-progress type dignity is all that it can ever have for Conley and those who agree with his construction model of gestation.

This seems the only reason that people like Orrin Hatch, John McCain, and other senators who are strongly opposed to abortion, even in early pregnancy, can feel free to vote for embryonic stem cell research funding. They must think that an intrauterine fetus or embryo is a great religious or non-religious⁸ work in progress, and thus shouldn't be aborted, even when just recently conceived, but only because it is under construction. Since the thousands of frozen, test-tube-generated embryos that scientists want to use for experiments are not under construction, are just scrap left over from IVF treatments, they can be recycled without a qualm.

DEVELOPMENT AS AN ALTERNATIVE TO CONSTRUCTION

Despite the great explanatory power of Conley's construction metaphor for an understanding of contemporary life-issue debates, it is radically misleading concerning the nature of gestation. It is in fact not true that the bodies of living creatures are constructed, by God or by anyone else. There is no outside builder or maker. Life is not made. Life *develops*.

In construction, the form defining the entity being built arrives only slowly, as it is added from the outside. In development, the form defining the growing life (that which a major Christian tradition calls its "soul") is within it from the beginning. If Corvette production is cancelled, the initial two pieces of metal stuck together can become the starting point for

⁸ Ronald Dworkin develops at some length the idea that a fetus has a non-religious value because of what is being invested in it. See his *Life's Dominion: An Argument about Abortion, Euthanasia, and Individual Freedom* (New York NY: Knopf, 1993). For a lengthy argument against Dworkin's theory, see R. Stith, "On Death and Dworkin: A Critique of His Theory of Inviolability," 56 *Maryland Law Review* 289 (1997).

something else, perhaps another kind of car, or maybe a washing machine. But even if you take a human embryo out of the womb, you can never get it to develop into a puppy or a guppy.

Life is not formed or defined from the outside. Life defines and forms itself.⁹ Its form or nature is there, in its activated genes, and it begins to manifest itself from the very first moment of its existence, in self-directed epigenetic interaction with its environment. Embryos don't need to be molded into a type of being. They already are a definite kind of being.

This idea of development—as the continual presence but gradual appearance of a being—lies deep within us. Look at the word “development” itself. To “de-velop” is to unwrap, to unveil—the opposite of to “envelop.” If you look at other Western languages, this is true, too. In German, to develop is *ent-wickeln*, in contrast to *ein-wickeln*, to wrap up. In Spanish, to develop is *desarrollar*, while *arrollar* is to roll up. In development, we unwrap or unroll or make manifest what was previously rolled or wrapped up and thus veiled from sight. That is the fundamental idea of development in our consciousness.

In other words, outward appearance has much less to do with the identity of a developing creature, human or otherwise, than it has to do with the identity of something under construction. Let's say, for example, that you have a valuable tree, a quince tree. I might well say to you, “I remember seeing that tree five years ago when it had just sprouted from the ground,” expressing the plant's continuity of being despite tremendous change in appearance. But I would no longer see that continuity if you responded, “No, that was an apple tree you saw sprouting. While the apple tree was growing, I cut it off at the trunk and grafted a quince tree trunk onto it.” The resulting grafted tree would not be considered the same kind of plant, the same kind of organism, as that first sprout, but some kind of hybrid. Grafting is making, constructing, and something that has been made was simply not in existence before its parts were put together.

Here is a non-biological example of development (like the car we used as a non-biological example of construction). Suppose that we are back in the pre-digital photo days and you have a Polaroid camera and

⁹ See S. Kripke, *Naming and Necessity* (Cambridge MA: Harvard Univ. Press 1980) for more on the idea of “natural kinds” to which our concepts conform.

you have taken a picture that you think is unique and valuable—let’s say a picture of a jaguar darting out from a Mexican jungle. The jaguar has now disappeared, and so you are never going to get that picture again in your life, and you really care about it. (I am trying to make this example parallel to a human being, for we say that every human being is uniquely valuable.) You pull the tab out and as you are waiting for it to develop, I grab it away from you and rip it open, thus destroying it. When you get really angry at me, I just say blithely, “You’re crazy. That was just a brown smudge. I cannot fathom why anyone would care about brown smudges.” Wouldn’t you think that I were the insane one? Your photo was *already there*. We just couldn’t see it yet.

That’s just what pro-lifers think when people say, “How can a microscopic dot matter to President Bush?” That microscopic embryo is a human being in the first stage of its development. We each started off looking like that. And each of us has been the same organism and the same kind of being at every stage of our development. To prove that something is a quince tree, we can just wait and see whether it bears quinces. If it does, we know it was always a quince tree, even early on when it didn’t look like one or yet bear fruit.

The nature of development is the reason that the German Constitutional Court has twice held that there is a right to life throughout pregnancy.¹⁰ That Court emphasizes over and over again in its opinions that the unborn child is “self-developing” and therefore cannot be said to come into being at some stage, as might happen with a thing being constructed. The Court also points out that almost all of us adopt the developmental understanding of life once a child has been born, for the peculiarly valuable characteristics that we identify with humanity (e.g.,

¹⁰ See Judgment of 25 February 1975, 39 BVerfGE 1 (First Senate) (F.R.G.), translated in Robert E. Jonas & John D. Gorby, “West German Abortion Decision: A Contrast to *Roe v. Wade*,” 9 *John Marshall Journal of Practice & Procedure* 551, 605-84 (1976), and see Judgment of 28 May 1993, 88 *Entscheidungen des Bundesverfassungsgerichts* [BVerfGE] 203 (Second Senate), 1993 *Europäische Grundrechte Zeitschrift* [EuGRZ] 229. Note that the Court was not asked to consider the status of the pre-implanted embryo, though its reasoning would seem to apply equally prior to implantation, since self-development begins during or just after fertilization. And German law does in fact protect even non-implanted embryos against lethal experimentation.

reason, free choice, human love) do not appear until some time after birth. Thus, if the newborn infant were somehow thought of as being constructed, we would have to say that it is not yet human until those traits are in place. But we give the child “credit” for those traits long before they show up because we know that they are already part of its nature, that they are already developing within it.

Why do we sometimes find the constructionist view plausible, while at other times the more accurate developmental view seems to make more sense? The constructionist view is intuitively appealing, I think, whenever the future is shut out of our minds, even if we are using the scientifically correct term “development.”¹¹ Whenever the embryo or fetus is described in terms simply of its current appearance, it is easy to fall into constructionism. For example, if a snapshot is taken in which an embryo looks like just a ball of cells, its dynamic self-direction is obscured. It seems inert. Since an entity that had merely embryonic characteristics as its natural end state would indeed not qualify as a human being, it is easy

¹¹ If development is imagined as just a sort of “self-construction,” an embryo’s identity can appear to be limited to the form so far constructed, ignoring its future development. Reframing development as self-construction does not in the end, however, provide a good argument against the embryo’s humanity. The embryo must already be human in order to construct itself as human. A non-living entity under construction lacks the identity of its final form because that form must still be imposed from the outside. But the embryo supposedly “constructing itself” possesses the fundamentals of that form within itself from its beginning, giving it a human identity. Put in scientific terms, an active genotype would have to be conceptually and physically separate from a passive phenotype, and the phenotype would have to count as a thing in itself apart from the genotype constructing it, in order for the idea of self-construction to negate the identity of the human embryo as an individual human being. But this sort of dualism (the separation of a developing organism into constructor and constructee) is highly strained, to say the least.

Another way to shut out the future of the embryo by re-imagining its development as a kind of construction is to call that future “mere potential.” A piece of wood may be potentially a beautiful sculpture, but it gets no “credit” for that beautiful shape until the potential has been realized. So, too, an embryo might not seem to deserve “credit” for a development not yet realized. The fallacy in this reasoning is that the wood is a wholly passive potential; its form lies wholly in the future. The humanity of the embryo, however, is already present and active. To call its future merely potential is thus highly misleading.

to imagine that the entity in the snapshot is not human. Scientific knowledge of its inner activity may not be enough to overcome this impression, for it is hard to recognize a form still hidden from view.¹² However, when we look backwards in time or otherwise hold in mind a living entity's final concrete form, development becomes intuitively compelling. For example, when we saw the mature (ungrafted) quince tree, we could immediately recognize it as the same plant that had sprouted there five years before. Again, knowing that the developing Polaroid picture would have been of a jaguar helped us to see that calling it a "brown smudge" was inadequate. Thus the most arresting way to put the developmental case against embryo-destructive research would be something like this: "Each of your friends was once an embryo. Each embryo destroyed could one day have been your friend."¹³

CONSTRUCTION VS. DEVELOPMENT: THE IMPACT ON EMBRYOS

Now, how does this tie into the embryonic stem cell debate? We saw before that the biologically incorrect construction model of gestation led nevertheless to a certain valuing of the fetus as a kind of work-in-progress. I think that we see that kind of valuing not just in the abstract but in many people's relationship to the fetus they abort. Abortion is a human tragedy.

¹² Political scientist Jon Shields of Cornell University has faulted proponents of embryonic stem cell research for using snapshots and external descriptions of embryos that obscure their inner coherence, integrity, and self-direction as organisms. "The Stem Cell Fight," *Society* 44/4 (June 2007): 18-21.

¹³ Note that this argument will not end the life debates. It will at most convince someone that the embryo is a human being. Thus someone who previously thought that human beings have dignity once they are constructed (in mid-pregnancy, for example) might be brought by this argument to recognize that same dignity from conception. If I am right that many Americans are the sort of constructionists who believe in human dignity but by mistake fail to recognize it in early pregnancy, then this argument can generate a significant consensus against killing embryos and fetuses. But it cannot convince those who have steeled themselves to deny that there is any dignity in simply being human. A consistent utilitarian, for example, aims only to cause happiness and to prevent unhappiness. He does not see a fundamental difference between humans and animals, nor does he see anything intrinsically wrong with painless killing of either.

Many have abortions because they think that they have a duty as parents to take care of their nascent child if they let the child be born; therefore, they have the abortion because they don't feel that they are up to doing their duty. Despite its violence, abortion has a human and a familial aspect to it, inasmuch as it acknowledges a parental relationship and a parental duty. The aborted fetus dies at least with the dignity of having been for a little while on the way to being someone's cared-for child. The fetus can thus be mourned by his or her parents. This moderate sadness over abortion, felt by many constructionists, provides a political middle ground in the abortion debate, a basis for treating abortion as regrettable, though not nearly as regrettable as it is for developmentalists.

The clash of the constructionist model with the developmental model is, however, much greater with regard to embryo research than it ever was with regard to abortion. Both models, as we have seen, may find something to regret about abortion. But they split radically with regard to the killing of extra-uterine embryos.

In contrast to how they feel about aborted fetuses, pure constructionists care little or nothing about embryos destroyed just after they have been conceived or cloned in a test tube. Never having been works-in-progress, such embryos lack any relationship to a future human form, or to their parents, and can just be used as scrap.

Yet from the very beginning, the identity of a *developing* human being remains constant. The value of that jaguar photo changes hardly at all from the time that it is snapped to the moment when it is fully developed. Thus, from a developmental viewpoint, embryonic stem cell research is not less but more dehumanizing than abortion. Embryos subject to research are first commodified and then destroyed for body parts. No one mourns their deaths, even though they are just as much our younger brothers and sisters as are human beings at other stages of development—fetuses, infants, toddlers, teenagers. In this sense, their equal human dignity is far more radically negated than it is by abortion.

DECONSTRUCTION VS. REVELOPMENT: THE IMPACT ON THE DISABLED

The construction vs. development clash may also help us to clarify our mutual misunderstandings regarding euthanasia. If a Corvette is gradually deconstructed (dismantled), it eventually ceases to merit the appellation

“car.” If you were given a disassembled Corvette body, without the motor or wheels, would you feel that you had been given a “car”? What if you got only a chunk of the frame? True, Corvette-lovers might still have a certain reverence for that body, or even for a piece of the frame, because of what it used to be part of, so that wantonly trashing it (for no good purpose) could still seem to them wrong. But it wouldn’t seem nearly as bad as destroying a whole car. (Remember, there’s nothing wrong with this thinking with regard to artificial creations like cars. Once the pieces necessary to form a car are gone, that form itself is gone and so the car is truly gone.)

Life, however, is different. The form (nature, design) of a living creature both precedes and perdures independently of its appearance and function. That activated form is imbedded within a living being’s every part and every cell (in its active DNA). As long as a disabled creature remains anything—that is, as long as it holds itself together in some way, rather than just becoming a collection of non-integrated objects—that is, as long as it remains *alive*—it remains what it always was from the beginning of its development. A quince tree that loses its ability to bear fruit never becomes an apple tree, or anything other than a quince tree, as long as it lives.

Indeed, our photo analogy fails fully to capture the nature of life. A photo does not hold itself together. If you scratch it after it has been developed, it won’t even try to repair itself. Like a constructed entity, it is merely an assemblage of parts, without a continuing inner force maintaining its form. Since a living creature is not only an assemblage of parts, it actually cannot be merely constructed. Both ancient and modern constructionists switch (and have to switch) to the developmental understanding at some point during gestation, or soon thereafter, in order to account for the fact that living human beings do have this active inner unifying form, until the day they die.

A deconstructionist might forget this truth and claim misleadingly that someone in a so-called “persistent vegetative state” is no longer a human being, having lost forever what we think special about our species. But in point of fact such a person never loses the unifying force that strives to express her humanity, until the moment she dies. Every part of her wasted body, even her very genes, actively, though in vain, strives to repair her injuries and to express her natural reason, will, and connection

to those whom she has loved. She never becomes something else, such as a vegetable. That's why her condition is tragic, because she has a human nature that is utterly frustrated. We don't find real vegetables tragic ("Poor little heads of lettuce. Look how they're just vegetating!") because they are able to exhibit their inner design or nature.

What word could we give to the process by which we lose the ability to manifest what we are? Just as "development" is an unwrapping or unveiling of a living form present from the beginning, I propose that the word "revelopment" be used to express the way in which that form can become veiled—though always still present. Revelopment does not seem so negative as words like "disabled" or "diminished," nor so much a judgment of being itself. As a result of accident or of age, we simply become no longer capable (in this world) of expressing well, or expressing at all, the speech, reason, choice, and love for which we remain formed. Our humanity has once more become partially hidden, wrapped up again, re-veiled, redeveloped.

