

When Does the Fetus Become a Person? A French Retrospective Study and Review of the Literature of Rituals Related to Medical Interruptions of Pregnancies, *in-utero* Fetal Death, and Late Miscarriages

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Abstract

Background: To best accompany bereaved couples facing a dead fetus, as a midwife or a physician, and understand more precisely what they live, it seems important to ask us on what represents for the mother, parents, this little being whom they had to separate. This brings us to the question: what represents this fetus lost for parents? How is he regarded by contemporary society? Do parents feel respect or revulsion to the body of the deceased children? What is the place of these “babies” in our society?

Objective: The objective of our study was to determine, in relation to the term, the beginning of “humanity” for the parents of a dead fetus. We wanted to determine a term (in the medical sense), if it exists, which can be considered the body as “sacred” (not just an inert entity) from the point of view of the parents.

Material and Methods: The study was retrospective and single site: it was carried out at the hospital Necker (Paris 5). Anonymous data collection was carried out from September 2011 to March 2012. Inclusion criteria were: medical interruption of pregnancy, *in-utero* fetal death, and late miscarriage. In order to define some “humanity” of the fetus from the point of view of the parents, from the 9 binary variables collected, four independent qualitative scores were constructed: “Announcement”, “Vision”, “Investment” and “Offering”.

Results: The study population included 310 cases, corresponding to fetus expelled between September 2010 and November 2011. On all of those fetal deaths, we distinguished three different modes: 233 medical interruptions of pregnancy (75.16%), 57 *in-utero* fetal deaths (18.39%), 20 late miscarriages (6.45%). After a statistical analysis, the average term of “humanity” was determined as around 180 days (95%CI [167;192]).

Discussion: Facing this term, we try to answer some questions: is the fetus a patient like any other? What is the place of the fetus in the society? Is there a special work of mourning for fetal deaths? Does-it change anything to see and feel the child? What is the place and importance of the fetus for the main religions? Practically, does-it change anything to the legal status of the fetus in France and elsewhere?

Keywords: Biomedical ethics; Anthropology; Fetus status; Fetal loss; Abortion; Death before birth; Cadaver status; Religion

Introduction

Today, prenatal diagnosis continues to improve thanks to the progress of a more powerful medicine, a real medical paternalism is observed [1]: the number of medical interruption of pregnancy increases while society tolerates more misunderstandings about sudden death [2]. Although the perinatal mortality rate decreases, each situation always remains difficult to cross.

To best accompany bereaved couples facing a dead fetus, as a midwife or a physician, and understand more precisely what they live, it seems important to ask us on what represents for the mother, parents, this little being whom they had to separate. This brings us to the question: what represents this fetus lost for parents? How is he regarded by contemporary society? Do parents feel respect or revulsion to the body of the deceased children? What is the place of these “babies” in our society?

This research will be focused on the following problem: is there a term, medical and scientific, for which the status of the fetus changes in the eyes of his brood [3]? Three hypotheses are following this question: this time “where all switches” corresponds to the period during which the mother felt her baby move [4], then when she sees it for the first time to the initial ultrasound of pregnancy [5] or, when the woman

announces to his spouse, his entourage “happy event” (Association Enfants sans nom-Parents endeuillés, 2012 ; Association Clara, 2012 ; Association Petite Emilie, 2012)?

Material and Methods

Definitions

The *in-utero* fetal death most often occurs within the third trimester of pregnancy. The etiology remains mostly unknown; however the most common causes are fetal malformation, congenital infection, immune factors, maternal illness, and obstetric complication. The diagnosis

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Received July 05, 2013; **Accepted** August 07, 2013; **Published** August 15, 2013

Citation: Charlier P, Le Gentil AR, Brun L, Hervé C (2013) When Does the Fetus Become a Person? A French Retrospective Study and Review of the Literature of Rituals Related to Medical Interruptions of Pregnancies, *in-utero* Fetal Death, and Late Miscarriages. *Anthropol* 1: 105. doi: [10.4172/2332-0915.1000105](https://doi.org/10.4172/2332-0915.1000105)

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arises in the absence of fetal heart sounds, confirmed by the absence of heartbeat on ultrasound. After 48 hours, we can support the diagnosis based on the overlap of the bones of the skull, an aspect in dual outline skull and a flattening of the thorax.

Late miscarriage occurs between 14 weeks of amenorrhea (term prior to which there will be preferentially spontaneous miscarriage if the termination of pregnancy occurs spontaneously, corresponding also to the maximum term for voluntary interruption of pregnancy if the judgment of pregnancy has been decided by the mother or the father, according to French law) and 24-25 weeks of amenorrhea (threshold of viability, i.e. minimum term to resuscitate newborns). It is defined as the spontaneous fetal expulsion. The most frequent causes are chromosomal anomalies, malformations, and infections.

Lastly, the medical interruption of pregnancy, formerly called "therapeutic termination of pregnancy", can be performed at any time in pregnancy. It is carried out, in France, according to strict conditions based on the parental demand and full compliance with the legislative framework. The Veil law decriminalizes the voluntary interruption of pregnancy in 1975 (Law of the 17th of January 1975) and was modified in 1999 (creating the therapeutic interruption of pregnancy), and in 2001 (adding the fact that the decision to medical interruption of pregnancy must be taken in a accredited Prenatal Diagnosis Centers). Article L2213 of the French Code of Public Health specifies two cases justifying the realization of a medical interruption of pregnancy: "when the unborn child is identified as a carrier of pathology of recognized gravity as incurable at diagnosis" or "mother's mental or physical health is seriously at risk". Some terms and conditions are given: no period is required, any decision of medical interruption of pregnancy must be validated by two doctors members of a multidisciplinary antenatal diagnosis centre (list of the centers well defined and controlled with referrers registered with the Ministerial tutelage). If the medical interruption of pregnancy is requested for maternal case, the authorization requires three people including a physician chosen by the patient, a referent of the centre, and a third person held to professional secrecy.

Studied population

The study was retrospective and single site: it was carried out at the hospital Necker (Paris 5). Data collection was carried out from September 2011 to March 2012. Inclusion criteria were: medical interruption of pregnancy, *in-utero* fetal death, and late miscarriage. Exclusion criteria were: aspiration, voluntary interruption of pregnancy, spontaneous early abortion, living born children.

The recruitment of patients was done manually and anonymously via the directory of the mortuary room, but also via a special computer software (DIAM) compiling fetopathological and maternity data from the hospital. The selected data were related to the term, weight, sex, the state of the child at birth, the mode of death, the realization of an eventual autopsy, the cause of death, the presence of an eventual surname given to the fetus, the declaration of birth of the child to the Civil State, the presence of the parents in the obstetrical room (to see the fetus quickly after the expulsion), the destination of the body (cemetery of cremation with hospital products), the visit of the parents to the dead fetus in the mortuary room, the investment of the parents, the gift of parents, the participation of parents in the care in the mortuary house, the presence of any religious ceremony or of a religious member.

Statistical analysis

In order to define some "humanity" of the fetus from the point

of view of the parents, from the 9 binary variables collected, four independent qualitative scores were constructed: "Announcement", "Vision", "Investment" and "Offering". Each score, reflecting separate characteristic toward the dead fetus, were constructed as follow:

- "Announcement" score was defined using responses to the presence of an eventual surname and the declaration of the birth to the Civil State (therefore fetus has a given name). In France, if the birth is at 22 weeks or after, or if the birth weight is greater or equal to 500 g, declaration to the Civil State is mandatory, thus, in those cases, presence of a surname and declaration to the Civil State could not be considered reflecting parent's "humanity". Then, except for term of birth ≥ 22 weeks of amenorrhea or birth weight ≥ 500 g, if the fetus has not received a surname and has not been declared to the Civil State, score was coded to 0; if the fetus received a surname but has not been declared to the Civil State, score was coded by 1; if the fetus was declared to the Civil State, score was coded by 2.

- "Vision" score was coded 0 if parents have never seen the fetus in the obstetrical room, nor in the mortuary room; 1 if parents have seen the fetus either in the obstetrical room, or in mortuary room and 2 if parents have seen the fetus both obstetrical and mortuary rooms.

- "Investment" score was coded 0 if the parents have not organized any funeral, and have not been warned from the departure of the body (they therefore transmitted the body to the hospital who eliminated it as anatomical products); 1 if the parents have not organized any funeral, but have been warned from the departure of the body to the place of cremation; 2 if the parents organized a funeral followed by a cremation; and 3 if the parents organized a funeral and proceeded to a religious burial.

- "Offering" was coded 0 if the parents gave nothing to the fetus and did not proceeded to any religious act and 1 if the parents gave something to the fetus and/or wished the practice of a religious act.

High class of each score was related to a benevolent parents' attitude towards their dead fetus.

The Chi2 test was used to test differences in scores 'frequencies. In order to establish any relationship between the term of pregnancy and the scores, we first used univariate linear regression analysis. Then all scores with $p < .20$ were included in multivariate regression model. Analyses were performed using SAS version 9.2 (SAS Institute, <http://www.sas.com/>). All statistical tests were two-tailed; a p-value of less than 0.05 was considered significant.

Results

The study population included 310 cases, corresponding to fetus expelled between September 2010 and November 2011. On all of those fetal deaths, we distinguished three different modes: 233 medical interruptions of pregnancy (75.16%), 57 *in-utero* fetal deaths (18.39%), 20 late miscarriages (6.45%).

- The four scores were described in Table 1. From the 32% of parents, not obliged to declare their fetus birth, only 9% did it. Since 68% of the parents had to declare him, taking into account that score is awkward to determine a term value where a beginning of "humanity" was noticed. Thus 'announcement' was not included in multivariate analysis. More than 20% of parents gave something to the fetus and/or wished the practice of a religious act, roughly the same percentage presented high scores (2 and 3) to "investment". If parents have seen the fetus in obstetrical or/and mortuary rooms then, investment was more important (Chi2 test, $P < .0001$) and more parents gave something

to the fetus and/or wished the practice of a religious act (Chi2 test, $P < .0001$). This last consideration was also related with an increase in the investment (Chi2 score, $P = .002$).

- Associations between each score and gestational term were presented in Table 2. As expected, excepted for announcement score, gestational term of each class corresponds to a null score was significantly (or marginally significantly) lower than the higher one. Indeed, the term associated with absence of investment (class 0) was significantly diminished of -31 days (95%CI [-46.8;-14.8], $P = .0002$) comparing to the one associated at the highest score. It was of -17 days (95%CI [-37.9; 3.7], $P = .11$) for the vision score, and -11 days (95%CI [-23.4;1.5], $P = .09$) for offering score. Reference for announcement score was the obligation of declaring then higher decreasing for other classes were estimated (around -57 days). However, if considering only the ones that were not obliged, no differences were estimated. For further analysis, only, vision, investment and offering scores were considered. From Table 2, it could be noticed that for vision, no significantly

difference was observed, thus, for multivariate analysis, 2 and 1 classes were grouped. In the same way, 3 and 2 classes of investment were too. Including those three scores in a multivariate models, lead to only one significant decrease in the term, of -16 days (95%CI [-31.8;-0.73], $P = .04$) for parents who have not organized any funeral and have not been warned from the departure of the body Table 3. In relation with previous model, a final one, including two binary scores was estimated. No “investment” was defined if the parents have not organized any funeral but could have been warned from the departure of the body to the place of cremation and no “vision” as previously, that is the parents have never seen the fetus in the obstetrical room, nor in the mortuary room. For both scores, no “investment” and no “vision” significantly decreased the term of the body, of, respectively -15 days (95%CI [-29.1;-0.21], $P = .048$) and -12 days (95%CI [-23.2;-0.41], $P = .04$) for an average term of “humanity” of 180 days (95%CI [167;192]).

Discussion

Is the fetus a patient like any other?

According to the medical literature, questions relative to the fetus represent a subject of high controversy: should it be considered as a full person? Or is that entity an inert one? For some, when death occurs *in-utero* or within the few minutes following his birth, the fetus is “not less a child for the couple who conceived it, and a patient for the maternity team that took care of it” [6]. For others, among other things, thanks to the last implementing prenatal therapy, the fetus is no longer a “stowaway” or “a non-identified fetal object” but became a full human being that medicine obstinately, often successfully, protects” [7,8]. Some authors classify the fetus into two categories: those which are intended to be aborted and are therefore not considered as “patients”, for which there is no ethics of research; those who are devoted to become “children” for which any research cannot be performed because it would be negative to the child; this is clearly a vision of fetus as a patient at the outset [9]. This fetus-physician relationship is covered as evidence “that the fetus is a patient has become a banality” [10].

Most obstetricians would fetus close to the term as having a moral status comparable (if not identical) to that of a newborn [11]. Will there be therefore a moment when “everything changes”? Perhaps not in the spirit of practitioners, but of the parents.

What is the place of the fetus in the society?

For French practitioners and families, the human fetus may be considered as a potential human being who has not yet acquired all the human rights [12]. This theory refers to the respect for every human person imposed by the universal Declaration of Human Rights which

Scores	Number of cases	Percentage (%)
Announcement (n=309)		
0	70	22.63
1	14	4.53
2	27	8.74
Obligation*	198	64.08
Vision (n=251)		
0	101	40.24
1	130	51.79
2	20	7.97
Investment (n=310)		
0	173	55.81
1	83	26.77
2	19	6.13
3	35	11.29
Offering (n=310)		
0	247	79.68
1	63	20.32

* Corresponding to term of birth ≥ 22 weeks of amenorrhea or birth weight ≥ 500 g.

Table 1: Repartition of the four scores.

	Estimation of regression parameter	Standard error	P*
Intercept	184.77	2.50	
Announcement (ref=obligation)			
0	-60.72	4.89	<.0001
1	-55.27	9.73	<.0001
2	-57.96	7.22	<.0001
Intercept	177.20	9.70	
Vision (ref=2)			
0	-17.13	10.62	.11
1	-2.07	10.42	.84
Intercept	185.46	7.44	
Investment (ref=3)			
0	-30.82	8.16	.0002
1	-17.41	8.87	.05
2	-5.09	12.55	.68
Intercept	172.00	5.67	
Offering (ref=1)			
0	-10.94	6.36	.09

*P value of the test comparing each class to the reference one.

Table 2: Relationships between gestational term (in days) and the four qualitative scores – univariate analysis – Four linear regression models.

	Estimation of regression parameter	Standard error	P*
Intercept	186.26	7.69	
Vision (ref=1)			
0	-8.99	6.28	.15
Investment (ref=2)			
0	-16.29	7.94	.04
1	-11.32	8.34	.17
Offering (ref=1)			
0	-6.97	6.79	.31

* P value of the test comparing each class to the reference one.

Table 3: Relationships between gestational term (in days) and the tree qualitative scores – multivariate analysis – One linear regression model.

Religion / Spiritual tradition	Period
Catholicism	Conception (but maturity 40 th day after fecundation for males, 60 th day after fecundation for females)
Protestantism	Conception
Orthodoxy	Fecundation
Islam	40th day after fecundation
Judaism	40th day after fecundation
Buddhism	Desire of children expressed by the parents

Table 4: Life-time when the fetus is considered as someone with the main religions.

applies everywhere and for anybody, even within the hospital... and for individuals not yet exteriorized out of the mother's intimacy. Maybe was-it led by this classical recommendation by Emanuel Kant: "Always act so that you treated humanity, in your person, as in that of others, always at the same time as an end, never only as a way" [13]. According to the French Laws of Bioethics, "the fetus is fully part of the flesh of the mother" [14]. It is not a person and has no legal status: it is a "person in the making". It acquires the status of full person only at birth. The National Advisory Committee of Ethics indeed stated that "the fetus is a potential person" [15].

Some consider that fetuses have an attenuated moral status, so attenuated that it is permitted to kill when it is beneficial to people. However as the fetus that will be allowed to develop in people, it is not allowed to do anything that would be detrimental to the person that they will become [11]. This position is strongly opposed to the feeling that the fetus is already someone, and that "being a human potential is to be someone" [16]. This refers to the definition of the human: philosophers describe that one must be aware to be a person: is respectable what is characterized by reason, otherwise it is just a thing. This therefore brings the question: should we consider children as persons [11] and especially very young ones?

Postulating that the fetus is not yet a real individual [9], it recognizes that there is no independent moral status for the fetus, but a moral consideration on this being in the making increasing with the term of pregnancy. Its maturation and the relative proximity acquired ultrasound after ultrasound may explain this gradual increase in consideration with the advancement of the term. The fetus is then considered as a future person. Therefore much attention has to be given to its well-being. The negative point of this theory [11], is the high culpability given to women who cannot complete their pregnancy for medical reasons or significant personal difficulties. This debate on the status of the fetus may call into question the right to abortion that every woman has.

Epidemiology

The rate of stillbirth is often overlooked or underestimated, around 4 per 1,000 total births in France in 2011 (WHO, 2011; INED, 2011), compared to 9.1 per 1,000 live births in 2008 [17]. It is the highest in Europe. This could be a direct consequence of French active policy of screening for congenital anomalies, and the practice of relatively late medical interruptions of pregnancy. Such rates correspond to 3,000 and 5,000 France stillborn children per year.

The incidence of medical interruptions of pregnancy is estimated to 5,200 per year in France, representing 12% of all perinatal mortality, for a total of 780,000 live births per year in France [14]. There are 700 to 800 *in-utero* fetal deaths each year in France; late term abortions are

difficult to identify, but would represent around 10% of all diagnosed pregnancies [14].

A special work of mourning for fetal deaths?

Beyond the grief caused by the loss of a loved one, a mental elaborated development exists, so that mourning can arise [18]: the work of mourning [19], i.e. a universal step [20]. Its classic definition is a psychic development that operates from real traces left by the dead, and that the survivor takes over and rejects [21]. Mourning occurs in three successive stages [22]: a stunning associated with the denial and a relative shock, then a reactive depression, and finally the acceptance with orientation to the future [23].

Pregnancy and infant/fetus death is delicate in the sense where it relates to people who have never shared the daily life of the family: they are the "subjects in the making", "potential children" [24]. This experience is the loss of someone who could not live. The death of a fetus is a mater of life felt, and the imagined child is difficult to set aside.

Some parents sometimes need to materialize the loss of the body: a worthy body treatment, the opportunity to bury these babies within the family, being able to declare the child, give him a name, incorporate him on the family register, etc. All of this allows the parents to assign a symbolic existence to these children who have gone too early, but also some consideration (recognition?) in the eyes of the society, which may be morally important for the parents. Many psychoanalysts began to grant this: "practicing a burial act is putting words on the death, giving a name to the deceased is entering it within the family lineage, allowing to remember, preventing that it does not completely disappear from family memoirs, and ensuring that it is not unspeakable" [7]. But such a practice is not universal...for other parents, not knowing the details of the child permits to better consider the future and the arrival of any future children.

The loss of a child, issued from the body of the mother, is an amputation. The mourning of this loss has to pass through the acceptance that some wounds never heal completely, but that life will continue with scars. With all perinatal death, "it is the hope of a life that is removed and, with it, any hope of an individual" [25].

See and feel the child

For the parents, very early after the conception, this individual being in development is a full form of life: "the embryo or fetus must be recognized as a potential human person who is, or has been alive, and whose respect is binding on everyone" [15]. This is reinforced by the fact that today; fetal imaging techniques (i.e. classical and/or 3D ultrasonography) lead to an early "personification" of the fetus [5]. Visualization of the fetus with more details (number of fingers, fetus who sucks his thumb in the womb and plays with its umbilical cord, etc.), the hearing of the heartbeats, etc. are all participating in this personification. Often, after the fetal ultrasonography, the parents receive from the practitioner a print of the *in-utero* ultrasound image of the fetus, i.e. the first official picture of their child [4]. In addition, the French jurisprudence reinforces this personification of the fetus in calling "lifeless child" any fetus died at an early stage of development. The choice of the term "child" instead of "fetus" can induce mental from being in gestation to a potential reality [2]. This linguistic misuse (maybe intentional?) may hit the parent's emotional representations of the fetus that could be considered as a full child [26], causing a kind of higher suffering and a need of recognition in case of a loss of this entity. The progress of medical techniques permitting to see the detail of each

fetus associated (with the commercialization of some of these new techniques, such as 3D ultrasonography that some parents buy directly in order to see by themselves, at home, their future child and follow him during all the time of the pregnancy), would not be something negative by creating a dangerous tighter link with a barely formed – and still fragile – fetus?

Fetus and religions

As a professional, it is interesting to know different considerations of the fetus by various religions and spiritual traditions in order to best understand the reactions of the parents. For this, we have sought to distinguish the place each important spirituality adopts on this ethical issue [27-29]. Each religion has its point of view on the conception of life and “life in progress”, and, in fact, the perception of the fetus as a person is influenced by national and religious facts [30]. For example, is there a term for each religion from which the fetus is perceived as a full “person” Table 4?

Roman Catholic medical morality is based on the *Hippocratic oath*: “I will not give any abortive substance”. For Catholics, life is a gift of God, so one cannot affect life itself, according to the *Bible*. The magisterial of the Church, the Pope, in agreement with the bishops, always confirmed the respect for nascent life from its conception. Such right to life of an innocent human being is inviolable. According to Christian dogma, the date of maturity for an embryo is 40 days for males and 60 days for girls; this was determined in the Middle Ages by St. Thomas Aquinas, based on previously works by the Greek philosopher and scientist Aristotle. In any case, this religion does not recognize any right compromising the life of the embryo and fetus prior to this date. For every Christian, the embryo is regarded as a person in becoming, worthy of the right to life and the right of integrity.

Protestantism, regarded as a religion of ethics and responsibility, is designed to connect the life to the truth revealed by the Bible. Various protestant obediences may be united according to the following principle: it is said that human life is not pure biological process, but that it get humanized by projects, exchanges, love, and facts that give sense and engage those uttering them. For Protestants, the fetus must also be regarded as a potential individual.

For the Orthodox Committee of bioethics (Greece), as far as the beginning of the conception, the embryo is no longer a “fertilized egg”; it is a perfect identity that continually improved in what concerns the expression and organization of its phenotype. The embryo has all rights relative to any individual, life and eternity. It gets and develops its own identity just after the moment of fecundation.

One of the fundamentals of the *Koran* is the sanctity of the human being. Of after Muhammad, the breath of life (*el rouh*) is given after three months and a week *in-utero*. Thus any abortion before 100 days (after fecundation), in case of any anatomical defect, is lawful, as are all research or investigations on the embryo prior to this term. However, any intervention on a fetus over 120 days is regarded as a murder. Lastly, the embryo is not considered as a human being before the 40th day after the conception.

In Judaism, the human being is seen in its unity: the body and the spirit form an inseparable whole. Respect for life is absolute, sacred, and inviolable. However the Rabbinic communities do not classically consider the fetus as a living being. Human life has an infinite value because considered as a gift of God, and because man is made in the image of God. If Talmudic sources give no clear indication in the matter,

all the Rabbinical authorities agree to say that, for social and economic reasons, abortion is contrary to the Jewish laws. A fetus is formed from the 40th day after fecundation, before it is considered as only water. According to the Torah and the Talmud, predominant elements of the Jewish tradition, an abortion before this period is lawful; indeed, the divine spirit cannot enter within the spirit of this being prior to this date. As there is no supreme authority for Judaism (as the Pope for Roman Catholics), the points of view diverge a lot on therapeutic/medical abortion: most Rabbinical authorities would authorize an abortion in the case of any mother’s life in danger; others would accept it in the case of strong fetal sickness or serious malformation.

The spiritual tradition of Buddhism provides an extreme holiness to human life and any form of existence in general. Three elements are necessary for life: two gametes and the continuum of consciousness, which is a reflection of the passage of the soul from an individual to its new “body”, i.e. a reincarnation. Thus every embryo is the reflection of the reincarnation of an individual, and the essence of that individual must never be altered: the preservation of the DNA is fundamental. For Buddhists, life starts from the desire of child within the parents’ soul. Abortion is considered a suppression of life at any stage. Killing is the first (and worst) negative action, but, as for all action, its negative character could considerably be reduced if compassion or desperation motivated it. This philosophy/religion invites every “disciple” to protect life and give life with all the passion he can.

Legal status of the fetus in France

In France, medical advances have exceeded the legal reflection. The Law guarantees “respect for any human being from the beginning of life”, as stated explicitly in the law Veil (17th January 1975), confirmed by the Constitutional Council in 1994 [31]. But the status of the fetus before birth is a real legal vacuum [32]. One classically assigns the existence of every human being only from its birth, when it is considered viable and gave its first cry, meaning that he breathes independently. Birth is a biological (and legal) fact, and this fact must be reported to enter into the legal order. How to move between some who think that the fetus has an inalienable right to life and others who argue that the fetus is that a cluster of cells whose moral status is not different from that of other cells, or that it is a person of law but that it must be protected on behalf of humanity to fight in the meaning of life? The French Law does not define the embryo, but ensures a legal protection to it [32]. The designed child has rights, some acquired, others being the subject of birth: filiations, succession duties, receive donations or a legacy, etc. When it comes to the world, a heritage awaits him.

Conclusion

There is indeed a term for which the vision of an *in-utero* human being changes. Thus we see that there is a period of significant transition for human consideration of the fetus during pregnancy: it is placed around 180 days (= 25 weeks) of amenorrhea (95%CI [167;192]). As a matter of fact, this period is slightly superior to the actual viability term (i.e. 22 weeks of amenorrhea) accepted by the whole medical community.

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