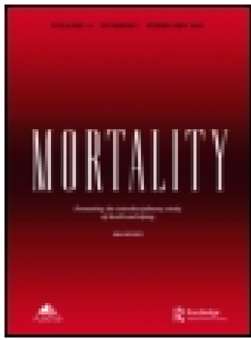

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Pregnancy remains, infant remains, or the corpse of a child? The incoherent governance of the dead foetal body in England

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ABSTRACT

In English law, the conventional view is that human personhood is produced by live birth, kinship is produced by relations between persons, and corpses are produced on the death of persons, which are then buried or cremated. Beings produced by human pregnancy which do not fit these discursive categories are classified as 'pregnancy remains', have no personhood or kinship, and their disposal is regulated as human tissue. However, this paper argues that the governance of the dead, born, foetal body in England, in fact, produces forms of foetal personhood, through the regulation of the material dead bodies of foetuses and babies. Furthermore, the assignment of responsibility for disposal and post-mortem decisions to kin of the dead foetal being also produces a relational form of foetal personhood. The examination of second-trimester pregnancy loss in England through fieldwork with women who have experienced foetal death, premature labour, and termination for foetal anomaly before 24 weeks' gestation reveals how governance of the dead, born, foetal body in England is incoherent.It also illustrates the effects of this incoherence on parental choices about the range of actions available after pregnancy loss in relation to the material body of the foetal being or baby.

KEYWORDS

Corpse; disposal; pregnancy loss; governance; personhood

Introduction

Seventeen weeks into her third pregnancy, mother of two Eva[1] attended a routine antenatal appointment at her local surgery in South West England. To her dismay, the midwife could not detect the foetal heartbeat using her foetal Doppler, and later that day an ultrasound scan at the hospital revealed that the baby boy had died *in utero*. After days of induced labour, Eva gave birth to his body, which was sent to the neighbouring county for post-mortem, in the hope of discovering a reason for the death. Visiting her consultant to be told the inconclusive results of that investigation, Eva described how she stole a look at her notes:

> . . . he went out of the room for some reason, and he left my files, like, open on the desk. And I looked. And I remember it said something really horrific about [son's] body, like, it refers to the body, as I don't know, medical waste? Something about 'the foetus has arrived and the leftover bits have been, like, sent back . . . '

For Eva, whose daughters had named their brother, and who had dreamed of the birth of a curly haired son, the thought that his body was classified as a form of waste still

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disturbed her when she spoke to me seven years after his death. She had been told that her son, who died before viability, would not be registered as a birth and death or as a stillbirth and was legally 'pregnancy remains'. He was not recognised as a person to whom she was a mother. Yet she and his father had held his tiny body in their arms and had been required as parents to officially consent to post-mortem and cremation.

Drawing on the experiences of Eva, and 30 other women in South West England, this paper seeks to explain, and also to complicate, English governance of the material body of the dead, born, foetal being. Immediately, it runs up against some problems of definition and terminology. The first of these is that the standard biomedical term 'foetus' is neither neutral nor appropriate for this research. A foetus is the legal opposite of a person in the UK, because of the live birth understanding of personhood described below. The term therefore excludes both those foetal beings in my research who were born alive and those who were born dead but whose mothers claimed them as persons. Furthermore, as other feminist research in the field of reproduction has found, the term 'foetus' is not ordinarily used in English speech about accepted pregnancy (Duden, 1993; Rothman, 1993) and only one of my participants used the term alongside that of 'baby'.

However, legally, the born human being is only a person, or 'baby', if it is alive when it is fully separated from the body of the pregnant woman at any point in pregnancy (UK Government, 1997). Such a person, once dead, is treated as a dead human and must be registered with the state as a death under the Births and Deaths Registration Act 1953, and then buried or cremated accordingly. By contrast, a living foetus in the UK has no separate personhood or claim to individuality in law, because by definition it is still within the body of the pregnant woman (C. Foster & Herring, 2017; Herring, 2011). If such a being dies before birth, before the legal threshold of viability at 24 weeks' gestation, this is not legally the death of a person but that of a foetus, a situation produced by the Infant Life (Preservation) Act 1929, the Abortion Act 1967, and the Human Fertilisation and Embryology Act 1990. On the other hand, if the foetal being dies before birth but after viability, as determined by biomedical surveillance, that being is a stillborn baby, who must be subject to civil registration as a stillbirth under the Births and Deaths Registration Act 1953, as amended by the Stillbirth (Definition) Act 1992, and whose dead body is classified as a human corpse and disposed of as such.

Viability acts as a threshold in English law and medicine which defines foetal beings by their gestational time, but it is also a threshold which is flexible and depends on context. This may be a specific historical context – for example, viability was reduced from 28 to 24 weeks by the 1990 Human Fertilisation and Embryology Act. It varies by jurisdiction, for example, in most of the USA, it is set at 20 weeks (Sanger, 2012). It may depend on medical assessments and resources – for example, in relation to whether to actively prolong the life of a pre-24 week neonate (RCOG, 2014). Furthermore, there may be flexibility around gestational time – for example, in terminations for non-medical reasons, gestation may be based on menstrual periods rather than foetal measurements (Jackson, 2001). Viability is therefore both a threshold concept for personhood and also one which can shift in certain circumstances. However, as Eva found, in cases of foetal death before 24 weeks in England there will be no flexibility about access to civil registration, and a different set of disposal rules applies to the body of a dead pre-viable being to those which apply to a registered person.

Governance of the material foetal body

English legal discursive positions on forms of personhood are intimately connected to the material body of the foetus. This article aims to contribute to literature from the social sciences which has considered the social production of foetal beings through material traces read by biomedical technologies (Casper, 1994; Han, 2009; Howes-Mischel, 2017; Middlemiss, 2020; Mitchell, 2001; Rapp, 2007; Reed et al., 2016), through the regulation of material foetal bodies (Beynon-Jones, 2012; Franklin, 1991; Memmi, 2011; Pfeffer & Kent, 2007), or through different kinship practices in relation to the dead foetus and its body (Layne, 2000, 2006; Mitchell, 2016; Peelen, 2009). The materiality of the foetal body is connected to ideas of personhood and the boundaries which are drawn in defining a foetal being as a person or non-person. The classifications which produce these beings are based on biomedical examination and normalisation of the foetal body through which its materiality is implicated in the production of personhood. At the same time, I argue, the governance arrangements around the dead foetal body work to discursively produce forms of personhood in that material body based on categorical alignment with other beings. Where governance arrangements produce recognition of the pre-viability foetal body as a human corpse, they align it with other corpses which are recognised persons. Where governance assigns responsibilities for the foetal body to kin, it is aligned with the corpses of other children. These alignments produce forms of personhood through governance.

The role of the law and regulation is well recognised in analysis of the production of foetal beings as contingent conceptual entities which have developed in specific historical circumstances and have then been naturalised. For example, in the context of English law, scholars have connected governance arrangements to the discursive production of classificatory categories of regulated subjects which include the foetus or embryo as a form of 'civil subject' (Franklin, 1999, p. 163) or other type of separate entity in law (Herring, 2011; Pfeffer & Kent, 2007; Sheldon, 1997; Tremain, 2006). In a different jurisdiction, it has been argued that the human corpse is a quasi-legal entity in itself (Troyer, 2008). Bringing together for analytic purposes the governance of the human corpse and the liminal dead bodies of foetal beings through consideration of second-trimester pregnancy loss in England produces a useful example of the incoherence of policy around death in the UK which has previously been addressed in this journal (L. Foster et al., 2017). However, I argue here that the case of the dead foetal body illustrates that is it not simply policy around death which is incoherent but the whole governance of death. Considering the frameworks for action as the result of governance rather than policy allows for the inclusion of a multiplicity of actors (Bevir, 2011), including statutory law, regulation and guidelines produced by legislators, governments, independent regulators, the charity sector, religious and professional bodies and so on. The use of the concept of governance also situates death in pregnancy within 'reproductive governance' through which multiple actors 'produce, monitor and control reproductive behaviours and practices' (Morgan & Roberts, 2012, p. 243). Such an analysis makes visible some of the consequences of governance, including how it can delimit the choices available to individuals whose lives are caught up in and defined by classifications which are not of their choosing or making.

Second-trimester pregnancy loss in England

This paper draws on sociological ethnographic fieldwork conducted in South West England in 2018 and 2019 during which I interviewed 31 women about their second-trimester pregnancy losses, conducted observations of memorial events and sites, and undertook critical discourse analysis of documents related to the governance of pregnancy in England. Interviews were ethnographic in style (Hockey, 2002; Hockey & Forsey, 2013; Rapport, 2013; Skeggs, 2001) and understood as collaborative endeavours in which my own experiences of second-trimester pregnancy loss were relevant and sometimes discussed (Oakley, 1981). Participants were self-selecting in response to online social media sharing of a request for participation. Ethnographic interviewing allowed women's experiences to unfold in different ways, for example, through the sharing of artefacts, the inclusion of other family members in the interview or post-interview contact. Interviews began with a question about the beginning of the pregnancy which was lost and then followed the participant's storytelling to produce an account of the events around the loss and its aftermath. The interviews were inductively thematically analysed, in an iterative process during and after data collection (Ezzy, 2002; Hammersley & Atkinson, 2007), with a view to understanding women's experiences of this specific category of pregnancy loss. The dead foetal body, its appearance, and what had happened to it was a significant theme in all the interviews which arose as part of the narrative of the loss. Documents were selected for analysis on the basis of the governance issues they address being raised during the interviews with participants. The wider qualitative sociology project seeks to contribute to feminist reproductive politics, in its consideration of the impact of classificatory and bureaucratic limitations on women experiencing second-trimester pregnancy loss, and their agential responses to these limitations.

The second trimester of pregnancy, defined in England as between 13 and 24 completed weeks of pregnancy (NICE, 2012; RCOG, 2011), is a useful case for the examination of issues around pregnancy because losses in this period are usually managed through labour and birth in the NHS, and there is often an encounter with a living or dead foetal body. However, before viability at 24 weeks, there is rarely any survival (RCOG, 2014) and personhood recognition of the dead foetus or baby is highly circumscribed. My research specifically focused on women who had experienced the death of their baby in the second trimester and who themselves went through labour and birth, and some of their stories are told below. These include the experiences of women such as Eva, Hayley, and Natalie who experienced foetal death *in utero*; women who experienced premature labours sometimes ending in live birth but whose babies did not survive, such as Esther; and women such as Joelle, Alice, Stacey and Amanda who had terminations for foetal anomaly, usually managed in the NHS through induction of labour. In this situation, both Alice and Amanda experienced foeticide before labour and birth. I use the term 'pregnancy loss' to encompass all these situations because the women in my research experienced the event as a loss. The women who took part were aged between 25 and 48 and they had a total of 34 second-trimester pregnancy losses, between 2003 and 2019, with most occurring between 2016 and 2019. Many of the women had also experienced live births, and losses at other times in pregnancy. All were in heterosexual relationships at the time of the loss, and except for one woman of Chinese British origin, all identified as White British. Two-thirds of the participants had no religion, six were Christian, and the others

described themselves having various 'spiritual' beliefs. There was a broad range of occupations and social classes and a geographic spread across the South West region and its different urban and rural sites.

The dead foetal being: human tissue or human corpse?

For women in my research, the shock of the death or anticipated death of their baby in the second trimester was accompanied by shock at the requirement to labour and give birth to what, by the second trimester, is a distinct foetal body (Kiserud et al., 2017). Once this foetal being has emerged from the pregnant woman, its body must be disposed of. What happens to a dead foetal body depends on its classification (Morgan, 2002) – it may be classified as a biological entity and specimen (Morgan, 1999) or as an organism with utility value (Pfeffer & Kent, 2007). Or it may be understood as a person, in need of disposal as a human corpse alongside other human bodies, as has been noted in France (Charrier & Clavandier, 2019). Similar classificatory tensions have been reported in the disposal of other pregnancy tissues such as the placenta (Yoshizawa & Hird, 2019). Confusion of classificatory categories may cause public outcry, as in the medical retention of human body parts and foetal bodies at Bristol Royal Infirmary and Alder Hey Children's Hospital in Liverpool (Mason & Laurie, 2001) which led to the regulation of storage and disposal of human tissue by the 2004 Human Tissue Act. In this section, I examine how laws and regulations on disposal of the dead in England and Wales produce the material bodies of foetal beings as different classificatory entities and the consequences of this for disposal and the recognition of personhood and kinship in the second trimester.

'Human corpse': classifying the live-born or post-24 week foetal body

In the UK, if a baby was born alive at any point in pregnancy and registered as a birth and death, or registered as a post-24 week stillbirth, including after termination; then, the body is classified as a human corpse. There are common law obligations to dispose of a human corpse appropriately (Sperling, D, 2008). A corpse must be buried, or, in England and Wales, cremated under the Cremation Act 1902, or it can be preserved in specific circumstances (Conway, 2016). Esther's son was born alive after placental abruption, and when he died, midwives explained the legal options:

> They said that I actually *had* to arrange something for him because he, you know, he'd sort of lived. They explained to me that it was a neonatal death even though it was also technically a miscarriage because it was before 24 weeks. [...] The hospital could do it, but I wanted to organise it myself. I didn't really fancy the idea of him ... I wouldn't have minded the idea of, the concept of, being in with a load of other babies, but then the fact that it's not your baby's own grave, it's sort of shared, kind of thing.

Esther and her husband bore the legal responsibility of disposing of their son's body, as do all parents whose registered child dies, including stillborn babies (Conway, 2016; HTA, 2015). The outcome for their son, of having a separate gravesite in a general cemetery, aligned his death with other deaths through the disposal of his corpse. Their involvement as parents in the disposal of his body aligned their bereavement with that of other parents who lose a child.

‘Pregnancy remains’: classifying the pre-24 week foetal body as human tissue

In other circumstances, such as non-live birth in the second trimester, the dead foetal body is classified as ‘pregnancy remains’, a form of human tissue belonging to the pregnant woman (and not the genetic father), under the Human Tissue Act 2004, regulated by the Human Tissue Authority (HTA) in England, Wales and Northern Ireland. Under the Act, a pregnant woman’s consent regarding the disposal of ‘pregnancy remains’ is not legally required. This is similar to other material from the human body, such as amputated body parts (Hanna & Robert, 2019). However, the HTA says that the woman’s wishes regarding ‘pregnancy remains’ should be given particular attention because of ‘the particularly sensitive nature of this tissue’ (HTA, 2015) and guidance is built around choice for women (McGuinness & Kuberska, 2017). The fact that ‘pregnancy remains’ are considered different to other human body parts relates to the potential presence of the foetal body. Pregnancy remains can include the placenta, umbilical cord etc., but it is the foetal body which produces a special status. The HTA recommends three options for the disposal of ‘pregnancy remains’: cremation, burial, or ‘sensitive incineration, separate from clinical waste’ (HTA, 2015), although the lack of recordkeeping means the prevalence of each is unknown (Kent, 2008). In addition, a woman can take pre-24 week pregnancy remains home. The multiplicity of disposal options is an attempt to cover multiple ontological outcomes of pregnancy, including circumstances where women do not want to choose the form of disposal and delegate this decision to the hospital. It also includes situations where there is no identifiable foetal body but there *may* be one present amongst other tissue. The separation from other clinical waste is designed to allow for that possibility because crematoria, who also play a part in governance, will not usually accept remains that do not include foetal tissue. The flexibility of the HTA guidelines reflects the liminal status of the foetal body, but it also constantly emphasises the ‘sensitive’ nature of the experience of termination or pregnancy loss (HTA, 2015, ND), producing it as an ambiguous and liminal experience for women through the governance of the dead foetal body.

Research into the acceptability of these forms of disposal of pregnancy remains has found that choice is restricted in practice (Austin & McGuinness, 2019; McGuinness & Kuberska, 2017). The HTA spells out in its guidance that ‘pregnancy remains’ from multiple pregnancies will be disposed of in one package made up of separately packaged units unless women specifically object (HTA, n.d.), for example, in separate boxes placed into one coffin (Kuberska, 2020). However, in my research these distinctions were not spelt out to women, who were usually told that if they chose group disposal their baby would be cremated ‘with other babies’ without further clarification about how different forms of disposal take place. Joelle inadvertently discovered that the standard ‘group cremation’ offered by her hospital included other pregnancy remains such as placental material:

> When you fill out the paperwork you have the option of having the group cremation, but they can’t tell you when it is, or, you can’t go to it. And that’s it, you just leave the baby and they deal with it. And I found that when I had the surgery to have the placenta removed, I filled out the same paperwork. Because it’s classed as, what is it, like, ‘foetal remains’? Even though it was just the placenta? And when I did that I was just so glad I’d chosen to have my own

> funeral [for her daughter]? Because it just made me think, like, what are they doing? Everything just goes into one … one thing?
>
> *And that wasn't what you wanted for her, or for you, or for … ?*
>
> No, I think … At the time, when I picked the group cremation, they didn't tell me that it's literally like, everything. [Pause] So I'm glad we did it ourselves and we got the ashes and things.
>
> *And would that have seemed disrespectful, then, putting her in with things like …*
>
> Yeah, I think it does, because it's not … saying that there's any difference between a bit of someone's placenta, and the baby? [pause] And I guess it's the same, like, if people have abortions and things, it's not treated very respectfully, is it?

For Joelle, the classificatory alignment of her daughter's body with placental material through disposal would have been inappropriate – she felt that foetal remains should be treated as a dead corpse rather than as clinical waste. The HTA guidelines' fudge is not without its casualties when it tries to produce categorical boundaries which meet everyone's needs in its governance of pre-viability dead foetal bodies.

Eliding boundaries between the 'human corpse' and 'pregnancy remains'

In the governance of the material body of the foetal being, boundaries are never as clear as they first appear. Viability is contingent and biomedically diagnosed, the presence of life at birth is a biomedical decision (Herring, 2011), and the status and content of 'pregnancy remains' are ambiguous. This complex situation is made even more complex by other governance arrangements relating to the dead foetal being: the role of cremation regulation, the legal connections and obligations between parents and children, and governance of the neonatal post-mortem. In each of these cases, I argue that the governance arrangements produce forms of foetal person in the pre-24 week foetus which resonate with the live-born or post-viability forms of personhood described above. The processes by which this occurs include individualisation and record keeping, and the situation of all foetal beings within kinship structures through relations to parents. The consequences of these forms of governance are that the foetal body is an unstable and incoherent entity.

'Infant remains': reclassifying all foetal bodies through cremation regulation

In the actual process of disposal, the dead foetal body is produced as a type of human corpse by cremation regulation. Cremation, as a relatively new disposal method, has been heavily regulated in the UK since it was legalised in 1902. Regulations included the first governance of 'stillborn' corpses through the requirement for medical certification of stillbirth prior to cremation, although there was no gestational timeframe related to the definition of 'stillborn' as a classificatory category. This was to be legally developed over the following century in relation to the increasing linkage of the concept of foetal 'viability' with that of 'stillbirth'.

Recently, however, there have been moves to partly decouple disposal from viability. These situate all cremated foetal beings alongside other human corpses in cremation

regulation by expanding the category of 'infant remains' to include second trimester and other foetal bodies. One pressure for this governance change involves mourners' desire to receive identifiable ashes from the cremation process, after scandals about the non-collection of individual ashes from infant cremations (House of Commons, 2018; Infant Cremation Commission, 2014; Jenkins, 2015). Reports into these practices led to a decision by the UK government to extend the definition of 'infant remains' in crematorium regulation to include pregnancy losses of less than 24 weeks' gestation (Dinenage, 2016). This change produces all foetal bodies as human corpses whose ashes relate to individual beings and are returned to identified kin. Such individualisation of foetal corpses is also found in the bureaucratic practices related to the disposal of pre-23 week foetal remains recommended by the professional body the Institute of Cemetery and Crematorium Management (ICCM, 2015), and in the bureaucracy required by the regulation of crematorium emissions requirements (Kuberska, 2020). The government's plans to dispose of pre-24 week foetal bodies on the same terms as post-24 week bodies, which are recorded under the Cremation (England and Wales) Regulations 2008, mean the record keeping of crematoria will become another site of bureaucratic governance through which there is a form of personhood recognition for second-trimester deaths based around the status of the foetal body.

The corpse of a child, and the obligations and entitlements of parental kin

A further factor in the governance of dead foetal bodies is the role of parental kin. The classification of the foetal body as 'human corpse', 'pregnancy remains', or 'infant remains' affects the choices available to relations about the disposal of the body. It also affects who has the responsibility to pay for and arrange the disposal, conceptualised through normative UK cultural assumptions about family relations and obligations reflected in state financial support for funerals (Woodthorpe & Rumble, 2016). In relation to disposal responsibility, there is some flexibility in English law about who this falls upon, except in the case of parents. In common law, parents are responsible for the disposal of the body of a dead child (Conway, 2016), unless they do not have the means to carry out disposal, in which case the local authority may be responsible under the Public Health (Control of Disease) Act 1984. This applies to all registered children, including live-born, stillborn and post-viability foetal deaths caused by termination. This means that parental kinship relations are recognised through legal responsibilities in certain types of pregnancy deaths, and parents may be entitled to state funding, for example, a Funeral Expenses Payment (UK Government, ND). Some dead foetal bodies are classified as children, and some of their parents are given a parental responsibility for them.

Yet the classification also produces exclusions, in the form of those second-trimester deaths where there is no parental responsibility to provide for the disposal of the foetal body. Often, because the pregnant woman's consent is also required under HTA regulation, this distinction is invisible to parents. For Alice, though, the distinction was clear. She had terminations for foetal anomaly within a year of one another but either side of the viability threshold, with the second baby, a boy, dying at 17 weeks:

> Afterwards, they said 'you can see the bereavement counsellor if you like, you don't have to have a funeral because it's not 24 weeks, but you obviously can if you want to, and we will pay for it and arrange it for you if you want'.
>
> And we said 'yes, please. We want to do exactly the same as we did before, because that would be the right thing to do'.
>
> *Is that because you were treating them both the same?*
>
> Yeah, yes. Yes. We felt . . . that they were both equally valid as individuals and relevant to us in our lives. And it just would have been awful saying yes, for our little girl we had a lovely funeral and flowers and all this stuff, and no, for the little boy, 'no, you can do what you like with *him*'. It doesn't make any sense. You know? Just because he was littler?

Alice was one of the few women in my research who was in a position to see that there was a difference between the *requirement* to have her post-viability daughter's body disposed of officially, and the hospital's *concession* that her pre-viability son's body could be treated similarly. Her case highlighted the classificatory principles behind the governance of pregnancy loss and how these can have an impact on the bereaved.

Furthermore, the actual enactment of parenthood in relation to born foetal beings is partly defined by the way regulations around the second trimester and other pregnancy loss disposal by hospital settings are applied in practice. In many cases, including that of Alice, payment of funeral costs and arrangement of the event was undertaken by the hospital. This could be a practical relief to parents, as Hayley, whose daughter died *in utero*, explained:

> I turned round and said, 'how much is all this going to cost?' When they mentioned a funeral. I was like, 'this sounds daft, it doesn't matter, but what are we facing?' They said, 'there's no charge for any child under 2'. They pay for it. Which that, I have to say, was the biggest relief.

On the one hand, the expectation that Hayley would not bear the costs of her baby's funeral meant that she was classified as having a diminished parental responsibility compared to a parent whose older child had died. On the other hand, the fact that the hospital paid for all costs for other under 2-year-old deaths meant she was classified as having experienced a similar loss to any other infant, aligning her experience with that of the parents of recognised infants. Payment and arranging of funerals, on the terms which hospitals were prepared to offer under the HTA regulations, produced this liminal type of dead foetal body in relation to liminal parents. Women in my research were usually excluded from the group disposal arrangements by hospitals, who either specifically told them they could not attend a group funeral, or never mentioned the possibility of attending, in line with findings from research with funeral directors (Kuberska, 2020). Stacey, whose daughter died during termination for foetal anomaly, explained how she had special dispensation to attend the cremation:

> We were told, 'you're not allowed to attend. You're not allowed to attend the mass cremation'. But the [hospital] chaplain agreed that we could go. Apparently it's because I was so upset. He made a special decision to allow us to go. [. . .] We were treated special, and apparently they did special compensation for us. They treated us differently, they went the extra mile.

Stacey felt her extreme grief as a bereaved parent had made the hospital recognise her parental status and change its ordinary rules to accommodate her suffering. She was satisfied with the acknowledgement of her parenthood during the ceremony when the funeral director said he was very sorry for her loss. However, whilst she was acknowledged as a bereaved parent, her daughter was still a liminal being, in a casket with several others, and the funeral was conducted in a way which produced the foetal beings as generic and non-individualised; for example, she noted, the names of individual babies were not read out. The hospital arranged funeral was in itself a sort of second-best arrangement, not quite a normal funeral, not paid for by kin.

At other times, it was funeral businesses which offered free funerals to parents bereaved in the second trimester. These funerals also often occupied a liminal space between a 'normal' funeral and the pregnancy loss version. Joelle arranged her own funeral through a funeral director, but there was a particular set of arrangements in place for the free cremation of babies who died in pregnancy. Normally these took place early on a Wednesday morning, before other people were likely to want to use the crematorium. However, there was heavy snow on the day scheduled for Joelle's daughter's cremation and the roads were impassible:

> So we got as far as [next village], and we couldn't get anywhere and we just phoned them and we said, 'we can't get there, we can't get to the funeral!' And so we had to cancel it. And then luckily they managed to reschedule it that afternoon, but they said 'just to let you know, there is a big funeral on at the same time'. So we went there [...] and there was like 10 cars, and a massive coffin with lots of flowers, and all these people turning up to this other one. And then there was just us. [pause] Yeah. [Fiancé] carried the coffin in, we had some songs and did some readings, and that was it.

Accepting the free funerals where the normal parental responsibility to pay for the disposal of a child's corpse was delegated to institutions produced pregnancy losses as different to the loss of an older person, or older child, and removed some control over the event for parents. This construction of pre-24 week loss as different to other losses reflects findings in research into funeral directors' attitudes to pre-24 week loss (Kuberska, 2020) and the use of separate 'baby garden' spaces in cemeteries (Woodthorpe, 2012).

In my research, parents were aware that professionals often viewed the foetal body as not quite the body of a person, and the parents as not quite the same as other parents or mourners. Amanda described this after her son died during termination for foetal anomaly:

> And so [funeral directors] were like 'well, what do you want?'
>
> I said, 'I want a willow casket'.
>
> 'Well, no, they don't do them small enough'.
>
> And that was the message of everything that I asked for: 'no, he's too small'.
>
> They didn't do a hearse, because he was too small for a hearse: 'It's not worth getting the hearse out. He can go in the boot of the people carrier'.

The size of her son, his gestation, and his lack of registered personhood set parameters on the disposal of his body which was not considered to be so formal an event as the disposal of an older being, even when Amanda was accepting the financial liability of his disposal

and thereby acting as his parent. Her choices as a parent regarding disposal were partly limited by the material condition and status of her son's body in conjunction with governance arrangements by a wide set of actors including funeral directors.

Post-mortem governance and the production of foetal personhood

Apart from disposal, the dead material foetal body may be subject to post-mortem. Perhaps as a result of sensitivities in England after the organ retention scandals at Bristol Royal Infirmary and Alder Hey, the responsibility for regulation of consent to processes concerning the dead foetal body, including post-mortem, is spread across multiple agencies working together in a classic example of governance. Post-mortem consent for adults and older children is regulated by the Human Tissue Authority (HTA), but the HTA has delegated the production of advice on perinatal post-mortem, including all stages of pregnancy loss, to the pregnancy loss charity Sands. Sands produced the guidance in consultation with a number of other actors including medical professionals, mortuary managers, and parents and this is now the standard practice recommended by the HTA (HTA, 2019). This best practice applies to all foetal beings born alive or dead and at any gestation, which are referred to by the guidance as 'babies', and who, on the sample consent form, have separate spaces for name, surname and date of birth, producing them as a form of person recognised by state and NHS bureaucracy, individually accounted for as a case through which power produces a form of reality (Foucault, 1991).

The Sands/HTA guidance states that consent and authorisation for a post-mortem *must* be received, and this 'should always' be given by the pregnant woman (referred to as 'the mother' in the text) unless there are exceptional circumstances such as her being too ill to consent, and 'wherever possible' should be sought from 'the father' (Sands, 2013a, p. 13). Having noted the heteronormative nature of the guidelines, they are also potentially controversial in their undermining of the definition of 'pregnancy remains', which are legally considered part of the pregnant woman's body. The Sands guidelines applied in a second-trimester pregnancy loss effectively allow the other parent of the foetus to give permission for the medical examination of tissue which legally belongs to the pregnant woman. The actual sample consent form then uses the term 'partner with parental responsibility' (Sands, 2013b, p. 2) suggesting that permission is not given on the basis of biological link with the foetus, as the male genetic parent, nor as next of kin of the pregnant woman, as her partner, but on the basis of a social parenting role in relation to the foetal being. The effect of this is to produce a second parent to the dead baby through consent to post-mortem. This aligns post-mortem consent for all pre-viability foetuses, including those who were born dead and who do not have legal personhood status, with the HTA post-mortem consent processes which apply when a dead legal person has not themselves given permission for a post-mortem. In these cases, a series of qualifying kinship relations are entitled to give consent, as defined in the 2004 Human Tissue Act, including parent–child relationships (HTA, 2017a, 2017b). The governance of perinatal post-mortem consent therefore produces foetal beings who have parental kin who can make legal decisions related to their dead bodies on their behalf. This is despite the fact that the foetal beings are not otherwise legally considered persons, and their personhood through connections to kin is in doubt in other areas of the governance of pregnancy, such as civil registration.

The post-mortem therefore constructs a foetal personhood through the individualisation of the foetal being and the construction of a parent–child relationship through consent procedures. It is also implicated in the production of a foetal person because of its judgement on the sex of the foetal being which has died. In the second trimester, the formation of foetal sex organs may not yet clearly indicate biological sex or the foetal body which has died in utero may have deteriorated so that sex is hard to determine visually at birth. A perinatal post-mortem involves chromosome analysis which fixes the sex of the foetal being. For many women in my research, the pronouncement of sex after post-mortem chromosomal diagnosis was an important moment which sometimes conflicted with their own idea of the sex of the baby or at other times confirmed it. For some women, such as Natalie, the unexpected disclosure of sex in the post-mortem results was distressing. Natalie's previously unnamed and unsexed baby born dead before viability was not legally classified as a person, but the post-mortem gave him a sex, and for her this made him a more tangible form of person:

> [The consultant] wrote to me, and I just opened the letter, and, and it said, you know, 'I can confirm that your baby was a boy.' And I was here on my own, and I hadn't actually asked to know the sex. They hadn't given me the option, 'Would you like to know the sex?' If I had, I would have preferred to have been told verbally, rather than in a black and white letter. I was here on my own, and I opened it, and suddenly it changed things, you know.
>
> *What did it change?*
>
> It just changed to having another son. You know. From just losing a baby, to losing a son.

The governance of perinatal post-mortem through the HTA guidance and medical practice produces a foetal being in the second trimester which has a definite sex, which is individualised in bureaucratic records linked to the state using a personal and family name, and which is situated in relation to parental kinship. This being, although dead, has many of the prerequisites of personhood which apply to other beings, such as the post-viability stillborn person.

Conclusion

This paper has shown that the governance of the material dead bodies of foetal beings produces forms of foetal personhood which the threshold legal concepts of live birth or post-viability personhood cannot perceive, and which state registration does not capture. During fieldwork interviews, women challenged the concepts of viability and live birth as thresholds for the production of personhood. Analysis of documents related to the governance of the foetal body showed that viability and live birth are also not consistently applied as thresholds for personhood within governance arrangements. Sometimes the dead foetal body is understood to be a dead baby which has parents, and sometimes it is understood to be part of the material body of the pregnant woman. At times, both positions can exist in relation to one foetal body, and a specific individual foetal being may be produced as part person, part non-person by different legal and regulatory arrangements. Furthermore, foetal personhoods can be, and are, produced after death, through practices of governance and kinship. Different forms of governance thus produce differently recognised beings with varying degrees of personhood through different regulatory practices. These

inconsistencies are visible when considered from the second trimester of pregnancy when the material foetal body is tangible and substantial but legal personhood recognition is limited. As such, investigation of the disruption of pregnancy loss in the second trimester contributes to the literature on the production of types of foetal personhood through the material foetal body (Han, 2009; Howes-Mischel, 2017), through regulation and law (Memmi, 2011) and through the enacting of kinship (Layne, 2000, 2006; Mitchell, 2016; Peelen, 2009) when it brings into question classificatory practices embedded in governance.

The consequences of the classification through the governance of the material foetal body as human corpse, pregnancy remains, or infant remains lie in delimiting the range of disposal options available to pregnant women and their families, who may or may not have ascribed personhood to the dead foetal being. There is not necessarily a match between what pregnant women want and what is available to them in the range of actions available for any given foetal body. The assignment of responsibility for disposal and post-mortem decisions to kin of the dead foetal being produces a relational form of foetal personhood which can sit well with those families who wish to claim foetal personhood. However, this is unlikely to be aligned with legal personhood recognition in the second trimester. Similarly, those women who do not wish for foetal personhood recognition may be obliged to take part in governance practices which enact it, such as birth registration. The governance of the material foetal body thus can conflict with relational constructions or non-constructions of personhood, in an example of how the governance of pregnancy focuses on the foetal body rather than the intentions of the pregnant woman. As such, the governance of the foetal body becomes reproductive governance, through which control is asserted over pregnancy, personhood, and kinship.

Using the concept of governance to consider the production of foetal personhoods is productive because it draws into the frame the multiple agents and regulatory frameworks which produce different forms of foetal person in different circumstances. When comparisons across texts and institutions are made, the diverse governance arrangements which produce foetal persons are shown to be uncoordinated and to have few coherent strategic or classificatory underpinnings. Furthermore, using governance as a framework makes the existing varied forms of personhood visible, challenging the simple legal threshold concepts and opening up the possibility of multiple types and degrees of personhood. This flexibility in personhood attribution seems to offer the potential for the future, if the agency of pregnant women could be brought into governance arrangements. Acknowledgement of existing complexity with regard to foetal personhood in the governance of the dead foetal body could be combined with the intentions of pregnant women and their families to produce a more nuanced and responsive form of reproductive governance in relation to pregnancy loss and the status of foetal beings as persons or non-persons.

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1. Where they requested it, women who took part in the study have been given pseudonyms in the body of the text.

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