*Chapter 3*

# What Counts as a Baby and Who Counts as a Mother?

## Civil Registration and Ontological Politics

Having examined the healthcare consequences for pregnant women of a pregnancy loss in the second trimester in the English NHS, I now address the legal, regulatory and bureaucratic frameworks related to second trimester pregnancy loss and its governance in England. In the story of what happens in a second trimester pregnancy loss, this is the period after the medical crisis is over. At this point, different legal and bureaucratic ontological positions involving fundamental understandings of what was lost in relation to whom come to the fore, as do the consequences of these definitions. Drawing on my fieldwork interviews and analysis of legal, regulatory and policy documents, I consider processes of reproductive governance (Morgan and Roberts 2012) through which persons and kin are produced or not produced by different agencies, more or less loosely related to the state. Governance is a useful framework here rather than governmentality because the latter is sometimes defined as not taking the state as a point of reference (Rabinow and Rose 2006), whereas the state is a very active agent in the politics of pregnancy and pregnancy loss. This chapter therefore explains civil registration in England, how it produces legally recognised forms of person, and how this is experienced by women whose second trimester foetuses and babies are included in, or excluded from, those categories. It also explains the bureaucratic consequences of civil registration and how these affect resource allocation in relation to the kin

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of registered persons, such as maternity benefits in the second trimester.

Biomedicine, law, standardisation, bureaucracy and regulation are closely intertwined in second trimester pregnancy loss. The actors involved in governance processes affecting second trimester pregnancy loss include the state, the state healthcare system of the NHS, and non-state actors, such as charities, religious groups and professional bodies. Statutory legislation in the UK emerges from parliamentary debate in a representative democracy in which lobby groups with particular ontological positions can influence outcomes, as has been demonstrated in relation to legislation on abortion (Sheldon 1997) and the human embryo (Franklin 1999a, 1999b). Also implicated as actors in reproductive governance are legal and regulatory texts which now apply to situations of pregnancy loss, but which may have been produced in different circumstances and been adapted to suit new purposes. For example, stillbirth registration was set up as an attempt to control infanticide, but has subsequently been adapted to the recognition of stillborn babies and their parents. Combinations of all these actors result in reproductive governance, in which multiple actors 'produce, monitor and control reproductive behaviours and practices' (Morgan and Roberts 2012: 243).

If multiple actors produce reproductive governance in England, the mechanism by which they do this is the same: the application of classificatory categories in relation to the foetal being. Knowledge systems use classification to produce power (Foucault 1991, 1998) and large-scale bureaucracies naturalise classificatory divisions by embedding them into routinised practices (Bowker and Star 2000). The role of the law and regulation is well recognised in the production of foetal beings as contingent concepts which have developed over time in specific historical circumstances and have then been naturalised. Multiple scholars have connected governance arrangements to the discursive production of classificatory categories of regulated foetal subjects in the UK context. Herring (2011) reads the Offences against the Person Act 1861 as a form of protection of the foetus as a separate entity. Franklin's work on the Human Fertilisation and Embryology Bill (now Act) shows how the human embryo was produced as a 'civil subject' (1999b: 163), and she links the production of these embryonic beings to new forms of kinship. Whilst Sheldon (1997) argues that the regulated subject in the 1967 Abortion Act is the woman seeking abortion, she also interprets the emphasis on viability in the 1990 Human Fertilisation and

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Embryology Act as the production of the foetus as a separate individual. Tremain (2006) proposes an analysis of the legal possibility of termination for foetal anomaly as the production of a prenatal impaired human body which is a form of foetal subject. Pfeffer and Kent (2007) describe the discursive production of embryos and foetuses as biological entities in UK regulatory policy in relation to their use as sources of stem cells. Pfeffer (2009) describes how the transformation of aborted foetuses into sources of stem cells for research takes place in part through their decoupling from identifiable social origins.

Thus governance of the embryonic or foetal body produces the beings it regulates through classification. In the governance of previability second trimester pregnancy loss, the basic differentiating classification is the status of a foetal being relative to personhood. The consequences of reproductive governance in the second trimester, however, fall on the pregnant or post-pregnant woman, whose options and agency are limited by the classificatory judgements made in relation to the foetal being, as I will show below.

Governance processes related to pregnancy and pregnancy loss are discursive and based on classification. However, they are also ontological in relation to the underlying principles of what is being classified: the reality of persons and their bodies, the reality of what a pregnancy is. The disruption of pregnancy loss gives an insight into the ontologies of pregnancy which are produced by the interactions of biomedicine and the law in the context of reproductive governance. In particular, the centrality of telos, or goal and ending orientation, in ontologies of pregnancy is made clear. As noted by Franklin (1999b, 1991) in relation to English legislation around the human embryo, the teleological outcome of the foetal or embryonic entity defines its ontological essence. Effectively, the end outcome of a baby is key in defining what an embryo, which may become a baby, actually is and therefore how it should be treated. Similarly, reproductive governance in the US regarding pre-pregnancy preparation of the female body for child-bearing refers to a 'future fetus' as an entity which needs protecting (Waggoner 2017: 25), and Ballif (2022: 3) describes an 'anticipated foetal subject' understood as a future child in antenatal care in Switzerland. Franklin's analysis of telos connects to commentary by legal scholars in the UK context who have pointed out that a child's body considered to be a 'body with potential', in other words a future body, will be given priority in legal decision making (Bridgeman 2002: 100). In termination for foetal anomaly, medical judgements are made regarding

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the 'best interests' of the putative child and their future life (Wicks, Wyldes and Kilby 2004). And the regulation of fertility treatment in the UK requires consideration of a legal entity referred to as the 'future child', even though it does not yet exist (Sheldon, Lee and Macvarish 2015, Lee, Macvarish and Sheldon 2014).[1] These ideas of telos, or outcome or ending, are not just present in ontologies of the foetal being or future child, but they define the whole of pregnancy as a teleological process, defined by its outcome of the production of a living person. This future-oriented ontology of pregnancy is highlighted when pregnancy is disrupted by death, such as in second trimester pregnancy loss. Using second trimester loss as a case study, it is also possible to see different consequences of pregnancy governance, such as its incoherence, exclusions and conflicts, and the way it can steer people down paths which are not of their choosing. These are ontological and reproductive politics playing out through governance.

## The Civil Registration of Persons and Kin in the UK

Two legal positions structure civil registration in the United Kingdom in relation to pregnancy outcome. Firstly, all live births must be legally registered with the state, as must the death of a registered person. Secondly, stillborn babies born in the third trimester, after 24 completed weeks' gestation, must be separately registered with the state on the Stillbirth Register. Foetal beings are divided into two groups: babies and persons, who have legally recognised parents and other kin, and foetuses, who do not. Later in this chapter, I will show how these legal classifications of the foetal being affect post-pregnant women's options and entitlements when they experience pregnancy loss in the second trimester.

Legal personhood, which defines a living being as a human baby, is conferred by having a human body which is alive at the point of separation from the body of the genetrix (House of Lords 1997, Herring 2011). This is a 'threshold' concept of personhood (Foster and Herring 2017) which means that technically a 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, although it may be offered some protections as a form of marginal person. Herring (2011) argues that the birth of a living baby is a distinct moment of transition from a blurred dual identity of pregnant woman and foetus to separate identities of mother

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and baby, in which the latter's legal rights can be assessed separately because it is no longer dependent on the body of the mother for existence. Birth is therefore convenient for lawyers seeking to ascribe legal personhood (Herring 2011) in a way that pregnancy is not. The legal difference between a baby and a foetus, the point of ontological shift, is produced by 'the bright line of birth' (Burin 2014).

However, Herring also spells out the difficulties of defining exactly when a live birth has taken place, with case law, rather than statute, having come to define it as full emergence from the pregnant woman, and when the baby lives and breathes separately from her, with a separate circulation. He concludes that the assessment of the presence of 'life' in a born baby is conveniently left to doctors rather than lawyers (Herring 2011). Where there is ambiguity in the UK about whether a being is alive or not, judgements are biomedically determined (Wicks 2017), and clinical staff determine signs of life in the second trimester (MBRRACE-UK 2020b). In the pre-viability second trimester, if there is no medically diagnosed separate life, then there is no access to civil registration. On the other hand, if there is diagnosed life, such as in the cases of premature live birth in this research, then birth and death registration is required. In both cases, the status of the foetal body determines what the post-pregnant woman cannot or must do.

In addition, this apparently simple model of personhood based on live birth recorded by civil registration is complicated by some other legal arrangements in the UK, which establish a form of personhood based on the foetal body which is born dead. This is the case of stillbirth registration, in which personhood is recognised in all beings born dead after viability. There is mandatory separate state registration at the General Register Office of stillbirths, defined in the United Kingdom since 1992 as those who are born dead after 24 completed weeks' gestation,[2] including after late term abortion, under the Births and Deaths Registration Act 1953, as amended by the Stillbirth (Definition) Act 1992 (House of Commons 2019). Since 1983, there has been the possibility of registering a name for a dead baby on the stillbirth register, a political act connected to foetal personhood claims and the decoupling of physical and social birth (Layne 2006). The registration of stillbirth alongside live birth and death in the annals of the state produces some legal record of the existence of a being which never lived independently, a being defined by particular stages of foetal bodily development over gestational time, which have themselves changed historically (General

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Register Office 2013). If, as historians have argued, stillbirth was initially neglected in official records because those records were designed to record legal rather than biological persons (Davis 2009, Higgs 2004), the more recent development of stillbirth registration since the 1926 Births and Deaths Registration Act demonstrates the opposite – a form of legal birth through civil registration. The bureaucratic recording of a stillbirth, including the name of the baby and the names of its parents, confers official existence alongside a form of legal parenthood and makes these beings and their relationships legible to the state. It acknowledges the significance of the event of stillbirth and situates it in the immediate family and in the wider community, whilst also emphasising a unique identity for the dead baby. Conversely, not being included in stillbirth registration, because the baby was born dead during the second trimester, before viability, produces a foetal being and its potential kin who are deemed insignificant and irrelevant to the state and wider society.[3]

## Live Birth Registration: Producing Citizens in Relation to the State

The birth of a living baby in the UK, at any stage in pregnancy including the second trimester, results in mandatory official recording of the birth at the General Register Office (GRO), which is responsible for civil registration in the UK. This civil registration system has been developed since 1836 out of multiple bureaucratic systems (Higgs 1996) and in a 'piecemeal' fashion (Crawshaw, Blyth and Feast 2017, 1), with its original intentions and purposes being overlaid by new meanings. At present, registration of a live birth in the UK generally entitles a baby to citizenship, establishing a relationship between a living individual and the state (Breckenridge and Szreter 2012). In the UK, this status includes rights such as individual access to the NHS (Frith and Jackson-Baker 2002). Registration also situates the individual in relation to the state when it makes populations legible to the state for purposes of taxation and control (Scott 1998), and in relation to macro level planning and service provision (Bainham 2008, McCandless 2011). However, even when there is a live birth in the second trimester, survival rates are very low (Royal College of Obstetricians and Gynaecologists 2014), and none of the women in my research had a surviving baby from the second trimester, partly because I had specifically asked to interview

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those who had experienced second trimester loss. Therefore, the modern citizenship aspects of birth registration for the baby itself are not relevant here.

However, civil registration is not just about a relationship between the individual and the state. Historically it concerned kinship, in relation to 'legitimacy' of offspring and the establishment of lines of descent for property purposes (Higgs 2018, 1996, Probert 2011, Higgs 2004). The identification of individuals in civil registration is through the names of persons and also their relationships to one another, which must be recorded in order to administer them (Scott, Tehranian and Mathias 2002). In birth registration in England, two parental identities can be recorded on birth certificates (Probert 2011, Bainham 2008), meaning that certification creates parents as well as children, as noted in other jurisdictions in cases of surrogacy (König and Majumdar 2022) and pregnancy ending (Charrier and Clavandier 2019b). Names are understood in social science to invoke, create and display connections between individuals and their family or kin (Finch 2008, Pilcher 2015, Bodenhorn and vom Bruck 2006, Layne 2006) situated in understandings of personhood and relations between the living and dead (Benson 2006).[4] As I will show below, for women in this research access to, or exclusion from, birth registration of the foetal being affected their own relationship to the state, with regard to entitlements such as maternity rights. This is consistent with the historical role of civil registration in England and Wales in which the registration of relationships enabled persons to exercise property and other rights in relation to the state (Szreter 2007). Civil registration is not simply about defining individuals through relational kinship, but also about defining relational kin through the existence of individual persons.

## The Baby Certified as Real: Civil Registration's Ontological Work

In second trimester pregnancy loss, civil registration also does ontological work. Live birth in this case acts as a standard for administration, which defines what is 'real', and actionable, in a particular state context (Timmermans and Prickett 2022). For women in my research, as noted in other research about pregnancy loss (Fuller et al. 2018), civil registration was understood as an official, formal acknowledgement of the ontological reality and existence of the

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baby, under conditions of this potentially being in doubt after the baby's death in the second trimester. Most of the thirty-one women in my research were happy to have had civil registration or would have liked it. Eight did not engage on this issue. Seven did not want, were neutral about, or were unsure about registration for their baby. For those women who had live births which were registered, the act of registration as an acknowledgement of their baby was very important, as Esther told me when reflecting on the fact that her first child was born alive at 22 weeks' gestation:

> I suppose the result of that as well, which makes it a bit easier for me than for a lot of people, is that I therefore did get birth and death certificates, which made it a little bit more like he'd existed, whereas obviously before 24 weeks otherwise it would have been as if he'd never been there.

By contrast, Amber's daughter died during termination for foetal anomaly in the second trimester, and therefore was not eligible for civil registration. She had found it impossible to talk to people about what had happened, and very few people knew about her loss. For Amber, registration of her baby would have been welcome:

> I would have preferred it that she could be registered . . . And it would have made it official. In my head she exists, she was a person, she was born, she was buried. You know. But. It would have been nice to have an official, you know, the rest of the world. Not that it matters that much. But yeah, it would have been nice, I think.
>
> *Kind of an acknowledgement?*
>
> Yeah, to say that she existed as a person. Cos she did. So yeah, yeah.
>
> *And do you think that would have made the knowledge that you have, that she existed as a person, like, allowed you to sort of communicate that to other people?*
>
> Possibly. But she'd have been on the record, she would be on a, you know, if someone came back in years to come and went, 'oh what, you know, the family history, oh look, Amber, she had 2, she had 3 children'. You know what I mean? It's just that. She existed.

Birth registration could potentially ontologically situate babies who had died alongside living babies and children as recognised and recorded persons. At the time of her son's live birth after termination for foetal anomaly, Lucy had felt indifferent about the registration of his birth and death. During her conversation with me, however, she decided that the way her son had been registered made him a person like her living daughter, and it was the setting

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alongside one another of the state recognition of both existences, which she had enacted by her active registration of both her children, which was important to her:

> I mean, you know, just sort of thinking about it now, it's another validation of him, as a person. Something else that we've got as a memory of him, you know, we've got two certificates [of birth and death] that are his because he was in the world. And that act of going and registering him, because it was so soon after we'd registered [older daughter]'s birth, because you know, he was born in the [summer] and she was born in the [previous winter], so you know, months later we're doing exactly the same thing that we'd done for her. It kind of seemed right? Because it was echoing what we'd done with her?

Besides the validation of the baby's existence, birth and death registration was a validation of the parent-child relationship and situated the baby in a wider, officially noted, kinship group, as Amber described above. This echoes the original purpose of birth registration in England as the establishing of 'legitimate' (through fathering) children in a kinship group, originally for inheritance purposes (Probert 2011, Higgs 1996). It also echoes how official adoption and international surrogacy paperwork mediates and produces recognised personhood, kinship relations and state entitlements such as citizenship in cases of babies who have liminal statuses (Kim 2019, König and Majumdar 2022). In the case of transnational adoption or surrogacy, the focus is the production of the child's identity and personhood, but in my research the official paperwork creates a trail which identifies the whole kinship group through time, working to make the baby and also its other kin legible to the state and therefore legitimate and 'real'. Angela's first son lived briefly when he was born at 21 weeks after she went into premature labour:

> *What does that mean to you now then, that he was registered?*
>
> Oh, huge! Physically, I've got a certificate. And it says 'mother' and 'father' and things like that on it. Again, a silly thing, not that I share all this crap with my husband, but if you do family tree research in 20, 40 years' time, his name will be on there? So he did exist?

Birth and death registration provided validated proof of existence, acknowledgement of personhood, recognition of loss, and the endurance over time of the official record of existence for the family tree.

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The certificates themselves could be used by women in an assertion of their loss and their right to grieve. Georgia's first child died after he was born alive at 21 weeks. She celebrates him as her son on social media and in her community, and felt his live birth and subsequent registration helped her to claim him as a person in relation to doubters in her wider family:

> *And is that important to you, that he had that recognition?*
>
> Yeah. Especially the, the birth certificate more. Because I had a cousin, I remember my mum fell out with my cousin, because she'd read in a magazine once that babies born at that gestation don't get a birth certificate.
>
> And my mum was like [triumphant tone] 'well, he was born alive, so he *does*!'

For those women whose babies were not born alive, hospitals usually offered unofficial certificates, based on templates from pregnancy loss charities.[5] These were important keepsakes to some of my participants, but others referred to them as 'token', 'fake', or 'made up': having a different version of official acknowledgement was secondary to inclusion in the national register of real persons. Charlie's first daughter was not eligible for civil registration, and she was in a position to compare this to her next daughter, born alive after viability:

> [First daughter] didn't get a birth certificate. But [hospital] did make one, a pretend one.
>
> *Is that what it feels like then?*
>
> Yeah. [in a scathing tone] I know it's pretend 'cos they specifically told me it wasn't a real one. They were like 'this isn't a real birth certificate, because she wasn't 24 weeks, so you can't have a birth certificate.' And then with [second daughter who died after birth], it was like, really official, 'you have to come and register her birth and her death.'

Another substitute for some women was inclusion in books of remembrance held at the hospital, sometimes by the chaplaincy, and used during memorial events. This was not quite the same as civil registration, but the public nature of the books and the open record went some way towards compensating for lack of birth and death registration, because they did some of the same ontological work as the birth and death register in recognition of a form of personhood. For the last decade, Amanda has made a point every year of attending her hospital's communal pregnancy loss event to commemorate her son who died through termination for foetal

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anomaly, in order to see his name in the book of remembrance. Similarly, Bethany felt that her son's inclusion in the hospital memorial book after he was ineligible for birth and death registration was a confirmation of his reality:

> I don't know what it is about having his name written somewhere that makes him any more real, but it does. Like, the first time I went in and saw his name, I was like, 'oh! He *was* real! His name is somewhere!'

However, despite these attempts at alternative forms of inclusion, overall exclusion from full birth and death registration was an issue for a large number of women in my research. It was their lack of control over the definition of their baby as a 'real' person with officially recorded parents because of a lack of biomedically confirmed separate life which was the key cause of distress.

Significantly, several of the women who actively did not want birth registration or who were neutral about their baby not being registered were those who felt the process did not add to the reality of their experience and their baby. They tended to see civil registration as a purely bureaucratic exercise which did not affect the meaning of their loss. For these women it was themselves, the baby's father and wider kin rather than the state who could determine the reality of a pregnancy or a person. Gemma had had a particularly supportive reaction from her family to her daughter's death through feticide and termination of pregnancy for a severe heart condition at 23 weeks' gestation. Her husband and mother were present at the baby's birth, and then her sister and her father came to visit and witness the baby's body. Gemma described how she felt about not registering her daughter:

> It didn't really bother me particularly. I kind of was, at the time I think I was just pleased that I didn't want to have to go through anything else, almost . . . And it hasn't really bothered me since. To be honest. I still feel like she was there, and the fact that she hasn't got proper bits of paper doesn't really bother me particularly. I can see why it would some people.
>
> *Also the significant people in your life actually met her?*
>
> Yeah. I think that seemed more important than anything formal like that. And at the time I just didn't want to have to do anything extra.

For Gemma, exclusion from civil registration did not affect the ontological status of her daughter, which was derived from a more

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intimate, kinship-based ontology which is further explored in Chapter 6.

## Birth Registration and the Making of Persons

Besides ontological work, birth registration was understood by women in my research as having the potential to produce persons through bureaucratic processes. Paula, the only person in my research who did not claim her termination for foetal anomaly as the loss of a baby or person, expressed this as we talked about the possibility of an optional form of birth registration:[6]

> Like, with ourselves we didn't see it as 'the baby', we saw it as tissues that had gone wrong. But suddenly if someone's saying you can register it, then you start questioning. Sometimes I feel as though we were a little bit harsh, because actually we did look at it as tissues, and I just think it would be another pressure, and do you start questioning your own – not beliefs, or?

Paula felt that civil registration would potentially have made her foetus into a baby – if the legal and bureaucratic process had been possible in her case, this would have disrupted her own ontology of the foetus as non-baby. It might have put pressure on her to conform to cultural expectations about being a bereaved parent, as Böcker argues in relation to miscarriage certification in Germany (Kirey-Sitnikova et al. 2021).

For the women in my study, civil registration was a formal ritual of recognition of personhood, whether this was something they wanted or did not want. Civil registration also tied the foetal being down in terms of its ontological status. Charlie would have liked registration for her first daughter who died during her premature birth in the second trimester, but she also felt that her exclusion from registration allowed the family some flexibility in terms of redefining her later on. The baby was posthumously adopted by Charlie's husband, who was not her biological father, and buried with her younger half-sister, who was his biological child, under the same surname. Charlie described how she felt this was made easier by the lack of birth and death registration of her daughter:

> She has got [husband's] name now, because the dad doesn't want, I don't know, he doesn't go to the grave, he doesn't. And after we lost [second daughter who was their joint biological child], we decided – well, I knew I would put them in [a grave] together. And then that

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> was when I was like, '[first daughter] is a [husband's surname]!' But [first daughter] hasn't got a birth certificate anyway because she was only 23 and 5 [weeks of gestation]. So regardless, it's not like I'd legally have to change anything.

Registration would have tied Charlie's baby to a specific classification, as a person officially related to certain other kin, and in her particular case would have restricted her own posthumous redefinition of her baby and her kinship. The compulsory nature of birth and death registration was therefore potentially an issue for women who wished to define their own pregnancies. Similarly, a few women in the research expressed doubts about potential extensions of birth registration to the second trimester because of the possibility of causing difficulties for women seeking abortion. Mandatory official bureaucracy was understood both as a potential restriction on women's choices and as a potential validation of women's experiences. This echoes Higgs' (2018) comments about the details on state registration documents such as gender, or third-party parents being fundamental to people's understandings of their own identity. In second trimester pregnancy loss, the bureaucratic requirements cut both ways: exclusion or inclusion produced by governance could be counter to the intentions of the pregnant woman.

## Stillbirth Registration and the Exclusion of Second Trimester Losses

Women in this research were by definition all excluded from stillbirth registration for their second trimester births because stillbirths happen in the third trimester. Stillbirth is defined by biomedicine. It is not enough for most diagnoses of stillbirth for the woman to have thought herself pregnant for 24 weeks, but scientific, standardised ultrasound foetal measurements are used to establish the 24-week timeframe, which is defined in law and connected to 'viability' as the point in pregnancy at which foetal life separate from the mother's body is thought possible (Infant Life (Preservation) Act 1929, Abortion Act 1967, Human Fertilisation and Embryology Act 1990). I described in Chapter 1 how this happened to Charlie when her first daughter was two days short of the viability threshold and how staff said they could not 'play with her dates' to get the pregnancy above 24 weeks' gestation. Biomedical technological

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surveillance of the foetal body determines its definition as miscarriage or stillbirth dependent on normalised measurement by biomedical instruments of surveillance. By contrast, in the case of requests for abortion before 24 weeks on grounds other than termination for foetal anomaly there is no routine ultrasound foetal measurement and dating of the foetal body unless there are 'clinical' reasons to suspect 'wrong dates' (Royal College of Obstetricians and Gynaecologists 2011a: 52). Instead, access to abortion is based on the dating of the pregnancy through estimates based on menstrual periods and the timeframe for conception and implantation of the embryo (Jackson 2001), giving some leeway in the application of these abortion timeframes. Only where there could be a claim to stillbirth registration (including post-viability termination for foetal anomaly) is there a perceived need for biomedical assessment of the foetal body, as either defective (at 'substantial risk' of 'handicap'[7] according to Ground E of the Abortion Act 1967) and therefore abortable, or as having passed the criterion for viability of 24 weeks' gestation. The governance of access to civil registration and the resources which follow, such as maternity benefits, is performed by a combination of the law and biomedicine interpreted and applied by medical professionals.

The intentions of the pregnant woman in recognising any parental or kinship relationship are not taken into account in defining a dead foetus as a type of person. A dead foetus will be registered as a stillbirth if it was intentionally aborted after viability at 24 weeks (Royal College of Obstetricians and Gynaecologists 2011a), whether the pregnant woman wishes it or not. It will not be registered as a stillbirth if it died before 24 weeks, whether she wishes it or not, despite repeated legislative challenges to this, such as the Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill 2019. This was the situation faced by Alice in her third and fourth pregnancies which she terminated at different gestational stages. Alice could not register her son's death at 17 weeks, but was legally obliged to register her daughter's death at 24 weeks. Alice and her husband did not particularly value registration as a form of state recognition, but they did want both babies treated the same. However, this ontology of equal value and status for the two foetal beings was one which the state explicitly refused to acknowledge because of registration law. Furthermore, the two different categorisations had consequences for the family's state benefits related to the state's recognition of her and her husband as parents which I will explain below. This was a similar situation to Charlie, whose

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spontaneous pregnancy losses either side of viability also prevented her from treating both babies the same in terms of personhood. Family positions on which persons are included as family members were completely overridden by state definitions of the legal status of foetuses or babies.

Many of the participants in this research who did not personally experience the starkness of this contrast in different pregnancies because they did not have third trimester losses were nevertheless aware of the possibility of stillbirth registration after 24 weeks. They knew that the magical threshold of legally defined viability was one at which a form of foetal personhood was recognised, and that this was one which their own non-living foetuses had not reached. For the majority of women in my research who did not experience live birth, the viability threshold served as a second barrier of exclusion for their babies, and a denial of their experience as pregnant women. Hayley, whose daughter died *in utero*, found out about the distinction after her baby was born at 22 weeks:

> I asked [the nurse] about a birth certificate, I was like, 'where do we go?'
> She said, 'you don't get one because it's classed as this that and the other.'
> And I felt, I didn't like that. These babies aren't acknowledged. In the medical world. It's just on our records that we had a miscarriage, really. When people think of miscarriage, they think of, you know, your body does it itself and there's nothing there. As you well know, I'm sure, it's not like that.

The classification of an experience as 'miscarriage' produces it as an event which has happened to the pregnant woman, rather than the birth or stillbirth of a person. This limits the potential social recognition of that event and its impact on the persons involved, including a pregnant woman who wishes to define it as the death of a baby.

## Stillbirth Registration as the Production of a Different Type of Baby

However, despite their general knowledge of the possibility of stillbirth registration, and their interest in whether it could, or should, apply to them, most women I talked to were unaware of the detail of the differences between birth registration and stillbirth registration.

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It is not commonly known that the Stillbirth Register in England is a closed register – it is not open to searching, for example for the making of family trees in future, in the way that the full Birth and Death registers are. This is because it was developed for the purpose of protecting women who experienced stillbirth from being prosecuted for infanticide under the Infant Life (Preservation) Act 1929. It was understood as a safeguard for newborn babies and a national record of postnatal and antenatal mortality, rather than a form of civil registration or public record (Davis 2009). The General Register Office today says the closed nature of the register is 'due to the sensitive nature of stillbirth registrations' (GRO, Personal communication). This makes the register different to the general registers of births and deaths, and the General Register Office's statement contains an assumption that there is something particular or different about the distress caused by stillbirth, which must be private rather than public compared to other deaths.

This register therefore does not fulfil all the roles that many women in my research would have wanted from civil registration. There are similarities with live birth registration, in that amendments to stillbirth registration have over time made space for the dead baby's name and for both parents to sign (UK Government n.d.-e) which bring the format nearer to birth registration and recognise an incipient or partial foetal personhood. Similarly, the benefits to which stillbirth registration entitles a family (examined below) also align it with birth registration. The adaptations of stillbirth registration over the last 40 years, hard fought by activists such as Bel Mooney and Hazelanne Lewis (Sands 2022), produce the post-24-week stillborn child as a form of person, registered somewhat like others, with a name and recognition of kin. This does result in certification of the event of pregnancy loss as ontologically 'real', and it does grant recognition of parenting and also sibling relationships in relation to the dead baby. This is because the General Register Office will provide access to stillbirth certificates for the registered mother or father, or, if they are deceased, the siblings (General Register Office 2013), so those relationships are officially recognised and prioritised in relation to access to state bureaucratic information. However, stillbirth registration does not place the dead baby in the official open record of wider family life, nor does it provide publicly accessible recognition of the baby's existence. It therefore does not make such babies and their kin fully visible. When I explained this to the women in my research, they felt that as a consequence stillbirth registration was a second-rate

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form of registration compared to full birth and death registration. Most women in this research conceptualised their pregnancy loss as closer to a third trimester stillbirth than a live birth, but for many of them the stillbirth registration process, if it were extended to pre-24 weeks, would not solve the exclusion of their dead baby from official registers.

## The Bureaucratic and Resource Consequences for Kin of the Legal Classifications of Foetal Beings

Registration in the UK of live birth and of death, or of stillbirth, recognises the individual involved as a person, but also brings state recognition of the social relationships in which that person exists or existed, especially in relation to kinship and property relations (Higgs 1996). Registering a birth and sometimes a stillbirth can give entitlement to state resources paid to parents, such as Child Benefit (UK Government n.d.-b). Where a living person has died, there are also financial consequences for kin, for example in inheritance law, or through access to bereavement benefits such as Bereavement Allowance, Bereavement Support Payment, or Widowed Parents Allowance (UK Government n.d.-a). Entitlements to financial resources through relationships to kin who have died can be a source of meaning and value to the bereaved (Corden and Hirst 2013). By contrast, it has been argued that the recognition that financial entitlements brings in the context of death can be undermined by inequity stemming from an incoherent set of systems for the administration of state support around death (Foster, Woodthorpe and Walker 2017). In other contexts, principles of entitlement though relations with kin have been applied to pregnancy loss. Sanger (2012) has argued in the US that stillborn birth certificates produce a posthumous change in legal status similar to that of non-citizen soldiers who were killed in combat and acquired posthumous US citizenship entitling their families to naturalisation. A non-person, who is not registered as a birth, death or stillbirth, will be excluded from state recognition and any financial entitlements, and their kin will share in their exclusion. Legal classifications of a person or non-person as enacted by civil registration as a form of reproductive governance therefore have a relational effect on other kin, as when the same ontologies are performed on different objects (Mol 1999). I now describe how this played out in the lives of women and their families in my research, in terms of the legal

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classification of their baby as foetus or person, and themselves as parent or non-parent.

### *'Have I Got to Go to Work Tomorrow?': Maternity Entitlements and Live Birth*

In the crisis of the event of pregnancy loss, the first impact on women was in relation to employment: the right to take time off for the emergency, and to recover afterwards, in which they turned to maternity rights, or to sickness employment rights. In the UK, maternity rights accrue differently to those in employment and those in self-employment. Statutory Maternity Leave (SML) is up to 52 weeks for anyone in employment, and Statutory Maternity Pay (SMP) is an entitlement for employed women who earn above a threshold and have worked for their employer for over 26 weeks. This pay is up to 39 weeks at two different rates (UK Government n.d.-d). Employers may choose to offer more generous benefits, but this is the legal minimum, developed and extended since maternity leave was introduced in the Employment Protection Act 1975. For the self-employed, those who have recently stopped paid employment, or some workers who do not qualify for SMP, there is the possibility of a lower benefit called Maternity Allowance (MA) which is payable for up to 39 weeks depending on circumstances. Women who are not in any form of paid employment cannot claim maternity benefits. Claiming all these benefits relies on the birth of a living baby, at any gestation, or the stillbirth of a third trimester baby, both of which will have forms of civil registration at the General Register Office, as described above.

In my research, some of the women who had medically confirmed live births were able to claim forms of maternity leave and pay, or other state support. Georgia's first son was born alive at 21 weeks after she went into early labour. He died two hours after his birth. She is a self-employed nail technician and qualified for Maternity Allowance, and she had seven months off work after her son's death. She found this very useful because she finds her client facing job emotionally demanding and the long hours physically tiring. She felt she would have struggled with these aspects of work whilst grieving for her son. By contrast, Esther, whose first son was born alive after weeks of attempts to prevent her going into labour, did not qualify for Statutory Maternity Pay or Maternity Allowance, but the fact that her son was born alive entitled her to a limited amount of Child Benefit, a state benefit paid for registered children who have lived (UK Government n.d.-e).[8] The status of the foetal

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and born body determined the level of this financial entitlement, and her own work record determined her non-entitlement to state recognition of her pregnancy. Her own physical condition after having been pregnant and given birth was not part of the assessment of her entitlements.

Employed women should be able to access maternity leave and pay after live birth, but this was not always straightforward. Kerry nearly failed to get maternity benefits after her third son was born alive at 20 weeks. Despite being employed at the hospital where her son was born and died, she struggled to access her entitlement:

> They don't really tell you anything. And I know it sounds stupid, and it's not something you really think about at that point, but you are sort of thinking, you're not pregnant any more, have I got to go to work tomorrow? . . .
>
> My boss had rang up [*sic*] to see what had happened, and [HR] said, 'no, she only gets a bit of sickness and then she has to come back to work.' . . . I was like, '*what*?' I said, 'there's no way I'll be coming back in 2 weeks or whatever.'
>
> So she said, 'well, you can get signed off sick for however long, but you don't get maternity leave because it's before time.'
>
> I rang my boss back and said, 'I think that's wrong.' I said, 'can you please look into it again because I've looked through these documents? And it clearly states that if you've got a heartbeat at birth, and it wasn't a stillbirth, you can get maternity leave?' . . . And the woman from HR did ring me in the end and say, 'I'm really sorry because this doesn't happen very often,' she said, which I suppose it doesn't, 'I wasn't entirely sure what it was, but it does actually say you can.'
>
> I said, 'I *have* got a birth certificate, I *have* got a death certificate.'

Those women who did receive some maternity leave or pay were conscious that others did not. All the women in my research knew that live birth or post-viability birth were the thresholds for entitlement. Kerry, following her employer's doubts about her entitlement, emphasised the particularity of the second trimester loss experience:

> I've miscarried before at different times, and a miscarriage at 8 weeks is completely different to a miscarriage, which they class this as, at 20 weeks . . . It shouldn't be miscarriage, because a miscarriage is not what that was. That was a birth. But it just didn't have an outcome.

This focus on teleological outcome is key to the biomedical-legal ontology of what pregnancy is, and it structures the governance of

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pregnancy in terms of entitlements and benefits for kin, especially pregnant women and mothers.

### *'Just from Circumstance': Second Trimester Exclusion from Maternity Benefits*

Most women in this study were not entitled to maternity leave or pay because their babies were born dead, having died before or during birth, including through feticide. Nor could they claim benefits associated with stillbirth because their loss occurred before viability. The status of the foetal body as a form of legal registered person or not, itself resting on biomedical assessments of gestation and independent life, was the gateway to entitlements for the pregnant woman (Middlemiss et al. 2023). State and private sector employment benefits thus accrue through kinship relationships and are delimited by ontological premises about what these involve, as represented by civil registration. Alice, whose babies were born during terminations for foetal anomaly either side of the viability threshold could see how her second trimester loss limited the financial support available. In her third trimester loss she had received Maternity Allowance:

> I felt like after losing our baby at 24 weeks, you know, it was really helpful to have two or three months just to recover from that. I felt not able to work myself for a good few weeks, possibly even a couple of months. But I didn't feel like I needed a full nine months to stop work, that seemed crazy to me. And yet when we lost our [subsequent] baby at 17 weeks, there's nothing, it doesn't. So neither of them made sense to me.

Alice felt that her own definition of what had happened to her was the same in both terminations, but the viability threshold had made an enormous difference to the two medical experiences, described in the previous chapters, and to the entitlements to time off and financial support that she had after the non-live births of the babies.

Many other women in my research who had non-live births but experienced the increased postnatal complications known to be a factor in second trimester pregnancy loss (see Chapter 2) were signed off sick by their General Practitioner (GP). This was for varying lengths of time up to six weeks, but usually for two weeks or more. The two-week standard derives from the 2010 Equality Act in which the protections of pregnancy extend for two weeks after the end of any pregnancy which does not entitle the woman to maternity leave. It is a similar duration to the compulsory period

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of maternity leave (two or four weeks depending on employment conditions) which will be further discussed below. However, not everyone had access even to sickness leave. Danielle, a care worker, had just experienced her second loss in a few months when she spoke to me. She had no sick leave after the loss of her first – the hospital where she was treated did not mention sick leave, and it never occurred to her to go to her GP. Her employer gave her a week of unpaid compassionate leave and then she was back at work. When I spoke to her, she was planning 10 days of unpaid leave after the death of her second son, and was anxious about the consequences of losing more pay. Danielle had very little awareness of her rights as a worker – for example, she was accustomed to booking holiday time from her job to attend antenatal scans, even though employers should give time off for these. After her second loss, she was anticipating reduced earnings, but her solution was not to turn to the state for help but to her local network of colleagues who offered to do a collection to give her some income during her time off.

Similarly, Joelle took time off under holiday entitlement for the termination for foetal anomaly of her daughter. She worked as a manager in the retail sector and had responsibility for staffing the shop:

> I had to do all the rotas and things like that, and plan, plan around it basically . . . So they tried to book me in [for the termination] around 14 weeks [gestation], and I said no. And they kept phoning to ask me what my decision was. And it finally got to the point where I had that week off [on leave]. And they, they booked the slot . . . But I never really wanted to go ahead with it. [small laugh] It was more just, well this is when I'm off work, this is the convenient time to do it.

Several self-employed people also had to return to work very quickly after a pregnancy loss. Helen had just opened her own business when she discovered her second child had died *in utero*:

> I'd just opened my shop two or three weeks before, I had no staff. I'd just started and I had to close . . . [tearful] I went back to work on the Tuesday, four days later. I was bleeding for about six weeks, I had to go back into hospital for them to, just to check there was no extra debris, because bleeding never really stopped . . . I became very angry later that no-one stopped me doing that. Which. My husband was signed off work! Because he's employed by a big employer! He had free counselling! [laughs ruefully] Which he absolutely needed,

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> not at all begrudging him it, but the difference between what I had and what he had, just from circumstance, is, you know, was telling.

A longer gestation of the foetus, beyond viability, would have entitled these women to Maternity Allowance or perhaps SML and SMP, but circumstances, the exclusions of benefit entitlements, and the lack of active engagement from GPs meant they faced different consequences. The consequences of lack of maternity entitlement were keenly felt. They had a material impact on the income of women, on their range of actions in the weeks and months after pregnancy loss, and on their sense that their experience was acknowledged or validated. Birth registration, including stillbirth registration, as the means of accessing maternity rights is therefore associated with recognition for the pregnant woman – her pregnancy work is validated by the state through the bureaucratic processes of registration when a live or certified stillborn baby results from the pregnancy (Middlemiss et al. 2023). Where this does not occur, in the majority of second trimester pregnancy losses, the post-pregnant woman and her partner as the second parent are excluded from maternity and parental employment rights. In those cases, women's pregnancy work is invisible and her labour is classified as sickness, if it is recognised at all as a physical event, because it did not produce a living person in the teleological ontology of pregnancy as a process of production ending with a specific outcome.

### *'You Tick the Maternity, and They Look Like You're from Mars': Prescription and Dental Care Entitlements*

Pregnant women in the UK get free state-funded medical prescriptions and free dental treatment during pregnancy and in the first year after the birth of a child. The prescription entitlement is evidenced by a Maternity Exemption (MATEX) certificate, applied for when pregnancy is medically confirmed. At present, women who have experienced miscarriage, termination or stillbirth can continue to claim free NHS prescriptions until the certificate expires, once they already have one (NHSBSA n.d.). However, this more generous entitlement is recent: previously women had to return the certificate after pregnancy loss. For those women who had experienced the previous system, it was a bureaucratic exercise in exclusion, which said that their own physical health after pregnancy loss was not a priority for the state, because they had no living baby through which they could claim their own bodily needs post-pregnancy. Effectively, the state denied the possible physical

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effects of pregnancy in cases of pregnancy loss. Even recently, lack of knowledge of the system meant that women in my research had not been able to claim their entitlement to free medical prescriptions. Bethany, pregnant with her second baby when I spoke to her, described how the certificate has changed and now spells out the post-pregnancy loss entitlement:

> On the back of the one I've got now [pregnant when she was talking to me], it says if you have a miscarriage or stillbirth you can still use until it's exempt. The other one [in 2018, when she had a second trimester loss], I'm pretty sure didn't say that. I would have read it. So last time, when I had, I had to have antibiotics, I had to have those anti-inflammatories that I didn't need from my doctor, I had to pay for all my prescriptions. And I was like, obviously, if it's going to make me better I don't mind, but had I, I thought the whole idea was that because you're pregnant they should be looking after you? And this wasn't my choice to happen? So I haven't made myself ill, and I need these things.

Even with the current entitlement, there are social barriers to claiming the free prescriptions using the certificate after pregnancy loss, based around the lack of the presence of a baby to evidence pregnancy. Kerry explained:

> So you go in to the doctors' to get a prescription because your boobs are like rocks [with mastitis], with no baby in your hand: 'have you got an exemption certificate?'
>
> You tick the maternity, and they look like you're from Mars. Because first they're looking at the fact that, 'she's 40, why's she going to be needing that?' and two, I'm not dragging baby in a carrier or a pushchair . . .
>
> *So then you look like you're scamming them or something?*
>
> That's what I mean!

Similarly, entitlement to free dental treatment can be hard to claim. Free dental care is based on pregnancy rather than possession of the MATEX certificate. As the NHSBSA states, 'being pregnant entitles you to free NHS dental treatment, not the fact that you hold a certificate' (NHSBSA n.d.).

NHS dental treatment is only free during pregnancy, after live birth, or after stillbirth. After other forms of pregnancy loss, the entitlement to free care only applies if the course of treatment was started during the pregnancy, i.e. before pregnancy loss. The consequences of this are difficult encounters for post-pregnant women in claiming care for their own bodies, despite their nominal entitlement

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to the care. For example, Joelle recounted how she had to publicly disclose her termination to a dental receptionist to explain why she was no longer pregnant and yet was entitled to care. Entitlements to resources and their inclusions and exclusions thus bureaucratically produce pregnancy as a teleological process which should end in the birth of a living baby, through which claims on the state are made, rather than a process which is happening to the woman's body and through which she can make claims herself. The post-pregnant woman's needs become invisible. Furthermore, women experiencing pregnancy loss may have difficulty in making these claims because the claims are so reliant on evidence of the body of a foetus or baby to prove pregnancy.

## The Incoherence of UK Maternity Entitlements When Viewed from the Second Trimester

Not only do UK maternity and healthcare entitlements include and exclude certain women based on the outcome for the foetal being, they also contain classificatory incoherences which add to the liminality of the pregnancy experience of a woman who has a second trimester loss. One of these has been discussed above, when Esther was able to claim Child Benefit for her son who died immediately after birth, but not any form of maternity leave or pay for herself. The entitlement to 'maternity' time away from paid employment and money during this period for the pregnant woman is further confused by the inclusion of live birth before viability, and post-viability stillbirth in maternity leave entitlement (Middlemiss et al. 2023). These inclusions raise questions about the purpose of maternity leave. Reading maternity leave entitlements from a perspective of second trimester pregnancy loss exposes inconsistencies at the heart of pregnancy governance. In pregnancies which end with the expected, normal outcome of live birth, these questions are black boxed. Second trimester exclusions, however, reveal that that maternity rights are confused and their purpose uncertain.

There is a compulsory element of maternity leave, which is two weeks for most forms of employment and four weeks for factory workers. This compulsory element must therefore relate to recovery time from labour for the pregnant woman. It would seem that the rest of the time away from work might be for nurturing the newborn, particularly because after the compulsory period the leave and pay can sometimes be shared with the non-pregnant

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partner under the Shared Parental Leave Regulations 2014 (UK Government n.d.-f). These regulations also state that entitlement to leave is related to responsibility for the care of the child in relation to the mother and the other parent of the child, or the partner of the mother.[9] However, the inclusion in maternity leave and pay rights of mothers of stillborn babies, and those of pre-viability live births, where the baby will not survive, suggests that most maternity leave and pay is not for the nurture of the baby, because the baby has died in these cases. Furthermore, not all women who have living babies are entitled to any maternity pay: those who are not in paid employment will not get maternity related money, despite their nurturing. Therefore, the financial aspect of maternity entitlements beyond the compulsory period seems to be about compensating whichever parent is not in paid employment, rather than to provide for a living child. This suggests that in these cases, the post-pregnant woman is being paid to grieve, or to recover from a serious trauma which will affect her employability, because she is not being paid to care. However, only those with a live birth or a post-viability stillbirth are included in this category of being paid to recover. Those women who experienced non-live births, of non-persons, have not had a loss which needs this attention.

*Shared Parental Rights and Paternity Rights in Second Trimester Loss*

Shared parental leave rules further complicate what is being enacted through maternity leave and pay, because the regulations are somewhat ambiguous about what happens if the baby is born dead or dies quickly, as in second trimester live births. My reading of the Shared Parental Leave Regulations 2014 accords with that of the charity Maternity Action (Maternity Action 2019) in understanding that the death of the child during or after pregnancy disqualifies parents from any claim to sharing parental leave. By contrast, the charity Working Families which advises on employment rights argues that if the required notice has been given of the intention to share parental leave, this still applies even after the death of the relevant child, if the child was born alive (Working Families 2017). Still other organisations have more inclusive policies which go beyond legal minimums. Angela, who has a senior managerial job for a national company, shared her maternity leave after the live birth and death of her second trimester son with her husband:

> So, my employer was brilliant. So me and my husband, because [son] was born alive, I got a birth certificate and I got maternity leave. Me

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> and my husband shared my maternity leave. Again, working in HR I was fully aware of what our rights were. So we shared. And we had both four months off together. Which was brilliant. We had days when we just sat here and watched crap on TV. We had days we went to the beach. We just had that control, I guess?

Angela's 'rights' in maternity leave were related to her company's careful equal treatment of all bereavement and parents rather than a legal position. She had not provided eight weeks' notice to her employer of her intention to share parental leave, but she told me that 'the company wanted to do everything they could to help'. In cases such as Angela's, where shared parental leave is permitted, both parents' loss is being acknowledged and their withdrawal from paid employment for a period of time is compensated. This means post-mortem shared parental leave is similar to bereavement or compassionate leave. However, for most deaths in the UK there is no statutory bereavement leave. The only exception is a very new form of bereavement leave introduced in 2020 for parents who lose a registered or stillborn child, giving them two weeks' paid leave from work (UK Government n.d.-g). Stillbirth, the neonatal death of a live baby during the maternity period and the death of a child are constructed through this benefit as unique bereavement events, but only apply to some people, those who meet criteria based on their specific kinship relationship with a foetal being which has been biomedically assessed to be in a particular legally certified relationship to them.

Where shared parental leave is not permitted in cases where the baby has died, the implication is that it is only the qualifying pregnant woman, or mother, of the baby who is suffering and needs time off paid employment. It excludes any other parents, and also women who do not qualify because of the legal status of their foetus or baby. There is an impact both on the recognition of their own experience, and on the consequent support available for the post-pregnant woman who may still be suffering the increased complications of second trimester labour and birth described in Chapter 2. There may also be financial consequences for the whole family. For example, Megan, a self-employed hairdresser mother of three, had no earnings while she was recovering from the intrauterine death of her son discovered at 20 weeks, and her partner, also self-employed, lost a week of work. For the household of five people this was a significant problem, and it had an impact on the choices available to the couple about whether to have a separate

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funeral for their son. Financial constraints meant they chose the free hospital-provided group cremation, but Megan regrets that as a consequence of this she does not have her son's ashes. The bureaucratic and governance boundaries around pregnancy loss can thus affect women indirectly through their other kin. This again demonstrates that the underlying ontology of pregnancy in governance terms is the production of new, separate persons, rather than an event which happens to a woman and her kin in a relational network.

## Conclusion: The Foetal Body as the Basis for the Reproductive Governance of Second Trimester Pregnancy Loss

In this chapter, I have shown how biomedical assessments of the foetal body interact with legal personhood statuses of live birth or stillbirth to produce classifications of the foetal being in the second trimester. These classifications affect whether any foetal being born in the second trimester will be included in, or excluded from, forms of civil registration. In turn, the foetal being's inclusion in, or exclusion from, civil registration affects the legal status of the pregnant woman and her partner, and whether they will be recognised as parents to a person. Where they are recognised as parents, they may be entitled to resources such as time off or maternity or paternity pay. Where the foetal being is classified as a non-person, it does not have legally recognised kin and there will be no entitlement to state or private sector resources for the pregnant woman and her partner. At the same time, where the foetal being is live born or stillborn, the mandatory nature of birth and death and stillbirth registration means that it is bureaucratically produced as a person with legal, registered parents, even if those parents do not wish to recognise these statuses.

The ontological status of the foetal being as person or non-person, with kin or no kin, is produced through the interaction of biomedicine and the law, as has been noted in other examples of the governance of pregnancy in the UK (Franklin 1999b, Sheldon 1997) and elsewhere (Memmi 2011). The way in which biomedicine, the law, regulation and bureaucracy work together gives the system strength as reproductive governance, because it is hard to challenge enmeshed discourses which share a tactical polyvalence (Foucault 1998). The result is a form of reproductive governance

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through which pregnant women's options, choices and entitlements are defined by biomedical and legal ontological positions on the status of the foetus as person or non-person. This biomedical-legal ontology regarding the foetal being itself rests on an ontology of pregnancy which is teleological and defined by the outcome of the production of a living person. This then affects the production of other kin such as mothers. Gestation does not count as a claim to motherhood unless it is completed with the birth of a person. In much of pregnancy loss in the second trimester, gestational work is made invisible by governance processes, and bureaucratic entitlements minimise the physical consequences of labour and birth for women as well as producing the event of loss as inconsequential and unimportant. This is repeatedly enacted in bureaucratic encounters which stem from second trimester loss, particularly around resources such as maternity leave and pay where live birth or third trimester stillbirth is a threshold for eligibility. In this chapter, I also argued that the category of stillbirth, its registration and its resource entitlements aligned with live birth create an incoherence and inconsistency in policy classifications around pregnancy. Furthermore, the existence of stillbirth policy regarding resource allocation serves to emphasise the ambiguity and liminality of the experience of second trimester loss for women. It complicates an ontology of pregnancy which is teleological and in which pregnancy only has value when it produces a living baby to be a citizen and the object of biomedical attention. This ontology sidelines the intentions, desires and needs of the pregnant woman, and her partner, in their experience of second trimester pregnancy loss as it relates to the events immediately after the loss. There is no space for women to define their own pregnancies and their pregnancy outcomes because of the bureaucratic control of ontologies of pregnancy. These ontologies are based around pregnancy outcome, in relation to the foetal being, rather than the needs or experiences of the pregnant woman. The following chapter will explore similar limitations of pregnant women's agency in relation to the governance of the dead body of the foetal being.

## Notes

1. Not only does the Human Fertilisation and Embryology Act create a being in need of legal protection before it materially exists, it also

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creates potential kin to that potential person in the form of acceptable or unacceptable putative parents.

2. Stillbirth is defined differently in different countries and contexts, with the World Health Organisation using foetal death at or after 28 weeks' gestation (WHO 2019), but, for example, parts of the USA defining a stillbirth as occurring from 20 weeks' gestation (Sanger 2012).
3. Lack of public recognition and acknowledgement of the process of pregnancy was an argument made by Tim Loughton MP's Private Member's Bill, which became the Civil Partnerships, Marriages and Deaths (Registration Etc.) Act 2019. It called for a report into the possibility of pre-24 week birth registration (House of Commons 2019), see Note 6 below.
4. The giving and use of names in an intimate kinship context is considered in Chapter 6.
5. The Women's Health Strategy of 2022 contained proposals to introduce optional certification of pre-viability pregnancy loss on a national scale in England and Wales, proposals which were fleshed out in 2023 in the Pregnancy Loss Review, see Note 6.
6. At the time of this interview in 2018, the government had commissioned a Pregnancy Loss Review to look at the possibility of a form of birth registration for pre-24 week losses ahead of a legal requirement established by the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019. I was invited to present to the Pregnancy Loss Review in June 2018 about birth registration before viability, in which presentation I laid out the complexity of birth and stillbirth registration and their possible consequences. After many delays, the Pregnancy Loss Review was finally published in July 2023 (Clarke-Coates and Collinge 2023) and contained proposals for optional pregnancy loss certification, for any type of loss, separate from civil registration, not requiring medical validation, and not entitling kin to any benefits. The proposed system is explicitly situated in bereavement recognition rather than public health surveillance, access to benefits, or any of the other functions of civil registration or population monitoring. The Government has committed to introducing these certificates.
7. The term 'handicap' is the term used in the Abortion Act 1967 and in Department of Health reporting on abortion, but it is offensive, so I have used it here in quotation marks to express my distance from it.
8. Since 2020, after my fieldwork ended, Statutory Bereavement Leave and Parental Bereavement Pay has been introduced for parents who experience the death of a child under 18 and post-viability stillborn babies. There were also attempts in Parliament in 2021 and 2023 to introduce bereavement leave for pre-viability miscarriage, via Private Member's Bills proposed by MPs Sarah Owen and Angela Crawley, but at the time of writing in 2023 these have not been successful.

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9. Notice must be given of an intention to share parental leave eight weeks before the expected birth of the 'child' defined in the regulations. This establishes some form of parental responsibility for both mother and her partner through an anticipatory recognised kinship relationship with a person who does not yet legally exist. The inclusion of the second parent in this makes the difference – a woman who is pregnant is effectively giving notice of her own need for time off after birth, but the non-pregnant parent here is claiming anticipatory kinship with a future person. This is another example of the breaching of the legal live birth personhood principle in the UK, and the teleological ontology of pregnancy.

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