

**Machine-Readable Lives or ‘Troubled Families’?  
Classification, categorisation and stereotyping  
in data collection and sharing in  
children’s social care in England**

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## **Abstract**

Critical data studies examines how the collection and use of data interact with systems of power: they shape who can know what about the world, and to what uses this knowledge can be put. This thesis uses feminist and queer approaches to consider the human rights impact of the collection and sharing of data in children's services in England. I draw on a wide range of critical literature to situate and explore a case study: the 'Troubled/Supporting Families Programme' which plays a key role in children's social care, and in the wider project of public sector datafication in England. In this thesis, I use the concepts of classification - segmentation of the world - and categorisation - naming the segments - to surface how the collection and sharing of data is not neutral but the outcome of human decision-making. I situate the collection and sharing of data within the history of information-gathering and decision-making in children's services and with the political choices which have shaped service delivery and datafication. Classification and categorisation are used to define the 'family' as a unit of analysis, which enables the identification of the 'problem family,' and further its definition as implicitly outside of the norm. Through examining the ways in which data systems classify, categorise and stereotype individuals who are known to social services based on their gender, I show how the expectation that individual and family lives are legible to computers is used to normalise certain forms of families, and stereotype those who do not comply as 'troubled.'

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# Table of Contents

<b>Abstract .....</b>	<b>2</b>
<b>Acknowledgements.....</b>	<b>3</b>
<b>Table of Contents .....</b>	<b>5</b>
<b>Chapter 1 Introduction.....</b>	<b>11</b>
<b>1.1 The rise and rise of ‘big data’ .....</b>	<b>11</b>
1.1.1 Big data and data ‘solutionism’ .....	12
1.1.2 Data solutionism in the UK public sector .....	13
1.1.3 Critical data studies and the ‘algorithmic turn’ .....	15
<b>1.2 Contribution to the literature.....</b>	<b>17</b>
1.2.1 A critical data studies perspective on data collection and sharing in children’s social care 18	
1.2.2 Strengthening feminist and queer critical data studies .....	20
1.2.3 Technology, ethics and human rights .....	21
<b>1.3 Overview of thesis .....</b>	<b>22</b>
<b>Chapter 2 Methods and methodology: engaging feminist and queer theories in critical data studies.....</b>	<b>25</b>
<b>2.1 Introduction .....</b>	<b>25</b>
<b>2.2 A socio-legal approach to the human rights framework .....</b>	<b>26</b>
2.2.1 Socio-legal social justice: a future worth striving for .....	27
<b>2.3 Examining inter-agency data sharing as a sociotechnical system case study         29</b>	
2.3.1 STS and the case study .....	31
2.3.2 Critical data studies: feminist and queer STS .....	32
<b>2.4 Methodology.....</b>	<b>55</b>
2.4.1 Embracing reflexivity .....	57
2.4.2 My own position as a researcher .....	59
2.4.3 Standpoint theory: centring people who are directly affected.....	61
2.4.4 Working at the intersections – and in the interstices – of different disciplines .....	62

2.4.5	Accessibility – beyond academia .....	63
<b>2.5</b>	<b>Methods .....</b>	<b>63</b>
2.5.1	Research in a pandemic .....	64
2.5.2	Interviews .....	66
2.5.3	Document analysis .....	72
<b>2.6</b>	<b>Conclusion.....</b>	<b>73</b>
<b>Chapter 3 Existing literature on human rights, data, and gender stereotyping</b>		
	<b>76</b>	
<b>3.1</b>	<b>Introduction .....</b>	<b>76</b>
<b>3.2</b>	<b>Data, algorithms and the “algorithmic turn” .....</b>	<b>77</b>
3.2.1	What is ‘data,’ precisely? .....	77
3.2.2	Data collection and sharing systems as socio-technical systems .....	79
3.2.3	Defining the algorithm .....	80
3.2.4	From data and algorithms to machine learning and artificial intelligence .....	86
<b>3.3</b>	<b>Human rights and data.....</b>	<b>84</b>
3.3.1	The human rights impact of the collection and sharing of data .....	85
3.3.2	Data and human rights in welfare support .....	97
<b>3.4</b>	<b>Gender stereotyping.....</b>	<b>99</b>
3.4.1	Gender stereotyping and harm .....	100
3.4.2	Human rights law and gender stereotyping .....	108
<b>3.5</b>	<b>Gender and data.....</b>	<b>125</b>
3.5.1	Different kinds of gender data .....	125
3.5.2	Gender data and queer lives.....	128
3.5.3	Gender, data and human rights .....	130
3.5.4	Stereotyping, gender and data.....	132
<b>3.6</b>	<b>Conclusion.....</b>	<b>133</b>
<b>Chapter 4 Classification and categorisation in datafication .....</b>		<b>135</b>
<b>4.1</b>	<b>Introduction .....</b>	<b>135</b>
<b>4.2</b>	<b>Categorisation and classification .....</b>	<b>136</b>

4.2.1	Classification .....	136
4.2.2	Categorisation .....	141
<b>4.3</b>	<b>Doing things with data .....</b>	<b>143</b>
4.3.1	What makes data 'good'?.....	143
4.3.2	Where does the data live? Hardware and bits .....	157
4.3.3	Telling the hardware what to do: software .....	162
<b>4.4</b>	<b>Classification and categorisation in data collection and sharing .....</b>	<b>148</b>
4.4.1	Deciding what to collect: conceptualising data infrastructures .....	149
4.4.2	The source of the data: collecting data .....	152
4.4.3	For sense-making: using data collection and sharing systems .....	155
<b>4.5</b>	<b>Conclusion.....</b>	<b>163</b>
<b>Chapter 5 The emergence of data collection and sharing in children's and family social service systems in England.....</b>		<b>165</b>
<b>5.1</b>	<b>Introduction .....</b>	<b>165</b>
5.1.1	Classification, categorisation and limitations in children's social care data.....	167
<b>5.2</b>	<b>Investigatory data collection: data as evidence .....</b>	<b>168</b>
<b>5.3</b>	<b>Managing uncertainty: data collection to justify and control risk.....</b>	<b>171</b>
5.3.1	Justifying intervention in the home: information for coordination .....	172
5.3.2	'Reflexive modernisation:' risks to children from the system itself .....	173
5.3.3	Managing outrage: recording and sharing information to justify decisions.....	176
5.3.4	Social work orientations and attitudes to risk.....	180
<b>5.4</b>	<b>Modern public services: digitisation and efficiency.....</b>	<b>187</b>
5.4.1	Digitisation as modernisation .....	188
5.4.2	Digitisation for efficiency: cost-cutting in an age of austerity.....	191
5.4.3	The rise of public sector predictive analytics .....	192
<b>5.5</b>	<b>'Joined-up thinking:' data for collaboration between different state entities</b>	<b>194</b>
5.5.1	Epidemiological data collection: child maltreatment as a public health issue .....	196
5.5.2	Better targeting: data sharing for identifying families at risk.....	197
<b>5.6</b>	<b>Data for early intervention and preventative services: predicting outcomes and making parents be good parents .....</b>	<b>199</b>

5.6.1	Good and bad families: preventative services and better family models .....	199
5.6.2	Researching good parenting: data collection to understand good and bad outcomes for children	201
5.6.3	Family support for everyone – New Labour and longitudinal approaches .....	202
5.6.4	Targeting and narrowing of the welfare state: the Coalition government .....	204
5.6.5	Authoritarian intervention .....	205
<b>5.7</b>	<b>Conceptualising and designing data systems for children’s social care.....</b>	<b>206</b>
5.7.1	Data systems are infrastructures .....	207
5.7.2	Data systems are built by people .....	209
5.7.3	Systems have multiple purposes .....	211
5.7.4	Tensions between the multiple purposes of data systems .....	215
<b>5.8</b>	<b>Limitations and ethical challenges: data solutionism in social service data systems.....</b>	<b>218</b>
5.8.1	Financial costs and outsourcing to ‘black-box’ systems .....	219
5.8.2	Inaccuracies and low-quality data .....	222
5.8.3	Transparency and engagement .....	224
5.8.4	Ideological decisions framed as technical constraints .....	226
5.8.5	Privacy and surveillance .....	227
5.8.6	The challenges of cross-agency data sharing .....	229
<b>5.9</b>	<b>Conclusion.....</b>	<b>230</b>
<b>Chapter 6 Classifying and categorising the ‘family’ in England: law, policy, practice, and experience .....</b>		
<b>232</b>		
<b>6.1</b>	<b>Introduction .....</b>	<b>232</b>
<b>6.2</b>	<b>Classifying the family: prototypes in law, policy and practice .....</b>	<b>233</b>
6.2.1	Defining the ‘family’ in law .....	234
6.2.2	Defining the ‘family’ in policy .....	238
6.2.3	Defining the ‘family’ in children’s services practices: focusing on the mother .....	242
<b>6.3</b>	<b>Categorising the ‘problem family’ .....</b>	<b>243</b>
6.3.1	A separate, problem, group: the idea of the ‘underclass’ .....	245
6.3.2	The concept of the ‘problem family’ .....	246
6.3.3	Identifying the problem family: defining characteristics .....	248



6.3.4	Problem families and family breakdown. ....	249
6.3.5	New Labour and 'social exclusion' .....	252
6.3.6	'Broken Britain' – the Coalition and Conservative Approaches .....	253
6.3.7	Welfare conditionality in the UK .....	254
6.3.8	Conditionality, data and surveillances.....	256
6.3.9	Digital-by-default: Universal Credit .....	258
<b>6.4</b>	<b>Defining our own families: resisting classification .....</b>	<b>260</b>
6.4.1	Covering the world in its entirety.....	261
6.4.2	Segmentation into mutually exclusive spaces .....	262
6.4.3	Consistent and unique principles .....	263
<b>6.5</b>	<b>Conclusion.....</b>	<b>265</b>
<b>Chapter 7 Categorising the 'troubled family': data sharing, binary classifications and family role stereotyping in children's social care in England</b>		
<b>266</b>		
<b>7.1</b>	<b>Introduction .....</b>	<b>266</b>
<b>7.2</b>	<b>Case study: The Troubled/Supporting Families Programme.....</b>	<b>267</b>
7.2.1	Case study as method .....	268
7.2.2	The history of the programme: 'problem families' as 'troubled families' .....	268
7.2.3	Interaction with the wider children's social care system .....	272
<b>7.3</b>	<b>Incentivising data use in the Troubled/Supporting Families Programme ....</b>	<b>273</b>
7.3.1	Legislation and guidance .....	274
7.3.2	Information sharing as an explicit goal: a 'data-intensive programme'.....	278
7.3.3	Data maturity as a key part of the programme .....	280
7.3.4	Limits of data sharing .....	281
<b>7.4</b>	<b>The 'family' in the 'Troubled/Supporting Families Programme' .....</b>	<b>283</b>
7.4.1	Adults, parents and dependent children .....	283
7.4.2	Gender neutrality in policy, maternal responsibility in practice.....	285
7.4.3	Individual indicators.....	287
7.4.4	Whole family Indicators .....	291
<b>7.5</b>	<b>Family is a categorisation – and one that is normalized, based on residence</b>	<b>293</b>

7.5.1	Enforcing a classification system on families:.....	294
7.5.2	Conflating family and household: shared residence as an identifier. ....	298
<b>7.6</b>	<b>The ‘model’ family.....</b>	<b>300</b>
7.6.1	Normalising cohabiting couples and punishing lone mothers.....	301
7.6.2	From heteronormativity to the ‘self-reliant couple’ .....	305
7.6.3	An employed family is an ‘untroubled’ family .....	307
7.6.4	Gendered roles within the family.....	308
7.6.5	Domestic abuse, Universal Credit, and ‘troubled’ families .....	311
7.6.6	Stability over time .....	313
<b>7.7</b>	<b>‘Troubled family’ is a categorisation – and one that is ideological.....</b>	<b>315</b>
7.7.1	Classification and categorisation .....	316
7.7.2	Targeted, not universal, services .....	317
7.7.3	Labelling families ‘troubled’ .....	318
<b>7.8</b>	<b>Stereotyping the ‘family’ in the ‘Troubled/Supporting Families Programme</b>	<b>319</b>
<b>7.9</b>	<b>Normalising the stereotypical ‘model family’ and CEDAW Article 5.....</b>	<b>321</b>
<b>7.10</b>	<b>Conclusion.....</b>	<b>324</b>
<b>Chapter 8 Futurity: naming and eliminating categorisation that perpetrates harmful gender stereotyping .....</b>		<b>326</b>
<b>8.1</b>	<b>Conclusion.....</b>	<b>326</b>
<b>8.2</b>	<b>Links with other work in other areas.....</b>	<b>328</b>
<b>8.3</b>	<b>Area for future research.....</b>	<b>331</b>
<b>Bibliography.....</b>		<b>334</b>

# Chapter 1 Introduction

## 1.1 The rise and rise of 'big data'

The late 2000s saw an explosion in the amount of data created in the world. By the early 2010s, the petabytes<sup>1</sup> of data being created, stored, and analysed were being termed 'Big Data,'<sup>2</sup> and these volumes of data quickly attracted attention as a potential source of revenue and insight for public and private sector alike.<sup>3</sup>

*"Data is the new oil" – numerous tech CEOs, politicians, and thought leaders since the late 2000s<sup>4</sup>*

By 2008, data analysts were arguing that so much data was being produced that it would render traditional forms of scientific analysis obsolete, arguing that "with enough data, the numbers speak for themselves."<sup>5</sup> 'Big Data' became a magic word, connoting size but also what Jen Jack Gieseeking has described as, "objectivity, insight and accuracy."<sup>6</sup> Decision-makers began to see larger datasets as better and more

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<sup>1</sup> A petabyte is 10<sup>15</sup> bytes of data. A petabyte of songs encoded as MP3 files would play for more than 2,000 years. See Brian McKenna, 'What Does a Petabyte Look Like?' (*Computer Weekly*, March 2013) <<https://web.archive.org/web/20180128072952/http://www.computerweekly.com/feature/What-does-a-petabyte-look-like>> accessed 15 February 2021.

<sup>2</sup> Paul McFedries, 'The Coming Data Deluge [Technically Speaking]' [2011] *IEEE Spectrum* 19.

<sup>3</sup> Paul McFedries, 'The Data Gold Rush [Technically Speaking]' [2011] *IEEE Spectrum* 26.

<sup>4</sup> For example: Meglena Kuneva, then European Consumer Commissioner: Meglena Kuneva, 'Keynote Speech' (Roundtable on Online Data Collection, Targeting and Profiling, 31 March 2009)

<[https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_09\\_156](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_09_156)> accessed 12 October 2021.; Qi Lu,

then chief of Microsoft's Applications and Services group: Matt Day, 'Microsoft Touts Developer Tools, Business Software at Build' *The Seattle Times* (31 March 2016)

<<https://www.seattletimes.com/business/microsoft/microsoft-touts-developer-tools-business-software/>>

accessed 15 February 2022.; The Economist: 'The World's Most Valuable Resource Is No Longer Oil, but Data' [2017] *The Economist* <<https://www.economist.com/leaders/2017/05/06/the-worlds-most-valuable-resource-is-no-longer-oil-but-data>> accessed 15 February 2022.

<sup>5</sup> Chris Anderson, 'The End of Theory: The Data Deluge Makes the Scientific Method Obsolete' *Wired* (23 June 2008) <<https://www.wired.com/2008/06/pb-theory/>> accessed 7 August 2018.

<sup>6</sup> Jen Jack Gieseeking, 'Size Matters to Lesbians Too: Queer Feminist Interventions into the Scale of Big Data [Pre-Print]' (2017) 70 *Professional Geographer* 150.

comprehensive: these datasets were increasingly treated as representative of reality.<sup>7</sup> Clive Humby, one of the inventors of the Tesco Clubcard,<sup>8</sup> is believed to have coined the quote comparing data to oil,<sup>9</sup> which has been used in hundreds, if not thousands, of presentations, white papers, and speeches.

*“Data is the new oil. It’s valuable, but if unrefined it cannot really be used. It has to be changed into gas, plastic, chemicals, etc to create a valuable entity that drives profitable activity; so must data be broken down, analyzed for it to have value.” – Clive Humby*

Humby recognised that data needed to be analysed to be of use. In the following sections, I will give a brief overview of the promises – and risks – of data analysis.

### 1.1.1 Big data and data ‘solutionism’

In their 2020 book *Data Feminism*, Catherine D’Ignazio and Lauren Klein argue that for those in positions of power, comparing data to oil is resonant because they see it as a resource that can be exploited for profit and to cement their power: but for many more people, the metaphor resonates because oil extraction is exploitative of both people and of the environment.<sup>10</sup> To this I would also add, the exploitation of data may have long-lived, harmful consequences: which may be unforeseen, or simply ignored, in pursuit of profit. Despite this critical engagement, however, data continues to be

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<sup>7</sup> Craig M Dalton, Linnet Taylor and Jim Thatcher, ‘Critical Data Studies: A Dialog on Data and Space’ (2016) January-June 2016 *Big Data & Society* 1.

<sup>8</sup> Dunnhumby, founded by husband-and-wife team Edwina Dunn and Clive Humby, came up with the Tesco Clubcard, which mined customer data for marketing and retail analysis from the mid-1990s. See Jonathan Brown, ‘Cashing in, the Couple Who Dreamed up Tesco Clubcard’ *The Independent* (22 October 2011) <<https://www.independent.co.uk/news/people/profiles/cashing-in-the-couple-who-dreamed-up-tesco-clubcard-2054543.html>> accessed 12 October 2021.

<sup>9</sup> Michael Haupt, ‘“Data Is the New Oil” — A Ludicrous Proposition’ (*Project 2030*, 2 May 2016) <<https://medium.com/project-2030/data-is-the-new-oil-a-ludicrous-proposition-1d91bba4f294#.vjyvcwnp0>> accessed 12 October 2021.

<sup>10</sup> Catherine D’Ignazio and Lauren F Klein, *Data Feminism* (MIT Press 2020) 45.

touted as a solution to many problems in almost every area of life, as part of what Evgeny Morozov has termed ‘solutionism,’ “the idea that given the right code, algorithms, and robots, technology can solve all of mankind’s problems.”<sup>11</sup>

This includes in the public sector. Data-based systems – ranging from analytical tools to predictive modelling – have been proposed in many different countries. These include, for example, systems which aim to allocate school places in Belgium, or identify tax fraud in Slovenia and Poland.<sup>12</sup> Specifically in the area of welfare benefits and social services, data-based systems have been deployed that aim to identify fraud in Michigan and in the Netherlands,<sup>13</sup> coordinate housing for unhoused people in the USA,<sup>14</sup> and distribute food aid in India.<sup>15</sup>

### 1.1.2 Data solutionism in the UK public sector

In the UK public sector, the use of data – and technologies for collecting, analysing and disseminating data - has increased rapidly in the last decade. In 2020, the then Digital Secretary Nicky Morgan stated that that the Conservative government would be “an unashamedly pro-technology government in all that we do.”<sup>16</sup> Different entities

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<sup>11</sup> Ian Tucker, ‘Evgeny Morozov: “We Are Abandoning All the Checks and Balances”’ *The Observer* (9 March 2013) <<https://www.theguardian.com/technology/2013/mar/09/evgeny-morozov-technology-solutionism-interview>> accessed 19 July 2019.

<sup>12</sup> AlgorithmWatch and Bertelsmann Stiftung, ‘Automating Society Report 2020’ (AlgorithmWatch 2020).

<sup>13</sup> Rashida Richardson, Jason M Schultz and Vincent M Southerland, ‘Litigating Algorithms 2019 US Report: New Challenges to Government Use of Algorithmic Decision Systems’ (AI Now Institute 2019).

<sup>14</sup> Virginia Eubanks, *Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor* (St Martin’s Press 2018).

<sup>15</sup> Rebecca Ratcliffe, ‘How a Glitch in India’s Biometric Welfare System Can Be Lethal’ *The Guardian* (16 October 2019) <<https://www.theguardian.com/technology/2019/oct/16/glitch-india-biometric-welfare-system-starvation>> accessed 3 March 2020.

<sup>16</sup> Sam Trendall, ‘Digital Secretary: “We Will Be an Unashamedly pro-Technology Government in All That We Do”’ (*PublicTechnology.net*, 15 January 2020) <<https://www.publictechnology.net/articles/news/digital-secretary-%E2%80%98we-will-be-unashamedly-pro-technology-government-all-we-do%E2%80%99>> accessed 15 January 2020.

within the public sector use data in their work from fixing potholes,<sup>17</sup> to information portals for the general public,<sup>18</sup> to financial dispute resolution.<sup>19</sup>

In this thesis, I will examine the collection and sharing of data by different public sector entities in England between 2010 and 2022. This period has been characterised by a particular pattern of public spending policies. In the 2010 General Election, the Labour government – which had been in power since 1997 - was replaced by a Coalition Conservative-Liberal Democrat government. The Coalition government – and the Conservative government which succeeded it, coming to power in 2015 – have implemented ‘austerity measures.’ Touted as a response to the 2008 global financial crises, these measures have involved cutting welfare and public sector spending. Facing cuts to their budgets, public sector organisations have sought alternative ways of working. At a time when data solutionism has been a dominant narrative in the public and private sector, these alternatives have included increasing the uses of data and technology.

*"Data sharing projects can make real world improvements to support for children and families" – Eddie Hughes, then Minister for Supporting Families, March 2021<sup>20</sup>*

I will focus on one specific public sector area in which the use of data has increased: children’s social services in England. Different entities in the UK public sector collect,

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<sup>17</sup> Sam Trendall, ‘Blackpool Claims £1m Savings after Using AI to Fix Potholes’ (*PublicTechnology.net*, 4 February 2020) <<https://www.publictechnology.net/articles/news/blackpool-claims-%C2%A31m-savings-after-using-ai-fix-potholes>> accessed 5 February 2020.

<sup>18</sup> Zeynep Engin and Philip Treleaven, ‘Algorithmic Government: Automating Public Services and Supporting Civil Servants in Using Data Science Technologies’ (2019) 62 *The Computer Journal* 448, 452.

<sup>19</sup> GOV.UK, ‘Check You Can Use Money Claim Online (MCOL)’ (*GOV.UK*) <<https://www.moneyclaims.service.gov.uk/eligibility/mcol-eligibility#>> accessed 28 October 2021.

<sup>20</sup> Ministry of Housing, Communities & Local Government, ‘Local Data Accelerator Fund for Children and Families: Prospectus’ (Ministry of Housing, Communities & Local Government 2021) 4 <<https://www.gov.uk/government/publications/local-data-accelerator-fund-for-children-and-families>>.

use and share with each other data about children and their families in many different ways, from statutory collection of information about school pupils,<sup>21</sup> to tracking ‘holiday hunger,’<sup>22</sup> to identifying children at risk of sexual exploitation.<sup>23</sup> As I will discuss further in Chapter 5, data collection, sharing and analysis are attractive to children’s services because they promise to increase the accuracy of decision-making while decreasing risk, in more efficient and cost-effective ways which are attractive in a context of austerity and cuts to public services.

### 1.1.3 Critical data studies and the ‘algorithmic turn’

As attention to ‘Big Data,’ and the number of undergraduate, postgraduate and boot camp courses in data science have grown, so too has the emerging field of ‘critical data studies.’ This growing field looks not only at the data itself but at the cultures within which it is used.<sup>24</sup> Critical data studies examines how the collection and use of data interact with systems of power: they shape who can know what about the world, and to what uses this knowledge can be put. This thesis aims to critically engage with the practical use of data – its collection, sharing, and use – in children’s services in the UK.

In 2016, Tarleton Gillespie identified three uses of the term ‘algorithm.’ For mathematicians and software engineers, the term can refer to a logical set of

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<sup>21</sup> GOV.UK, ‘Complete the School Census’ (*GOV.UK*) <<https://www.gov.uk/guidance/complete-the-school-census/statutory-requirement-data-sharing-and-regulations>> accessed 28 October 2021.

<sup>22</sup> Gill Hitchcock, ‘How Open Data Is Helping Falkirk Halt Summer “Holiday Hunger”’ [2019] *PublicTechnology.net* <<https://www.publictechnology.net/articles/features/how-open-data-helping-falkirk-halt-summer-%E2%80%98holiday-hunger%E2%80%99>> accessed 7 August 2019.

<sup>23</sup> Lina Dencik and others, ‘Data Scores as Governance: Investigating Uses of Citizen Scoring in Public Services’ (*Data Justice Lab* 2018) 30–1.

<sup>24</sup> Dalton, Taylor and Thatcher (n 7) 7.

mathematical steps acting on a body of data.<sup>25</sup> In public discourse, the term increasingly refers to a broader system that combines data, the steps that act on it, the infrastructure within which this happens, and its application.<sup>26</sup> More broadly, however, Gillespie argues that the term ‘algorithm’ can refer to “the insertion of procedure into human knowledge and social experience,” both functionally and ideologically.<sup>27</sup> In 2011, William Uricchio termed this insertion, in the context of photographic media, the ‘algorithmic turn’:<sup>28</sup> since then, this term has been used in fields ranging from STS,<sup>29</sup> to media studies,<sup>30</sup> to journalism,<sup>31</sup> to politics.<sup>32</sup> Nick Seaver goes further, stating that the use of ‘algorithm’ in this sense has come to represent “advanced technology, creepy mathematical efficacy, and shadowy control.”<sup>33</sup> In this thesis, I will unpack specific uses of data: these may not be ‘algorithmic’ in the mathematical sense, but they are systems which exert ‘shadowy control,’ on the lives of thousands of children and their families in England.

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<sup>25</sup> Tarleton Gillespie, ‘Algorithm’ in Benjamin Peters (ed), *Digital Keywords: A Vocabulary of Information Society and Culture* (Princeton University Press 2016) 19.

<sup>26</sup> Gillespie (n 25) 22.

<sup>27</sup> Gillespie (n 25) 25.

<sup>28</sup> William Uricchio, ‘The Algorithmic Turn: Photosynth, Augmented Reality and the Changing Implications of the Image’ (2011) 26 *Visual Studies* 11.

<sup>29</sup> See for example Gillespie (n 25) 27.

<sup>30</sup> See for example Lisa Parks, ‘Field Mapping: What Is the “Media” of Media Studies?’ (2020) 21 *Television & New Media* 642.

<sup>31</sup> See for example Diana L Ascher, ‘The New Yellow Journalism: Examining the Algorithmic Turn in News Organizations’ Social Media Information Practice through the Lens of Cultural Time Orientation’ (PhD dissertation, UCLA 2017) 104 <<https://escholarship.org/uc/item/5k712905>> accessed 26 January 2021.

<sup>32</sup> See for example Anita Gurumurthy and Deepti Bharthur, ‘Democracy and the Algorithmic Turn’ (2018) 27 *Sur - International Journal on Human Rights* 39.

<sup>33</sup> Nick Seaver, ‘Knowing Algorithms’ in Janet Vertesi and David Ribes (eds), *digitalSTS: A Field Guide for Science & Technology Studies* (2019) 412–3 <<https://digitalsts.net/essays/knowing-algorithms/>> accessed 26 January 2021.



## 1.2 Contribution to the literature

In this thesis, I will examine in particular one policy implementation the 'Troubled/Supporting Families Programme' (discussed in detail together with other related social programmes, particularly the introduction of Universal Credit in Chapter 7). This Programme has been a motivating force for the increase in the collection of data related to children's services, and for data sharing between different local government entities. The questions at the heart of this thesis are: to what extent does the collection and sharing of data in this Programme support and perpetuate norms about what constitutes 'good' families and gendered stereotypes of individuals within families; and is this stereotyping in violation of the international human rights legal framework?

My research presents a novel perspective on this Programme, using a critical data studies lens to surface and examine the gendered stereotyping which underpins this collection and sharing of data. In addition to this specific examination of one UK government programme, my thesis also contributes to the broader critical data studies literature on children's social care, as well as extending feminist and queer critical data studies. It also develops the technology and human rights literature. I will discuss these contributions in more detail in the following sections.

### 1.2.1 A critical data studies perspective on data collection and sharing in children's social care

Literature from the last decade on the use of data in children's services has largely focused on high-profile predictive risk models, for example in New Zealand,<sup>34</sup> the USA,<sup>35</sup> as well as in the UK,<sup>36</sup> where an estimated 10% of local authorities have piloted predictive models.<sup>37</sup> Children's services have emerged as one of the first areas of the UK public sector to use automated decision-making systems, and so much of the existing literature looks at the use of these systems – often termed 'algorithms,' or 'algorithmic decision-making systems,' as part of the 'algorithmic turn' I have discussed in section 1.1.3 above. Proponents of these systems argue that they can use resources more effectively than existing systems,<sup>38</sup> and that they can personalise services for families.<sup>39</sup> Existing literature has argued that the use of these models can improve efficiency, cut costs, and help free up frontline worker time for working with families.<sup>40</sup>

In the area of children's services in the UK, much of the critical data studies literature has focused on *what is being done* with data once it has been collected. The use of data collection and sharing systems has been criticised for being an area where

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<sup>34</sup> Emily Keddell, 'The Ethics of Predictive Risk Modelling in the Aotearoa/New Zealand Child Welfare Context: Child Abuse Prevention or Neo-Liberal Tool?': [2014] Critical Social Policy <<https://journals.sagepub.com/doi/10.1177/0261018314543224>> accessed 18 May 2020.

<sup>35</sup> Eubanks (n 14); Stephanie Cuccaro-Alamin and others, 'Risk Assessment and Decision Making in Child Protective Services: Predictive Risk Modeling in Context' (2017) 79 Children and Youth Services Review 291.

<sup>36</sup> David Pegg and Niamh McIntyre, 'Child Abuse Algorithms: From Science Fiction to Cost-Cutting Reality' *The Guardian* (16 September 2018) <<https://www.theguardian.com/society/2018/sep/16/child-abuse-algorithms-from-science-fiction-to-cost-cutting-reality>> accessed 20 January 2020.

<sup>37</sup> Vicky Clayton and others, 'Machine Learning in Children's Services: Technical Report' (2020) 9.

<sup>38</sup> Cuccaro-Alamin and others (n 35).

<sup>39</sup> David Leslie and others, 'Ethics Review of Machine Learning in Children's Social Care' (What Works for Children's Social Care 2020) 8.

<sup>40</sup> Cuccaro-Alamin and others (n 35).

experimentation is being done by local governments (including as part of public-private partnerships), with limited impact assessment or evaluation.<sup>41</sup> Criticisms have also highlighted the challenges of acquiring quality data,<sup>42</sup> the risk of bias,<sup>43</sup> and the potential for disproportionate impact on marginalised people who are least likely to be able to seek redress.<sup>44</sup>

My thesis extends this literature by critically examining the collection and sharing of this data itself: in this way, I link critical data studies with the longer history of critically engaging with metrics and IT systems in social care, as I will discuss in Chapter 5. In this thesis, I use the concepts of classification - segmentation of the world - and categorisation - naming the segments - to surface how the collection and sharing of data is not neutral but the outcome of human decision-making. My thesis examines how attempts to render individual and family lives 'machine-readable' - that is to say, legible to data collection and sharing systems - itself has consequences for the ability of those individual to claim and enjoy their human rights. Through examining the ways in which data systems classify, categorise and stereotype individuals who are known to social services, I draw on feminist and queer approaches to show how the expectation that individual and family lives are legible to computers is used to normalise certain forms of families, and stereotype those who do not comply as 'troubled.'

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<sup>41</sup> Joanna Redden, Lina Dencik and Harry Warne, 'Datafied Child Welfare Services: Unpacking Politics, Economics and Power' [2020] Policy Studies 1.

<sup>42</sup> Cuccaro-Alamin and others (n 35).

<sup>43</sup> Leslie and others (n 39).

<sup>44</sup> Emily Keddell, 'Risk Prediction Tools in Child Welfare Contexts: The Devil in the Detail' (*husIta*, 6 April 2018) <<http://www.husita.org/risk-prediction-tools-in-child-welfare-contexts-the-devil-in-the-detail/>> accessed 29 October 2020.

## 1.2.2 Strengthening feminist and queer critical data studies

While feminist science and technology studies is an established field, as I will discuss in Chapter 2, feminist data studies is much newer: Catherine D'Ignazio and Lauren Klein's influential book *Data Feminism* was published only in 2020.<sup>45</sup> Feminist data studies is arguably a part of critical data studies:<sup>46</sup> many of the higher-profile critical studies of data use in the public sector, however, focus on race,<sup>47</sup> or sometimes disability.<sup>48</sup> A gender lens – let alone an explicitly feminist lens – thus far has been lacking in the literature and analysis of data in the public sector: this not only precludes analysis of the specifically gendered impact of these systems, but weakens analysis of how data and data systems contribute to intersectional discrimination<sup>49</sup> and to the matrix of domination.<sup>50</sup> My research, first and foremost, adds a gender lens to the analysis of the use of data in the public sector in England generally, and in children's services in particular. Specifically, it addresses how the use of data collection and sharing systems risk cementing and perpetuating gender stereotypes that are already present in children's services: these include stereotyping women as primary caregivers, and men as 'breadwinners.'

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<sup>45</sup> D'Ignazio and Klein (n 10).

<sup>46</sup> Dalton, Taylor and Thatcher (n 7).

<sup>47</sup> Julia Angwin and others, 'Machine Bias' (*ProPublica*, 23 May 2016)

<<https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>> accessed 22 May 2018.

<sup>48</sup> Colin Lecher, 'A Healthcare Algorithm Started Cutting Care, and No One Knew Why' (*The Verge*, 21 March 2018) <<https://www.theverge.com/2018/3/21/17144260/healthcare-medicare-algorithm-arkansas-cerebral-palsy>> accessed 13 April 2018.

<sup>49</sup> Kimberlé Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' (1989) 1989 University of Chicago Legal Forum <<https://chicagounbound.uchicago.edu/uclf/vol1989/iss1/8>> accessed 31 March 2023.

<sup>50</sup> Patricia Hill Collins's concept, applied to technology in e.g. Ruha Benjamin, *Race after Technology: Abolitionist Tools for the New Jim Code* (Polity 2019) 86; D'Ignazio and Klein (n 10) 24; Sasha Costanza-Chock, *Design Justice* (MIT Press 2020) <<https://design-justice.pubpub.org/>> accessed 27 January 2021.

My work also contributes to the nascent area of queer data studies. Queer data studies can refer to the collection and analysis of “data relating to gender, sex, sexual orientation and trans identity/history:”<sup>51</sup> in other words, data about queer facets of a person’s identity. Queer data studies can also, however, describe an approach to data which draws on queer theory: Jen Jack Giesecking describes this approach as rejecting binaries, considering tensions rather than oppositions, and admitting the unknown and the partial.<sup>52</sup> This thesis builds on this ‘queering’ approach to data by unpacking and challenging the use of binaries, classifications and categorisations, and by examining the real-world impact that these categorisations have on individuals who do – or do not – fit neatly into the criteria.

### **1.2.3 Technology, ethics and human rights**

From a sociological point of view, it is important to understand how the introduction – and use - of more and more data in children’s services impacts the ways that social services operates, and how this impacts on children and families. From a human rights point of view, it is important to understand the potential ways that data could be used in service of respect, protection and fulfilment: and conversely, the risks of human right violations.

As a result, much of the debates on accountability and responsibility use an ethical framework instead of a human rights framework. There is, however, a growing recognition that ‘ethics’ can be co-opted and used, particularly by corporate actors, to

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<sup>51</sup> Kevin Guyan, ‘Queer Data’ (*Dr Kevin Guyan*, 10 June 2020) <<https://kevinguyan.com/queer-data/>> accessed 22 November 2021.

<sup>52</sup> Giesecking (n 6).

evade accountability.<sup>53</sup> Ethical frameworks have also been criticised for locating the source of problems in individuals, or at best particular, isolated sociotechnical systems,<sup>54</sup> rather than looking at broad structural factors which contribute, amongst other things, to discrimination, stereotyping and harms.

My research also contributes to the growing push to bring technology within the ambit of human rights and to ensure that the existing human rights framework is adequate for this task.<sup>55</sup> I do not mean to imply that ethics has no place in this debate: but the human rights framework remains an important – and crucially, external – force for accountability.<sup>56</sup> My thesis, therefore, contributes to bringing the field of technology and data use, particularly in the public sector, within the ambit of the human rights framework and its enforcement mechanisms.

### 1.3 Overview of thesis

In Chapter 2, I explain my socio-legal approach to the human rights framework: examining this legal framework in the context of its impact on people's lives. I consider data collection and sharing as a socio-technical system, using feminist and queer theory to examine both a specific case study and the broader context. Again drawing

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<sup>53</sup> Alison Berthet, 'Why Do Emerging AI Guidelines Emphasize "Ethics" over Human Rights?' (*OpenGlobalRights*, 10 July 2019) <<https://www.openglobalrights.org/why-do-emerging-ai-guidelines-emphasize-ethics-over-human-rights/>> accessed 12 July 2019.

<sup>54</sup> D'Ignazio and Klein (n 10) 60–1.

<sup>55</sup> See for example Lorna McGregor, Daragh Murray and Vivian Ng, 'International Human Rights Law as a Framework for Algorithmic Accountability' (2019) 68 *International & Comparative Law Quarterly* 309; Council of Europe, 'Algorithms and Human Rights: Study on the Human Rights Dimension of Automated Data Processing Techniques and Possible Regulatory Implications' (2018) Council of Europe study DGI(2017)12; 'Statement on Visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on Extreme Poverty and Human Rights' (Office of the High Commissioner for Human Rights 2018) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23881&LangID=E>> accessed 9 January 2019.

<sup>56</sup> Lottie Lane, 'Clarifying Human Rights Standards through Artificial Intelligence Initiatives' (2022) 71 *International & Comparative Law Quarterly* 915, 927.

on reflexive feminist theory, my methodology considers my own standpoint and positionality. I use documentary analysis and draw on a considerable range of literature, supplemented by a selection of key informant interviews, to situate my later case study in the wider context.

In Chapter 3, I explain how I will be defining and using the term 'data,' and summarise and interpret literature on the human rights implications of data collection and sharing, as well as literature on gender and data from a range of disciplines. I also examine the broader human rights literature pertaining specifically to gender stereotyping, ways it can be harmful, and the human rights legal framework which considers gender stereotypes, their causes and consequences.

Chapter 4 articulates what I mean by classification and categorisation. It uses feminist and queer theory to make visible the specific ways that both classification and categorisation enter into data collection and sharing systems, and how – despite being the result of human decisions – these are naturalised as a result.

In Chapter 5, I explore the historical and ideological factors which have contributed to the rise in the use of data collection and data sharing tools and systems in England. I trace data collection from its use in investigations in the 19th century in the early years of the 'modern' child protection system, through the 20th century use of data to justify decisions and manage risk, to the late 20th century enthusiasm for digitising the public sector. I also explore how data sharing became a social service priority in the early 21st century, and how increased data collection and sharing has become a governmental priority to facilitate early intervention in family services, as well as the key tensions in sharing data for reuse for different purposes.

In Chapter 6, I argue that in England, the concept of ‘family’ has been historically used as a categorisation: the naming of a segmentation of the world. The use of ‘family’ as a categorisation in this way is cemented by the longstanding view of some families as ‘problem families:’ and the widespread – if sometimes implicit – assumption that those families can be located within the population. This usage is widespread despite the fact, as I argue, that people cannot be neatly segmented into mutually exclusive and completely exhaustive ‘families.’

Chapter 7 examines one specific case study in existing programming in children’s social care: the ‘Troubled/Supporting Families Programme.’ This programme, as I will show, has as a key objective the increasing use of data by the local authorities. I will argue that the concept of ‘family’ in this data does not correspond with how the concept is defined in law, policy or practice. I use feminist and queer theory to argue that the use of data in this programme encourages and naturalises simplistic, Aristotelian classification: both to categorise people into families, and in order to classify families into ‘troubled’ and (implicitly) ‘normal.’ Furthermore, I argue that the idea of what constitutes a ‘normal family’ is based on stereotypes: this includes gender stereotyping, to an extent that may violate Article 5 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Finally in Chapter 8, I link my work with wider fields of research in human rights, science and technology studies, social policy, and in particular work on the ‘algorithmic turn’ in welfare policy and beyond. I also explore potential avenues for building on and expanding this work, through exploring the operationalisation of gender in data systems, examining other case studies in the UK and beyond, and participatory design of welfare systems which build a future that works for everyone.



## Chapter 2 Methods and methodology: engaging feminist and queer theories in critical data studies

### 2.1 Introduction

My research examines the human rights implications of the collection and sharing of data about children and families in children's social care services in England. In this chapter, I will first explain how I use a socio-legal approach to examine the human rights implications of these practices. I will then discuss how my research sits firmly within the paradigm of critical research: the use of critical theory to unpack hidden assumptions in prevailing theories and practices, with the intent of examining not only the current situation but in envisioning alternatives.<sup>57</sup>

In the following sections, I situate my work within the broad field of science and technology studies (STS), as well as explaining how I use feminist and queer theories to engage critically with data collection and use: placing my research in the emerging field of 'critical data studies.' This field, which Craig Dalton, Linnet Taylor and Jim Thatcher describe as "three words cobbled together imperfectly signifying diverse sets of work around data's recursive relationship to society,"<sup>58</sup> has emerged as a named field of study in the 2010s,<sup>59</sup> though of course critical engagement with how data relates to society – and vice versa - dates back further.

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<sup>57</sup> Stephen Eric Bronner, 'Introduction: What Is Critical Theory?', *Critical Theory: A Very Short Introduction* (2nd edn, Oxford University Press 2017) 1–2.

<sup>58</sup> Dalton, Taylor and Thatcher (n 7) 1.

<sup>59</sup> For an early example, see: danah boyd and Kate Crawford, 'Critical Questions for Big Data' (2012) 15 *Information, Communication & Society* 662.

I also engage with the 'ethical technology' paradigm and demonstrate how my methodology goes beyond a simple engagement with ethics in general. In particular, I explain how my use of critical theory is underpinned by a social justice viewpoint. Critical theory shares with feminist theory (along with other theories such as post-structuralist and decolonial theories) the view that the theoriser can never be neutral.<sup>60</sup> To situate my discussion of methodology, therefore, I consider my own standpoint as a researcher: my background in human rights, my use of standpoint and social constructionist ideas, and my aim of increasing the accessibility of my work beyond a solely academic audience. Finally, I describe my research methods, and explain how my choice of methods has been constrained by the ongoing COVID-19 pandemic.

## **2.2 A socio-legal approach to the human rights framework**

In this human rights research project I have chosen to take a socio-legal approach: a research approach which, as Reza Banakar explains, focuses on social norms and practices against the backdrop of the law: it is a normative approach.<sup>61</sup> Rosemary Hunter further articulates two key components of socio-legal research: first, it is focused on the social effects of law and how it is experienced; second, it sees law as a constituent part of society, rather than as a separate entity operating according to its own rules and logics.<sup>62</sup> (She additionally notes that both these components are also part of feminist legal research.<sup>63</sup>)

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<sup>60</sup> Linda Alcoff, 'The Problem of Speaking for Others' [1991] *Cultural Critique* 5, 12.

<sup>61</sup> Reza Banakar, 'On Socio-Legal Design' 14 <<https://papers.ssrn.com/abstract=3463028>> accessed 7 August 2019.

<sup>62</sup> Rosemary Hunter, 'Feminist Approaches to Socio-Legal Studies' in Naomi Creutzfeldt, Marc Mason and Kirsten McConnachie (eds), *Routledge Handbook of Socio-Legal Theory and Methods* (1st edn, Routledge 2019) 260.

<sup>63</sup> Hunter (n 62) 260.

I have chosen this approach as it allows me to consider the effects of inter-agency data sharing on individual people through a human rights lens. As a human rights scholar with a practitioner background (within a human rights NGO, as I detail in section 2.4.3.2 below), I am familiar with the human rights framework of international and national law: in this research project, I will consider human rights law as a socio-legal system. This means that, rather than taking a doctrinal law approach, for example, which sees the law as a closed system with its own internal logic,<sup>64</sup> I will examine whether individuals are in fact able to enjoy the human rights to which they are entitled.

My human rights analysis will focus on Article 5 of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which obliges states to take measures to eliminate practices based on gender stereotypes. The CEDAW has not yet been domesticated into UK law: consequently, I will look to the UN Committee on the Elimination of All Forms of Discrimination Against Women (the Women's Committee) for interpretation of this Article: I will examine this further in Chapter 3. I will use this to examine how public sector data sharing practices do – or do not – comply with state obligations under CEDAW Article 5.

### **2.2.1 Socio-legal social justice: a future worth striving for**

My research - like my previous work as a human rights practitioner - is driven by a strong sense of social justice: an approach articulated by Kristin Kalsem and Verna L. Williams as a “concept of fairness and equality,”<sup>65</sup> which is “concerned with how society's practices and institutions create and distribute society's benefits and

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<sup>64</sup> Banakar (n 61) 2.

<sup>65</sup> Kristin Kalsem and Verna L Williams, ‘Social Justice Feminism’ (2010) 18 *UCLA Women’s Law Journal* 131, 13.

burdens.”<sup>66</sup> My interest in social justice influenced my choice to take a socio-legal approach. I will examine how the use of data sharing by public sector agencies does – or does not – enable the people whose data is shared to enjoy their human rights in their everyday lives: and as part of this, I will examine to what extent this data sharing exacerbates or addresses inequalities.

As a result, my human rights scholarship aligns most closely to what Marie-Bénédicte Dembour calls the ‘protest scholar’ school of human rights:<sup>67</sup> my research is founded on an understanding that human rights are a goal, not something that will be practically realised, because there will always be more injustices to fight, in law and in practice.<sup>68</sup>

I do not, however, interpret this to mean that human rights progress is an impossible goal: my work is also influenced by what Kathryn McNeilly calls ‘human rights futurity,’ a recognition that a future that can never be reached is nonetheless worth striving for.<sup>69</sup> McNeilly describes the human rights project as one that is constant and unfinished, but a means to a better end.<sup>70</sup> In my research, this means interrogating the future impacts on individuals who come into contact with automated, data-driven systems, and the broader impact on society of the use of these systems, the categories they use, and the stereotypes they rely on. In doing so, the questions that Gillian Youngs outlines for interrogating new technology will be important: who benefits from

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<sup>66</sup> Kalsem and Williams (n 65) 11.

<sup>67</sup> Marie-Bénédicte Dembour, ‘What Are Human Rights? Four Schools of Thought’ (2010) 32 *Human Rights Quarterly* 1.

<sup>68</sup> Dembour (n 67).

<sup>69</sup> Kathryn McNeilly, ‘After the Critique of Rights: For a Radical Democratic Theory and Practice of Human Rights’ (2016) 27 *Law and Critique* 269.

<sup>70</sup> McNeilly (n 69).

its introduction, who will be most in control of it, and who will mould and define it?<sup>71</sup>

This approach has some commonalities with ethical approaches to technology, but goes beyond it, as I will discuss in section 2.3.2.3 below.

I also see a socio-legal approach as a way to address one of the key concerns for Dembour's protest scholar: that while human rights law is a possible tool for challenging human rights violations, it is a tool that can be co-opted and bureaucratised.<sup>72</sup> For me, a socio-legal approach is a way to address this potential co-optation, through considering the practical enjoyment of human rights, not simply the position in law. Human rights is not the only discipline which offers opportunities for practical realisation: an emerging school of STS scholarship argues that STS scholars can use their understanding of how knowledge and societies are co-produced in order to "make a difference in the world,"<sup>73</sup> and similarly there is a strand of feminist scholarship that argues that feminist research should incorporate calls for action.<sup>74</sup> I will discuss the ways in which my research uses these ideas and approaches in the following section.

### **2.3 Examining inter-agency data sharing as a sociotechnical system case study**

My research examines inter-agency data sharing in children's services in England.

This focus on data has naturally led me to the field of science and technology studies

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<sup>71</sup> Gillian Youngs, 'Digital Transformations Of Transnational Feminism In Theory And Practice' in Rawwida Baksh-Soodeen and Wendy Harcourt (eds), *The Oxford handbook of transnational feminist movements* (Oxford University Press 2015) 866–7.

<sup>72</sup> Dembour (n 67).

<sup>73</sup> Ulrike Felt, 'Making Knowledge, People, and Societies' in Ulrike Felt and others (eds), *The handbook of science and technology studies* (4th edn, The MIT Press 2017) 257.

<sup>74</sup> Joey Sprague, *Feminist Methodologies for Critical Researchers: Bridging Differences* (AltaMira Press 2005) 3.

(STS): a field that “examines the social, cultural and historical aspects of science and technology.”<sup>75</sup> Science and technology studies (STS) scholars have demonstrated how scientific thought and technological development is situated within – and cannot be separated from – societal and cultural systems.<sup>76</sup> It argues that both scientific ideas, and technological developments, emerge from and reflect the interests of (some parts of) society:<sup>77</sup> and in turn shape how we understand – and order – society.<sup>78</sup>

STS emerged from critical study of the scientific method: it examines the ways in which both scientific ideas and technological developments reflect societal interests.<sup>79</sup> In particular, STS takes as objects of study ‘sociotechnical systems:’ systems that include both social and technical components.<sup>80</sup> As Deborah Johnson and Jameson Wetmore note, this concept recognises that social and technical components of a system are mutually intertwined, and that, “to treat either as a separate unit is to abstract it from reality.”<sup>81</sup> These social components include how technologies are imagined, designed, deployed, and evaluated, as well as how people interact with technical systems and how these systems interact with the wider world. Public sector data-sharing systems are an example, therefore, of sociotechnical systems.

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<sup>75</sup> Catherine D’Ignazio and Lauren Klein, ‘Feminist Data Visualization’ (2016)

<[https://www.academia.edu/28173807/Feminist\\_Data\\_Visualization](https://www.academia.edu/28173807/Feminist_Data_Visualization)> accessed 19 June 2018.

<sup>76</sup> D’Ignazio and Klein (n 75).

<sup>77</sup> John Law, ‘STS as Method’ in Ulrike Felt and others (eds), *The Handbook of Science and Technology Studies* (4th edn, The MIT Press 2017) 32.

<sup>78</sup> Felt (n 73) 253.

<sup>79</sup> Law (n 77) 32.

<sup>80</sup> Andrew D Selbst and others, ‘Fairness and Abstraction in Sociotechnical Systems’, *Proceedings of the Conference on Fairness, Accountability, and Transparency* (Association for Computing Machinery 2019)

<<http://doi.acm.org/10.1145/3287560.3287598>> accessed 29 January 2019.

<sup>81</sup> Deborah G Johnson and Jameson M Wetmore, ‘STS and Ethics: Implications for Engineering Ethics’ in Edward J Hackett and others (eds), *The Handbook of Science and Technology Studies* (3rd edn, The MIT Press 2008) 574.

As Andrew Selbst et al have argued, examining only the technical aspects of different technologies ignores the broader social context within which these technologies operate, including the people who use them and the institutions within which they are used.<sup>82</sup> Iyad Rahwan et al have argued further that the behaviour of machines should be studied as its own field, similar to ecology (which also studies how different actors and entities impact each other): recognising that an understanding of context is crucial to understand how machine behaviour is impacted by human behaviour: and vice versa.<sup>83</sup> I am thus examining data-driven children's services systems as socio-technical systems: systems that comprise not only technological elements but also social ones, and which interact with other socio-technical systems.

### **2.3.1 STS and the case study**

One key idea from STS which I am using in this thesis is the idea of a case study. John Law notes that case studies are a key (if not uncontroversial) tool for STS, and that they are useful in that they link together the empirical, the theoretical and the method.<sup>84</sup> Case studies are not, of course, limited to STS as a field: but they have proved particularly useful in examining the interactions of social and technical practices.

For this thesis, my case study is a programme which has run as part of UK government policy since 2012. Called the 'Troubled Families' Programme until 2021, when it was renamed the 'Supporting Families' Programme,<sup>85</sup> the programme aims to identify families in need of support: but as I argue, it is rooted in ideological assumptions about

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<sup>82</sup> Selbst and others (n 80).

<sup>83</sup> Iyad Rahwan and others, 'Machine Behaviour' (2019) 568 *Nature* 477.

<sup>84</sup> Law (n 77) 32.

<sup>85</sup> As a result, I refer in most places in this thesis to the 'Troubled/Supporting Families Programme.'

the sources of problems in families and the nature of families themselves. I examine this programme in depth in Chapter 7.

### **2.3.2 Critical data studies: feminist and queer STS**

As the use of data and technology has risen in the 2010s, so too has critical engagement with this use. In 2014, Rob Kitchin and Tracey Lauriault discussed the emergence of the field of ‘critical data studies:’ they argue that this field situates data in context, as inherently political.<sup>86</sup> In particular, they note that databases and other repositories are not neutral, but “expressions of knowledge/power, shaping what questions can be asked, how they are asked, how they are answered, how the answers are deployed, and who can ask them.”<sup>87</sup> Craig Dalton et al extend the idea of critical data studies, arguing that a crucial part of this field is not only to understand how data is used: but also to intervene where that use contributes to injustice.<sup>88</sup>

Influenced by these articulations of critical data studies, and in particular drawn to Dalton’s social justice framing, I have chosen to draw on two theoretical frameworks to guide my critical engagement with inter-agency data sharing: feminist theory, and queer theory. In Chapter 3, I will explore critical data studies literature which uses these theoretical frameworks, including literature which examines gender and which examines queer lives. In Chapter 4, I will use these theories to make visible the specific ways that both classification and categorisation enter into data collection and sharing systems, and how – despite being the result of human decisions – these are

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<sup>86</sup> Rob Kitchin and Tracey Lauriault, ‘Towards Critical Data Studies: Charting and Unpacking Data Assemblages and Their Work’ [2014] *The Programmable City Working Paper 2* <<https://papers.ssrn.com/abstract=2474112>> accessed 26 August 2020.

<sup>87</sup> Kitchin and Lauriault (n 86) 4–5.

<sup>88</sup> Giesecking (n 6).



naturalised as a result. In Chapter 5, I will use this critical lens to trace the historical and ideological factors which have driven – and continue to drive - data collection and sharing in children’s services in England. In Chapter 6, I will draw on this examination of categorisation and classification to examine the ways that ‘family’ has been classified and categorised in law, policy, and practice.

In the following sections, I will elaborate on these feminist and queer approaches – their importance, why I believe they are appropriate and the kinds of analysis that they permit.

### 2.3.2.1 *Feminist critical data studies*

There is no single approach to feminist research,<sup>89</sup> but as Christina Scharff points out, there are a number of recurring themes, including a focus on women’s experiences and a recognition of power imbalances.<sup>90</sup> Feminist research, as Róisín Ryan-Flood and Rosalind Gill have argued, aims to make the unseen and unacknowledged visible and heard.<sup>91</sup>

Feminist engagement with technology is not new: in the early 1990s, Judith Halberstam was arguing that feminist critiques of technology could not simply engage with or oppose technology, but that they needed to understand their position “in relation to a plurality of technologies.”<sup>92</sup> an argument that is even more relevant today. Donna Haraway’s work not only brings in feminist analysis to STS: in particular, she

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<sup>89</sup> Nicola A Harding, ‘Co-Constructing Feminist Research: Ensuring Meaningful Participation While Researching the Experiences of Criminalised Women’ (2020) 13 *Methodological Innovations* 2 <<https://doi.org/10.1177/2059799120925262>> accessed 19 April 2022.

<sup>90</sup> Christina Scharff, ‘Silencing Differences: The “Unspoken” Dimensions of “Speaking for Others”’ in Róisín Ryan-Flood and Rosalind Gill (eds), *Secrecy and Silence in the Research Process* (Routledge Ltd 2010) 84.

<sup>91</sup> Róisín Ryan-Flood and Rosalind Gill, ‘Introduction’ in Rosalind Gill and Róisín Ryan-Flood (eds), *Secrecy and Silence in the Research Process* (Routledge Ltd 2010) 2–4.

<sup>92</sup> Judith Halberstam, ‘Automating Gender: Postmodern Feminism in the Age of the Intelligent Machine’ (1991) 17 *Feminist Studies* 439.

analyses how narratives and metaphors are a key part of understanding technologies, but that they also carry their own agendas and risk naturalising understandings of the world.<sup>93</sup>

My use of feminist theory in a critical data studies approach draws, therefore, on the wide and deep body of feminist theory more generally. In this, I am contributing to the established feminist subfield of STS, in which feminist theory has been used to consider a wide range of topics across science and technology.<sup>94</sup> There is no single feminism nor feminist theory: areas of theory, research and practice that use the term 'feminist' may disagree or even conflict with each other. In the following sections, I explain the specific feminist theoretical approaches that inform my work.

The feminist project, as Sharon Cowan argues, is both descriptive and normative: it recognises lived experiences of discrimination based on gender, and it "applies a gendered analysis to what are largely understood as gender neutral legal and social arrangements."<sup>95</sup> In the case of my research, I will be applying a gendered analysis to data-sharing between public sector entities in England in general, and to the 'Troubled/Supporting Families Programme' in particular.

### **2.3.2.1.1 Feminist critiques of 'objectivity'**

An epistemology is a theory about who can know what, and how knowledge can be developed.<sup>96</sup> Different epistemologies involve different assumptions about what Joey

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<sup>93</sup> Law (n 77) 37.

<sup>94</sup> See for example Shaowen Bardzell in the field of human-computer interaction: Shaowen Bardzell, 'Feminist HCI: Taking Stock and Outlining an Agenda for Design', *Proceedings of the SIGCHI Conference on Human Factors in Computing Systems* (Association for Computing Machinery 2010) <<https://doi.org/10.1145/1753326.1753521>> accessed 13 May 2020.

<sup>95</sup> Sharon Cowan, "'What a Long Strange Trip It's Been': Feminist and Queer Travels with Sex, Gender and Sexuality' in Margaret Davies and Vanessa Munro (eds), *The Ashgate research companion to feminist legal theory* (Ashgate 2013).

<sup>96</sup> Sprague (n 74) 5.

Sprague describes as “the knower, the known, and the process of knowing.”<sup>97</sup> Róisín Ryan-Flood and Rosalind Gill have argued that a key component of feminist epistemology is challenging the concept of the ‘objective’ knower.<sup>98</sup> In this section, I will summarise the development of this feminist epistemology, and explain how I specifically apply it to my research into data-sharing.

‘Objectivity’ as an approach to produce an impartial, unbiased view of the world emerged as an idea in London around the Royal Society in the seventeenth century, as the newly-emerging scientific community sought a way to separate facts from politics and religion.<sup>99</sup> In the humanities, by the nineteenth century, ‘objectivity’ had come to mean “the suppression of the self by the self.”<sup>100</sup> This included impartiality and restraint in interpreting evidence – the ‘modest witness’ described by Donna Haraway who only observes, objectively<sup>101</sup> - but also a focus only on the object of study, and a disinterestedness in everything outside of this area.<sup>102</sup>

Feminist academics have criticised this valorisation of the ‘objective’ researcher. Different types of feminist theory, however, challenge this idea of ‘objectivity’ in different ways. One strand, which draws on scientific ideas, is feminist empiricism: the idea that science can be made more objective through more rigorous research<sup>103</sup> which is conducted, justified and verified by a diverse scientific community with a range

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<sup>97</sup> Sprague (n 74) 31.

<sup>98</sup> Ryan-Flood and Gill (n 91) 2–4.

<sup>99</sup> Law (n 77) 36.

<sup>100</sup> Lorraine Daston, ‘Objectivity and Impartiality: Epistemic Virtues in the Humanities’ in Rens Bod, Jaap Maat and Thijs Weststeijn (eds), *The Making of the Humanities* (Amsterdam University Press 2014) 38 <<https://www.jstor.org/stable/j.ctt12877vs.4>> accessed 13 May 2022.

<sup>101</sup> Donna Haraway, ‘Modest\_Witness@Second\_Millennium’, *The Haraway Reader* (Routledge 2004) 229.

<sup>102</sup> Daston (n 100) 38.

<sup>103</sup> Britta Wigginton and Michelle N Lafrance, ‘Learning Critical Feminist Research: A Brief Introduction to Feminist Epistemologies and Methodologies’ [2019] *Feminism & Psychology* 5 <<http://journals.sagepub.com/doi/10.1177/0959353519866058>> accessed 23 November 2021.

of experiences and values, so as to minimise bias.<sup>104</sup> As Donna Haraway has noted, feminist empiricism emerged from a critique of ‘scientific objectivity:’ what she termed the “god trick of seeing everything from nowhere.”<sup>105</sup> Instead, Haraway argued, feminist empiricism offers a richer and better account of the world:<sup>106</sup> one that is neither relative nor totalising, but which emerges from communities, conversations, and solidarity between what she calls “partial, locatable, critical knowledges.”<sup>107</sup> In my work, I draw on this strand of feminist empiricism to seek out diverse knowledges: I draw on a wide range of theoretical perspectives, complemented by interviews with individuals in different positions relative to public sector data sharing. I will cover my interview methods in more detail in section 2.5.2 below. My research, however, draws on two strands of feminist theory which go further, in some sense, than feminist empiricism: standpoint theory; and feminist social constructionism.

Standpoint theory is based on an epistemology that argues that “all knowledge is constructed in a specific matrix of physical location, history, culture, and interests.”<sup>108</sup> As can be seen from Haraway’s evocation of ‘partial knowledges’ above, standpoint theory shares some key ideas with feminist empiricism. As Kristen Intemann argues, however, while feminist empiricism advocates for a diverse community of knowledge producers in order to minimise bias and create knowledge as communities;<sup>109</sup> standpoint theory emerges from the active selection of certain values and interests

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<sup>104</sup> Kristen Intemann, ‘25 Years of Feminist Empiricism and Standpoint Theory: Where Are We Now?’ (2010) 25 *Hypatia* 778, 781–2.

<sup>105</sup> Donna Haraway, ‘Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective’ (1988) 14 *Feminist Studies* 575, 581.

<sup>106</sup> Haraway, ‘Situated Knowledges’ (n 105) 579.

<sup>107</sup> Haraway, ‘Situated Knowledges’ (n 105) 584.

<sup>108</sup> Sprague (n 74) 41.

<sup>109</sup> Intemann (n 104) 782.

over others, with the aim of challenging injustice.<sup>110</sup> As Catharine Mackinnon has pointed out, 'objective' is frequently the subjective of the powerful: instead of, as claimed, being positionless, accurate and fair, the standpoint of 'objectivity' is in fact that of a specific form of power and dominance.<sup>111</sup> Referring specifically to data, Jen Jack Giesecking, in their examination of queer feminist critical data studies, notes also that critical data studies considers all the different interpretations of data,<sup>112</sup> not just those of people or systems in positions of dominance. I have discussed the social justice underpinnings of my work in section 2.2.1 above; I will elaborate on the specific forms of power and dominance which are in play in the area of data collection and sharing, and examine which standpoints are privileged, in Chapter 4.

I also draw on feminist social constructionism. Social constructionist approaches argue that it is not possible to have impartial facts: instead, as Vivien Burr describes, facts are "are always the product of someone asking a particular question, and questions always derive from, albeit often implicit, assumptions about the world."<sup>113</sup> In particular, as Sally Haslanger argues, social constructionist approaches challenge assumptions about what is 'natural';<sup>114</sup> feminist social constructionist approaches are particularly interested in assumptions about what is 'natural' when it comes to gender. (In this respect, this approach shares some elements with queer theory, which I will discuss in section 2.3.2.2 below). In this research, I use the approach of questioning assumptions, to specifically critique assumptions that are made about gender - and in

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<sup>110</sup> Intemann (n 104) 793.

<sup>111</sup> Catharine A MacKinnon, 'Postmodernism and Human Rights', *Are women human? and other international dialogues* (Belknap Press of Harvard University Press 2006) 47.

<sup>112</sup> Giesecking (n 6).

<sup>113</sup> Vivien Burr, *Social Constructionism* (2nd edn, Routledge 2003) ch 8.

<sup>114</sup> Sally Haslanger, 'Introduction', *Resisting Reality: Social Construction and Social Critique* (Oxford University Press 2012) 3.

particularly about gendered roles within families - in the context of a specific government programme: the 'Troubled'/Supporting Families Programme.'

Social constructionist approaches also recognise that ways of knowing are historically and culturally specific, and that knowledge is, as Vivien Burr argues, "sustained by social processes."<sup>115</sup> Furthermore, social constructionism recognises that constructions of the world "sustain some patterns of social action and exclude others."<sup>116</sup> As a result, Burr argues, these constructions are entangled with power relations:<sup>117</sup> in the case of gender, these constructions have implications for what is deemed 'gender-appropriate' behaviour and treatment. In the following section, I will expand further on my use of feminist theories of power in this thesis.

#### **2.3.2.1.2 Examining power: intersectional approaches, the matrix of domination, and transnational solidarity**

Different strands of feminist thought conceptualise power in different ways.<sup>118</sup> Liberal feminists, for example, see power as a resource that is unequally distributed, and seek power for women in the form of participation in public spaces on an equal basis with men;<sup>119</sup>

this contrasts with those strands of feminism philosophy which sees power as capacity or potential,<sup>120</sup> and 'empowerment' as the capacity for transformative change.<sup>121</sup> In my research, I focus on a third use: power as power-over, a relation of dominance, that

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<sup>115</sup> Burr (n 113) ch 8.

<sup>116</sup> Burr (n 113) ch 8.

<sup>117</sup> Burr (n 113) ch 8.

<sup>118</sup> Amy Allen, 'Feminist Perspectives on Power' in Edward N Zalta (ed), *The Stanford Encyclopedia of Philosophy* (Winter 2021 edn, Metaphysics Research Lab, Stanford University 2021)

<<https://plato.stanford.edu/archives/win2021/entries/feminist-power/>> accessed 3 December 2021.

<sup>119</sup> Shona Hunter, 'Feminist Perspectives' in Pete Alcock and others (eds), *The Student's Companion to Social Policy* (5th edn, Wiley-Blackwell 2016) 91.

<sup>120</sup> Sprague (n 74) 42.

<sup>121</sup> Allen, 'Feminist Perspectives on Power' (n 118).

may also be called ‘oppression’ or ‘patriarchy.’<sup>122</sup> My work is particularly informed by two concepts from USA-based Black feminism: intersectionality, and the matrix of domination.

Intersectionality, developed by Kimberlé Crenshaw, sees multiple axes of oppression not as independent factors, but as interacting dimensions: such that intersectional discrimination is not simply a sum of its parts, but a specific form of oppression that needs specific solutions.<sup>123</sup> Over the past three decades, intersectionality as a concept has become widely accepted within many (but not all) schools of feminist thought, and has begun to be widely used outside the academy. In 2010, CEDAW General Recommendation 28 called intersectionality “a basic concept for understanding the scope of the general obligations” on States parties, and specifically noted that states should recognise, prohibit, and take steps to eliminate intersecting forms of discrimination.<sup>124</sup> In this thesis, I am particularly concerned with the intersections between oppression on the grounds of gender, and on the grounds of socioeconomic status: however, I recognise in my work that these are not the only two axes of oppression, and in particular that poor women are not a homogenous group with the same interests and needs.

Developed by Patricia Hill Collins, the matrix of domination refers to how intersecting oppressions are actually organised, within structural, disciplinary, hegemonic, and interpersonal domains of power.<sup>125</sup> Catherine D’Ignazio and Lauren Klein, in their work

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<sup>122</sup> Allen, ‘Feminist Perspectives on Power’ (n 118).

<sup>123</sup> Crenshaw (n 49).

<sup>124</sup> UN Committee on the Elimination of Discrimination against Women (CEDAW), ‘General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women’ (2010) UN Doc CEDAW/C/2010/47/GC.2 para 18 <<http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW-C-2010-47-GC2.pdf>>.

<sup>125</sup> Patricia Hill Collins, *Black Feminist Thought* (2nd edn, Routledge 2009) 26.

on feminist approaches to data and technology, interpret these domains: structural domains of power include laws and policies, as well as the practices of the institutions tasked with implementing them; disciplinary domains use bureaucracy and hierarchies to administer and manage power relations; hegemonic domains include media and culture, which consolidate ideas about power relations and who may exercise power over whom; interpersonal domains, finally, reflect the experiences of individuals who navigate these power relations.<sup>126</sup>

In this research, I am particularly concerned with the structural and disciplinary domains of power, and how these operate in the main case study of my thesis: the 'Troubled'/'Supporting Families Programme.' I consider the structural domain through analysis of the laws and policies underpinning this programme, and their relationship to the long history of regulating 'social problems' in England, which I explain in more detail in Chapter 6. I examine the disciplinary domain through my analysis of data collection, analysis and sharing: my thesis details the ways that different individuals and families are 'seen' in the data, and the implications for their access to support, welfare and services. In particular, my research is concerned with the ways that power relations operate in this disciplinary domain to enforce norms about what a 'good' family should look like, and how deviation from this norm is stigmatised and labelled 'troubled,' as I will discuss in Chapter 7. My discussion of norms and normalisation also links with queer theory, which I will discuss in more detail in section 2.3.2.2.1 below.

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<sup>126</sup> D'Ignazio and Klein (n 10) 24–6.



The main case study in my thesis is a government programme in England, the ‘Troubled/Supporting Families Programme.’ Despite this focus on a case study in England, my work remains influenced by transnational feminists, who examine the interactions between global and local factors that shape norms and experiences related to gender and sexuality.<sup>127</sup> Transnational feminism recognises that capitalism and globalisation can cause global harms, and so aims to build feminist solidarity across borders, as well as across other “divisions of place, identity, class, work, belief, and so on.”<sup>128</sup>

In the era of ‘big data,’ it is particularly important to consider the international influences of ‘big tech’ companies, with annual revenues in the tens or hundreds of billion dollars.<sup>129</sup> While they are not directly responsible for the data collection and sharing which I document in this thesis, the big tech companies are a key influence in the rise of data solutionism, which I discussed in section 1.1.1 above, and have contributed to the homogeneity of tech and data workers worldwide, which I discuss in section 4.4.1.2 below. In this, I am using transnational feminist ideas in the way espoused by Chandra Talpade Mohanty: to enable me to “read up the ladder of privilege” and make power visible.<sup>130</sup>

A final consideration, when considering power, is my own position: the power that I have, and my position in the matrix of domination. In carrying out feminist research,

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<sup>127</sup> Janice McLaughlin, ‘The Return of the Material: Cycles of Theoretical Fashion in Lesbian, Gay and Queer Studies’ in Diane Richardson, Janice McLaughlin and Mark E Casey (eds), *Intersections between feminist and queer theory* (Palgrave Macmillan 2006) 76.

<sup>128</sup> Chandra Talpade Mohanty, “‘Under Western Eyes’ Revisited: Feminist Solidarity through Anticapitalist Struggles’ (2003) 28 *Signs* 499, 530.

<sup>129</sup> Florian Zandt, ‘Infographic: Big Tech Keeps Getting Bigger’ (*Statista Infographics*, 29 October 2021) <<https://www.statista.com/chart/21584/gafam-revenue-growth/>> accessed 29 June 2022.

<sup>130</sup> Mohanty (n 128) 511.

as Sara Ahmed argues, we must consider power *within* research.<sup>131</sup> I will explore this further in my discussion of reflexivity in section 2.4.2 below. In this, I draw on reflexive practices in feminist theory in general, as well as the growing use of reflexivity in STS: for example, the use by Cheryl Cooky et al of feminist holistic reflexivity – questioning the authority of knowledge, considering contexts, and holding researchers accountable – in their qualitative study of narratives of domestic violence on social media.<sup>132</sup>

### 2.3.2.1.3 Collaboration and care: towards social justice

As I discussed in section 2.3.2.1.2 above, my work is influenced by Black feminist thought in how it considers power and domination. In addition to this, I am also influenced by the collaborative nature and coalition-building work of Black feminist theorising and organising.<sup>133</sup> This is particularly important in the study of technology: a field which is often popularly understood as the project of (white, male, straight, cis) individuals rather than of collaboration: at its most extreme, as Meredith Broussard argues, technology is a field dominated by a:

*"small, elite group of men who tend to overestimate their mathematical abilities, who have systematically excluded women and people of color in favor of machines for centuries, who tend to want to make science fiction real, who have little regard for social convention, who don't believe that social norms or rules apply to them, who have unused piles of government money sitting around,*

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<sup>131</sup> Sara Ahmed, 'Foreword' in Róisín Ryan-Flood and Rosalind Gill (eds), *Secrecy and Silence in the Research Process* (Routledge 2010).

<sup>132</sup> Cheryl Cooky, Jasmine R Linabary and Danielle J Corple, 'Navigating Big Data Dilemmas: Feminist Holistic Reflexivity in Social Media Research' (2018) 5 *Big Data & Society* <<https://doi.org/10.1177/2053951718807731>> accessed 6 September 2019.

<sup>133</sup> Alison Phipps, *Me, Not You: The Trouble with Mainstream Feminism* (Manchester University Press 2020) 52–3.

*and who have adopted the ideological rhetoric of far-right libertarian anarcho-capitalists"*<sup>134</sup>

As a result, it lacks perspectives from people who are marginalised, and ignores the labour of tech workers, let alone the work of tech contractors who may have less job security and benefits, and are often people of colour.<sup>135</sup> In my work, I have specifically sought out these perspectives. I have drawn on a wide range of academic and grey literature sources, as well as interviewing people who occupy different positions in relation to data collection and sharing by local authorities, as I will discuss in section 2.5.2 below.

It is also important to critically engage with the fact that the homogenous perspective which dominates much discussion of technology and data is specifically *masculine*. Catherine D'Ignazio and Lauren Klein point this out in their conceptualisation of 'Big Dick Data':<sup>136</sup>

*"a formal, academic term that we, the authors, have coined to denote big data projects that are characterized by masculinist, totalizing fantasies of world domination as enacted through data capture and analysis. Big Dick Data projects ignore context, fetishize size, and inflate their technical and scientific capabilities."*<sup>137</sup>

D'Ignazio and Klein's metaphor explicitly genders the data solutionism I discuss in section 1.1.1 above, linking it to conceptualisations of harmful masculinity. I will

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<sup>134</sup> Meredith Broussard, *Artificial Unintelligence: How Computers Misunderstand the World* (MIT Press 2018) ch 6.

<sup>135</sup> D'Ignazio and Klein (n 10) 180–4.

<sup>136</sup> D'Ignazio and Klein ran a series of online workshops on their Data Feminism book in the summer of 2020: during one of these workshops, Klein acknowledged that perhaps the more academic term would have been 'Big Phallus Data.'

<sup>137</sup> D'Ignazio and Klein (n 10) 151.

discuss the impact on the specific technology of data collection of this homogenous perspective – and how it inhibits collaborative, participatory development of technology – in Chapter 4.

Feminist conceptions of collaboration include a recognition that the production of theory must not be limited to any one discipline or even to academia itself. Catharine MacKinnon notes that making theory has been a way “to take women’s experience seriously enough” – in the academy, and in other institutions of power - to challenge inequality.<sup>138</sup> bell hooks goes further, arguing that a feminist movement must include those who experience sexist oppression – as well as other forms of oppression – in the creation of theory as well in liberatory action.<sup>139</sup>

This combination of theory and action requires transformative change if it is to work towards social justice, which I have described in section 2.2.1 above. In the area of technology, as Maria Puig de la Bellacasa argues, transformation can be achieved through an ethos of **care**, which includes maintenance, commitment, and taking responsibility for what things become: a feminist ethic of care prioritises sustainability, survival and flourishing over self-sufficiency, autonomy and independence.<sup>140</sup> I have attempted to prioritise this ethic of care in conducting my research: both in analysing my findings through a futural human rights lens, as I have described in section 2.2.1 above, and through my interactions with interviewees, as I will describe in section 2.5.2 below.

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<sup>138</sup> MacKinnon, ‘Postmodernism and Human Rights’ (n 111) 46.

<sup>139</sup> bell hooks, *Feminist Theory from Margin to Center* (South End Press 1984) 161.

<sup>140</sup> Maria Puig de la Bellacasa, ‘Matters of Care in Technoscience: Assembling Neglected Things’ (2011) 41 *Social Studies of Science* 85.

### 2.3.2.2 **Queer critical data studies**

There has been less engagement between queer theory and STS than between feminist theory and STS. Nevertheless, there have been some efforts to integrate some queer perspectives into data and technology. In this section, I will briefly introduce the background and some of the main themes in queer theory. I will then summarise the queer theoretical perspectives on which I draw in my research: some of which are already focused on data, and others of which I am drawing on and applying to this new area.

Queer theory has its roots in critical engagement with how sex, gender, and sexual desire relate to each other:<sup>141</sup> it emerged, in part from considering how gender and sexuality should be studied as related – but separate – topics,<sup>142</sup> as well as from criticism of feminist ideas that historically considered gender and sexuality together but which gave gender precedence.<sup>143</sup> Feminist theorists, such as Adrienne Rich,<sup>144</sup> had written about sexuality before the emergence of ‘queer theory’ as a named area, including in ways that challenged heteronormativity and the understanding of sexuality as a purely private issue.<sup>145</sup>

It is important to note, however, that queer theory is not the same as lesbian and gay theory.<sup>146</sup> One reason for this, as Kath Browne argues, is that lesbian and gay studies may have the potential to disrupt existing (heteronormative) hierarchies, but not the

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<sup>141</sup> Tamsin Spargo, *Foucault and Queer Theory* (Icon 1999) 8–9.

<sup>142</sup> Cowan (n 95).

<sup>143</sup> Janice McLaughlin, Mark E Casey and Diane Richardson, ‘Introduction: At the Intersections of Feminist and Queer Debates’ in Diane Richardson, Janice McLaughlin and Mark E Casey (eds), *Intersections between feminist and queer theory* (Palgrave Macmillan 2006) 1.

<sup>144</sup> See for example Adrienne Rich, ‘Compulsory Heterosexuality and Lesbian Existence’ (1980) 5 *Signs* 631.

<sup>145</sup> Diane Richardson, ‘Bordering Theory’ in Diane Richardson, Janice McLaughlin and Mark E Casey (eds), *Intersections between feminist and queer theory* (Palgrave Macmillan 2006) 27–33.

<sup>146</sup> Noreen Giffney, ‘Denormalizing Queer Theory: More Than (Simply) Lesbian and Gay Studies’ (2004) 5 *Feminist Theory* 73, 74.

existence of hierarchies as a whole.<sup>147</sup> Elaine Craig points out that the gay and lesbian rights movement is in large part a formal equality project,<sup>148</sup> rather than a substantial equality one. Queer theory in part emerged from criticisms of gay and lesbian civil rights movements, which were seen as pursuing a “politics of assimilation.”<sup>149</sup><sup>150</sup>

Queer theory has historically faced criticism for being too focused on the USA.<sup>151</sup> However as the quote below illustrates, ‘queer’ as a term has its own – contested – history in the UK as well.

*"In the late 1990s, two seemingly unrelated events brought the term 'queer' into common parlance, but also into dispute. One was the prime time presentation of the British mini-series Queer as Folk, later screened and remade internationally. The second was a nail bomb."<sup>152</sup>*

‘Queer’ is not only limited to theory: ‘queer’ as a political strategy emerged in the 1980s, in the context of the AIDS epidemic, as a challenge to the idea that claiming or conferring particular identities could keep people safe. In the quote above, invoking the 1999 bombing of the Admiral Duncan pub in Soho,<sup>153</sup> Iain Morland and Annabelle Wilcox emphasise that queer theory cannot be separated from queer life.

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<sup>147</sup> Kath Browne, ‘Selling My Queer Soul or Queering Quantitative Research?’: (2017) 13 Sociological Research Online <<https://doi.org/10.5153/sro.1635>> accessed 30 November 2020.

<sup>148</sup> Elaine Craig, ‘Converging Feminist and Queer Legal Theories: Family Feuds and Family Ties’ (2010) 28 Windsor Yearbook of Access to Justice 209, 213.

<sup>149</sup> Richardson (n 145) 24.

<sup>150</sup> Iain Morland and Annabelle Wilcox, ‘Introduction’ in Iain Morland and Annabelle Wilcox (eds), *Queer Theory* (Palgrave Macmillan 2005) 2.

<sup>151</sup> Mandy Merck, ‘Afterword’ in Iain Morland and Annabelle Wilcox (eds), *Queer Theory* (Palgrave Macmillan 2005) 189–90.

<sup>152</sup> Morland and Wilcox (n 150) 1.

<sup>153</sup> Soho was – and is – a centre of queer life in London, particularly popular with gay men. The bomb, which killed three people and injured dozens more, was the third planted by a Neo-Nazi in April 1999: he also targeted Brixton’s Black community and the South Asian community in Brick Lane.

### 2.3.2.2.1 Queer theory and feminist theories: tensions and generation

Much of queer theory has been concerned with identities: both with how diverse identities can and should be celebrated, but at the same time, with what Morland and Wilcox call a “cultural diversity that surpasses the notion of identity.”<sup>154</sup> This includes questioning what has come to be called ‘identity politics:’ the presentation of an identity group as having fixed, innate qualities and shared needs.<sup>155</sup> In this section, I will discuss how this puts queer theory into tension with some forms of feminism, but also offers the potential for generative solidarity.

Queer focuses on differences: instead of innate identities, queer sees identities as being produced by the operation of power.<sup>156</sup> For Mark Norris Lance and Alessandra Tanesini, identity judgements are normative, and the “commitments and responsibilities that are taken to flow from given identities”<sup>157</sup> are defined – implicitly or explicitly – by social institutions and practices.<sup>158</sup> This view of identities has been criticised by feminist theorists who argue that it prevents the development of positions from which to challenge oppression:<sup>159</sup> some strands of feminism use identity politics as a form of ‘strategic essentialism’<sup>160</sup> through which to challenge oppressions.<sup>161</sup>

However, other feminist theorists argue that queer and feminist theories can be productive together, as in the case of, for example Janice McLaughlin’s argument that

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<sup>154</sup> Morland and Wilcox (n 150) 3.

<sup>155</sup> Kevin Guyan, *Queer Data: Using Gender, Sex and Sexuality Data for Action* (Bloomsbury Academic 2022) 128.

<sup>156</sup> Annamarie Jagose, *Queer Theory: An Introduction* (New York University Press 1996) 77–82.

<sup>157</sup> Mark Norris Lance and Alessandra Tanesini, ‘Identity Judgements, Queer Politics’ in Iain Morland and Annabelle Wilcox (eds), *Queer Theory* (Palgrave Macmillan 2005) 177.

<sup>158</sup> Lance and Tanesini (n 157).

<sup>159</sup> McLaughlin, Casey and Richardson (n 143) 10; Richardson (n 145).

<sup>160</sup> The choice to use an essentialist categorisation in order to recognise and document something that is perceived as real, and its consequences: see Geoffrey C Bowker and Susan Leigh Star, *Sorting Things Out: Classification and Its Consequences* (MIT Press 1999) 224.

<sup>161</sup> McLaughlin (n 127) 63.

queer and feminist approaches can be combined to examine how identities are formed and destroyed in the context of broader economic and political systems,<sup>162</sup> or in Philipp Kastner and Elisabeth Trudel's argument that in the context of peacemaking, including queer theory in the analysis allows for deeper understanding of inclusion and exclusion than simply identifying certain groups that are excluded.<sup>163</sup> As Diane Richardson points out, queer theory supports feminist theory in its critique of normative assumptions, as well as in its view of the enforcement of social norms as a form of regulation.<sup>164</sup>

The productive intersections of feminist and queer theory can, as McLaughlin has argued, create space for "collective vision of politics and change:"<sup>165</sup> which is essential to a futurist vision of human rights (discussed in section 2.2.1 above). In this thesis, I am particularly engaging with the commonality in which both queer and feminist theories challenge the "politics of normalisation:"<sup>166</sup> the idea that rights are equivalent to access to institutions, and that they are predicated on 'good behaviour'. I will discuss in more detail the ways that this normalisation is used in welfare and family services to label some families as problem families or 'troubled families,' in Chapter 7.

#### **2.3.2.2.2 Queer people in data**

There is a recognition that queer lives are invisible in many datasets, and consequent efforts to collect data that includes queer people and lives. These include proposals for a global LGBTI Inclusion Index, developed by UNDP in response to criticism that

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<sup>162</sup> McLaughlin (n 127).

<sup>163</sup> Philipp Kastner and Elisabeth Roy Trudel, 'Unsettling International Law and Peace-Making: An Encounter with Queer Theory' (2020) 33 *Leiden Journal of International Law* 911.

<sup>164</sup> Richardson (n 145) 35.

<sup>165</sup> McLaughlin (n 127) 77.

<sup>166</sup> Richardson (n 145) 34.



the Sustainable Development Goals, despite their promise to “leave no-one behind,” did not include LGBTI people.<sup>167</sup> At national level, these efforts have produced, for example, questions on sexual orientation and transgender status on the 2021 England and Wales census.<sup>168</sup> Proponents of this approach argue that collecting more data about queer people not only increases visibility and representation, but also supports effective allocation of resources and evidences the need for services and for law and policy.<sup>169</sup>

However, as Kevin Guyan has argued, decisions about what data is collected, in what form, for what purpose are often made without the input of queer people, who are most likely to be affected by the consequences of this decision.<sup>170</sup> For some people, inclusion in data collection may actually be dangerous, for example, if it makes their sexual orientation or gender identity more public in a climate of homo- and/or transphobia.<sup>171</sup>

For others, even if they feel safe and empowered to provide this data, the processes of data cleaning and analysis may ‘disappear’ their contributions: Guyan reports that in the 1990 US census, the census bureau would record the data of male partners who reported that their relationship to each other was ‘husband’ by keeping the relationship intact but changing the gender marker of one respondent to female.<sup>172</sup>

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<sup>167</sup> MV Lee Badgett and Randall Sell, ‘A Set of Proposed Indicators for the LGBTI Inclusion Index’ (UNDP 2018).

<sup>168</sup> PinkNews, ‘This Is What the 2021 Census Is Really Asking about Gender, Sex and Sexuality’ (*PinkNews*, 4 March 2021) <<https://www.pinknews.co.uk/2021/03/04/census-2021-england-wales-gender-sex-sexuality-questions/>> accessed 22 February 2022.

<sup>169</sup> Guyan (n 51).

<sup>170</sup> Guyan (n 155) 97–8.

<sup>171</sup> Soren Spicknall, ‘Protecting Queer Communities Through Data’ (*Medium*, 26 August 2019) <<https://medium.com/@SorenSpicknall/protecting-queer-communities-through-data-4707ae0cb562>> accessed 4 March 2020.

<sup>172</sup> Guyan (n 155) 115–6.

More recently, the social media site Facebook introduced more than 50 'custom gender options' for its English-language users to use in their online profiles in 2014: the underlying database (used for Facebook's valuable data products), however, stored only four options - male, female, custom, and blank – based on the user's choice of pronoun.<sup>173</sup>

Bonnie Ruberg and Spencer Ruelos argue that, in part as a result of this, commonly-used demographic data collection methods are not sufficient to capture queer lives.<sup>174</sup>

In this research, I will explore how the data collection and sharing infrastructure of the 'Troubled'/'Supporting Families Programme' does, or does not, capture the existence of and information about queer people. In addition, however, I will explore in more detail in section 2.3.2.2.3 below, the ways in which the collection of data may be seen through a queer lens as being fundamentally incapable of capturing lives, queer or not.

### **2.3.2.2.3 Troubling categories and queering categorisation**

Queer theory, as an academic discipline, also developed from postmodern and poststructuralist theories,<sup>175</sup> both of which argue that identities are not static but produced and reproduced.<sup>176</sup> From postmodern theories, additionally, comes queer

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<sup>173</sup> Rena Bivens, 'The Gender Binary Will Not Be Deprogrammed: Ten Years of Coding Gender on Facebook' (2017) 19 *New Media & Society* 880.

<sup>174</sup> Bonnie Ruberg and Spencer Ruelos, 'Data for Queer Lives: How LGBTQ Gender and Sexuality Identities Challenge Norms of Demographics' (2020) 7 *Big Data and Society*.

<sup>175</sup> Cathy J Cohen, 'Punks, Bulldaggers, and Welfare Queens' (1997) 3 *GLQ: A Journal of Lesbian and Gay Studies* 437, 437.

<sup>176</sup> Elsje Bonthuys, 'Equality and Difference: Fertile Tensions or Fatal Contradictions for Advancing the Interests of Disadvantaged Women?' in Margaret Davies and Vanessa Munro (eds), *The Ashgate Research Companion to Feminist Legal Theory* (Ashgate 2013).

theory's 'troubling' of how we talk about and understand different objects and concepts.<sup>177</sup>

Queer theory challenges binaries and categories, while recognising that they can be useful.<sup>178</sup> For Judith Butler, for example, categories are normative, and defined through opposition: for example, heterosexuality does not exist without homosexuality.<sup>179</sup> For Eve Kosofsky Sedgwick, a queer strategy is "repeatedly to ask how certain categorizations work, what enactments they are performing and what relations they are creating, rather than what they essentially mean."<sup>180</sup>

Queer theory has in the past been more comfortable with qualitative work than quantitative.<sup>181</sup> As Kath Browne points out, however, queer theory also offers tools for quantitative work: in particular, to question and examine the assumptions which underpin the design of studies and the collection of data.<sup>182</sup> Kath Weston, in her consideration of the methodological challenges of collecting data about lesbian women, examines the different strategies that researchers use to navigate the politics of identifying with a term which has different meanings in different times and different contexts.<sup>183</sup> Weston points out that each of the possible strategies has a downside: relying on self-definition may shift some power from researcher to research subject, but still assumes a unified self and does not take into account the fact that some

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<sup>177</sup> Hannah McCann and Whitney Monaghan, 'Defining Queer Theory', *Queer Theory Now: From Foundations to Futures* (Bloomsbury 2019) 8.

<sup>178</sup> Cowan (n 95).

<sup>179</sup> Cowan (n 95).

<sup>180</sup> Eve Kosofsky Sedgwick, 'Axiomatic' in Iain Morland and Annabelle Wilcox (eds), *Queer Theory* (Palgrave Macmillan 2005) 83.

<sup>181</sup> Benjamin Haber, 'The Queer Ontology of Digital Method' (2016) 44 *Women's Studies Quarterly* 150, 157–8.

<sup>182</sup> Browne (n 147) para 5.4.

<sup>183</sup> Kath Weston, 'The Lady Vanishes: On Never Knowing, Quite, Who Is a Lesbian' (2009) 13 *Journal of Lesbian Studies* 136, 138.

identities are culturally negotiated; while adopting a working definition for the purposes of a study may be precise, but is likely to be arbitrary and to exclude some people that a researcher wants to include.<sup>184</sup>

As it has grown and developed, queer theory has come to a useful tool to critique what Annamarie Jagose calls “the very notion of the natural, the obvious, and the taken-for-granted.”<sup>185</sup> As a result, it allows for recognition that real life is fundamentally messy: it does not neatly ‘fit’ into theory, or practice.<sup>186</sup> According to Matt Brim and Amin Ghaziani, queer research engages critically with how concepts and categories originate, are used, and what effects they have, and rejects what they call “the fetishizing of the observable.”<sup>187</sup>

As I will discuss in Chapter 4, my research examines the ways that data collection systems rely on classifications – segmentations of the world – and categories – named segments - in order to function. These categories, however, are designed and structured deliberately. Even when the categories are in some sense drawn from nature, the choice of how to record them – and what to record, or not – are made within the confines of a particular technical system. Queer, as a theory and as an approach to research, is inherently resistant to categorisation, and as a result has a critical power, as well as a power to deconstruct.<sup>188</sup>

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<sup>184</sup> Weston, ‘The Lady Vanishes’ (n 183) 139–142.

<sup>185</sup> Jagose (n 156) 102.

<sup>186</sup> Matt Brim and Amin Ghaziani, ‘Introduction: Queer Methods’ (2016) 44 *Women’s Studies Quarterly* 14, 18.

<sup>187</sup> Brim and Ghaziani (n 186) 16.

<sup>188</sup> Browne (n 147).

### 2.3.2.2.4 Queering computing

There is a history to queer engagement with computing. The ‘Turing Test’ is a widely used shorthand for whether a computer program can mimic a human successfully enough to fool a human observer. Its inventor, Alan Turing – a gay man who was later convicted under the UK’s ‘gross indecency’ laws – however first theorised this test (which he called the ‘Imitation Game’) in a 1950 paper, as an exercise in which a man and a woman would both try to imitate a woman.<sup>189</sup> This exercise in gendered mimicry is far less discussed than Turing’s second thought experiment, in which the man is replaced by a machine to test the question, “can machines think?”<sup>190</sup>

As Bonnie Ruberg et al point out, while it is not possible to draw a direct line from Turing’s queerness to his work in theorising computing, it is also not possible to entirely separate the two.<sup>191</sup> Queer people have seen themselves in real and imagined data systems: from the censuses I describe in section 2.3.2.2.2 above, to ‘reading’ the sentient computer HAL in the film *2001: A Space Odyssey* as a catty gay male,<sup>192</sup> to seeing fictional cyborgs as metaphors, as KI Surkan describes, for “transgendered [sic] and disabled viewers, whose physical bodies do not necessarily correspond to their internal sense of identity as gendered subjects.”<sup>193</sup>

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<sup>189</sup> Alan M Turing, ‘Computing Machinery and Intelligence’ (1950) 59 *Mind* 433–4.

<sup>190</sup> Contemporary discussion of Turing’s paper also tends to omit the section in which he considers the Imitation Game in the context of extra-sensory perception, stating that “the statistical evidence, at least for telepathy, is overwhelming.” Luckily, he concludes that in order to mitigate against the ‘psycho-kinetic powers’ of the imaginary observer, it would be sufficient simply to put all participants into a ‘telepathy-proof room.’ See Turing (n 189) 453–4.

<sup>191</sup> Bonnie Ruberg, Jason Boyd and James Howe, ‘Toward a Queer Digital Humanities’ in Elizabeth Losh and Jacqueline Wernimont (eds), *Bodies of Information* (University of Minnesota Press 2018) 115 <<https://www.jstor.org/stable/10.5749/j.ctv9hj9r9.11>> accessed 16 August 2022.

<sup>192</sup> Mark Dery, ‘Straight, Gay, or Binary? HAL Comes Out of the Cybernetic Closet’, *I Must Not Think Bad Thoughts: Drive-By Essays on American Dread, American Dreams* (University of Minnesota Press 2012) 140.

<sup>193</sup> KI Surkan, “‘I WANt TO BE A REAL BOY’: A.I. ROBOTS, CYBORGS, AnD MUTAnTS AS PASSInG FIGURES In SCIEnCE FICTIOn FILM’ (2004) 5 *Femspec* 114, 2.

In my research, I aim to bring in ideas from queer theories and queer methods to question these categories, where they emerge from, and their effects.<sup>194</sup> To do this, these categories need to be made visible, in order to identify their constraints.<sup>195</sup> Making visible how these categories work – and in particular, how they do not work – will allow me to, in the words of Donna Haraway, “feel the friction:”<sup>196</sup> to identify the points where categories conflict, with each other and with the realities of people’s lives. I will, in this research, specifically examine the categories which are used in data collection and sharing in relation to the ‘Troubled’/‘Supporting Families Programme.’ In particular, I will consider the extent to which these categories - in the form of variables and data points – are based on what Kevin Guyan, in his examination of ‘queer data,’ calls “reductive stereotypes, an erasure of differences and inaccurate accounts of homogeneity.”<sup>197</sup>

### 2.3.2.3 ***The limits of ‘ethics’ in the consideration of data and technology***

A further part of critical data studies that I am drawing on for my work is a critical engagement with how data and technology should be governed, regulated and managed. Amongst technology companies, the discourse of ethics is prominent, and sets of ‘Ethical Principles’ abound, as I will discuss in more detail in section 3.3.1.4 below. Ethical considerations are of course not limited only to STS: considering research in general, Sara Ahmed argues for attention to the limits of research ethics: recognising whether ethics are defined negatively: not causing harm; or positively:

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<sup>194</sup> Brim and Ghaziani (n 186) 16.

<sup>195</sup> Noah Tsika, ‘CompuQueer: Protocological Constraints, Algorithmic Streamlining, and the Search for Queer Methods Online’ (2016) 44 *Women’s Studies Quarterly* 111.

<sup>196</sup> Donna Haraway, ‘Cyborgs, Coyotes and Dogs: A Kinship of Feminist Figurations and There Are Always More Things Going On Than You Thought! Methodologies as Thinking Technologies’, *The Haraway Reader* (Routledge 2004).

<sup>197</sup> Guyan (n 155) 128.

causing good.<sup>198</sup> This discussion is especially relevant for my research, which considers the human rights impact of technology.

Feminist technology scholars have called for a shift in discourse away from ethics, which locates problems within individuals or individual systems and implicitly promotes technical fixes, and towards structural concepts such as justice.<sup>199</sup> In this research, as I have discussed in section 2.2.1 above, I follow this practice, focusing on social justice. This does not, of course, mean that my research does not engage with ethics at all. It is of course important that I, as an individual researcher, abide by the codes of ethics and ethical approval procedures laid down by my institution: that is not in question. Nonetheless, a feminist approach to research requires that I consider ethics as a necessary – not sufficient – part of my work: as feminist researchers have noted, ethics boards may not necessarily make decisions in feminist ways.<sup>200</sup> As well as ensuring that my work is not causing harm, I will aim to ensure that my work contributes to the process and achievement of justice. The ongoing practice of reflexivity is also crucial for what William Simmons and Lindsey Feldman define as a radical approach to human rights.<sup>201</sup> I will cover this in more detail in the below sections on my methodology (section 2.4) and methods (section 2.5).

## 2.4 Methodology

Research methodology, according to Britta Wigginton, and Michelle Lafrance should be developed from the epistemological commitments at the time of enquiry.<sup>202</sup> In the

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<sup>198</sup> Ahmed (n 131).

<sup>199</sup> D'Ignazio and Klein (n 10) 61.

<sup>200</sup> Ryan-Flood and Gill (n 91) 5–6.

<sup>201</sup> William Paul Simmons and Lindsey Raisa Feldman, 'Critical Ethnography and Human Rights Research' in Lee McConnell and Rhona Smith (eds), *Research Methods in Human Rights* (1st edn, Routledge 2018).

<sup>202</sup> Wigginton and Lafrance (n 103) 12.

following sections, I explain how I have developed a methodology for my research, drawing on the epistemological and theoretical foundations I have described in section 2.3 above. As I have discussed in section 2.2 above, my research takes a normative socio-legal approach, drawing on the critical data studies literature I discussed in 2.3.2 above.

#### **2.4.1 Developing a methodology**

As I will discuss in more detail in section 2.5.1 below, my research took place during the lockdowns imposed during the COVID-19 pandemic in the UK. The limitations imposed by lockdowns shifted the focus of my research away from a holistic examination of data collection and sharing in children's services. I had envisaged field research in the form of technical examination of specific software used for this data collection and data sharing, and in the form of ethnographic analysis of the experiences of families whose data was used in local authority systems: the limitations imposed by the pandemic made both of these extremely difficult. As a result, I shifted my area of focus to examine the theoretical underpinnings of data collection systems, and on documentary analysis of one specific programme: the 'Troubled/Supporting Families Programme,' discussed in more detail in Chapter 7.

As a result, as I have stated in section 1.2 above, the central questions of this thesis are: to what extent does the collection and sharing of data in this Programme support and perpetuate norms about what constitutes 'good' families and gendered stereotypes of individuals within families; and is this stereotyping in violation of the international human rights legal framework? To address these questions, my methodology examines the theoretical and envisaged use of categorisation in this collection and sharing of data using technology, through the lens of the human rights framework. As



I discuss in Chapter 8, this research will complement future examination of individual experiences. It will also provide a useful theoretical underpinning for future examination of specific technological systems, including software programs.

### **2.4.2 Embracing reflexivity**

A key part of understanding my own standpoint and positionality as a researcher is self-reflexivity: in particular, considering how my own assumptions, values and standpoint change how I assess others.<sup>203</sup> In this section, I will outline the theoretical underpinnings of this reflexivity: I will explain in detail my own positions and standpoint below.

Catherine D'Ignazio and Lauren Klein define reflexivity as "the ability to reflect on and take responsibility for one's own position within the multiple, intersecting dimensions of the matrix of domination."<sup>204</sup> In this sense, reflexivity is closely linked to standpoint theory, which I discuss in section 2.3.2.1.1 above.

Reflexive research is also a key component of feminist research. As I discuss in section 2.3.2.1.2 above, feminist thought focuses on how power operates: this includes power in research processes. In order to engage in feminist research, as Sara Ahmed argues, I need to be reflexive about what it means to carry out feminist research: where power is situated and how labour and work is valued.<sup>205</sup> For Christina Scharff, reflexivity in research also includes accountability, including for the communit(ies) within which a researcher produces knowledge, and the choices of what

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<sup>203</sup> Carolyn Zerbe Enns, Lillian Comas Díaz and Thema Bryant-Davis, 'Transnational Feminist Theory and Practice: An Introduction' (2021) 44 *Women & Therapy* 11, 13.

<sup>204</sup> D'Ignazio and Klein (n 10) 64.

<sup>205</sup> Ahmed (n 131).

is shared and what is not spoken about.<sup>206</sup> Reflexive consideration of how we inquire is a key part of critical legal research<sup>207</sup> and socio-legal research,<sup>208</sup> as well as a potential radical approach to human rights.<sup>209</sup> Reflexive writing in particular, as Mann points out, can be used to disrupt an impression of objectivity in research: an aim of mine, as I discuss in section 2.3.2.1.1 above.

Cheryl Cooky et al define feminist reflexivity as “a method or practice wherein researchers engage in an ongoing process of critical reflection on the development and outcomes of knowledge production and is central to enacting and enhancing feminist ethics.”<sup>210</sup> this includes recognising the relative positions of, and the power dynamics between, the researcher and the ‘researched.’<sup>211</sup> Feminist research projects need to continually re-examine their approaches, objectives, and how they uses its findings, as well as how they fit into local contexts, needs and priorities, research agendas, and local ways of constituting feminism.<sup>212</sup>

However, it is important, as Jacqueline Sanchez Taylor and Julia O’Connell Davidson point out, to recognise and avoid the use of ‘reflexivity’ to absolve guilt about researcher behaviour, or about powerlessness when working with people in difficult circumstances which researchers have little or no power to alter.<sup>213</sup> I will discuss

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<sup>206</sup> Scharff (n 90) 91.

<sup>207</sup> Lee McConnell, ‘Legal Theory as a Research Methodology’ in Lee McConnell and Rhona Smith (eds), *Research Methods in Human Rights* (1st edn, Routledge 2018) 62.

<sup>208</sup> Banakar (n 61) 8–13.

<sup>209</sup> Simmons and Feldman (n 201) 126.

<sup>210</sup> Cooky, Linabary and Corple (n 132) 2.

<sup>211</sup> Lillian Artz and others, ‘Participation in Practice: A Case Study of a Collaborative Project on Sexual Offences in South Africa’ (2017) 115 *Feminist Review* 79, 86.

<sup>212</sup> Artz and others (n 211) 92–3.

<sup>213</sup> Jacqueline Sanchez Taylor and Julia O’Connell Davidson, ‘Unknowable Secrets and Golden Silence: Reflexivity and Research on Sex Tourism’ in Róisín Ryan-Flood and Rosalind Gill (eds), *Secrecy and Silence in the Research Process* (Routledge Ltd 2010) 49–51.

further my own personal reflections about powerlessness in research in the following section.

### **2.4.3 My own position as a researcher**

In the following sections, I will discuss my own pre-PhD research experiences, and how they have shaped my approach to research for this thesis.

#### **2.4.3.1 *Client-facing work: local domestic violence support in London***

My research looks at the impact of data-driven systems in children's services in the UK. As a child, I never knowingly encountered these services: my first known encounter with these services was as a London borough charity sector worker (without children of my own) in 2010-11. I worked for a charity organisation which supported people who had experienced domestic violence or homophobic hate crimes. As a non-statutory organisation, we could engage only with clients who chose to engage with us: but if there was a risk to children, we were obliged to report the situation to the local authority's Children and Young People's Services (CYPS) for safeguarding purposes (I will discuss the role of safeguarding in children's services in England in more detail in Chapter 5).

Many of my domestic violence clients had children: many of the perpetrators were fathers of these children. My clients navigated the expectations of their families and communities about the roles of parents in the lives of children, and in several cases refused to look for refuge placements because it would mean taking their children away from their father. CYPS, meanwhile, considered violence in the home to be a risk factor for children. Clients – mostly women – sometimes talked about having to make a choice between what they perceived as best for their children, and what was safest for themselves.

My tenure in this organisation preceded austerity policies in the UK: refuge places were scarce but findable, and we were able to support many of our clients with measures to protect themselves. Since 2010, funding for local authority services has been cut dramatically: I did not, however, witness this as either a recipient of services or as a frontline worker.

#### **2.4.3.2 *Structure-facing work: campaigning for change in a human rights NGO***

From 2011 to 2019 I worked at an international human rights organisation: my interactions with UK policy and its implementation were limited to reported experiences of friends in client-facing and government roles, to reports and campaigns by civil society organisations, and to media coverage. At the same time, however, I was engaging with feminist research and practice in international human rights law: and navigating the challenges of feminist practice in an organisation which was largely focused on the letter of human rights law. While campaigning for structural change, I found myself confronting 'gender-blindness,' stereotypes and assumptions within and external to my organisation.

My research, as a result, is grounded in both a well-honed sense of choosing when to fight, and when to focus my energies elsewhere: as well as in my experience of analysing structural situations causing human rights violations with the aim of changing those situations and the structures that enable them. But reflexive research will require that I remain vigilant to the fact that I am not personally impacted by child protection systems in the UK: and so my personal experience of them will differ from those who are.

#### **2.4.4 Standpoint theory: centring people who are directly affected**

As a result, I need to consciously centre not people like me, but people whose lives are directly impacted by these technologies, in my research. For this, standpoint theory will be important: particularly Sprague's interpretation, which includes working from the standpoint of the disadvantaged and the instruction to ground interpretations in interests and experience.<sup>214</sup> I will also draw on the radical approach to human rights outlined by William Simmons and Lindsey Feldman: like feminist thought approaches, they advocate a focus on positionality and self-reflexion; they also include the instructions to understand power relations, to listen to the voices of the marginalised, and to immerse in a particular setting.<sup>215</sup> In this I am also drawing on the principles of feminist practical reasoning: to focus on lived experiences.<sup>216</sup>

However, as I discussed at the beginning of section 2.4 above, my research methodology formally examines the use of categorisation in this collection and sharing of data using technology, through the lens of the human rights framework. My research does not directly examine the experiences of families who are affected by the use of data collection and sharing in children's social care, as I will discuss in more detail in section 2.5.2 below. While I conducted research interviews (as I will discuss in the same section), I did not conduct a rigorous ethnographic examination of the experiences of my interviewees.

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<sup>214</sup> Sprague (n 74) 75–80.

<sup>215</sup> Simmons and Feldman (n 201).

<sup>216</sup> McConnell (n 207) 59–61.

### **2.4.5 Working at the intersections – and in the interstices – of different disciplines**

My research is also grounded in a reluctance to adhere to disciplinary categories, and instead to embrace the opportunities – and challenges – of interdisciplinary work. My academic background spans a variety of current and archaic disciplines. I received my undergraduate degree in mathematics from a university which teaches a narrow range of undergraduate courses (and, notoriously, still issues degrees in ‘Natural Sciences’ when the rest of the world has long since moved to – and beyond – categories such as ‘biology’). Later, I pursued an MA in Gender Studies in a then-new centre which sat uncomfortably between existing faculties, borrowing from all of them but accepted nowhere. My current PhD sits in the School of Law, but I am not and never have been a practicing lawyer.

Part of the process of returning to academia, for me, has been to understand where disciplinary boundaries are drawn, to start to get a feel for where different words are used for the same phenomenon: and more confusingly, where the same word can make markedly different things to different actors. This is something that I am still grappling with, and will likely continue to.

I believe that an interdisciplinary approach – despite the challenges posed by a lack of shared analytical tools, and the confusion of shared terminology carrying different meanings – is particularly valid for a research project such as this one, as it allows me to approach the situation I am researching flexibly, recognising the ways in which different lenses converge, while helping ensure that aspects of the research project do not fall through gaps in individual disciplinary approaches.

#### 2.4.6 Accessibility – beyond academia

Joey Sprague has listed three ‘steps’ for feminist sociology, of which the third step is ‘answer empoweringly.’<sup>217</sup> At present I aim to produce a dissertation as my first priority, in order to obtain my PhD. Doctoral dissertations are not noted for their wide appeal: as such, during the course of my research, I have aimed to be aware of outreach and engagement opportunities, and remain cognizant of the limitations of a PhD as feminist practice. As I was completing this thesis, I began working at the Ada Lovelace Institute, a research institute interrogating how to make data and AI work for people and society:<sup>218</sup> my role there as Senior Researcher on Public Sector Algorithms gives me an opportunity to use what I have learned over the course of my PhD to shape and inform policy and practice.

More importantly, though, I will aim to make my research as accessible as possible across disciplines and outside the academy: through dissemination but also through terminology. This also links with Sprague’s expression of standpoint theory, which includes the need to maintain a strategically diverse discourse and to create knowledge that empowers the disadvantaged.<sup>219</sup>

### 2.5 Methods

The research for this thesis was carried out between 2018-2022, with writing up continuing into 2023. I will discuss the existing literature that exists on my topics of

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<sup>217</sup> Sprague (n 74) 199–200.

<sup>218</sup> ‘Ada Lovelace Institute’ <<https://www.adalovelaceinstitute.org/>> accessed 22 February 2023.

<sup>219</sup> Sprague (n 74) 75–80.

study in Chapter 3. In the following sections, I explain and reflect on the methods I used for this research.

### **2.5.1 Research in a pandemic**

After working on my PhD part-time in 2018 and 2019, I started full-time research in January 2020. Through a PhD enrichment placement, I was based at the Alan Turing Institute in London, where I hoped to build relationships with academics working at the intersections of data, technology, and public policy. I also hoped to build on the connections I had established in 2018-19 with the wide range of people in academia, NGOs, and government who were considering the implications of the use of data in welfare services. In March 2020, those plans changed.

I was luckier than many. My housing and income were not affected by the pandemic and the various lockdown measures imposed on the UK government. My close family members were able to shield themselves from exposure until vaccines were available. My wife, an epidemiologist, kept abreast of the research, the risks, and what we should do to protect ourselves. We were able to stop going out, and start working from home, before national lockdown made it mandatory: we proactively locked down almost two weeks earlier, when one of her friends – who had been working long hours contact-tracing the first known COVID-19 cases in the UK – called to say that he had been told to stop tracing and go home.

Despite this, like many researchers – PhD or otherwise - my research work was severely impacted by the pandemic. In the first few months of the pandemic, day-to-day concerns left little brain space for thinking about my work. As well as keeping our flat – home to an epidemiologist and a key worker teacher as well as myself – stocked with food, I also volunteered with an anarchist mutual aid group to deliver food to local



residents who were already isolated from welfare support systems before they had to shield from COVID-19. Like many people, I found that focusing on immediate tasks like disinfecting groceries distracted me from the fear and anxiety of living through a pandemic.

In March and April 2020, I briefly kept a research diary, in an effort to retain some connection to my research:

*23 March: Finding it very hard to focus on anything at all. Trying to work my way through edX Ethics course but it's not engaging me at all. I'm at the kitchen table, Jules<sup>220</sup> is on the sofa and Matt<sup>221</sup> is in his room – so far we are not getting on each nerves, yet... Worrying about the research proposal that I sent to Lorna and Róisín,<sup>222</sup> particularly the bit about focus groups. It was pretty poorly thought-through anyway, and now seems completely infeasible.*

...

*3 April: 2-hour Zoom PhD meeting today, which gave everyone a chance to talk about how they are feeling. Not many of us are getting much done, and I'm one of the lucky ones to be living with people.*

...

*7 April: Procrastinating emailing Lorna and Róisín to confirm receipt of Lorna's comments. Need to find a way to explain that I'm fine, but*

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<sup>220</sup> My wife, an epidemiologist. Later we would set up workspaces for both of us. Amidst a shortage of furniture available for purchase as an entire country tried to work from home, we hacked a chest of drawers into an ersatz desk.

<sup>221</sup> Our flatmate, a secondary school History teacher. He cycled to school on some days to supervise children of key workers; other days, he had to do tech support for children and their parents trying to use the school's online platform for the first time, in addition to online teaching.

<sup>222</sup> Professors Lorna McGregor and Róisín Ryan-Flood, my PhD supervisors.

*not motivated at the moment. My family is all safe and well, I don't have childcare to do, and my work has been set up for remote working for 2 years<sup>223</sup> so I'm not even lacking many of the notes I need. But it's still hard to stay motivated. Suggested a piece on COVID-19 and gender for Carla's anthology, will see what she thinks. I have a phone screening for the [institution] internship though, which is exciting!<sup>224</sup>*

The abstract I submitted became a chapter, 'Imperfect Models of the World: Gender Stereotypes and Assumptions in Covid-19 Responses,'<sup>225</sup> in the collection *Covid-19, Law and Human Rights: Essex Dialogues*, edited by Carla Ferstman and Andrew Fagan. Writing the chapter gave me space to think about my research again, by applying the topics I was thinking about to the upheaval of the first few months of the pandemic. By the middle of 2020, I was taking tentative steps towards thinking about research again.

## 2.5.2 Interviews

Drawing on my theoretical foundations, particularly the feminist theories I describe in section 2.3.2.1 above, I had hoped to work with families who are directly affected by the use of data in children's services in England. In early 2020, I was beginning to network with other academics and with charities in the UK who were also interested in public sector technology and data use, with the hope of making connections with

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<sup>223</sup> I was living in London, two hours by train and bicycle from the University of Essex campus in Colchester, and on a placement at the Alan Turing Institute: my digital workspace was already set up to be accessible from multiple locations.

<sup>224</sup> I did not get the internship.

<sup>225</sup> Laura Carter, 'Imperfect Models of the World: Gender Stereotypes and Assumptions in Covid-19 Responses' in Carla Ferstman and Andrew Fagan (eds), *Covid-19, Law and Human Rights : Essex Dialogues. A Project of the School of Law and Human Rights Centre* (University of Essex 2020) <<http://repository.essex.ac.uk/28041/>> accessed 2 July 2020.

existing service user groups who might be open to participating in interviews and focus groups.

However, I was already concerned about the feasibility of this in March 2020, as can be seen in my research diary excerpts in section 2.5.1 above. This was in part driven by the fact that I did not feel that the size and scope of my PhD project allowed for sufficient support to be put in place to engage ethically with children and their families. While designing the research for this project, I did not have sufficiently strong links with social work and counselling services to be able to offer support to research participants. This was exacerbated by the ongoing COVID-19 pandemic: I did not feel that I could offer potential participants enough support to make participating in my research worthwhile for them.

As a result, I changed my interview strategy. Instead of seeking interviewees who were directly affected by children's service data use, for face to face interviews and focus groups, I sought out instead people who were *interested* in this use of data. Drawing on connections as and when I could, I looked for people who worked in social services, either as social workers or data workers. I contacted staff and volunteers at charities and informal organisations who were interested in data, the public sector, and children, as well as other academics. I sought out not specific details of one system or even one local authority, but a variety of standpoints and perspectives. In line with my use of standpoint theory and with feminist critiques of objectivity (discussed in section 2.3.2.1.1 above), I considered each of my interviewees as partial observers, asking them not only for what they had observed in their work, but also how they felt about the use of data in children's services.

My interviews informed my analysis in Chapters 5 and 6, on the emergence of data collection and sharing in children's and family social service systems in England, and how the family is classified and in law, policy, practice, and experience, and in Chapter 7, on the 'Troubled/Supporting Families Programme.' An anonymised list of interviewees is in Appendix 1.

### 2.5.2.1 ***The interview process***

I aimed to understand not only what my interviewees considered the risks and challenges of data use in the public sector in England in general, and in relation to children in particular: but also their hopes and fears for this use, and for public sector data more broadly. Consequently, I chose to use semi-structured interviews: I prepared a guide formed from general questions for all interviewees, as well as some targeted questions based on research about the individual interviewee and key projects that they had been involved in. By using semi-structured interviews, I hoped to be able to allow space for discussion and for interviewees to talk about their opinions as well as their experiences, while still keeping the conversation within the scope of my research.

I approached interviewees through my own networks; the networks of colleagues at the University of Essex and the Alan Turing Institute; recommendations from other interviewees; and in some cases, cold approaches (for example, contacting individuals who I had seen speak at an online conference or panel). Friends and colleagues kindly posted calls for interviews on channels where they thought public sector data workers would see them. In training sessions for PhD researchers, I spoke about the interviewees I hoped to find, which elicited participants who had left social work for academia and were prepared to talk about their previous work.

Some of my interviewees agreed to speak to me because we already knew each other, or as a favour to an intermediary who introduced us. Some were clearly happy to talk about their work to an interested PhD student.<sup>226</sup> Others, particularly in local authorities, welcomed the chance for an outlet to raise their concerns about what they saw as potentially risky data collection and sharing: while I was honest that being awarded a PhD was my priority, I also talked to these interviewees about wanting to make my work accessible to a broader audience.

In total, I carried out 18 interviews with individuals who work (or have worked) with data in children's social care in England: as local authority workers (7 individuals), as members of civil society organisations (9 in total), or as academics (2 in total). These interviews were carried out in January-May 2021, and were conducted remotely using the phone, Zoom, or Microsoft Teams, in line with University of Essex and UK public health guidance at the time due to the ongoing COVID-19 pandemic. With the consent of interviewees, I recorded the majority of the interviews and as well as taking extensive notes, used Zoom's embedded otter.ai software to produce transcripts for analysis.

Carrying out remote interviews, unexpectedly, made finding interviewees easier. By early 2021, most of the people I interviewed were familiar with Zoom and other video call platforms, and all had either suitable equipment or were happy to use the phone: finding a one-hour slot for an additional video meeting did not prove difficult. As

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<sup>226</sup> As a mid-career PhD student, I am also asked from time to time to participate in research interviews about my previous work. In the period that I was conducting research interviews, I also participated as an interviewee in research covering topics that included: the internal working of large international NGOs, disagreements in UK feminist movements, the ethics of research on trans rights, humanitarian technology, and fairness in software development. I found it helpful, when nervously cold-contacting potential interviewees, to think about how much I enjoyed being part of semi-structured interviews where I was encouraged to talk anonymously about things that I found interesting.

someone who is comfortable with technology, I was able to help my interviewees with any technical difficulties they encountered. However, not everyone I approached agreed to speak with me. Some considered my request and declined, citing that they did not have recent or relevant experience to talk about, while others failed to respond at all. This may be because they did not feel comfortable talking to me, did not have time due to other commitments, or simply were not interested.

My background and experience also facilitated the process of interviewing. As a PhD student – working towards the production of a thesis, not a public report – I felt that my interviewees were more willing to talk candidly with me, especially anonymously. As a mid-career PhD student in my mid-30s, I was the same generation as many of my interviewees, creating a peer-like relationship and easy conversation. I was also able to draw on my unconventional academic background – prior to a PhD in Human Rights Research Methods, I obtained an MA in Gender Studies, and a BA in Mathematics – to find points of connection with both technical and non-technical interviewees. I also had extensive experience carrying out semi-structured interviews from my previous work as a domestic violence caseworker and as a human rights field researcher, which meant I had the confidence and experience to direct the interview: allowing strands of discussion to develop while still keeping the conversation on topic.

Ethical approval for these interviews was granted by the Humanities Ethics Sub-Committee at the University of Essex (ETH1920-1563). The data from the interviews remains stored on OneDrive cloud storage run by the University of Essex, and will be retained for ten years, in line with the data management plan approved by the Ethics Sub-Committee. In line with the University of Essex Research Data Management

Policy, the data will be available for access and re-use where legally, ethically and commercially appropriate.

#### **2.5.2.2 *Analysing the interviews***

I took extensive notes during each interview. For the recorded interviews, I also recorded audio files and generated automated transcripts using otter.ai software within Zoom. The automated transcripts were frequently wildly inaccurate, particularly for interviewees who spoke quickly and/or had an accent that was not from the USA coasts, but they contained timestamps: by cross-referencing my own notes and the automated transcript, I was able to quickly and easily check quotes.

For the analysis, I initially experimented with the qualitative analysis software NVivo. I loaded all the text files into the programme for analysis, but soon found that the only function I was using in the software was the 'search' box. Instead, I read and re-read the interview notes, building on past interviews to plan future ones, and considering them – as discussed above – as opinions from different standpoints, which helped contextualise my broader research. The interviews acted as a guide for me to focus my analysis on the 'Troubled'/'Supporting Families Programme' and to look at wider government policy. Rather than being the principal subject of my research, the interviews have acted as guides to help me situate my research in its proper context.

While I do quote directly from some interviews in the text of the thesis – specifically in chapters 5-7 - the aim of including these quotes is to illustrate the issues that I discuss. It is important to note that I did not carry out an ethnographic analysis of these experiences. The people I interviewed were kind enough to give me their time and their perspectives. Coming from many different angles and standpoints, each interview

was necessarily what Donna Haraway calls “partial, locatable, critical knowledges,”<sup>227</sup> (discussed in more detail in section 2.3.2.1.1 above). Nonetheless, I find these quotes useful to demonstrate the links between my theoretical discussions and the real-world challenges and tensions in the use of data in children’s social care.

### 2.5.3 Document analysis

Guided by my interviews, I focused much of my research on one specific programme: the ‘Troubled’/‘Supporting Families Programme.’ A key source of data for my research was publicly-available documentation produced by national government ministries: these included programme guidance, information for the public, policy speeches and statements, evaluation reports, as well as primary and secondary legislation.

As a researcher working during the COVID-19 pandemic, I was lucky to be able to access almost every such document via the UK government’s GOV.UK portal:<sup>228</sup> the majority were available as downloadable .pdf documents which I was able to store and analyse locally, though some information was only available through website pages which are subject to change. The key documents upon which my analysis relied are listed in Appendix 2.

I was able to identify relevant documents through both global search engines (Google and DuckDuckGo) as well as using the GOV.UK search feature. Other relevant documents were identified through links and references: in a very small number of cases, linked or referenced documents were not available online, and in one case I submitted a Freedom of Information request to obtain one such document.

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<sup>227</sup> Haraway, ‘Situated Knowledges’ (n 105) 584.

<sup>228</sup> GOV.UK, ‘About GOV.UK’ (GOV.UK) <<https://www.gov.uk/help/about-govuk>> accessed 21 March 2022.



I analysed this data both in the form of documentation of programmes, policies and processes, but also as examples of official government discourse: about data and technology systems as well as about the individuals and families who these programmes were trying to reach. In this respect, documentary analysis complemented the literature review, which I will discuss in Chapter 3. However, it is important to note that I examined this Programme through the lens of the documentation, and not through direct examination of the specific technologies or software programs that were in use to administer the Programme during my research period. I did not directly observe the use of such technologies in local authorities, nor the experiences of local authority staff members in using computer technology to share.

## **2.6 Limitations**

My research examines the theoretical and envisaged use of categorisation in the collection and sharing of data using technology in children's social services, through the lens of the human rights framework. It does not examine the practical implementation of such technologies within a local authority in England, nor does it examine the impacts of specific software which might be used for the collection and sharing of data. As a result, while it identifies potential impacts of this collection and sharing of data, this thesis cannot in and of itself document such impacts, nor does it alone provide evidence of human rights violations as occurring in general with the use of data sharing and collection technologies. Further research will be required to investigate the general situation.

This thesis does examine one policy programme in detail - the 'Troubled/Supporting Families Programme' – arguing that based on an analysis of documentation of this

programme, the gender stereotyping in this Programme normalises a particular type of 'model' family – a family with two (preferably heterosexual) parents in a stable cohabiting relationship, in which one parent (preferably male) works and the other (preferably female) prioritises childcare – as a gender stereotype within the ambit of Article 5 of CEDAW. I argue that this obliges the UK government to engage in a process of examining this stereotype and developing policies that not only do not uphold this stereotyping – as the 'Troubled/Supporting Family Programme' does, but which actively combat the harm that they do. However, the actual implementation of this Programme is out of scope of this thesis, as is examination of the lived experiences of families and individuals who are affected by the Programme. As a result, this thesis does not evidence any practical harms, and further research will be necessary to document the real-life impact of the 'Troubled/Supporting Families Programme.'

## **2.7 Conclusion**

In this chapter, I have described my methodology and the key theories that underpin it. Working in the socio-legal human rights tradition, I consider my research through the lens of critical data studies. Within this, I draw on key feminist and queer theoretical ideas. Using feminist theory, I question the perceived objectivity of data-driven systems, and use intersectional analysis to consider where power lies within the use of data collection and sharing in the public sector in England and Wales. I also draw on feminist ideals of collaboration and of social justice-focused research as a part of my human rights focus: on human rights as a constant, unfinished project which is nonetheless worth pursuing. From queer theory, I draw the questioning of and troubling of assumptions, norms and categories. I consider the erasure and

normalisation of queer lives from data, as well as the generative possibilities which can emerge from combining feminist and queer ideas to consider how exclusion and discrimination affects people in different ways.

I also reflect on my own position as a researcher and the specific and particular constraints of doing doctoral research during an unprecedented pandemic: how, while I was unable to work directly with affected individuals, I have endeavoured to use interviews with local authority staff, civil society and academics to guide my work by providing different perspectives on local authority data use. Guided by these interviews, I used document analysis to contextualise one specific government programme: the 'Troubled/Supporting Families' Programme. In later chapters, I will use these approaches from science and technology studies (STS) together with feminist and queer theories to examine inter-agency data sharing in general, and this specific case study in particular. First, however, I will review the key literature related to my work in the next chapter.

## **Chapter 3 Existing literature on human rights, data, and gender stereotyping**

### **3.1 Introduction**

In this chapter, I will review the key literature related to my topic of study. In section 2.3.2 above, I covered how my research forms part of the broader field of critical data studies, which Rob Kitchin and Tracey Lauriault argue situates data in context, as inherently political.<sup>229</sup> In this section, I will first look at key terms related to data, including ‘algorithm and ‘machine learning,’ explain how I am using these terms, and situate my definitions within wider usage in discussion of the collection of data about families in social services.

I will then examine at how the human rights implications of data collection and sharing have been considered in different contexts, including how data can facilitate or even cause human rights violations, particularly of the rights to privacy and to non-discrimination. I will consider the human rights approach to data and how it compares to ethical lenses which consider data in the context of harms and benefits. I will also consider the specific human rights literature which examines the use of data in welfare systems.

I will then consider the broader literature on gender stereotyping: specifically, feminist and queer approaches to stereotyping and how it links to other concepts of

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<sup>229</sup> Kitchin and Lauriault (n 86).

normalisation. I will also cover the human rights law basis for considering stereotyping as a potential violation of human rights.

Finally, I will examine the literature on gender and data, including feminist and queer approaches to data, and consider specific prior research on data and gender stereotyping. I will demonstrate that my research, which examines the ways in which data systems in one social services programme in England supports gender stereotypes, extends this literature. It does this both through the use of a novel case study in the ‘Troubled/Supporting Families Programme;’ and through an in-depth analysis of the ways in which data systems classify, categorise and stereotype individuals based on their gender.

### **3.2 Data, algorithms and the “algorithmic turn”**

including how I will define the terms ‘data’, ‘algorithm,’ ‘hardware’ and ‘software. I will start by defining some of the terms I will be using, and noting how my usage of these terms fits with other uses of common terms in academic papers and in media written for a popular audience. In Chapter 5, I will discuss the historical, practical and political factors which have influenced the collection and sharing of data about families, and the use of data to classify and categorise (terms I will discuss in Chapter 4) families.

#### **3.2.1 What is ‘data,’ precisely?**

‘Data’ has become such a ubiquitously-used term that it is useful here to define it more precisely.

Rob Kitchin defines data as “the raw material produced by abstracting the world into categories, measures and other representational forms.”<sup>230</sup> In the same book, he goes on to point out, however, that the term ‘data’ is derived from *dare*, the Latin word for ‘give’: and it would perhaps be more accurate to call it ‘capta’ from *capere* (to take)<sup>231</sup> because – like most raw materials – there is a process to collecting it, which includes choices of what to abstract and what to ignore. I will discuss this further in section 4.4.1 below.

The collection and analysis of data predates the use of computers. Censuses – the collection of population data for military conscription, taxation, or economic analysis – have been performed for more than two thousand years.<sup>232</sup> For Nick Couldry and Ulises Mejias, data is “information flows that pass from human life in all its forms to infrastructures for collection and processing.”<sup>233</sup> Historically, these infrastructures may have been clay tables, knotted strings or parchment pages; until the mid-20<sup>th</sup> century, they may have been paper files and index cards.

The invention of computing, however, allowed data to be collected more flexibly and analysed in a more timely manner. Data, as a result, has come to be synonymous with computerised data, and data infrastructures are computing infrastructures. I will discuss the compromises and constraints inherent in infrastructures further in section 4.3 below.

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<sup>230</sup> Rob Kitchin, *The Data Revolution: Big Data, Open Data, Data Infrastructures & Their Consequences* (Sage Publications 2014) 1.

<sup>231</sup> Kitchin (n 230) 2.

<sup>232</sup> William Seltzer and Margo Anderson, ‘The Dark Side of Numbers: The Role of Population Data Systems in Human Rights Abuses’ (2001) 68 *Social Research* 481, 481.

<sup>233</sup> Nick Couldry and Ulises A Mejias, *The Costs of Connection: How Data Is Colonizing Human Life and Appropriating It for Capitalism* (Stanford University Press 2019) xiii.

As technological systems have become more sophisticated – and cheaper – the amount of data that can be processed has increased, and so too has the role played by computing in both the private and the public sectors. In Chapter 7, I will discuss the specific data that is collected and shared about families in one particular programme: the ‘Troubled/Supporting Families Programme.’

### **3.2.2 Data collection and sharing systems as socio-technical systems**

In section 2.3 above I discussed the concept of sociotechnical systems: systems that include both social and technical components.<sup>234</sup> These social components include how technologies are imagined, designed, deployed, and evaluated, as well as how people interact with technical systems and how these systems interact with the wider world. Joanna Redden et al see socio-technical systems, therefore, as "comprising people, political, social and legal contexts, infrastructures, and processes of sense-making."<sup>235</sup> Science and Technology Studies (STS), as I discuss in the same section, is an academic discipline which is particularly interested in these sociotechnical systems.<sup>236</sup>

Public sector data-sharing systems are an example, therefore, of sociotechnical systems. The technical infrastructure which holds databases, runs reports, and produces .xlsx<sup>237</sup> and .csv<sup>238</sup> files is imagined, designed, deployed and evaluated by human decision-makers and users.

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<sup>234</sup> Selbst and others (n 80).

<sup>235</sup> Redden, Dencik and Warne (n 41).

<sup>236</sup> Selbst and others (n 80).

<sup>237</sup> The file format used for Microsoft Excel spreadsheets

<sup>238</sup> Comma-separated variable files: used to store tabulated data in text form, and readable by a wide range of programs.

### 3.2.3 Defining the algorithm

The rise of data – discussed in section 3.2.1 above – and the increasing popularity of ‘big data,’ (see section 1.1 above) has led to another term becoming widely used: ‘algorithm.’ In this section, I will discuss three separate – but related - uses of this term which occur in the literature, from computer science to critical data studies. In popular literature – and in my interviews (discussed in section 2.5.2 above) – the term ‘algorithm’ is sometimes used without explanation or clarification, taking for granted that the meaning would be understood. In this section, therefore, I disambiguate different uses of the term.

#### 3.2.3.1 ***Algorithm as set of steps: from al-Khwarizmi to machine learning***

An algorithm is a set of steps to carry out a specific procedure. A recipe is a type of algorithm: it sets out the starting conditions (ingredients in different quantities) and the steps to follow to create a dish. A set of directions is also an algorithm: it gives the steps to follow to reach a destination from a starting point.

The term ‘algorithm’ is named after ninth-century Persian mathematician Muhammad ibn Musa al-Khwarizmi,<sup>239</sup> and the idea - a set of steps to carry out a specific procedure - dates back even further.<sup>240</sup> Algorithms can be built from the top down, using a specified set of criteria to channel an input towards an output. This is a clear and transparent way to sort data, and dates back thousands of years.

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<sup>239</sup> Al-Khwarizmi wrote the earliest extant algebra text, *The Compendious Book on Calculation by Completion and Balancing* in around 820CE and is often called the founder of algebra. His works are also largely responsible for spreading Hindu-Arabic numerals through Europe.

<sup>240</sup> An algorithm for finding prime numbers is attributed to Eratosthenes, a Greek mathematician and librarian at Alexandria in the 3<sup>rd</sup> century BCE: see Nicomachus of Gerasa, *Introduction to Arithmetic* (Martin Luther D’Ooge tr, Macmillan 1926) 27, 35.



A set of discrete, intelligible steps lends itself well to computerisation.<sup>241</sup> Since the development of modern computing, computer scientists have used the term ‘algorithm’ to refer to computational steps for transforming inputs into outputs.<sup>242</sup> One computer science textbook describes the process thus: “one begins with an input, runs for a finite number of steps, and produces an output.”<sup>243</sup>

Algorithms inherently abstract the world, and that means that the context within which they operate may not be taken into account.<sup>244</sup> But understanding the context within which an algorithm operates is tricky: even more so when that algorithm is a ‘black box’ and outcomes cannot be weighted with additional information even when it is relevant.<sup>245</sup> As a result, scholars have argued for expanding the computer science literature to include analysis of the context – for example, the social aspects of the situation in which a model’s inputs and outputs are created and used - as well as of individual computer models.<sup>246</sup>

My case study (the ‘Troubled/Supporting Families Programme,’ described in Chapter 7) can be said to use an algorithm of this kind: a simple count of binary yes/no conditions in six categories, which is used to sort individuals and families into – or exclude from - the Programme. In fact, the term ‘algorithm’ is not used in the literature

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<sup>241</sup> In the late 1990s, some of my earliest computer programming experiences involved translating flowchart quizzes from *Shout* magazine into BASIC on an old BBC Micro, so that the computer could more quickly and easily tell me which Spice Girl I was most like.

<sup>242</sup> Karen Yeung, ‘Algorithmic Regulation: A Critical Interrogation’ (2018) 12 *Regulation & Governance* 505, 506.

<sup>243</sup> Jon Kleinberg and Éva Tardos, *Algorithm Design* (Pearson/Addison-Wesley 2006) 795.

<sup>244</sup> Selbst and others (n 80).

<sup>245</sup> Cynthia Rudin, ‘Please Stop Explaining Black Box Models for High Stakes Decisions’ <<http://arxiv.org/abs/1811.10154>> accessed 1 February 2019.

<sup>246</sup> See for example: Ben Hutchinson and Margaret Mitchell, ‘50 Years of Test (Un)Fairness: Lessons for Machine Learning’, *Proceedings of FAT\* ’19: Conference on Fairness, Accountability, and Transparency* (Association for Computing Machinery 2018) <<http://arxiv.org/abs/1811.10104>> accessed 1 January 2019.

about the Programme: but it is useful to situate the discussion of algorithms in children's services within the wider context of the literature on algorithms.

### 3.2.3.2 **Algorithm as system: data systems**

In 1979, Robert Kowalski proposed a definition: "Algorithm = Logic + Control."<sup>247</sup> Kowalski argued that an algorithm – in a computational sense – consisted of two components. The first, a logic component, specified "what is to be done:"<sup>248</sup> the data structures that will be used, and abstract definitions of procedures to be followed. The second, a control component, specified "how it is to be done:"<sup>249</sup> including specific procedure structures, and schemes for representing relationships between data. The logic component, then, specifies how to computerise a real-world problem: the control component, how to solve that computerised problem. The same logic, paired with different controls, will produce different results: but a real-world problem can also be represented in different ways, using different logics.<sup>250</sup> This recognition - that there is not necessarily a clear, unambiguous, way to represent real-world problems in code – is an early example of viewing algorithms not merely as computer code but as tools that are impacted by social systems.

The term 'algorithm,' has come to have a second, broader meaning, referring not just to a specified set of steps by which a computer reaches an output. Instead, in popular discourse, the term acts as a synecdoche:<sup>251</sup> it stands in for a system that also includes "model, target goal, data, training data, application, hardware - and connect[s] it all to

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<sup>247</sup> Robert Kowalski, 'Algorithm = Logic + Control' (1979) 22 Communications of the ACM 424.

<sup>248</sup> Kowalski (n 244) 435.

<sup>249</sup> Kowalski (n 244) 435.

<sup>250</sup> Kowalski (n 244) 428.

<sup>251</sup> Gillespie (n 25) 23.

a broader social endeavour.”<sup>252</sup> ‘Algorithm,’ then, has come to be used for socio-technical systems that contain computer-science algorithms: and ‘algorithms’ have therefore become subjects of study for fields like STS as well as computer science.<sup>253</sup>

This second usage of ‘algorithm’ is vague, and its overlap with the computer science term, understandably creates confusion. In place of algorithm-as-socio-technical-system, then, I will talk instead about systems for collecting and storing data, and reserve the term ‘algorithm’ for the narrower, computer science-adjacent meaning. Considering these systems as socio-technical systems, as Redden et al have argued, provides a way to analyse how these systems are constructed while still considering them in their own right.<sup>254</sup> Kitchin and Lauriault argue that unpacking data systems, examining its components both individually and as interacting elements that continually combine and recombine in a dynamic process, is one way to engage critically with the systems themselves and their impact on the world.<sup>255</sup>

### 3.2.3.3 ***Algorithm as metaphor: justifying and rationalising the use of data***

Gillespie identifies a third use of the term ‘algorithm:’ to refer to “the insertion of procedure into human knowledge and social experience,” both functionally and ideologically.<sup>256</sup> In 2011, Uricchio termed this insertion, in the context of photographic

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<sup>252</sup> Taina Bucher, *If...Then: Algorithmic Power and Politics* (Oxford University Press 2018) 30.

<sup>253</sup> See for example Maranke Wieringa, ‘What to Account for When Accounting for Algorithms: A Systematic Literature Review on Algorithmic Accountability’, *Proceedings of the 2020 Conference on Fairness, Accountability, and Transparency* (ACM 2020) <<http://dl.acm.org/doi/10.1145/3351095.3372833>> accessed 28 January 2020.

<sup>254</sup> Redden, Dencik and Warne (n 41) 2.

<sup>255</sup> Kitchin and Lauriault (n 86).

<sup>256</sup> Gillespie (n 25) 25.

media, the ‘algorithmic turn:’<sup>257</sup> since then, this term has been used in fields ranging from STS,<sup>258</sup> to media studies,<sup>259</sup> to journalism,<sup>260</sup> to politics.<sup>261</sup>

Seaver goes further, stating that the use of ‘algorithm’ in this sense has come to represent “advanced technology, creepy mathematical efficacy, and shadowy control.”<sup>262</sup> In this thesis, I examine the political, social and ideological dimensions of ‘algorithms’ in this sense as part of data systems: they emerge as motivating and justifying forces for the use of these systems, as well as in the relationships between different system parts, and processes of sense-making.

### **3.3 Human rights and data**

In this section, I will cover key literature from this broader field which informs my research into the human rights impact of the collection and sharing of data in children’s services in England. It is useful to consider this within the broader context of the literature on human rights and data collection and sharing more broadly. I will first examine the broader literature on the human rights impact of data collection and sharing, and will then discuss the literature on the human rights impact of data collection and sharing in welfare systems in general and in England in particular.

I will argue that while research on the impact of data collection and use in welfare systems exist, little of it has so far used a human rights lens. My thesis – which uses a particular aspect of the human rights framework: the obligation to challenge gender

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<sup>257</sup> Uricchio (n 28).

<sup>258</sup> See for example Gillespie (n 25) 27.

<sup>259</sup> See for example Parks (n 30).

<sup>260</sup> See for example Ascher (n 31) 104.

<sup>261</sup> See for example Gurumurthy and Bharthur (n 32).

<sup>262</sup> Seaver (n 33) 412–3.

stereotypes, as I will discuss in section 3.4 below – therefore extends the literature on human rights and data both in general and in the area of gender stereotyping.

### **3.3.1 The human rights impact of the collection and sharing of data**

It is useful first to note that the literature on the human rights impact of collecting and sharing data sits within a much broader field of literature on human rights and data-driven technologies. These technologies are covered by a number of broad terms including data matching, algorithms, automated decision-making, machine learning, and artificial intelligence. In Chapter 3 I will discuss in more detail how I use terms such as ‘data’ and ‘algorithm,’ and how they connect with other commonly used terms such as ‘machine learning’ and ‘artificial intelligence.’

These terms are not necessarily well-defined in the broader literature, and are sometimes used interchangeably for breadth or hype. Nonetheless, much has been written in the last decade about the potential risks and benefits of ‘AI.’ Some of this is philosophical, examining the hypothetical ‘general AI,’ but much of the work deals with concrete uses of machine learning and the data that underpins it.

In the following sections, I will examine the existing literature on human rights and data collection and sharing. I will consider the literature on uses of data that both contribute to, and bring to light, human rights violations. I will also consider the critical data human rights literature in the context of alternative approaches which aim to surface societal benefits and harms related to the collection and sharing of data: specifically considering ethical approaches and the concept of robot rights.

### 3.3.1.1 **Data as a cause of violations and abuses**

The collection and sharing of data can, itself, violate human rights. This use of data to perpetrate human rights abuses is not new. Population data can and has been used to identify subgroups of populations in order to target them for human rights violations: both through sharing data about individuals, but also by sharing aggregated data or expertise.<sup>263</sup>

Notoriously, the Nazis used population data to identify Jewish people living in Germany and Nazi-occupied territories.<sup>264</sup> Data from the 1940 US census - and technical expertise provided by census officials - was used to intern Japanese-Americans during WWII,<sup>265</sup> and the colonial population control system which had defined Hutu and Tutsi ethnic groups in the 1930s was used in the 1994 genocide in Rwanda.<sup>266</sup> Recognising that these violations predate the current technological era shows that, as McGregor et al argue, there is not a need to create new rights: instead the existing human rights framework needs to be applied effectively.<sup>267</sup> This includes in the conception and design of data systems.<sup>268</sup>

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<sup>263</sup> Seltzer and Anderson (n 232) 482–5.

<sup>264</sup> William Seltzer, 'Population Statistics, the Holocaust, and the Nuremberg Trials' (1998) 24 *Population and Development Review* 511.

<sup>265</sup> Margo Anderson, 'The Census and the Japanese "Internment": Apology and Policy in Statistical Practice' (2020) 87 *Social Research: An International Quarterly* 789, 789.

<sup>266</sup> Seltzer and Anderson (n 232) 493.

<sup>267</sup> Lorna McGregor, Vivian Ng, and Ahmed Shaheed, 'The Universal Declaration of Human Rights at 70: Putting Human Rights at the Heart of the Design, Development and Deployment of Artificial Intelligence' (Human Rights, Big Data and Technology Project 2018) 44 <<https://hrbdt.ac.uk/the-universal-declaration-of-human-rights-at-70-putting-human-rights-at-the-heart-of-the-design-development-and-deployment-of-artificial-intelligence/>> accessed 20 December 2018.

<sup>268</sup> As well as perpetrating or facilitating abuses of human rights, the collection, collation and analysis has in many situations been key to verifying that violations and abuses of human rights have taken place. Again, this predates the era of 'big data': US journalist Ida B Wells collected statistics on lynchings as part of her civil rights campaigning in 1895 (see D'Ignazio and Klein (n 10) 34–5.) and population data was used as evidence in the prosecution of Nazis at the Nuremberg trials (Seltzer (n 271) 532–536.). More recently, statistical analysis has

### 3.3.1.2 **Big data: a bigger violation?**

The rise of ‘big data’ (as discussed in section 1.1 above) may not create new kinds of human rights violations, but it may make it easier for state and non-state actors to violate or abuse human rights. As David Kaye, then the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has pointed out in the context of data-driven artificial intelligence technologies, difficulties for individuals in knowing how their data is being used and repurposed risks accountability and the right to an effective remedy for adverse effects of these technologies.<sup>269</sup>

A 2018 report by the Council of Europe on “automated data processing techniques” found that these techniques are defined in various different ways and not well understood by the general public, and called for the development of these technologies to be designed “with the effective exercise and enjoyment of the rights of all human beings in mind.”<sup>270</sup> The same year, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression stated that human rights should be mainstreamed in artificial intelligence policy, and argued for a human rights-based approach which protects individual agency and autonomy as well as the need for meaningful disclosure.<sup>271</sup> In 2019, the UN Special Rapporteur on

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also been used as evidence in the International Criminal Tribunals for Yugoslavia and Rwanda (Seltzer and Anderson (n 232) 506–7.), as well as to document killings in the Guatemalan Civil War (Tina Rosenberg, ‘The Body Counter’ [2012] *Foreign Policy* <<https://foreignpolicy.com/2012/02/27/the-body-counter/>> accessed 17 July 2020.).

<sup>269</sup> UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, ‘Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression to the General Assembly on Artificial Intelligence Technologies and Implications for the Information Environment’ (2018) para 60.

<sup>270</sup> Council of Europe (n 55) 44.

<sup>271</sup> UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (n 276) paras 47–48.

extreme poverty and human rights raised concerns about the rights implications of the use of data matching.<sup>272</sup>

### 3.3.1.3 ***Specific rights violated: privacy and non-discrimination as ‘gatekeeper’ rights***

Lorna McGregor et al argue that the use of big data and AI can specifically threaten the rights to equality and non-discrimination, and to privacy: these rights act as ‘gatekeepers’ to the enjoyment of other rights including the rights to education, work and health.<sup>273</sup> In this section, I will explore these two rights in more detail.

The right to privacy is protected by Article 17 of the International Covenant on Civil and Political Rights (ICCPR), which states that “1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks.”<sup>274</sup> As early as 1988, in General Comment No.16, the Human Rights Committee (responsible for monitoring compliance with the ICCPR) recognised that this right extended to “[t]he gathering and holding of personal information on computers, data banks and other devices,” and stated that states should take measures to ensure that this information “is never used for purposes incompatible with the [ICCPR].”<sup>275</sup>

Juan Ortiz Freuler argues that the rise in the deployment of data collection tools, including sensors, in public spaces risks violations of the right to privacy – and related

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<sup>272</sup> UN Special Rapporteur on Extreme Poverty and Human Rights, ‘Report on Digital Technology, Social Protection and Human Rights’ (2019)

<<https://www.ohchr.org/EN/Issues/Poverty/Pages/DigitalTechnology.aspx>> accessed 2 March 2021.

<sup>273</sup> McGregor, Ng, and Ahmed Shaheed (n 274).

<sup>274</sup> International Covenant on Civil and Political Rights 1966.

<sup>275</sup> UN Human Rights Committee, ‘General Comment No. 16: Article 17 (The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation)’ (1988) para 10.



rights such as the right to freedom of assembly – by making it increasingly difficult to “navigate public spaces anonymously.”<sup>276</sup> In the UK, Article 8 of the Human Rights Act 1998 protects the right to respect for private and family life. In *R (Bridges) v South Wales Police* [2020] EWCA Civ 1058, the Court of Appeal found that the use of facial recognition technology affecting the public at large by South Wales Police had breached this right and had “failed properly to assess the risks to the rights and freedoms of data subjects and failed to address the measures envisaged to address the risks.”<sup>277</sup>

This violation of the right to privacy can also impact the work of human rights defenders. Mobile phone data – including photos and footage taken using phone cameras, but also call details records, cell site analysis and social network analysis – has been used to investigate mass atrocities, but this has risks to the right to privacy for the people whose data is being collected.<sup>278</sup>

Legally binding initiatives related to human rights and data tend to concentrate on privacy and data protection:<sup>279</sup> the latter particularly in Europe, with the passage of the EU General Data Protection Regulation in 2016 representing a significant development.<sup>280</sup> This focus on data protection and privacy – sometimes at the expense of the broader human rights framework - is echoed in examinations of data

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<sup>276</sup> Juan Ortiz Freuler, ‘Datafication and the Future of Human Rights Practice’ (JustLabs 2021) 32.

<sup>277</sup> *R (Bridges) v South Wales Police* [2020] EWCA Civ 1058 [153].

<sup>278</sup> Nema Milaninia, ‘Smartphones and Call Detail Records in Investigating Mass Atrocities and the Human Rights Considerations’ (Cambridge International Law Journal 8th Annual Cambridge International Law Conference: ‘New Technologies: New Challenges for Democracy and International Law’, University of Cambridge, 20 March 2019).

<sup>279</sup> Lane (n 56) 943.

<sup>280</sup> Retained in UK domestic law as the UK GDPR. See ICO, ‘The UK GDPR’ (24 January 2022) <<https://ico.org.uk/for-organisations/dp-at-the-end-of-the-transition-period/data-protection-and-the-eu-in-detail/the-uk-gdpr/>> accessed 25 February 2023.

and welfare systems at an international level. Payal Arora's article on the impact of 'big data' in the Global South criticises the Western lens used to talk about big data, noting that data-driven welfare initiatives in the Global South – such as the Aadhaar system in India that uses biometric data - collect data about individuals under the guise of 'empowerment,' even as similar projects in the Global North are criticised on privacy grounds.<sup>281</sup>

The focus on privacy and data protection is, of course, not irrelevant or erroneous. In one of the more high-profile challenges to the use of data in the welfare state, the District Court of the Hague in the Netherlands found that the use of the SyRI data-driven risk assessment for benefits fraud violated the right to privacy.<sup>282</sup> (It also found that the system discriminated on the grounds of socioeconomic or migrant status.<sup>283</sup>) An analysis of documentation from data protection authorities in six European countries has also found that broader concepts of human rights underpinned data protection decisions: particularly the right to freedom from discrimination and the concept of human dignity, which as Alessandro Mantelero and Maria Samantha Esposito point out, is particularly at risk from surveillance and other forms of monitoring.<sup>284</sup>

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<sup>281</sup> Payal Arora, 'The Bottom of the Data Pyramid: Big Data and the Global South' (2016) 10 *International Journal of Communication* 19.

<sup>282</sup> Privacy International, 'The SyRI Case: A Landmark Ruling for Benefits Claimants around the World' (*Privacy International*, 24 February 2020) <<http://privacyinternational.org/news-analysis/3363/syri-case-landmark-ruling-benefits-claimants-around-world>> accessed 2 March 2021.

<sup>283</sup> Jon Henley and Robert Booth, 'Welfare Surveillance System Violates Human Rights, Dutch Court Rules' *The Guardian* (5 February 2020) <<https://www.theguardian.com/technology/2020/feb/05/welfare-surveillance-system-violates-human-rights-dutch-court-rules>> accessed 7 February 2020.

<sup>284</sup> Alessandro Mantelero and Maria Samantha Esposito, 'An Evidence-Based Methodology for Human Rights Impact Assessment (HRIA) in the Development of AI Data-Intensive Systems' (2021) 41 *Computer Law & Security Review* 105561, 12–13.

The potential for data sharing and repurposing means that breaches of the right to privacy are difficult to remedy.<sup>285</sup> Violations and abuses of the right to privacy, in particular, have a disproportionate impact on individuals and groups who are already marginalised.

The right to freedom from discrimination is protected by Article 2 of the International Covenant on Civil and Political Rights (ICCPR) and Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as by other treaties including the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). In the UK, Article 14 of the Human Rights Act 1998 prohibits discrimination in the enjoyment of any rights and freedoms.

It is useful to note here some key areas critical data literature related to other axes of discrimination. This literature is often framed not in terms of the human rights framework, but in terms of bias. As I will discuss in more detail in Chapter 4, this concept is narrower and more linked to statistical measures than the human rights framework: however, it is possible to read much of this work in terms of the right to freedom from discrimination.

Racial discrimination has been identified by scholars like Joy Buolamwini, who has examined racial bias in facial recognition technology,<sup>286</sup> and Safiya Noble, who has examined how search engines amplify racism.<sup>287</sup> Aisha Kadiri has argued that the

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<sup>285</sup> 'OHCHR: The Right to Privacy in the Digital Age' (The Human Rights, Big Data and Technology Project, University of Essex 2018) Written Submission paras 6–7.

<sup>286</sup> *How I'm Fighting Bias in Algorithms* (TED 2016)

<[https://www.ted.com/talks/joy\\_buolamwini\\_how\\_i\\_m\\_fighting\\_bias\\_in\\_algorithms](https://www.ted.com/talks/joy_buolamwini_how_i_m_fighting_bias_in_algorithms)> accessed 15 January 2021.

<sup>287</sup> Safiya Umoja Noble, *Algorithms of Oppression: How Search Engines Reinforce Racism* (New York University Press 2018).

traditional 'data subject' is not adequate to understand racism and algorithmic bias, citing the example of the 'Afro-census' initiative which aimed to visibilise the experiences of Black people in Germany.<sup>288</sup> Amnesty International found that in London, data collection and sharing by the Metropolitan police for the purposes of identifying supposed gang members violated the right to privacy of those identified, who were disproportionately Black boys and young men.<sup>289</sup>

Disability discrimination has been identified in investigations of algorithms used to determine the allocation of welfare benefits,<sup>290</sup> while the UK Home Office stopped using a visa application assessment algorithm after a legal challenge alleging that the algorithms used nationality as a discriminant.

I will return to this topic in more detail in section 3.4.2 below, where I will discuss in more detail sex and gender-based discrimination, and the development of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),<sup>291</sup> and in section 3.5 below, where I will cover the critical data literature related to gender and gender stereotyping.

#### 3.3.1.4 ***Human rights and ethics***

As well as looking at specific abuses and violations of human rights caused by or facilitated by data, there is literature arguing for the broader use of human rights-based approaches in the development of data technologies, including in shaping policy and

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<sup>288</sup> Aisha PL Kadiri, 'Data and Afrofuturism: An Emancipated Subject?' (2021) 10 Internet Policy Review <<https://policyreview.info/articles/analysis/data-and-afrofuturism-emancipated-subject>> accessed 10 December 2021.

<sup>289</sup> Amnesty International, 'Trapped in the Matrix: Secrecy, Stigma, and Bias in the Met's Gangs Database' (2018).

<sup>290</sup> Richardson, Schultz and Southerland (n 13).

<sup>291</sup> UN Convention on the Elimination of All Forms of Discrimination Against Women 1979.

in assessing the impact of these technologies as they are deployed.<sup>292</sup> The human rights framework, however, is not the only framework applied to examine the real or potential benefits and harms from data-driven technologies. In this section, I will explore how the human rights framework contrasts with an alternative framework: that of ethics.

A mapping by the Berkman Klein Center for Internet & Society at Harvard University examined 36 sets of 'AI Principles:' while more than half of them referenced human rights, only five used an explicit rights-based framework.<sup>293</sup> McGregor et al do note that some of the key parts of the human rights framework are still being developed, most notably the responsibilities of businesses under international human rights law.<sup>294</sup> At present, there are 'expectations' about how businesses should act, not yet legal obligations: and for businesses that operate globally, there are inconsistencies in state compliance with human rights obligations, meaning that there are inconsistencies and gaps in regulation.<sup>295</sup>

Particularly when considering the commercial applications of data, many commentators have chosen to call for ethical principles for the use of data and technology. Some of these arguments are grounded in philosophy,<sup>296</sup> or apply

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<sup>292</sup> See for example: Corinne Cath, 'Human Rights and Internet Technology: Six Considerations' (*The Policy and Internet Blog*, 17 April 2018) <<http://blogs.oii.ox.ac.uk/policy/human-rights-and-internet-technology-six-considerations/>> accessed 3 May 2020; B-Tech Project, 'Key Characteristics of Business Respect for Human Rights' (Office of the High Commissioner for Human Rights) B-Tech Foundational Paper; McGregor, Ng, and Ahmed Shaheed (n 274); UN Special Rapporteur on Extreme Poverty and Human Rights (n 279).

<sup>293</sup> Jessica Fjeld and others, 'Principled Artificial Intelligence: Mapping Consensus in Ethical and Rights-Based Approaches to Principles for AI' (Berkman Klein Center 2020) 64 <<http://nrs.harvard.edu/urn-3:HUL.InstRepos:42160420>> accessed 15 January 2021.

<sup>294</sup> McGregor, Murray and Ng (n 55) 313.

<sup>295</sup> McGregor, Murray and Ng (n 55) 313.

<sup>296</sup> Luciano Floridi and Mariarosaria Taddeo, 'What Is Data Ethics?' (2016) 374 *Philosophical Transactions of the Royal Society A* <<http://rsta.royalsocietypublishing.org/content/374/2083/20160360>> accessed 13 February 2018.

philosophical principles to specific contexts, such as Emily Keddell's ethical examination of the use of algorithms to predict the risk of child abuse in Aotearoa/New Zealand.<sup>297</sup> Others have analogised the need for codes of ethics with such codes in fields such as medicine.<sup>298</sup> This is particularly the cases, as Berthet argues, in discussions of how to *regulate* AI and other data-driven technologies, which focus on ethical principles rather than human rights standards.<sup>299</sup>

This may in part be due to the disproportionate weight one country carries in the the world of data and AI. The United States of America is the home of Silicon Valley, the base for many of the world's largest tech firms, and the country in which many data researchers live and work, but it is not representative of the world. This may have contributed to a neglect of the human rights framework, which carries less analytical weight in the US than it does in many other countries, including in Europe.<sup>300</sup>

Philosophical ethicists have considered the ethics of technology and data use, calling for audits of algorithms,<sup>301</sup> participative ethical assessments of data science projects,<sup>302</sup> ethics training for data scientists and technologists.<sup>303</sup> Ethicists of technology draw on different ethical frameworks, for example from Europe<sup>304</sup> or from

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<sup>297</sup> Keddell (n 34).

<sup>298</sup> Tom Upchurch, 'To Work for Society, Data Scientists Need a Hippocratic Oath with Teeth' (*WIRED UK*, 8 April 2018) <<http://www.wired.co.uk/article/data-ai-ethics-hippocratic-oath-cathy-o-neil-weapons-of-math-destruction>> accessed 17 April 2018.

<sup>299</sup> Berthet (n 53).

<sup>300</sup> Kathryn Libal and Shareen Hertel, 'Paradoxes and Possibilities: Domestic Human Rights Policy in Context' in Shareen Hertel and Kathryn Libal (eds), *Human Rights in the United States: Beyond Exceptionalism* (Cambridge University Press 2011).

<sup>301</sup> Andrew Smart and Rebecca White, '(Unpublished Working Draft) Closing the AI Accountability Gap: Defining a "SMARteR" Framework for Internal Algorithmic Auditing' Unpublished working draft.

<sup>302</sup> Sabina Leonelli, 'Locating Ethics in Data Science: Responsibility and Accountability in Global and Distributed Knowledge Production Systems' (2016) 374 *Philosophical Transactions of the Royal Society A* <<http://rsta.royalsocietypublishing.org/content/374/2083/20160122>> accessed 2 February 2018.

<sup>303</sup> Leonelli (n 309).

<sup>304</sup> Luciano Floridi and others, 'AI4People—An Ethical Framework for a Good AI Society: Opportunities, Risks, Principles, and Recommendations' (2018) 28 *Minds and Machines* 689, 701.

Native American traditions,<sup>305</sup> and often analogise other fields which have ethical codes, such as medicine<sup>306</sup> and social work.<sup>307</sup> An ethical frame has been used by a wide range of public organisations including UNESCO<sup>308</sup> and the UK government's Central Data & Digital Office,<sup>309</sup> academic platforms such as the Conference on Neural Information Processing Systems (NeurIPS);<sup>310</sup> and private companies including Google<sup>311</sup> and Axon (whose best known product is the TASER).<sup>312</sup>

An analysis, however, of 84 sets of ethical principles written for the field of artificial intelligence specifically (I will discuss the discursive and technical relationships between data, technology and 'artificial intelligence' in section 3.2 above) showed that there is not consensus on what should be included, nor how ethical principles should be articulated.<sup>313</sup> Anna Jobin et al argue that ethics is a malleable framework, and that some actors are incentivised to use 'ethics' to avoid regulation.<sup>314</sup> This process has

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<sup>305</sup> Suzanne Kite, 'How to Build Anything Ethically' in Jason Edward Lewis (ed), *Indigenous Protocol and Artificial Intelligence Position Paper* (Indigenous Protocol and Artificial Intelligence Working Group and the Canadian Institute for Advanced Research 2020) <<https://spectrum.library.concordia.ca/986506/>> accessed 9 December 2020.

<sup>306</sup> Brent Mittelstadt and others, 'Is There a Duty to Participate in Digital Epidemiology?' (2018) 14 *Life Sciences, Society and Policy* 9.

<sup>307</sup> Philip Gillingham, 'Decision Support Systems, Social Justice and Algorithmic Accountability in Social Work: A New Challenge' (2019) 31 *Practice* 277, 287.

<sup>308</sup> UNESCO, 'Recommendation on the Ethics of Artificial Intelligence' (2021) SHS/BIO/REC-AIETHICS/2021 <<https://unesdoc.unesco.org/ark:/48223/pf0000380455>> accessed 28 February 2022.

<sup>309</sup> Government Digital Service, 'Data Ethics Framework' (2020).

<sup>310</sup> Samy Bengio and others, 'A Retrospective on the NeurIPS 2021 Ethics Review Process' (*NeurIPS Blog*) <<https://blog.neurips.cc/2021/12/03/a-retrospective-on-the-neurips-2021-ethics-review-process/>> accessed 24 February 2022.

<sup>311</sup> Google, however, shut down their 'Ethics Board' just a week after it was announced: Jane Wakefield, 'Google's Ethics Board Shut Down' *BBC News* (5 April 2019) <<https://www.bbc.com/news/technology-47825833>> accessed 25 June 2019.

<sup>312</sup> Axon, 'AI Ethics Board' <<https://www.axon.com/info/ai-ethics>> accessed 12 July 2019; Axon AI and Policing Technology Ethics Board, 'First Report of the Axon AI & Policing Technology Ethics Board' (2019).

<sup>313</sup> Anna Jobin, Marcello Lenca and Effy Vayena, 'Artificial Intelligence: The Global Landscape of Ethics Guidelines' [2019] arXiv:1906.11668 [cs] <<http://arxiv.org/abs/1906.11668>> accessed 28 June 2019.

<sup>314</sup> Jobin, Lenca and Vayena (n 320) 3.

come to be known as ‘ethics-washing:’ adopting the appearance of ‘ethical’ behaviour to justify deregulation or self-regulation (instead of external regulation.)<sup>315</sup>

This singular focus on ethics has been criticised by technology and human rights experts. Veen and Cath argue that human rights are better defined than ethical principles, and that they carry legal and rhetorical weight which means there is a reputational cost to being seen to abuse rights.<sup>316</sup> Veen and Cath also point out that human rights have existing enforcement mechanisms, such as the UN Special Procedures:<sup>317</sup> two UN Special Rapporteurs have in fact criticised this focus on ethics at the expense of human rights. The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, in his 2018 report focusing on artificial intelligence, specifically noted that the private and public sector was exploring ethical approaches: he pointed out that this often implied “resistance to human rights-based regulation.”<sup>318</sup> The Special Rapporteur specifically recommended that “All efforts to elaborate guidelines or codes on ethical implications of AI technologies should be grounded in human rights principles.”<sup>319</sup> The same year, in his statement after visiting the UK, the Special Rapporteur on extreme poverty and human rights criticised the focus on ethical automation, stating that “Ethical concepts such as fairness are without agreed upon definitions, unlike human rights which are law.

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<sup>315</sup> Elettra Bietti, ‘From Ethics Washing to Ethics Bashing’, *Proceedings of the 2020 Conference on Fairness, Accountability, and Transparency* (Association for Computing Machinery 2020) 210.

<sup>316</sup> Christiaan van Veen and Corinne Cath, ‘Artificial Intelligence: What’s Human Rights Got To Do With It?’ (*Data & Society: Points*, 18 May 2018) <<https://points.datasociety.net/artificial-intelligence-whats-human-rights-got-to-do-with-it-4622ec1566d5>> accessed 3 May 2020.

<sup>317</sup> Veen and Cath (n 323).

<sup>318</sup> UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (n 276) para 46.

<sup>319</sup> UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (n 276) para 65.



Government use of automation, with its potential to severely restrict the rights of individuals, needs to be bound by the rule of law and not just an ethical code.”<sup>320</sup>

### 3.3.2 Data and human rights in welfare support

In the specific area of state support, a response to a call for submissions from the UN Special Rapporteur on extreme poverty and human rights, prepared by the Data Justice Lab at the University of Cardiff, noted that there is a risk to rights from the use of data in the welfare system in the UK, and called for a human rights impact assessment of “any algorithmic process that involves decisions on access to or distribution of welfare.”<sup>321</sup> The Special Rapporteur’s report, issued in 2019, raised concerns specifically about the rights implications of the use of data matching in the ‘digital welfare state.’<sup>322</sup>

These risks to rights are not theoretical: violations of rights have been identified by NGOs. For example, in 2022, Human Rights Watch found that the Hungarian government had violated the right to privacy by reusing data collected from people applying for state services – including the COVID-19 vaccine – to send messages campaigning for the ruling party, Fidesz.<sup>323</sup>

Much of the literature which examines specific uses of data in the welfare system does consider ‘rights,’ but in a very narrow sense: often focusing on privacy or even more narrowly data protection (as discussed in section 3.3.1.3 above). For example, the

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<sup>320</sup> ‘Statement on Visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on Extreme Poverty and Human Rights’ (n 55).

<sup>321</sup> Data Justice Lab, ‘Digital Technologies and the Welfare System’ (2018).

<sup>322</sup> UN Special Rapporteur on Extreme Poverty and Human Rights (n 279).

<sup>323</sup> Human Rights Watch, ‘Hungary: Data Misused for Political Campaigns’ (*Human Rights Watch*, 1 December 2022) <<https://www.hrw.org/news/2022/12/01/hungary-data-misused-political-campaigns>> accessed 12 December 2022.

Data Justice Lab examined specific data collection systems used in the UK's welfare system, including a predictive model for children at risk of abuse and neglect in Hackney, and a data warehouse consolidating 'social issue' datasets in Bristol,<sup>324</sup> with specific examination of the data protection and privacy framework. Examples of this kind of analysis are not restricted only to the era of 'big data.' Spiros Simitis's 1987 article on the 'information society' also considers privacy,<sup>325</sup> as does Perri 6 et al's 2005 analysis of the tensions between data protection and New Labour social policy.<sup>326</sup>

There is literature which recognises the importance of other rights. Rahman and Keseru, in their report on predictive analytics for children, use the broader children's rights framework.<sup>327</sup> As mentioned above, Human Rights Watch's investigation of the inflexible data collection system used to calculate Universal Credit payments found that the UK was failing to meet its obligations under the Covenant on Economic, Social and Cultural Rights.<sup>328</sup>

Other relevant literature does not use a rights framework explicitly, though it is certainly possible to apply such a framing to their findings. For example, the Child Poverty Action Group (CPAG) in the UK has documented problems with the automated computer system which administers Universal Credit (discussed in more detail in

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<sup>324</sup> Redden, Dencik and Warne (n 41) 6.

<sup>325</sup> Spiros Simitis, 'Reviewing Privacy In an Information Society' (1987) 135 *University of Pennsylvania Law Review* 707.

<sup>326</sup> Perri 6, Charles Raab and Christine Bellamy, 'Joined-up Government and Privacy in the United Kingdom: Managing Tensions between Data Protection and Social Policy. Part I' (2005) 83 *Public Administration* 111.

<sup>327</sup> Zara Rahman and Julia Keseru, 'Predictive Analytics for Children: An Assessment of Ethical Considerations, Risks, and Benefits' (UNICEF Office of Research 2021) <<https://www.unicef-irc.org/publications/1275-predictive-analytics-for-children-an-assessment-of-ethical-considerations-risks-and-benefits.html>>.

<sup>328</sup> Human Rights Watch, 'Automated Hardship: How the Tech-Driven Overhaul of the UK's Social Security System Worsens Poverty' (Human Rights Watch 2020) <<https://www.hrw.org/report/2020/09/29/automated-hardship/how-tech-driven-overhaul-uks-social-security-system-worsens>>.

Chapter 6): for example, where one tenant on a joint tenancy has moved out, the remaining tenant may only have their housing entitlement calculated at 50% of the rent, even though they are now liable for 100% of the rent.<sup>329</sup> Even though CPAG does not frame it in this way, this automated process has obvious implications for the right to housing.

This is particularly true of research on the US: for example, Virginia Eubanks's influential book *Automating Inequality* considers algorithmics used in the welfare state in the US through a lens of equity,<sup>330</sup> while the Litigating Algorithms report produced by Rashida Richardson et al at the AI Now Institute did not use a rights framework, but did state that welfare benefits algorithms could result in negative impacts to an individual's ability to access "education, employment, food, housing, and other opportunities."<sup>331</sup> This may be due to the USA focus of both pieces, a context in which international human rights carries less weight, as I have discussed in section 3.3.1.4 above).

### **3.4 Gender stereotyping**

My thesis examines the ways in which data systems classify, categorise and stereotype individuals who are known to social services based on their gender. In this section, therefore, I will examine the literature on gender stereotyping, and in particular on the human rights framework which obliges states to engage in a process of

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<sup>329</sup> Lynsey Dalton and Sophie Howes, 'Universal Credit and Access to Justice: Applying the Law Automatically' (Child Poverty Action Group 2021) 10–11.

<sup>330</sup> Eubanks (n 14) 194–5.

<sup>331</sup> Richardson, Schultz and Southerland (n 13) 23.

examining prevailing gender stereotypes in every sphere of life – including in data-driven processes – and developing policies that combat the harm that they do.

This section situates my later discussions on gender stereotyping and data in the wider context of the literature on gender stereotyping in general and in the human rights framework in particular. As I will discuss further in section 3.5.4 below, however, there is far less research on these stereotypes within the domain of data and data-driven technologies.

### **3.4.1 Gender stereotyping and harm**

In this section, I will examine the literature on gender stereotyping, and on the circumstances under which gender stereotyping can be considered to be harmful.

#### **3.4.1.1 *Defining stereotyping***

As Ruha Benjamin points out, the term ‘stereotype’ is a technological term: in printing, a solid plate called a ‘stereo’ (from the Greek *stereos*, meaning ‘solid’ or ‘firm’) was used to make copies.<sup>332</sup> By the early 20<sup>th</sup> century, as she describes, the term ‘stereotypes’ had moved from the domain of printing, and had begun to mean “shorthand attributes and beliefs about different groups.”<sup>333</sup>

Stereotypes may be based on observation, everyday interactions, or even on statistics, but this does not necessarily mean that, when they are used in decision-making of any

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<sup>332</sup> Benjamin (n 50) 64–5.

<sup>333</sup> Benjamin (n 50) 64.

kind, that they are legitimate to the situation at hand.<sup>334</sup> They are perpetrated through cultural heritage<sup>335</sup> and may be deeply ingrained.<sup>336</sup>

#### 3.4.1.2 ***Defining gender stereotyping***

Rebecca Cook and Simone Cusack have defined gender stereotypes as a “structured set of beliefs about the personal attributes of women and men,”<sup>337</sup> and stereotyping as “the use of gender stereotypic knowledge in forming an impression of an individual man or woman.”<sup>338</sup> These definitions implicitly assume a binary model of gender, but can easily be extended to encompass individuals who identify – or are identified – outside of a simple binary.

Stereotypes may be descriptive: expressions of what men and women are like - or they may be prescriptive: expressions of what they *should* be like.<sup>339</sup> A study noted by Alice Eagly and Valerie Steffen supported the hypothesis that sex differences in employment supported sex stereotypes: in other words, the stereotypes about which jobs were in some sense ‘for’ men and women were supported by observable evidence.<sup>340</sup> Charles Stangor and Mark Schaller have argued, however, that once a stereotype has emerged, it becomes in itself part of society.<sup>341</sup> According to Cook and Cusack, it’s not always easy to determine, with individual stereotypes, whether they

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<sup>334</sup> Rebecca J Cook and Simone Cusack, *Gender Stereotyping: Transnational Legal Perspectives* (University of Pennsylvania Press 2010) 15–6.

<sup>335</sup> Cook and Cusack (n 341) 32.

<sup>336</sup> Cook and Cusack (n 341) 37–8.

<sup>337</sup> Cook and Cusack (n 341) 20.

<sup>338</sup> Cook and Cusack (n 341) 20.

<sup>339</sup> Hilary M Lips, *Gender: The Basics* (Routledge 2014) 25.

<sup>340</sup> Alice H Eagly and Valerie J Steffen, ‘Gender Stereotypes Stem from the Distribution of Women and Men into Social Roles’ in Charles Stangor (ed), *Stereotypes and prejudice: essential readings* (Psychology Press 2000).

<sup>341</sup> Charles Stangor and Mark Schaller, ‘Stereotypes as Individual and Collective Representations’ in Charles Stangor (ed), *Stereotypes and prejudice: essential readings* (Psychology Press 2000) 76.

operate descriptively, prescriptively, or somewhere in between,<sup>342</sup> and advocates of social role theory argue that stereotypes may reinforce themselves.<sup>343</sup>

All societies construct genders and assign them attributes and roles – including but not limited to those based on biological differences.<sup>344</sup> These gender relations come with power differentials and stereotypes, which are used to make assumptions about individuals based on their gender.

### 3.4.1.3 ***Harmful gender stereotyping***

Gordon Allport defines ‘prejudice’ as, “avertive or hostile attitude[s] towards a person who belongs to a group, simply because he [sic] belongs to that group, and is therefore presumed to have the objectionable qualities ascribed to that group.”<sup>345</sup> In this sense, the idea of ‘prejudice’ goes further than the idea of a ‘stereotype’ because it includes an emotional component: for example, dislike, anger, or fear.<sup>346</sup>

Allport argues that prejudicial views emerge when one group is separated from other and are “adequately explained by the principles of ease, least effort, congeniality, and pride in one’s own culture.”<sup>347</sup> This, however, does not explain prejudice – or stereotyping – between men and women, or indeed within groups: a group of people who may have the same ethnicity, for example, may of course contain members who

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<sup>342</sup> Cook and Cusack (n 341) 13–14.

<sup>343</sup> Lips (n 346) 14.

<sup>344</sup> Not all societies have only two genders. *Hijra* in India, Two-Spirit in some Native American cultures, and *xanith* in Oman are all examples of socially accepted gender identities that are neither male nor female.

<sup>345</sup> Gordon W Allport, ‘The Nature of Prejudice’ in Charles Stangor (ed), *Stereotypes and prejudice: essential readings* (Psychology Press 2000) 22.

<sup>346</sup> Charles Stangor, ‘Volume Overview’ in Charles Stangor (ed), *Stereotypes and prejudice: essential readings* (Psychology Press 2000) 8.

<sup>347</sup> Allport (n 352) 27.

have different genders or different classes and may maintain prejudices against each other on that basis.

Cook and Cusack have argued that gender stereotypes, in particular, arise and persist in order to “provide stability, predictability and certainty in gender roles and relations”<sup>348</sup> and to maintain gender hierarchies, whether this is framed as hostile and ‘othering,’ or whether the stereotyping purports to protect.<sup>349</sup> They argue that while gender stereotyping is not inherently harmful, it becomes so when “it operates to ignore individuals’ characteristics, abilities, needs, wishes, and circumstances in ways that deny individuals their human rights and fundamental freedoms.”<sup>350</sup>

Gender stereotypes may not necessarily be hostile or reach the level of prejudice, as described above. They may act in a superficially benevolent or ‘protective’ way, perpetrated as Cook and Cusack have described by people who consider themselves “thoughtful” but in so doing “preclude consideration of individuals’ needs, capacities wishes and interests because of the paternalistic instincts of the ‘protector’.”<sup>351</sup> A feminist approach, as I will describe in the following section, allows us to identify harm in stereotyping which may take this ‘protective’ form.

#### 3.4.1.4 ***Identifying and challenging gender stereotyping: feminist and queer approaches***

In the following sections, I will draw on the feminist and queer theories I discussed in section 2.3.2 above, in the context of broader scholarship on gender stereotyping. I will cover how these approaches help to identify gender stereotyping, in order to

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<sup>348</sup> Cook and Cusack (n 341) 176–7.

<sup>349</sup> Cook and Cusack (n 341) 17–18.

<sup>350</sup> Cook and Cusack (n 341) 20.

<sup>351</sup> Cook and Cusack (n 341) 18.

challenge it. I will also discuss feminist legal scholarship, which is crucial to interpreting the key elements of gender stereotyping in international human rights law, as I will discuss further in section 3.4.2 below.

#### **3.4.1.4.1 Feminist approaches to stereotyping**

Gender roles help maintain a hierarchy where men – in general - are more powerful than women. As I discussed in section 2.3.2.1.2 above, a key component of feminist approaches is analysing these power dynamics. Hierarchical systems are successful if they are able to maintain and perpetuate themselves. Gender roles help prop up these systems: thus, as Diane Otto argues, it is in the interests of those who are already in power to perpetrate and normalise gender roles and stereotypes, in order to maintain their own power.<sup>352</sup>

Feminist theories offer powerful tools to name gender stereotypes, trace their development, and offer solutions. A feminist approach to gender stereotyping and discrimination requires an analysis of how gender stereotypes – including so-called ‘protective stereotypes’ – perpetrate gender inequality, and how this is a form of harmful gender stereotyping as discussed in section 3.4.1.3 above.

Hilary Lips has argued that these power differentials are themselves incorporated into the gender roles: men express masculinity through power and women express femininity through submission.<sup>353</sup> This analysis, however, does not take into account other forms of power and hierarchies: heterosexual women, for example, may yet be

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<sup>352</sup> Diane Otto, ‘International Human Rights Law: Towards Rethinking Sex/Gender Dualism’ in Margaret Davies and Vanessa Munro (eds), *The Ashgate Research Companion to Feminist Legal Theory* (Ashgate 2013).

<sup>353</sup> Lips (n 346) 14.



able to exert power over lesbian women: and the power exerted by men over heterosexual women and lesbian women may not look or act in the same way.

Harmful gender stereotyping denies individuals an opportunity to exercise their own autonomy,<sup>354</sup> and in maintaining hierarchies of power, sustains unequal gender power relations.<sup>355</sup> As Cook and Cusack have argued, eliminating discrimination requires the dismantling of harmful stereotypes<sup>356</sup> so that women are treated according to their “actual needs, abilities, and circumstances.”<sup>357</sup>

#### **3.4.1.4.2 Feminist legal approaches to stereotyping and discrimination**

Stereotyping and discrimination are also legal concepts. As I will discuss in section 3.4.2 below, Article 5 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is a crucial part of the human rights legal framework for addressing gender stereotyping. It is therefore useful to consider the range of feminist legal scholarship which considers these issues.

Feminist legal scholars have argued that far from being neutral, law is “a product of social forces:”<sup>358</sup> it is constructed by those in power and built up over time, reflecting the priorities of the historically powerful – who have usually been men.<sup>359</sup> As a result, legislation and judicial decisions can uphold existing power structures and therefore

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<sup>354</sup> Rikki Holtmaat, ‘Article 5’ in Marsha A Freeman, Christine Chinkin and Beate Rudolf (eds), *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary* (Oxford University Press 2012) 145.

<sup>355</sup> Rikki Holtmaat, *Towards Different Law and Public Policy; The Significance of Article 5a CEDAW for the Elimination of Structural Gender Discrimination* (Ministry of Social Affairs and Employment in the Netherlands 2004) xii <<https://openaccess.leidenuniv.nl/handle/1887/41992>> accessed 25 July 2018.

<sup>356</sup> Cook and Cusack (n 341) 2.

<sup>357</sup> Cook and Cusack (n 341) 62.

<sup>358</sup> Sandra Fredman, *Women and the Law* (Clarendon Press 1997) 2.

<sup>359</sup> Fredman (n 365) 2; Elizabeth Evatt, ‘Foreword’ in Hilary Charlesworth and Christine Chinkin, *The boundaries of international law: a feminist analysis* (Manchester University Press 2000) ix.

reinforce discriminatory structures,<sup>360</sup> including gender stereotypes.<sup>361</sup> In this way, the law exists as an institution like others, as Stephanie Seguino has argued, that contributes to gender hierarchical attitudes and “reflect an underlying set of power relations that are an enactment of the degree of gender stratification a society will tolerate.”<sup>362</sup> Catharine MacKinnon has criticized models of equality that do not recognise the gender hierarchies that exist in society: that treat men, their treatment and their behaviour as the standard against which everyone else’s equality should be measured,<sup>363</sup> while Sandra Fredman and other feminist legal scholars have criticised ‘symmetric’ models of equality that ignore existing gender hierarchies and treat positive action (which seeks to favour a disadvantaged group) as equivalent to discrimination.<sup>364</sup>

Instead, feminist legal scholars argue, challenging discrimination requires that law – as well as policy and practice – promote substantive equality: that is, recognizing the substance of inequality, its roots, causes and consequences, and working to address these in their totality. Cook and Cusack argue that - in order to promote substantive equality and effectively end discrimination - laws, policies and practices must “be free from gender stereotyping in all its forms and manifestations.”<sup>365</sup> Only then, they argue,

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<sup>360</sup> Ongoing ‘Feminist Judgement’ projects in at least 10 countries worldwide aim to show how cases could have been decided differently, had feminist principles been applied. See for example Linda L Berger, Bridget J Crawford and Kathryn M Stanchi, ‘Feminist Judgments: Comparative Socio-Legal Perspectives on Judicial Decision Making and Gender Justice’ (2018) 8 *Oñati Socio-legal Series* 1215, 4.

<sup>361</sup> Elizabeth Sepper, ‘Confronting the Sacred and Unchangeable: The Obligation to Modify Cultural Patterns under the Women’s Discrimination Treaty’ (2008) 30 *University of Pennsylvania Journal of International Law* 585, 630–1.

<sup>362</sup> Stephanie Seguino, ‘Help or Hindrance? Religion’s Impact on Gender Inequality in Attitudes and Outcomes’ (2011) 39 *World Development* 1308.

<sup>363</sup> Catharine A MacKinnon, ‘Making Sex Equality Real’, *Are women human? and other international dialogues* (Belknap Press of Harvard University Press 2006) 72; Fredman (n 365) 184–5.

<sup>364</sup> See for example Fredman (n 365) 383; Holtmaat (n 362) 20.

<sup>365</sup> Cook and Cusack (n 341) 68.

will women's circumstances, needs and abilities be fully recognized, and only then will measures to end discrimination be fully effective.<sup>366</sup>

Finally, as with many other disciplines, feminist legal scholars have called for a more intersectional approach to international human rights law in general. Drawing on the work of Crenshaw,<sup>367</sup> academics have noted that an intersectional approach is necessary to truly address the human rights violations experienced by individuals who are marginalized on more than one ground, for example ethnic minority women<sup>368</sup> or disabled children.<sup>369</sup>

#### **3.4.1.4.3 Queer approaches to stereotyping**

In this section, I will draw on the queer theories I discussed in section 2.3.2.2 above, to examine how they can be applied to stereotyping. Queer theory, although it has many of its roots in examinations of sexuality and sexual identity, can be applied broadly: as Noreen Giffney argues, it is a tool for interrogating “*all* normative and non-normative acts, identities, desires, perceptions, and possibilities.”<sup>370</sup>

In section 2.3.2.2.3 above, I discussed the queer theoretical approaches to categorization, and in particular the power of queer theory to ‘trouble’ categories. This can be extended to consider how queer theory can be used to question stereotypes, both by itself and in conjunction with feminist theory.

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<sup>366</sup> Cook and Cusack (n 341) 62.

<sup>367</sup> Crenshaw (n 49).

<sup>368</sup> Aisha Nicole Davis, ‘Intersectionality and International Law: Recognizing Complex Identities on the Global Stage’ (2015) 28 *Harvard Human Rights Journal* 38.

<sup>369</sup> Gauthier de Beco, ‘Protecting the Invisible: An Intersectional Approach to International Human Rights Law’ (2017) 17 *Human Rights Law Review* 633.

<sup>370</sup> Giffney (n 146) 74. (emphasis in original)

If stereotypes are, as I discussed in section 3.4.1.1 above, “shorthand attributes and beliefs about different groups,”<sup>371</sup> then there is a clear link to the concept of ‘normativity:’ as I discuss in section 2.3.2.2 above, queer theory provides tools to identify and challenge what is perceived as ‘normal.’ As Kath Browne emphasises, queer work is not about creating new stereotypes, assumptions or narratives, but is instead about creating space where these may remain open.<sup>372</sup>

### **3.4.2 Human rights law and gender stereotyping**

International human rights treaties (including the CEDAW) refer to ‘sex.’ This term has rarely if ever been defined in international law, but is interpreted to mean the categorisation (legal or social) of individuals as either ‘male’ or ‘female’. In the years since CEDAW was adopted in 1979, however, ‘gender’ has become a useful category of analysis, including by treaty bodies. The Committee on the Elimination of Discrimination against Women (the Women’s Committee) has defined gender as referring to “socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women.”<sup>373</sup>

#### **3.4.2.1 CEDAW: filling a gap in international law**

International human rights treaties like the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic and Social Rights (ICESCR) included protections from sex discrimination and guaranteed the equal

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<sup>371</sup> Benjamin (n 50) 64.

<sup>372</sup> Browne (n 147) para 2.5.

<sup>373</sup> UN Committee on the Elimination of Discrimination against Women (CEDAW), ‘General Recommendation No.28’ (n 124) para 5.

enjoyment of rights for men and women, but they viewed equality as formal and symmetric.<sup>374</sup> As feminist legal scholars have argued (and as I have discussed in section 3.4.1.4.2 above): where systematic oppression of and discrimination against women exists – a condition that is prevalent in almost every country and every society in the world - this formal, symmetric conception of equality is not sufficient to ensure that women can access all their human rights.

The Commission on the Status of Women (CSW), established in 1946, successfully lobbied against the use of ‘men’ as a synonym for ‘people’ in the Universal Declaration of Human Rights.<sup>375</sup> Hilikka Pietilä and Jeanne Vickers have argued that the UN and its systems mainly viewed women as objects in need of protection – rather than individuals with agency of their own - prior to the 1970s:<sup>376</sup> but the CSW did begin earlier than that to consider women’s rights. For the first decade and a half of its existence, the CSW focused primarily on the elaboration of conventions that covered specifically political rights of women and rights related to marriage and married women,<sup>377</sup> and in 1963 the CSW was instructed by the UN General Assembly to prepare a broader declaration on discrimination against women.<sup>378</sup> The Declaration on the Elimination of Discrimination Against Women (DEDAW)<sup>379</sup> was adopted in 1967 and a voluntary reporting mechanism in 1968.<sup>380</sup>

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<sup>374</sup> M Shanthi Dairam, ‘CEDAW, Gender and Culture’ in Rawwida Baksh-Soodeen and Wendy Harcourt (eds), *The Oxford handbook of transnational feminist movements* (Oxford University Press 2015) 367.

<sup>375</sup> ‘A Brief History of the Commission on the Status of Women’ (*UN Women*) <<http://www.unwomen.org/en/csw/brief-history>> accessed 3 October 2018.

<sup>376</sup> Hilikka Pietilä and Jeanne Vickers, *Making Women Matter: The Role of the United Nations* (Zed Books 1990) vii–viii.

<sup>377</sup> ‘A Brief History of the Commission on the Status of Women’ (n 382).

<sup>378</sup> ‘A Brief History of the Commission on the Status of Women’ (n 382).

<sup>379</sup> UN General Assembly, ‘Declaration on the Elimination of Discrimination against Women’ (1967) UN Doc A/RES/22/2263.

<sup>380</sup> ‘Short History of CEDAW Convention’ (*UN Women*)

<<http://www.un.org/womenwatch/daw/cedaw/history.htm>> accessed 3 October 2018.

However, implementation of the DEDAW was limited<sup>381</sup> and in the early 1970s, the CSW began to consider a more binding convention.<sup>382</sup> Around the same time, the CSW – the Commission on the Status of Women – started to consider in more detail what ‘status’ meant.<sup>383</sup> A 1974 report recognized that a woman’s status depended on “the extent to which she had control over her own life,” although stated that in practice, status was determined by access to “knowledge, economic resources and political power.”<sup>384</sup>

Also in the 1970s, the UN was starting to consider development issues as a higher priority, and women’s movements were becoming increasingly visible.<sup>385</sup> The UN Decade for Women, which ran from 1976 to 1985, saw the beginning of systematic UN data collection on the situation of women around the world<sup>386</sup> and an increasing recognition of women as actors and agents in their own right.<sup>387</sup>

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>388</sup> was adopted in 1979. Anne Hellum and Henriette Sinding Aasen have argued that the intention of the CEDAW was two-fold: to address the shortcomings of the ‘gender-neutral’ approach of previous human rights treaties, and to take a holistic and transformative approach to women’s rights and gender equality.<sup>389</sup> According to

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<sup>381</sup> UN Women, ‘Short History of the Commission on the Status of Women’ <<http://www.un.org/womenwatch/daw/CSW60YRS/CSWbriefhistory.pdf>>.

<sup>382</sup> Dairam (n 381) 368.

<sup>383</sup> Pietilä and Vickers (n 383) 118–9.

<sup>384</sup> Commission on the Status of Women, ‘Report on the Twenty-Fifth Session, 14 January - 1 February 1974’ (1974) UN Doc E/CN.6/589 para 126.

<sup>385</sup> Pietilä and Vickers (n 383) 72.

<sup>386</sup> Pietilä and Vickers (n 383) 77.

<sup>387</sup> Pietilä and Vickers (n 383) vii–viii.

<sup>388</sup> CEDAW.

<sup>389</sup> Anne Hellum and Henriette Sinding Aasen, ‘Introduction’ in Anne Hellum and Henriette Sinding Aasen (eds), *Women’s human rights: CEDAW in international, regional, and national law* (Cambridge University Press 2013) 2.

Savitri Goonesekere, CEDAW for the first time defined women's rights as universal, and defined discrimination against women as a denial of human rights.<sup>390</sup> As of 2022, there are 189 states parties to the CEDAW:<sup>391</sup> however, it is the treaty with the most reservations.<sup>392</sup>

### 3.4.2.2 **Obligations under CEDAW**

As with all international human rights treaties, the CEDAW confers obligations on states parties. The Women's Committee has stated that states have three key obligations under CEDAW: to end discrimination against women in law and protect women from discrimination, to improve the position of women, and to address gender stereotypes,<sup>393</sup> and has recognized that states must effectively address the underlying causes of discrimination through transformative measures.<sup>394</sup> Furthermore, the Committee has stated clearly that in order to comply with CEDAW, states must "provide for substantive and formal equality"<sup>395</sup> and that the responsibility lies with

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<sup>390</sup> Savitri Goonesekere, 'Universalizing Women's Human Rights Through CEDAW' in Hanna-Beate Schöpp-Schilling and C Flinterman (eds), *The Circle of Empowerment: Twenty-five Years of the UN Committee on the Elimination of Discrimination against Women* (Feminist Press at the City University of New York 2007) 53.

<sup>391</sup> 'Convention on the Elimination of All Forms of Discrimination Against Women' (*UN Treaty Collection*) <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en)> accessed 20 June 2022.

<sup>392</sup> Basak Çali and Mariana Montoya, *The March of Universality? Religion-Based Reservations to the Core UN Human Rights Treaties* (Universal Rights Group 2017) 3.

<sup>393</sup> UN Committee on the Elimination of Discrimination against Women (CEDAW), 'General Recommendation No. 25, on Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on Temporary Special Measures' (2004) para 7 <[http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20\(E%20nglish\).pdf](http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(E%20nglish).pdf)> accessed 22 May 2018.

<sup>394</sup> UN Committee on the Elimination of Discrimination against Women (CEDAW), 'General Recommendation No.25' (n 400) para 10.

<sup>395</sup> UN Committee on the Elimination of Discrimination against Women (CEDAW), 'General Recommendation No. 29 on Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (Economic Consequences of Marriage, Family Relations and Their Dissolution)' (2013) para 8 <[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolNo=CEDAW/C/GC/29&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CEDAW/C/GC/29&Lang=en)> accessed 8 August 2018.

states to examine the impact of existing laws and policies, as well as discrimination and stereotyping, on women's equality.<sup>396</sup> Legal change, in itself, is not sufficient.<sup>397</sup>

### 3.4.2.3 ***Asymmetric focus***

Commenting on the 25<sup>th</sup> anniversary of CEDAW, then-Secretary General of the UN Kofi Annan stated that the CEDAW "has made us aware of the need to examine laws that appear to be gender-neutral but that, in fact, have adverse effects on women".<sup>398</sup>

The CEDAW is unusual in international human rights law, in that instead of directing the elimination of sex discrimination (a formal equality approach), it takes an explicitly asymmetric approach, recognizing that women specifically are victims of discrimination.<sup>399</sup> Catharine MacKinnon has argued that, in comparison to other human rights CEDAW focuses on "the concrete situation of a substantive group of people."<sup>400</sup>

This has been criticized for being exclusionary, both of trans, intersex and non-binary people, and of men who experience gender-based discrimination: Darren Rosenblum, for example, has argued that the framing of CEDAW in terms of discrimination against women, rather than as discrimination on the grounds of gender, undermines its effectiveness by reifying the gender binary and renders the treaty "neither accurate nor effective".<sup>401</sup> It is true that the framing of CEDAW implicitly excludes the situation

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<sup>396</sup> UN Committee on the Elimination of Discrimination against Women (CEDAW), 'General Recommendation No. 29' (n 402) para 8.

<sup>397</sup> Sepper (n 368) 632.

<sup>398</sup> Kofi Annan, 'Message on CEDAW's Twenty-Fifth Anniversary' in Hanna-Beate Schöpp-Schilling and C Flinterman (eds), *The Circle of Empowerment: Twenty-five Years of the UN Committee on the Elimination of Discrimination against Women* (Feminist Press at the City University of New York 2007) 1.

<sup>399</sup> Holtmaat (n 362) 7.

<sup>400</sup> Catharine A MacKinnon, 'Women's Status, Men's States', *Are women human? and other international dialogues* (Belknap Press of Harvard University Press 2006) 8.

<sup>401</sup> Darren Rosenblum, 'Unsex CEDAW, or What's Wrong With Women's Rights' (2011) 20 *Columbia Journal of Gender and Law* 98, 193.



of individuals whose legal gender, gender identity, gender expression and/or sex characteristics place them outside the category of women, even if they experience discrimination: the Women’s Committee, however, has begun to consider the situation of lesbian, bisexual, trans and intersex women in its Concluding Observations, albeit largely in the context of women who experience intersectional discrimination.<sup>402</sup> A similar process has taken place with other treaty bodies.<sup>403</sup>

#### 3.4.2.4 **Article 5(a): addressing stereotyping**

Within CEDAW, stereotyping is explicitly addressed in Article 5(a):

##### *Article 5*

*States Parties shall take all appropriate measures:*

*(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;*

Article 5(a) draws on – and expands – Article 3 of the 1967 Declaration on the Elimination of Discrimination Against Women (DEDAW).<sup>404</sup> While Article 3 of DEDAW addresses only public education and on “aspiring” to eradicate prejudice,<sup>405</sup> Article 5(a) of CEDAW is much broader and obliges states, in effect, to change all aspects of culture where they contribute to discrimination against women. Other, more limited

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<sup>402</sup> Rikki Holtmaat and Paul Post, ‘Enhancing LGBTI Rights by Changing the Interpretation of the Convention on the Elimination of All Forms of Discrimination Against Women?’ (2015) 33 *Nordic Journal of Human Rights* 319.

<sup>403</sup> See compilations prepared by ILGA, a Geneva-based LGBTI rights NGO: ILGA, ‘Treaty Bodies Session Reports’ <<https://ilga.org/treaty-bodies-session-reports>> accessed 6 October 2018.

<sup>404</sup> UN General Assembly (n 386).

<sup>405</sup> Sepper (n 368) 594.

versions of the article were proposed during the drafting process, but ultimately the final version of Article 5(a) was adopted by consensus.<sup>406</sup>

Article 5(a) plays a dual role: both as an interpretative tool for other provisions of CEDAW, and as an article which imposes obligations not covered elsewhere.<sup>407</sup> In its concluding observations, the Women's Committee has used Article 5(a) to express general concern, as well as (more frequently) in the context of other articles.<sup>408</sup> Notably, the Committee has used Article 5(a) together with other articles in order to bring violence against women within the scope of CEDAW.<sup>409</sup>

#### 3.4.2.5 ***Stereotyping and family roles in international human rights law: CEDAW Article 5(b) and beyond***

Within the human rights framework on stereotyping, some attention has been paid to stereotypes specifically related to families: in particular women's roles in families. While Article 5(a) of the CEDAW addresses stereotyped gender roles in general (as discussed in section 3.4.2.4 above), the following section, Article 5(b), addresses the specific case of what Alexandra Timmer and Rikki Holtmaat refer to as "fixed parental gender roles:"<sup>410</sup> the stereotyping of women as mothers and housewives, and of men as breadwinners:

#### *Article 5*

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<sup>406</sup> Sepper (n 368) 595–6.

<sup>407</sup> Sepper (n 368) 597–8; Holtmaat (n 361) 143.

<sup>408</sup> Holtmaat (n 361) 154.

<sup>409</sup> UN Committee on the Elimination of Discrimination against Women (CEDAW), 'General Recommendation No. 12: Violence against Women' (1989) 12 <<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom12>> accessed 30 July 2018.

<sup>410</sup> Alexandra Timmer and Rikki Holtmaat, 'Article 5' in Patricia Schulz and others (eds), *The UN Convention on the Elimination of All Forms of Discrimination Against Women and its optional protocol: a commentary*. (2nd edn, Oxford University Press 2022) 229.

*States Parties shall take all appropriate measures:...*

*(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.*

The Women's Committee has recognized that women should not be stereotyped as economically dependent on men, nor should they be limited only to domestic care work. The Committee has criticized national laws which place men as heads of household, which confine women to domestic roles, and which explicitly make women primarily responsible for child and elder care.<sup>411</sup> They have also stated that states are obliged to "provide for substantive as well as formal equality," which specifically includes attention to the "economic dimensions of family relations" including "the impact of gender stereotypes and gender roles on women's economic capacity."<sup>412</sup>

This includes where women are harmed for their perceived familial role. In 2011, the Committee found that Peru had violated Article 5(a) by denying a minor access to a therapeutic abortion despite the risks to her health and wellbeing: the Committee found that the stereotype that women should be mothers contributed to this denial of healthcare.<sup>413</sup> In a joint general recommendation, the Women's Committee and the Committee on the Rights of the Child noted that so-called 'honour' crimes are "disproportionately, although not exclusively, committed against girls and women

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<sup>411</sup> Holtmaat (n 361) 154.

<sup>412</sup> UN Committee on the Elimination of Discrimination against Women (CEDAW), 'General Recommendation No. 29' (n 402) para 8.

<sup>413</sup> UN Committee for the Elimination of All Forms of Discrimination against Women, 'L.C. v. Peru' (2011) UN Doc CEDAW/C/50/D/22/2009.

because family members consider that some suspected, perceived or actual behaviour will bring dishonour to the family or community,” and they note that such behaviour includes “generally failing to conform to stereotyped gender roles.”<sup>414</sup>

This attention to stereotyped roles within the family is not limited to CEDAW or the Women’s Committee. The UN Working Group on discrimination against women in law and practice has noted that “[w]hile gender stereotypes pervade all aspects of human existence, women’s rights are at particular risk in the family, which is a locus for the perpetuation of traditional values.”<sup>415</sup> The Working Group has argued that “the understanding and legal definition of the family in national legislation should be extended to recognize different forms of family.”<sup>416</sup>

The UN Working Group on the issue of discrimination against women in law and practice has also specifically noted that gender stereotypes are used to the detriment of women’s rights within the family, which they describe as, “a product of patriarchal culture and a vital institution for upholding the patriarchy.”<sup>417</sup> Shanthi Dairam goes further, arguing that discriminatory cultural norms not only limit women’s rights but are “seen as necessary for the wellbeing of the family and society.”<sup>418</sup> In extreme cases, as a 2014 Joint General Recommendation from the Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child points

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<sup>414</sup> Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women / General comment No. 18 of the Committee on the Rights of the Child on harmful practices 2014 para 29.

<sup>415</sup> ‘Report of the Working Group on the Issue of Discrimination against Women in Law and in Practice’ para 22.

<sup>416</sup> ‘Report of the Working Group on the Issue of Discrimination against Women in Law and in Practice’ (n 422) para 25.

<sup>417</sup> ‘Report of the Working Group on the Issue of Discrimination against Women in Law and in Practice’ (n 422) 7.

<sup>418</sup> Dairam (n 381) 389.

out, so-called 'honour' crimes are often justified by their perpetrators on the grounds that the victim has failed to conform to gender stereotyped roles.<sup>419</sup>

At the same time as the UN treaty bodies are arguing that families should not rely on stereotyped roles, however, there is increasing weaponization of the concept of 'family' in the political bodies. This is particularly apparent in the series of resolutions put forward to the UN Human Rights Council on 'protection of the family.'<sup>420</sup> In each case, these resolutions argue for a narrow definition of 'family,' implicitly excluding others from the definition - and thus from protection.<sup>421</sup> Progressive countries – and civil society activists working at UN level<sup>422</sup> - have continually attempted to broaden the resolutions to cover 'all forms of family,' or to lobby for Human Rights Council members to vote against these resolutions.<sup>423</sup>

This manoeuvring at UN levels can be echoed at policy levels in the UK. Vagueness in the definition of 'family' can allow assumptions and stereotypes about 'normal' families to creep in: and justify intervention in 'problem' families, as I will explore in Chapter 6.

#### 3.4.2.6 *The widening remit of Article 5*

Early General Recommendations by the Women's Committee referring to stereotyping limited their focus to media and public education.<sup>424</sup> Over the years, however, the

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<sup>419</sup> Joint General Recommendation No.31 and General Comment No.18 para 29.

<sup>420</sup> Four resolutions on this theme were tabled at the Human Rights Council between 2014 and 2017. See M Joel Voss, 'Contesting "Family" at the United Nations Human Rights Council' (2019) 14 Religion & Human Rights 95, 97.

<sup>421</sup> Voss (n 427).

<sup>422</sup> See for example: ILGA, 'Input to Human Rights Council Resolution 29/22 on the Protection of the Family' (ILGA 2015); Association for Women's Rights in Development and Sexual Rights Initiative, "'Protection of the Family": A Human Rights Response' (24 March 2015) <<https://www.awid.org/publications/protection-family-human-rights-response>> accessed 20 January 2023.

<sup>423</sup> Voss (n 427) 97.

<sup>424</sup> Sepper (n 368) 613–4.

Committee's approach has broadened. Alexandra Timmer and Rikki Holtmaat point out that since General Recommendation 25 in 2004, the Women's Committee has expanded the scope of Article 5 to cover not only cultural practices and ideas, but also the need to transform "societal structures and institutions that are based on and reinforce stereotypes."<sup>425</sup>

Most General Recommendations since 2013 have recognized the role that stereotyping plays in discrimination against women, including specifically for example in post-conflict situations,<sup>426</sup> for rural women,<sup>427</sup> and in the context of climate change.<sup>428</sup> The Women's Committee continues to argue that stereotypes are part of the causes of discrimination, and are also themselves discriminatory,<sup>429</sup> and to recognize that while changing society may take time, states are obliged to take immediate action to begin the process of challenging stereotypes.<sup>430</sup> Elizabeth Sepper's analysis of comments by the Committee shows that they set forth a two-step approach - first, conducting studies, and second, creating policies – for states to take to address the underlying issues that contribute to stereotypes.<sup>431</sup> The Committee's recommendations have become more specific and robust, and are based on the needs

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<sup>425</sup> Timmer and Holtmaat (n 417) 224–5.

<sup>426</sup> UN Committee on the Elimination of Discrimination against Women (CEDAW), 'General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations' (2013) para 43 <[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/29&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/29&Lang=en)> accessed 8 August 2018.

<sup>427</sup> UN Committee on the Elimination of Discrimination against Women (CEDAW), 'General Recommendation No. 34 (2016) on the Rights of Rural Women' (2016) para 22 <[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/34&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/34&Lang=en)> accessed 8 August 2018.

<sup>428</sup> UN Committee on the Elimination of Discrimination against Women (CEDAW), 'General Recommendation No. 37 (2018) on the Gender-Related Dimensions of Disaster Risk Reduction in the Context of Climate Change' (2018) para 7 <[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/37&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/37&Lang=en)> accessed 8 August 2018.

<sup>429</sup> Holtmaat (n 361) 144–5.

<sup>430</sup> Holtmaat (n 361) 165.

<sup>431</sup> Sepper (n 368) 623.

of women in different States parties.<sup>432</sup> The ultimate aim is societal change: all societies have culture, and where culture (including traditions, customs and religion) is damaging to women's rights, states must change this.<sup>433</sup>

As of 2018, the Women's Committee has yet to issue a specific General Recommendation on Article 5, nor to articulate a specific definition of 'stereotypes.'<sup>434</sup> From the committee's approach, however, together with the clear dual interpretative and substantive nature of the article, Article 5 clearly has a broad applicability. Regardless of the intent in the initial drafting, Article 5 has come to be interpreted as calling for a transformative understanding of equality,<sup>435</sup> and is recognised as a crucial part of achieving the overall objective of the CEDAW: eliminating discrimination against women.<sup>436</sup>

#### 3.4.2.7 ***CEDAW jurisprudence: naming and examining stereotypes***

The Optional Protocol to CEDAW,<sup>437</sup> which entered into force in 2000, allows the Women's Committee to receive and consider complaints from individuals and groups, and to initiate enquiries into "grave and systematic violations of women's rights."<sup>438</sup> Alexandra Timmer and Rikki Holtmaat note that Article 5 has been invoked in many Optional Protocol communications: but always in conjunction with other rights.<sup>439</sup>

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<sup>432</sup> Sepper (n 368) 634.

<sup>433</sup> Holtmaat (n 361) 150.

<sup>434</sup> Timmer and Holtmaat (n 417) 227.

<sup>435</sup> Holtmaat (n 361) 144.

<sup>436</sup> Timmer and Holtmaat (n 417) 222.

<sup>437</sup> Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women 1999.

<sup>438</sup> Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women para 8.

<sup>439</sup> Timmer and Holtmaat (n 417) 255.

The majority of cases which the Women's Committee has examined on their merits have considered Article 5:<sup>440</sup> many of these cases have concerned gender-based violence. In each of these cases, the Women's Committee found that gender stereotyping – about women's roles in the family and as mothers, and about women's behavior in cases of rape and sexual violence – contributed to the human rights violations perpetrated against the victims in these cases. In each case, the Committee named the stereotypes that were being used and examined how they contributed to the human rights violations.

The level of detail in the cases varies: in *AT v Hungary*, the Women's Committee made a reference to previous recommendations to Hungary on gender stereotyping, while in *Vertido v The Philippines*, the Committee named and examined several specific stereotypes and how they had contributed to the violation. This may reflect progress on the part of the Committee: *AT* was decided in 2005 and *Vertido* in 2010: however, it may equally reflect different presentations of the complaints. While both *AT* and *Vertido* alleged violations of Article 5(a), *Vertido* in her complaint presented seven separate stereotypes that she alleged had contributed to the human rights violations against her,<sup>441</sup> some of which the Committee agreed with it in its consideration of the merits of the case.

I argue, therefore, that while the Women's Committee is open to naming and examining stereotypes with the aim of challenging harmful gender stereotyping, as advocated by Cook and Cusack, its jurisprudence on this depends in large part on the extent to which complainants name and examine these stereotypes themselves. This

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<sup>440</sup> Timmer and Holtmaat (n 417) 224.

<sup>441</sup> UN Committee for the Elimination of All Forms of Discrimination against Women, 'Karen Tayag Vertido v. The Philippines' (2010) UN Doc CEDAW/C/46/D/18/2008 s 3.5.



is supported by the fact that relatively few cases that have been considered by the Committee have found a violation of Article 5, despite the pervasiveness of gender stereotypes in perpetuating discrimination against women.

#### 3.4.2.8 ***Other international human rights law instruments***

While the CEDAW was the first international law document to include references to gender stereotyping,<sup>442</sup> other international human rights law instruments do include specific references to stereotyping. At an international level, Article 8 of the Convention on the Rights of Persons with Disabilities takes a similarly broad approach to CEDAW Article 5(a), requiring states to take measures to combat stereotypes related to persons with disabilities, and in addition it specifies an intersectional approach, at least with regards to sex and age.

Also at an international level, Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) does not explicitly mention stereotypes, but targets “all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form.” The same article obliges states to take measures to end all such discrimination and specifies legal and policy measures.<sup>443</sup> Catharine MacKinnon has observed that in comparison to CEDAW, ICERD presents racism as not only inefficient and a barrier to other right but as factually inaccurate.<sup>444</sup>

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<sup>442</sup> Timmer and Holtmaat (n 417) 222.

<sup>443</sup> International Convention on the Elimination of All Forms of Racial Discrimination 1965.

<sup>444</sup> MacKinnon, ‘Women’s Status, Men’s States’ (n 407) 10–11.

At a regional level, Article 4 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa<sup>445</sup> and Article 8 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women<sup>446</sup> specifically oblige states to carry out public education programmes in order to eradicate harmful stereotypes that legitimize violence against women: however, neither is as far-reaching as CEDAW Article 5(a). Also specifically addressing violence, Article 12(1) of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (the Istanbul Convention) obliges States parties to eradicate “prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.”<sup>447</sup>

In addition to the CEDAW, the contribution of gender stereotypes to gender discrimination has been recognized by other treaty bodies including the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, who have noted that women’s inequality is embedded in culture and tradition,<sup>448</sup> and recognized that stereotypes disadvantage women<sup>449</sup> and are part of discrimination.<sup>450</sup> In the

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<sup>445</sup> Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol) 2003.

<sup>446</sup> Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará) 1994.

<sup>447</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) 2011.

<sup>448</sup> UN Human Rights Committee, ‘General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women)’ (2000) UN Doc CCPR/C/21/Rev.1/Add.10 para 5.

<sup>449</sup> UN Committee on Economic, Social and Cultural Rights, ‘General Comment No. 16: Article 3: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights’ (2005) UN Doc E/C.12/2005/3 para 14.

<sup>450</sup> UN Committee on Economic, Social and Cultural Rights, ‘General Comment No. 20 Non-Discrimination in Economic, Social and Cultural Rights (Art. 2, Para. 2, of the International Covenant on Economic, Social and Cultural Rights)’ (2009) UN Doc E/C.12/GC/20 para 20.

following section, I will discuss the ways that the human rights system has considered a subset of these stereotypes that specifically relate to families.

#### 3.4.2.9 **Gaps in the existing system**

While Article 5 and related standards provide a strong framework for tackling discrimination through identifying and dismantling gender stereotypes, there are still challenges to be resolved.

Firstly, while ‘culture’ – including religion, traditions and customs – is a crucial part of how stereotypes are developed and maintained,<sup>451</sup> the Women’s Committee itself has noted that culture is not static but dynamic.<sup>452</sup> Rikki Holtmaat and Jonneke Naber have argued that presenting culture as an oppositional force to women’s human rights neglects the fact that women have the right to “participate in the interpretation and development of the culture to which they choose to belong.”<sup>453</sup> Consequently, efforts to combat harmful gender stereotypes must engage with culture in an inclusive way, but as yet the international human rights law standards have not provided a clear framework within which to do this.

Secondly, there are not yet consistent approaches to examining gender stereotypes, let alone best practice standards for what states must do to challenge gender stereotyping. In consistently recommending media and education initiatives, the Women’s Committee has begun to establish a minimum standard,<sup>454</sup> but as discussed above, the Committee has not taken a consistent approach in naming stereotypes,

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<sup>451</sup> Cook and Cusack (n 341) 32.

<sup>452</sup> Holtmaat (n 361) 156.

<sup>453</sup> Rikki Holtmaat and Jonneke MM Naber, *Women’s Human Rights and Culture: From Deadlock to Dialogue* (Intersentia 2011) 5.

<sup>454</sup> Sepper (n 368) 615–6.

instead appearing to rely on submissions made to it to identify and examine the harmful gender stereotyping that contributes to human rights violations. The Committee provides additional guidance to states depending on the situation of women in that given country,<sup>455</sup> but as yet has not been able to articulate standards for what is acceptable.<sup>456</sup> This is a strong indication that, in any given country, there is still progress that can be made in eliminating harmful gender stereotyping.

Finally, more needs to be done to establish an intersectional approach to gender stereotyping, including through collaborative efforts at the international level. As outlined above, the Women's Committee has looked at stereotypes within certain specific contexts, including the rights of rural women, and frameworks exist to approach stereotyping around different identities, including race and disability; the Women's Committee has also joined with the Committee on the Rights of the Child to look at how gender stereotypes impact children's rights.<sup>457</sup> As Rikki Holtmaat argues, however, gender stereotypes interact with other stereotypes in order to perpetrate discrimination:<sup>458</sup> for example, trans women of colour may face specific stereotyping (such as assumptions that they are sex workers<sup>459</sup>) that is not applied to all women. As a result, a truly intersectional approach is required in order to bring about substantive equality.

Within the international human rights law system, Article 5 provides a powerful framework for transformative change. It operates dynamically as both a tool for

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<sup>455</sup> Sepper (n 368) 634.

<sup>456</sup> Sepper (n 368) 639.

<sup>457</sup> Joint General Recommendation No.31 and General Comment No.18 para 17.

<sup>458</sup> Holtmaat (n 361) 149–50.

<sup>459</sup> Kristi E Gamarel and others, 'Stigma Experienced by Transgender Women of Color in Their Dating and Romantic Relationships: Implications for Gender-Based Violence Prevention Programs' [2020] *Journal of Interpersonal Violence* 9.

interpretation and for exerting specific obligations over states. The Women's Committee recognises the importance of overcoming gender stereotypes in order to eliminate discrimination: in order to do this, every state has the obligation to engage in a process of examining prevailing gender stereotypes in every sphere of life – including in data-driven processes – and developing policies that combat the harm that they do.

### **3.5 Gender and data**

In this section, I will review the key literature on gender and data. This include critical engagement with what data is actually collected under the term 'gender,' and the failure of simple binary gender questions to capture the reality of queer lives, especially for trans and non-binary people. I will also consider the literature on gender, data and human rights. Finally, drawing on the wider literature on gender stereotyping and harm in section 3.4 above. I will discuss the existing literature on stereotyping in gender data. I will demonstrate that while there is a substantial body of work on gender data, its promises and potential pitfalls, there is much less on how the collection and use of data can be used to perpetuate stereotypes about gender.

#### **3.5.1 Different kinds of gender data**

Gender data is increasingly collected, and the importance of recognising the different experiences of people of different genders is increasingly recognised – even if, as advocated in Caroline Criado Perez's influential book *Invisible Women*,<sup>460</sup> this data is collected as one of two binary options. As a result, as Anna Lindqvist et al point out, it is often not clear – to the collector or to the collectee – what concept is actually being

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<sup>460</sup> Caroline Criado Perez, *Invisible Women: Data Bias in a World Designed for Men* (Abrams 2019).

targeted in this collection. As Anna Lindqvist et al point out, the concept of ‘gender’ may include one or more of physiological characteristics, identity, legal gender, or gender expression. For some people, the answer to the ‘gender question’ may be the same no matter which concept is being targeted: for a not inconsiderable number of people, however, the answer they may give may be different for different concepts: and any mismatch may put them at risk of discrimination, harassment, or even violence.<sup>461</sup>

This issue is compounded when gender data is not obtained directly from an individual, but from other sources. Rachel Cohen, in her exploration of the possibilities of quantitative feminist sociology, argues that the rise of ‘big data’ may actually *reduce* the amount of data that is available to examine using a gender lens.<sup>462</sup> She argues that, as much ‘big data’ analysis relies on administrative data or data ‘exhaust,’<sup>463</sup> it is not representative of the population but instead represents the interests of the scientists or corporates which originally collected the data.<sup>464</sup> It also almost always uses – and so reinforces - a binary conception of gender.<sup>465</sup> As Emma Parnell

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<sup>461</sup> Anna Lindqvist, Marie Gustafsson Sendén and Emma A Renström, ‘What Is Gender, Anyway: A Review of the Options for Operationalising Gender’ [2020] *Psychology & Sexuality* 1.

<sup>462</sup> Rachel Lara Cohen, ‘Towards a Quantitative Feminist Sociology: The Possibilities of a Methodological Oxymoron’ in L McKie and L Ryan (eds), *An End to the Crisis of Empirical Sociology?: Trends and Challenges in Social Research* (Routledge 2015) 12.

<sup>463</sup> Data collected for another purpose that is available for reuse. Also sometimes termed ‘digital footprints: see e.g. ‘Digital Footprints’ (UKRI) <<https://www.ukri.org/what-we-offer/browse-our-areas-of-investment-and-support/digitalfootprints/>> accessed 3 March 2023. (In 2023, I have been a member of an advisory group to the strategic advice team for this programme of grantmaking). It may also be known as ‘digital breadcrumbs’ or ‘behavioural surplus:’ see Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (PublicAffairs 2019) 75,90.

<sup>464</sup> Cohen (n 469) 13.

<sup>465</sup> Cohen (n 469) 12.

documents in her analysis of an NHS data system, once gender data is embedded in a system, it can be technically difficult to remove it.<sup>466</sup>

Recent years have also seen an increasing number of feminist data projects, with many appearing in the years that I have been researching for this thesis.<sup>467</sup> Catherine D'Ignazio and Lauren Klein's influential book *Data Feminism* offers a framework through which to understand how data is used to perpetuate inequalities, and how data can challenge distributions of power.<sup>468</sup> They argue that the question of whether – and how – to collect gender data varies based on context, implication, and whether the data is actually needed.<sup>469</sup> They point out that the appearance of inclusion can mask binaries: for example, users of Facebook have the option to choose from multiple gender options when registering, but when the data is sold, these options have been collapsed into 'male' or 'female'.<sup>470</sup>

Koen Leurs's feminist research into young people's performance of digital identities argues that big data research "simultaneously empowering and excluding, opening up new possibilities but also amplifying previously existing hierarchies for women and minorities,"<sup>471</sup> while Cheryl Cooky et al examine how access to data is a form of power, often mediated through corporations.<sup>472</sup> Josie Swords's work examines feminist technology design to examine how a feminist chatbot might be built.<sup>473</sup> Black and

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<sup>466</sup> Emma Parnell, 'Let's Talk about Sex\*' (*Medium*, 19 March 2021) <<https://emmaparnell.medium.com/lets-talk-about-sex-6bb64c7e8f0c>> accessed 19 March 2021.

<sup>467</sup> Between 2018 and 2023.

<sup>468</sup> D'Ignazio and Klein (n 10) 9–10.

<sup>469</sup> D'Ignazio and Klein (n 10) 110–111.

<sup>470</sup> D'Ignazio and Klein (n 10) 100.

<sup>471</sup> Koen Leurs, 'Feminist Data Studies: Using Digital Methods for Ethical, Reflexive and Situated Socio-Cultural Research' (2017) 115 *Feminist Review* 130, 134.

<sup>472</sup> Cooky, Linabary and Corple (n 132) 3–4.

<sup>473</sup> Josie Swords, 'Designing Feminist Chatbots' (2017) Research Summary.

decolonial feminists are also increasingly turning their attention to the power and possibility of data: Joy Buolamwini's 'Gender Shades' project draws attention to the ways in which facial recognition technologies perform less well for darker-skinned women,<sup>474</sup> and Catherine Knight Steele's work on digital Black feminism examines both the role of Black women as holders of digital expertise, and how Black feminist theory and practice has shifted and changed through the use of digital tools.<sup>475</sup>

### 3.5.2 Gender data and queer lives

Bonnie Ruberg and Spencer Ruelos have argued that commonly-used demographic data collection methods are not sufficient to capture queer lives, as identifiers for gender and sexual identity are continually shifting and people may find that multiple markers 'fit' them.<sup>476</sup> In previous work, I have argued that binary assumptions of gender can be harmful to human rights: using the example of COVID-19 responses like gendered curfews, which put trans people whose gender expression does not match their legal documentations at risk of discrimination and harassment.<sup>477</sup>

Ruberg and Ruelos advocate instead data collection methods which do not require discrete, fixed responses, but which instead recognise instead that identities may change over time without losing their validity: they also advocate for the participation of different individuals and groups on how best to represent them in data.<sup>478</sup> Technologists have also proposed models for collecting data on gender that is not

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<sup>474</sup> Joy Buolamwini, 'Response: Racial and Gender Bias in Amazon Rekognition — Commercial AI System for Analyzing Faces.' (*Medium*, 25 January 2019) <<https://medium.com/@Joy.Buolamwini/response-racial-and-gender-bias-in-amazon-rekognition-commercial-ai-system-for-analyzing-faces-a289222eeced>> accessed 13 February 2019.

<sup>475</sup> Catherine Knight Steele, *Digital Black Feminism* (New York University Press 2021) 11–12.

<sup>476</sup> Ruberg and Ruelos (n 174).

<sup>477</sup> Carter (n 225).

<sup>478</sup> Ruberg and Ruelos (n 174).



restricted only to binary options, for example the ‘Gender Field’ option in the content management system Drupal.<sup>479</sup>

Research by LGBT specialist organisations such as Stonewall<sup>480</sup> in the UK and the Williams Institute<sup>481</sup> in the USA has explored more inclusive ways to capture data about gender identity than a simplistic binary. The 2021 census in England and Wales used the ‘two-step’ method for the first time. As well as a question about sex, which has been asked in censuses since 1801<sup>482</sup> and which has only collected binary data,<sup>483</sup> the 2021 census added an optional question on whether the respondent’s gender identity was the same as their sex assigned at birth.<sup>484</sup> If the respondent answered ‘no,’ they could write in their gender identity.

Os Keyes has criticised so-called Automatic Gender Recognition technology for its fundamentally flawed assumption that gender can be identified externally based on physiological features or markers such as first names, which inherently excludes many trans and non-binary people.<sup>485</sup> In the context of labelling data for use in machine learning, Stuart Geiger et al have specifically argued for clarity in what is being

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<sup>479</sup> ‘Gender Field’ (*Drupal.org*, 22 January 2013) <<https://www.drupal.org/project/gender>> accessed 21 January 2022.

<sup>480</sup> Lynn Pasterny, ‘Do Ask, Do Tell: Capturing Data on Sexual Orientation and Gender Identity Globally’ (Stonewall 2016).

<sup>481</sup> Andrew Park, ‘Data Collection Methods for Sexual Orientation and Gender Identity’ (Williams Institute 2016) <<https://williamsinstitute.law.ucla.edu/publications/data-collection-sogi/>> accessed 31 March 2021.

<sup>482</sup> Office for National Statistics, ‘Census 2021: Final Guidance for the Question “What Is Your Sex?”’ <<https://www.ons.gov.uk/census/censustransformationprogramme/questiondevelopment/genderidentity/census2021finalguidanceforthequestionwhatisyoursex>> accessed 16 June 2022.

<sup>483</sup> The 2021 census was also the first to put these binary answers in alphabetical order, presenting them as ‘female’ and then ‘male’ instead of the other way around.

<sup>484</sup> Office for National Statistics, ‘Census 2021 Individual Questionnaire: England’ (Office for National Statistics 2021).

<sup>485</sup> Os Keyes, ‘The Misgendering Machines: Trans/HCI Implications of Automatic Gender Recognition’ (2018) 2 *Proceedings of the ACM on Human-Computer Interaction*, 88:1.

labelled, citing that what is often called ‘gender’ is in fact ‘gender presentation according to norms.’<sup>486</sup>

### 3.5.3 Gender, data and human rights

While – as I have discussed above – there is a substantial body of work on gender and data, there is limited research in this area using a rights perspective.

Since at least 2000, UN human rights bodies – in particular the Committee on the Elimination of All Forms of Discrimination Against Women (the CEDAW Committee) have recommended the collection of gender-disaggregated data in order to understand women’s human rights situations. In practice, however, this is often used to mean data that is separated into two categories: ‘male’ and ‘female,’ with the assumption that this is both comprehensive and mutually exclusive.<sup>487</sup> While undoubtedly useful, this data collection is often seen as an optional extra which can be disregarded in certain circumstances: for example, in the early months of the COVID-19 pandemic, the UK government suspended mandatory gender pay gap reporting.<sup>488</sup>

There is increasing attention to specific forms of gendered discrimination related to data and digital technologies: for example, noting that women in low and middle

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<sup>486</sup> Presentation at FAT\* 2020 of R Stuart Geiger and others, ‘Garbage In, Garbage Out? Do Machine Learning Application Papers in Social Computing Report Where Human-Labeled Training Data Comes From?’, *Proceedings of the 2020 Conference on Fairness, Accountability, and Transparency* (Association for Computing Machinery 2020).

<sup>487</sup> See for example: UN Committee on the Elimination of Racial Discrimination (CERD), ‘General Recommendation XXV on Gender-Related Dimensions of Racial Discrimination’ (2000) <[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7497&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7497&Lang=en)>.

<sup>488</sup> Suzannah Brecknell, ‘Government Pauses Mandatory Reporting of Gender Pay Data’ (*PublicTechnology.net*, 26 March 2020) <<https://publictechnology.net/articles/news/government-pauses-mandatory-reporting-gender-pay-data>> accessed 26 March 2020.

income countries are less likely to own a mobile phone, so are less likely to be represented in datasets which draw on mobile phone usage.<sup>489</sup> Recommendations to address this imbalance include bringing women into the process of creating data and data-driven technologies, as well as using these technologies to address problems faced by women, from unpaid care work, to under-representation in senior roles, to a lack of sexual and reproductive rights.<sup>490</sup>

Research has also been carried out on the ways in which gender data may also be used to compound harms and discrimination in data systems more broadly. Geoffrey Bowker and Susan Leigh Star note that the racial classification system used in apartheid South Africa was heavily gendered: women's racial classification was often dependent on how their husbands were classified.<sup>491</sup> More recently, data used in the 2010s development of a predictive risk model for child abuse in New Zealand relied more on data about mothers, because more data was available: as a result, it was more likely to label female caregivers as 'risky.'<sup>492</sup>

Advocating for a feminist internet, Namita Aavriti Malhotra, Tigist Shewarega Hussen and Mariana Fossatti argue that this works towards "empowering more women and people of diverse and marginalised sexualities and genders—in all our diversities—to fully enjoy our rights, engage in pleasure and play, and dismantle patriarchy."<sup>493</sup>

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<sup>489</sup> IEEE Global Initiative on Ethics of Autonomous and Intelligent Systems, 'Ethically Aligned Design: First Edition' (Institute of Electrical and Electronics Engineers 2019) 143 <<https://ethicsinaction.ieee.org/>> accessed 18 August 2019.

<sup>490</sup> Surya Deva, 'Addressing the Gender Bias in Artificial Intelligence and Automation' (*OpenGlobalRights*, 10 April 2020) <<https://www.openglobalrights.org/addressing-gender-bias-in-artificial-intelligence-and-automation/>> accessed 17 April 2020.

<sup>491</sup> Bowker and Star (n 160) 203.

<sup>492</sup> Keddell (n 34) 9.

<sup>493</sup> Namita Aavriti Malhotra, Tigist Shewarega Hussen, and Mariana Fossatti, 'How to Build a Feminist Internet and Why It Matters' in Namita Aavriti Malhotra, Tigist Shewarega Hussen and Mariana Fossatti (eds), *Feminist by Design*, vol 4 (2022) 7 <<https://www.ingentaconnect.com/content/10.37198/APRIA.04.04.a1>> accessed 12 May 2022.

However, even within the broad range of feminist data research I discussed in section 3.5.2 above, there is little attention paid to a rights perspective.

### 3.5.4 Stereotyping, gender and data

In section 3.4.2 above I discussed the literature on gender stereotyping. Reliance on binary gender – or sex – data can easily fall victim to stereotyping. Kate Crawford and Vladen Joler point out that data collected to drive machine learning technologies are often simplistic and rely on stereotyping:<sup>494</sup> Anna Hoffmann points out that these stereotypes include gender stereotypes, which pervade the data world just as they are prevalent in offline culture and society.<sup>495</sup> However, there is still comparatively little research into how stereotyping can enter into gender data.

Some technical research has identified gender stereotyping. Tolga Bolukbasi et al found that using a machine learning technique called ‘word embeddings’<sup>496</sup> trained on Google News articles reproduced gender stereotypes: codings between ‘man’ and professions like ‘broadcaster’ and ‘boss’ were similar to those between ‘woman’ and ‘receptionist’ or ‘homemaker.’<sup>497</sup> Ryan Steed and Aylin Caliskan adapted the Image Association Test from social psychology<sup>498</sup> to assess images generated by computer

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<sup>494</sup> Kate Crawford and Vladen Joler, ‘Anatomy of an AI System’ (2018) <<http://www.anatomyof.ai>> accessed 9 December 2020.

<sup>495</sup> Anna Lauren Hoffmann, ‘Data Violence and How Bad Engineering Choices Can Damage Society’ (*Medium*, 30 April 2018) <<https://medium.com/s/story/data-violence-and-how-bad-engineering-choices-can-damage-society-39e44150e1d4>> accessed 16 May 2018.

<sup>496</sup> A method which represents individual words as d-dimensional vectors, which aims for words with similar meanings to be close together in the d-dimensional space, and for vector differences between pairs of words to be similar if the relationship is similar: for example, the vector subtraction between vector representations of ‘Paris’ and ‘France’ is similar to that between ‘Tokyo’ and ‘Japan.’

<sup>497</sup> Tolga Bolukbasi and others, ‘Man Is to Computer Programmer as Woman Is to Homemaker? Debiasing Word Embeddings’ [2016] arXiv <<http://arxiv.org/abs/1607.06520>> accessed 13 February 2019.

<sup>498</sup> A test to measure the ‘strengths of automatic association,’ including stereotyping. See e.g. Anthony G Greenwald, Brian A Nosek and Mahzarin R Banaji, ‘Understanding and Using the Implicit Association Test: 1. An Improved Scoring Algorithm’ (*PsyArXiv* 2016) <<https://osf.io/acgxd>> accessed 3 March 2023.

models, finding statistically significant gender (as well as racial) biases and concluding that the models had been affected by “patterns of stereotypical portrayal of social groups” in their training data.<sup>499</sup>

Attempts to be more inclusive in the collection of data may not address the problem of stereotyping. Soren Spicknall argues that collecting data about queer identities and queer groups always relies on stereotypes, even when it is trying to be inclusive,<sup>500</sup> while Kevin Guyan points out that in data collection and analysis, “the construction of constituencies based on identity relies on reductive stereotypes, an erasure of differences and inaccurate accounts of homogeneity that are sometimes hard to extinguish once unleashed.”<sup>501</sup>

### 3.6 Conclusion

In this chapter, I have reviewed the key literature on how data collection and sharing have been considered in different contexts, and situated these topics in the broader literature related to data, gender, and human rights. I have also considered the broader literature on gender stereotyping: in particular feminist and queer approaches to stereotyping and how it links to other concepts of normalisation, as well as the human rights law basis for considering stereotyping as a potential violation of human rights.

These key areas of literature will be crucial when considering the nature of data systems and the ways that they encode and promote stereotypes. As I have

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<sup>499</sup> Ryan Steed and Aylin Caliskan, ‘Image Representations Learned With Unsupervised Pre-Training Contain Human-like Biases’, *Proceedings of the 2021 ACM Conference on Fairness, Accountability, and Transparency* (Association for Computing Machinery 2021) 710 <<https://doi.org/10.1145/3442188.3445932>> accessed 6 March 2021.

<sup>500</sup> Spicknall (n 171).

<sup>501</sup> Guyan (n 155) 128.

discussed, however, there is little prior research on the topic of my thesis, which examines the ways in which data systems classify, categorise and stereotype individuals who are known to social services based on their gender: and none on my case study of choice, the UK government 'Troubled/Supporting Families Programme,' which I will discuss in more detail in Chapter 7.

My thesis, therefore, makes a concrete contribution in this area, by demonstrating how data systems in this government programme perpetuate gender stereotypes. In the following chapter, I will explore data systems in more detail, including how they classify and categorise information.

## Chapter 4 Classification and categorisation in datafication

### 4.1 Introduction

In this thesis, I examine how classification and categorisation are used to define the 'family' as a unit of analysis, which enables the identification of the 'problem family,' and further its definition as implicitly outside of the norm. The concepts of classification - segmentation of the world - and categorisation - naming the segments – make visible how the collection and sharing of data is not neutral but the outcome of human decision-making.

The specific choices made by human actors are often hidden behind technological systems: compounding this, the specific classification and categorisation choices included in systems can be 'naturalised:' treated as natural and unchangeable. The use of computer systems to collect and share data risks obfuscating not only the specific choices made, but also that choices were made at all. In later chapters, I will show how the expectation that individual and family lives are legible to computers is used to normalise certain forms of families, and stereotype those who do not comply as 'troubled:' the limitations of technological systems have ramifications outside of those systems.

In this chapter, I will articulate what I mean by classification and categorisation, and I will argue that classification and categorisation enter into computerised data collection and sharing systems at multiple points. I will also argue that at every such point, these classifications and categorisations are not the result of naturally occurring segmentations but of human interpretation of the world. The choice of what information to retain – and what to lose – is a human decision. These decisions are made by

different actors, at different stages, with different levels of consultation and different participation.

## 4.2 Categorisation and classification

In this section, I will explain the definitions of ‘classification’ and ‘categorisation’ which I am using. I will also explain how I am using the theoretical underpinnings described in section 2.3 above to engage with these concepts at a theoretical level.

### 4.2.1 Classification

In this chapter, I will use Geoffrey Bowker and Susan Leigh Star’s definition of a classification as “a spatial, temporal, or spatio-temporal segmentation of the world.”<sup>502</sup> Bowker and Star further note that an ideal classification system should use consistent and unique principles to classify, cover the world in its entirety, and segment the world into mutually exclusive spaces: but that few if any real-world systems meet this definition.<sup>503</sup> Bowker and Star, of course, devote much of their book *Sorting Things Out* to identifying places and situations in which classification systems fail to live up to this ideal. In section 4.4 below, I will explore the specific ways in which data collection and sharing systems are often considered to function as ‘ideal’ classification systems as described by Bowker and Star, despite theoretical and practical demonstrations that they do not.

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<sup>502</sup> Bowker and Star (n 160) 10.

<sup>503</sup> Bowker and Star (n 160) 10–11.



#### 4.2.1.1 **Considering the 'ideal classification' from feminist and queer perspectives**

Before considering specifics, however, I believe it is useful to critically engage with the concept of this 'ideal' system. In this section, I will draw on the feminist and queer science and technology theories which I covered in section 2.3.2.

First, a feminist social constructionist approach (as discussed in section 2.3.2.1.1 above) demands that we ask what is normalised or naturalised by the use of a classification system: for whom is this classification 'ideal'? Who has decided that a classification should be done in the first place, and for what purpose? Bowker and Star themselves describe how racial classifications were used by authorities in South Africa to uphold racist apartheid-era laws and policies: they point out both the absurdities and inconsistencies in the principles that were used to divide the population into different groups with different restrictions and rights,<sup>504</sup> but of course the aim of the system itself was racial discrimination. As Ruha Benjamin points out, race is itself a technology "designed to stratify and social injustice as part of the architecture of everyday life."<sup>505</sup> Classifications can naturalise inequalities.

Similar questions can be asked about the 'world' that is to be covered by the ideal classification system. The definition assumes that there is a universally accepted 'world' which is to be classified. In section 2.3.2.1.1 above, I noted that Vivien Burr's account of social constructionism recognises that constructions of the world "sustain some patterns of social action and exclude others:"<sup>506</sup> views of the 'world' to be assessed are not neutral or objective, nor does it necessarily follow that there is a

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<sup>504</sup> For example, the 'pencil test': if the police suspected that a person was wrongly classified as 'coloured,' they put a pencil in their hair: if it stuck, the person was determined to be Black. See Bowker and Star (n 160) 208–212.

<sup>505</sup> Benjamin (n 50) 17.

<sup>506</sup> Burr (n 113) ch 8.

universally clear definition of that ‘world.’ Queer theory offers a related critique. As I have discussed in section 2.3.2.2.3 above, Matt Brim and Amin Ghaziani point out that queer theory offers a perspective from which to question what they call “the fetishizing of the observable.”<sup>507</sup> The definition of an ideal classifications relies on observations: while feminist social constructionism questions who is doing the observing and of what, queer theory questions whether what can be observed is important at all.

We can also apply a feminist critique of objectivity to Bowker and Star’s segmentation of the world in a “spatial, temporal, or spatio-temporal” way. Again, this definition implicitly assumes that there are universally-accepted ways to measure space and time. We know from pure mathematics that there are different geometries: while many of us learned Euclidean geometry at school, we must use different calculations to consider, for example, geometry on a spherical planet.<sup>508</sup> Time, also, is not universal: special relativity demonstrates that two events that appear to happen simultaneously for one observer may not be simultaneous to another; it also shows that two clocks moving at different speeds do not record the same elapsed time.<sup>509</sup> Moreover, the Western scientific conception of even non-relativistic time as a linear progression ‘at a rate of one second per second’<sup>510</sup> is not universal: Laura Rademaker points out, for example, that “for many Australian Aboriginal people, time is neither exclusively linear nor cyclical, it can be always, everywhen.”<sup>511</sup> Experiences of space and time vary:

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<sup>507</sup> Brim and Ghaziani (n 186) 16.

<sup>508</sup> In Euclidean geometry – on a flat plane - the angles of a triangle always add up to 180 degrees. In spherical geometry, it is perfectly possible to draw a triangle with three 90-degree angles (consider one 90 degree vertex on the North Pole, and the other two on the equator). In hyperbolic geometry, all three angles of a triangle may be zero degrees. All are mathematically valid.

<sup>509</sup> Time dilation effects are rarely visible at planetary scale, but they are apparent at galactic scale.

<sup>510</sup> Not my phrase, but one so widely used in discussions of time travel that I have been unable to trace its original coiner.

<sup>511</sup> Laura Rademaker, ‘60,000 Years Is Not Forever: “Time Revolutions” and Indigenous Pasts’ [2021] *Postcolonial Studies* 1, 9.

therefore, it is not possible to construct a single spatio-temporal segmentation of the world which works universally.

Finally, the 'ideal classification system' requires a consistent set of principles by which to classify. We can apply a social constructionist critique, as above, to the idea that a set of principles can be universally agreed and applied. It is useful also, however, to consider the importance that this definition places on 'consistency.' As I have discussed in section 2.3.2.2.3 above, queer theory offers a critique to this valorisation of consistent principles for classification. Annamarie Jagose points out that queer theory allows for a recognition that real life is fundamentally messy: it does not neatly 'fit' into theory, or practice.<sup>512</sup>

#### 4.2.1.2 **Classification in practice**

Bowker and Star themselves do note that attempting to keep classification principles consistent over time fails to respond to changes in the world. They note, for example, that the International Classification of Diseases (ICD)<sup>513</sup> has undergone many changes over more than a century and 11 editions: new diseases are added (including COVID-19 in 2020<sup>514</sup>), while others are removed, such as when better diagnostics rendered the distinction between 'active' and 'inactive' tuberculosis less useful.<sup>515</sup>

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<sup>512</sup> Brim and Ghaziani (n 186) 18.

<sup>513</sup> The international standard for recording information about death and disease: the eleventh edition came into use in 2022 after more than a decade of development led by the WHO. See 'International Classification of Diseases (ICD)' (*World Health Organization*) <<https://www.who.int/standards/classifications/classification-of-diseases>> accessed 8 August 2022.

<sup>514</sup> In February 2020, ICD-11 introduced two new codes: a confirmed COVID-19 diagnosis (where the virus has been identified) is coded RA01.0, and a suspected/probable case as RA01.1. See 'Emergency Use ICD Codes for COVID-19 Disease Outbreak' (*World Health Organization*) <<https://www.who.int/standards/classifications/classification-of-diseases/emergency-use-icd-codes-for-covid-19-disease-outbreak>> accessed 8 August 2022.

<sup>515</sup> Bowker and Star (n 160) 74.

Bowker and Star further define three types of classification: practical, Aristotelian, and prototypical. Practical classifications are defined as “how people categorize the objects they encounter in everyday situations:”<sup>516</sup> in other words, these kinds of classifications rely on human decision-making. More formal classification schemes, Bowker and Star argue, must link to – and be consistent with – practical classifications in order to be useful.<sup>517</sup>

In Aristotelian classification, an entity either presents, or does not present, a set of binary characteristics.<sup>518</sup> Aristotelian classifications have traditionally been used in the sciences. Prototypical classifications, meanwhile, start with a broad picture of what an object is - for example, a chair - and use metaphor and analogy to extend this picture to decide if a given thing is or is not an example of that object.<sup>519</sup> The process of developing prototypical classifications is not necessarily straightforward. A simple definition of a chair, for example, might be ‘something with four legs that people sit on:’ but this definition does not include a lot of chairs<sup>520</sup>; and it does include plenty of ‘not-chairs,’ such as horses. Using a prototypical classification system, therefore, requires an understanding of metaphor. As Jeannette Littlemore et al point out, while it is possible to programme an algorithm to generate metaphors, these remain less useful for humans than human-generated examples.<sup>521</sup>

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<sup>516</sup> Bowker and Star (n 160) 59.

<sup>517</sup> Bowker and Star (n 160) 67.

<sup>518</sup> Bowker and Star (n 160) 62.

<sup>519</sup> Bowker and Star (n 160) 62.

<sup>520</sup> For example, the IKEA office chair I have sat on while writing most of my thesis, which has a central support post on top of a ring of five short horizontal legs, each with a castor.

<sup>521</sup> Jeannette Littlemore and others, ‘What Makes a Good Metaphor? A Cross-Cultural Study of Computer-Generated Metaphor Appreciation’ (2018) 33 *Metaphor and Symbol* 101, 116–8.

## 4.2.2 Categorisation

I will use the term ‘categorisation’ to cover the closely related concept of *naming* the different spaces into which a classification system (discussed in section 4.2.1 above) separates the world. In this, I am drawing on the branch of mathematics termed ‘category theory.’ Developed in the mid-20<sup>th</sup> century,<sup>522</sup> this theory aims to allow communication of ideas between different branches of mathematics - for example, between algebra and topology - by formalising the ideas and developing connections (termed ‘functors’) that allow ideas and proofs to be communicated between branches.<sup>523</sup>

In category theory, the process of what I am calling ‘categorisation’ consists of using *labels* - in the form of singular indefinite noun phrases - to refer to *types*: abstract concepts. For example, the label ‘a car’ is used to refer to the class of cars, each one of which is called ‘a car.’<sup>524</sup> I am generalising this concept to refer not only to mathematical classes but to classification systems as defined above: and will thus use ‘categorisation’ to refer to the process of applying a name to a segment of the world.

### 4.2.2.1 *Considering categorisation from feminist and queer perspectives*

As I have discussed in section 2.3.2.2.3 above, queer theory offers an explicit critique to categorisation as I have described it above. As well as challenging the underpinning classification of the world as I have described in section 4.2.1.1 above, queer theory

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<sup>522</sup> Category theory built on the work of Emmy Noether, a German mathematician who graduated from the University of Erlangen in 1903 despite only being permitted to audit classes. She worked unpaid in the University of Göttingen in the mid-1910s, where her lectures were often advertised under the name of a male colleague, as women were not permitted to teach. In my three years as a mathematics undergraduate, Noetherian rings were the only constructs I learned about that were named for a woman.

<sup>523</sup> David I Spivak, ‘Category Theory for Scientists (Old Version)’ (2013) 9–10.

<sup>524</sup> Spivak (n 530) 23–4.

can also offer a perspective to challenge the homogenising effects of categorisation: assigning all objects (or people, or families) within a particular classification the same label. This is a concern shared by feminist theory: for example, Catherine D'Ignazio and Lauren Klein point out that classification systems (they do not distinguish between classification and categorisation) are inherently reductive.<sup>525</sup>

A queer approach, as Annamarie Jagose explains, also offers space to question “the very notion of the natural, the obvious, and the taken-for-granted.”<sup>526</sup> including how a category is chosen, and the effect that categorisation has on the objects within a given category. This is also a concern shared by social constructionism, as I discussed in section 2.3.2.1.3 above: as Sally Haslanger argues, social constructionist approaches challenge assumptions about what is ‘natural.’<sup>527</sup> Feminist science and technology studies is also concerned with naturalisation: Donna Haraway, for example, analyses how narratives and metaphors - a key part of understanding technologies- risk naturalising understandings of the world.<sup>528</sup>

As Eve Kosofsky Sedgwick argues, we must continue to ask, “how certain categorizations work, what enactments they are performing and what relations they are creating, rather than what they essentially mean.”<sup>529</sup> Applying a queer analysis to categorisation requires that we make these categorisations visible, as Noah Tsika points out, in order to identify their constraints.<sup>530</sup> For categorisations of individuals, it

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<sup>525</sup> D'Ignazio and Klein (n 10) 22.

<sup>526</sup> Jagose (n 156) 102.

<sup>527</sup> Haslanger (n 114) 3.

<sup>528</sup> Law (n 77) 37.

<sup>529</sup> Sedgwick (n 180) 83.

<sup>530</sup> Tsika (n 195).

is important to, in the words of Donna Haraway, “feel the friction:”<sup>531</sup> to identify the points where categories conflict, with each other and with the realities of people’s lives.

### 4.3 Doing things with data

In section 3.2 above, I articulated how I use and understand key terms such as ‘data’ and ‘algorithm.’ In this section, I will explore some of the value judgements that are inherent in wider uses of these terms, in particular under what circumstances data is considered to be ‘good.’

#### 4.3.1 What makes data ‘good’?

For Rob Kitchin, ‘good quality’ data is discrete and intelligible; it can be aggregated into datasets; it has metadata (information about the data that can include how its collectors interpreted and implemented different aspects of the world<sup>532</sup>), and it can be linked to other data.<sup>533</sup>

This ‘good quality’ data is often conceived in the form of ‘tabular data:’<sup>534</sup> a 2-dimensional table, with rows and columns. For example, one dataset familiar to many data science students<sup>535</sup> is the Iris dataset, drawn from a 1936 paper: it contains 50 observations with five variables each: petal length, petal width, sepal length, sepal

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<sup>531</sup> Haraway, ‘Cyborgs, Coyotes and Dogs’ (n 196).

<sup>532</sup> Nadine Schuurman, ‘Database Ethnographies Using Social Science Methodologies to Enhance Data Analysis and Interpretation’ (2008) 2 *Geography Compass* 1529, 1538.

<sup>533</sup> Kitchin (n 230) 1.

<sup>534</sup> Though not always. Data can also be in the form of images, or of unstructured text, for example.

<sup>535</sup> This dataset appears in dozens, if not hundreds, of introductory courses, tutorials and blog posts on machine learning. It is cited in more than three hundred and fifty papers. See ‘Iris’ (*UCI Machine Learning Repository*, 1 July 1988) <<https://archive-beta.ics.uci.edu/ml/datasets/iris#Attributes>> accessed 15 August 2022. This data is drawn from a 1936 paper which appeared in a journal called *Annual Eugenics*. Data and statistics have a long history of being used for political purposes, including unpleasant ones, as I have discussed in Chapter 3. I will discuss eugenic ideas and their influence on conceptions of families in Chapter 5.

width, and class of flower.<sup>536</sup> Each observation is a single, different flower, of which 5 properties have been observed. This is discrete – no two observations look at the same flower, no petal or sepal belongs to more than one (or fewer than one) flower. It is a classification, as I have described in section 4.2.1 above: a separation of the world, into 250 boxes (and an implicit 251<sup>st</sup> box marked ‘other,’ which holds everything not deemed relevant about these irises – the number of leaves, the lengths of their roots, the colour of their petals – as well as everything else in the world.)

*“there is a tendency to think that data emerges as a byproduct of life and neatly orders itself, but the data always needs some level of processing, [not just] the data itself but also the schema of the data, it needs to be understood and tested” – former user researcher for a children’s charity<sup>537</sup>*

The dataset is intelligible with the help of its metadata. The metadata tells users that the numbers in the dataset are measurements in centimetres,<sup>538</sup> for example, instead of inches or metres. This metadata also allows us to link it to other data: if we have another dataset with a new set of observations of some or all of the variables, we can analyse both together if we know that they are measuring the same things (and even if they use different measurements, we will know what conversion factor to apply).

Interestingly, Kitchin’s definition does not specify ‘accurate’ or ‘precise’ as part of ‘good quality’ data. All of the criteria he puts forward – discreteness and intelligibility, ability to be aggregated into datasets, presence of metadata, and ability to link together

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<sup>536</sup> RA Fisher, ‘Iris Data Set’ (*UCI Machine Learning Repository*) <<https://archive.ics.uci.edu/ml/datasets/Iris/>> accessed 16 November 2019.

<sup>537</sup> Interview 27 April 2021

<sup>538</sup> ‘Iris’ (n 542).



datasets<sup>539</sup> - could be met by a dataset which contains randomly-generated numbers, for example. It is useful to note, therefore, the ways in which 'big data' can be bad data, as I will do in the following section.

### 4.3.2 Big bad data

As I discussed in section 1.1 above, the term 'big data' came into wide use in the early 2010s,<sup>540</sup> to describe the large volumes of data which were increasingly viewed as a potential source of revenue and insight for public and private sector alike.<sup>541</sup> By 2020, an estimated 228,000 petabytes of data were being transferred through the internet each month.<sup>542</sup> 'Big data' remains a vague term: it has come to stand not only for these quantities of data, but also for a myriad of tools and techniques for processing and sifting through the data and distilling it into outputs.<sup>543</sup> 'Big data' also sometimes refers to taking data that has been collected or generated for one purpose (sometimes termed digital or data 'exhaust'<sup>544</sup>) and reusing or analysing it for a different reason entirely.

These quantities of data are far, far beyond the comprehension, let alone analysis, of individual humans. As early as 2008, data analysts were arguing that so much data was being produced that it would render traditional forms of scientific analysis obsolete, arguing that "with enough data, the numbers speak for themselves."<sup>545</sup> 'Big Data' became a magic word, connoting size but also "objectivity, insight and accuracy."<sup>546</sup>

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<sup>539</sup> Kitchin (n 230) 1.

<sup>540</sup> McFedries (n 2).

<sup>541</sup> McFedries (n 3).

<sup>542</sup> A petabyte is 10<sup>15</sup> bytes of data (see footnote 1). 'Global IP Data Traffic 2016-2021' (*Statista*) <<https://www.statista.com/statistics/499431/global-ip-data-traffic-forecast/>> accessed 15 February 2021.

<sup>543</sup> Yeung (n 242) 505.

<sup>544</sup> Zuboff (n 470).

<sup>545</sup> Anderson (n 5).

<sup>546</sup> Giesecking (n 6).

Decision-makers began to see larger datasets as better and more comprehensive: these datasets were increasingly treated as representative of reality.<sup>547</sup>

However, as I have discussed in section 2.3.2 above, the emerging field of critical data studies has at the same time increasingly challenged assumptions that all data is 'good' data.<sup>548</sup> Rob Kitchin has noted that data is inherently partial: it is a reflection not of the world as it is but of what the collector of that data views as important.<sup>549</sup> A classifier algorithm trained on several well-known and commonly-used image datasets was able to tell the difference between images from different sets: if the datasets were truly all representative of the world at large, this should not have been possible.<sup>550</sup>

As a result, a representation of the world is not necessarily true, nor useful: large data is not necessarily population data,<sup>551</sup> and while statistical calculations on large datasets can lead to statistically significant results, using these results to predict behaviour across a population can still be erroneous.<sup>552</sup> Michael Golebiewski and danah boyd have noted the existence of 'data voids': gaps in data that can reflect bias in society, in data gathering, or that can even be weaponised with malicious intent.<sup>553</sup> Jen Jack Gieseeking argues that a focus on 'big data' may exclude marginalised people

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<sup>547</sup> Dalton, Taylor and Thatcher (n 7).

<sup>548</sup> See for example Laurel Eckhouse and others, 'Layers of Bias: A Unified Approach for Understanding Problems With Risk Assessment' [2018] *Criminal Justice and Behavior* <<https://doi.org/10.1177/0093854818811379>> accessed 1 December 2018., *Tutorial: 21 Fairness Definitions and Their Politics* (2018) <[https://www.youtube.com/watch?time\\_continue=31&v=jlXluYdnyyk](https://www.youtube.com/watch?time_continue=31&v=jlXluYdnyyk)> accessed 3 July 2019.

<sup>549</sup> Kitchin (n 230) 3.

<sup>550</sup> Antonio Torralba and Alexei A Efros, 'Unbiased Look at Dataset Bias', *CVPR 2011* (2011) <<https://ieeexplore.ieee.org/document/5995347>> accessed 2 April 2023.

<sup>551</sup> Daniel A McFarland and H Richard McFarland, 'Big Data and the Danger of Being Precisely Inaccurate' (2015) 2 *Big Data & Society* <<https://doi.org/10.1177/2053951715602495>> accessed 1 February 2019.

<sup>552</sup> McFarland and McFarland (n 558).

<sup>553</sup> Michael Golebiewski and danah boyd, 'Data Voids: Where Missing Data Can Easily Be Exploited' (*Data & Society*, 29 October 2019) <<https://datasociety.net/output/data-voids-where-missing-data-can-easily-be-exploited/>> accessed 11 September 2018.

(who are likely to struggle to be fairly represented in data) and particularly highlights that queer lives, which are fluid but also stigmatised and pathologized, are unlikely to be fully recognised in ‘big data.’<sup>554</sup> On the other hand, as Linnet Taylor has argued, other marginalised people – particularly poor people – may be subjected to more surveillance and therefore overrepresented in data.<sup>555</sup>

Scholars have also criticised the focus on ‘big data’ as the source of authoritative knowledge. Catherine D’Ignazio and Lauren Klein critique the ideology that underpins ‘big data’ projects, coining the term ‘big dick data’ to denote “big data projects that are characterized by masculinist, totalizing fantasies of world domination as enacted through data capture and analysis.”<sup>556</sup> Big data may appear useful: but that does not mean it will yield useful insights. As I will discuss further in section 4.4 below, the output of data analysis is heavily dependent on what data is collected and how it is interpreted: political choices, made by humans.

Data systems require infrastructures: structures into which information is inputted, within which information is stored, and from which information is outputted. Clay tablets recording data about the contents of warehouses containing raw materials for beer in the Sumerian city of Uruk (in what is now southern Iraq) survive from more than five thousand years ago.<sup>557</sup> Other historical infrastructures may have taken the form of knotted strings, or parchment books: more recently, data has been held most commonly in paper records. Since the middle of the 20<sup>th</sup> century, however, the

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<sup>554</sup> Giesecking (n 6).

<sup>555</sup> Linnet Taylor, ‘What Is Data Justice: The Case for Connecting Digital Rights and Freedoms Globally’ (2017) 4 *Big Data & Society* 1, 2.

<sup>556</sup> D’Ignazio and Klein (n 10) 151.

<sup>557</sup> Matt Parker, *Humble Pi: A Comedy of Maths Errors* (Allen Lane 2019) 150–149. This page range is not a typo: the pages in this book are numbered in decreasing order, to the confusion of my referencing software.

infrastructure in data systems has become more and more likely to be computerised. The ways in which computers classify and categorise data information reflect design choices.

#### 4.4 Classification and categorisation in data collection and sharing

In section 4.2 above, following Bowker and Star, I defined a ‘classification’ as a segmentation of the world based on space and/or time,<sup>558</sup> and ‘categorisation’ as the process of applying a name to one or more of these segments of the world. Categorisation is clearly a product of human decision-making: naming is a human practice, and any computerised process for assigning names must draw on human naming conventions.<sup>559</sup> However, so too is classification.

Problems in the real world are very rarely expressed in terms of data, but data-driven systems must, at some point, input and output data. As a result, designers must make choices at every stage of the process: starting from what data to collect and how to clean it, to the choice of training data, to the choice of variables for a model, and how to interpret results. Each of these choices has consequences, but these are not always made explicit.<sup>560</sup> In the following sections, I will discuss the different points and places at which classification and categorisation can enter into data collection and data sharing, and the different kinds of human decisions which influence the choice of both classification: separation of the world – and categorisation: naming those separations.

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<sup>558</sup> Bowker and Star (n 160) 10.

<sup>559</sup> Neural networks trained on lists of names that humans find plausible – for example, cat names - may still not produce names that are themselves plausible. See Shane (n 268) 132–4.

<sup>560</sup> Samir Passi and Solon Barocas, ‘Problem Formulation and Fairness’, *Proceedings of the Conference on Fairness, Accountability, and Transparency* (Association for Computing Machinery 2019) <<http://doi.acm.org/10.1145/3287560.3287567>> accessed 29 January 2019.

#### 4.4.1 Deciding what to collect: conceptualising data infrastructures

The decision to introduce any kind of data collection or data sharing system into a socio(-technical) system is a political one. (I will explore the specific case of data collection and data sharing systems in social services in England in Chapter 5.) Eubanks has noted that new technologies – such as data collection and sharing systems - are often accompanied by “a dangerous form of magical thinking” which assumes that problems and assumptions from the past will be erased with their introduction.<sup>561</sup>

##### 4.4.1.1 *Choosing variables*

In data science, ‘variables’ are the specific information that we choose to collect in the form of data, together with their labels. In the ‘Iris’ dataset mentioned in section 4.3.1 above, the variables for each flower include ‘petal length’ and ‘petal width,’ recorded as numbers. The variables that are included in a dataset are determined by the priorities and choices of those who created the dataset and collected the data, and these are not necessarily the same. Data on forests, for example, collected by wildlife biologists will likely include information on vegetation for animals, while data collected by foresters is more likely to focus on commercial viability of different species:<sup>562</sup> as a result, each group is unlikely to find the other group’s data as useful as data they collected themselves, even if they are looking at the same area of forest.

Collecting data on any given area, therefore, involves choices: driven by personal preference, by resources, or even by legal considerations.<sup>563</sup> As Rob Kitchin has noted

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<sup>561</sup> Eubanks (n 14) 183.

<sup>562</sup> Schuurman (n 539) 1542.

<sup>563</sup> I am grateful to my friend Alex Wilkes (see footnote **Error! Bookmark not defined.**) for pointing out some of the constraints on these choices.

and as I discuss in section 3.2.1 above, ‘data’ should perhaps be called ‘capta’ because it represents what is taken, not what is given.<sup>564</sup> Taina Bucher has noted the importance, in data collection, of identifying variables that accurately represent whatever it is that the collector is trying to measure, stating that “the understanding of data and what it represents, then, is not merely a matter of a machine that learns but also of humans who specify the states and outcomes in which they are interested in the first place.”<sup>565</sup> The specification of these includes specifying variables: in spreadsheets, these are often expressed as column headings.

*“the columns you create in any kind of spreadsheet are boundaries...the creator of any system has the power to make things meet their view of the world” – civil society researcher<sup>566</sup>*

In section 4.3.2 above I discussed some of the challenges with analysing so-called ‘big data’ (defined in section 1.1 above). One of the meanings of ‘big data’ is the reuse of data, often in unexpected ways: this is often touted as one of the benefits of ‘big data’ systems, but it also presents its own challenges.<sup>567</sup> This problem did not emerge only with ‘big data’ the potential dangers of reusing data for multiple purposes was highlighted in the context of employer information systems as early as 1978<sup>568</sup> - but the availability of more and more data has made its reuse more and more popular.

Nadine Schuurman has suggested that datasets should be accompanied by ‘data ethnographies:’ explicit information about the context in which data was collected. She

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<sup>564</sup> Kitchin (n 230) 2.

<sup>565</sup> Bucher (n 252) 25.

<sup>566</sup> Interview 14 January 2021

<sup>567</sup> Philip J Nickel, ‘The Ethics of Uncertainty for Data Subjects’ in Jenny Krutzinna and Luciano Floridi (eds), *The Ethics of Medical Data Donation* (Springer International Publishing 2019) 58–62 <[https://doi.org/10.1007/978-3-030-04363-6\\_4](https://doi.org/10.1007/978-3-030-04363-6_4)> accessed 23 March 2020.

<sup>568</sup> Simitis (n 332) 722–3.

argues that this would make visible areas of semantic instability: for example, when different disciplines use the same term to designate different variables, and help to clarify how well datasets can – or cannot – be useful in different contexts from the ones in which they were collected.<sup>569</sup>

A particular challenge in reusing information that was captured for a different purpose is that volume is not equivalent to usefulness: if the data that you have is not relevant to the question you are asking, it does not matter how much of it you have.

*“Using more and more hay doesn’t help you find better needles” –  
civil society activist<sup>570</sup>*

This is not only true for data which is commonly thought of as ‘big data:’ it is also true for smaller datasets. When it comes to people, data that has been collected on individuals for one purpose may not necessarily be useful for other purposes. I will discuss the specific motivations for collecting children’s social care data in Chapter 5.

The decisions about which variables to use – which areas of data to collect – might be made by those who commission systems, or based on existing data: or they may be made by computer programmers, as I will discuss in the following section.

#### 4.4.1.2 ***Building software: computer programmers***

The computer scientists who have the expertise to build data systems are not representative of the population in general.<sup>571</sup> As the AI Now Institute has noted that employees at tech companies tend to be white, male, and rich, and called for more

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<sup>569</sup> Schuurman (n 539).

<sup>570</sup> Interview 25 May 2021

<sup>571</sup> UNESCO and EQUALS Skills Coalition, ‘I’d Blush If I Could: Closing Gender Divides in Digital Skills through Education’ (EQUALS Skills Coalition 2019) <<https://unesdoc.unesco.org/ark:/48223/pf0000367416.page=85>> accessed 30 August 2019.

diversity in the field, above and beyond tokenistic efforts or solutions that narrowly focus on the pipeline of incoming workers.<sup>572</sup> In the UK, 17% of tech workers are women (compared to 25% in the US and in parts of Europe).<sup>573</sup>

Historically, tech workers may, as Cathy O’Neil has pointed out, have thought of themselves as technicians who do not need to consider the outcomes of their work,<sup>574</sup> although growing awareness of the potential for damaging effects has made some of them more conscious of the possibilities of harm. Data can also have an ‘othering’ effect: those who collect or work on data may not be represented within it.<sup>575</sup> As Sasha Costanza-Chock notes, designers make assumptions about who their users are and frequently default to privileged or dominant groups.<sup>576</sup> In the private sector, computer scientists may work on projects that they themselves will use: but the designers of public sector systems may not be impacted by their operations. I will discuss specifically the position of computer scientists, developers and programmers in children’s services in section 5.7 below.

#### 4.4.2 The source of the data: collecting data

Data systems require data, by definition. Yet even once the scope of data collection has been decided – as I discuss in section 4.4.1 above, this could be through the reuse of existing datasets, or the creation of new datasets according to decisions made by humans – there remains human involvement in the collection of this data.

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<sup>572</sup> Sarah Myers West, Meredith Whittaker and Kate Crawford, ‘Discriminating Systems: Gender, Race, and Power in AI’ (AI Now Institute 2019).

<sup>573</sup> ‘Women in Data Science and AI Overview Report - Executive Summary’ (The Alan Turing Institute 2019).

<sup>574</sup> Upchurch (n 305).

<sup>575</sup> Dalton, Taylor and Thatcher (n 7) 4.

<sup>576</sup> Sasha Costanza-Chock, ‘Design Justice: Towards an Intersectional Feminist Framework for Design Theory and Practice’, *Proceedings of the Design Research Society 2018* (2018) <<https://papers.ssrn.com/abstract=3189696>> accessed 18 June 2018.



While the designers of tech systems in general may be privileged or working (implicitly or explicitly) in the interests of privileged groups, many technologies rely on hand-labelled data, which may be outsourced to overseas contractors.<sup>577</sup> D'Ignazio and Klein have argued for feminist principles in the use of data, in particular making visible under-valued forms of labour such as data entry work.<sup>578</sup>

#### 4.4.2.1 **Data about individuals: collection or surveillance**

Some datasets about individuals are representative population studies: many are not. When it comes to datasets about individuals, the gaps in data are not distributed at random: many datasets over- or underestimate different groups of people.

In 1988, Roger Clarke coined the term 'dataveillance' to refer to "the systematic use of personal data systems in the investigation or monitoring of the actions or communications of one or more persons."<sup>579</sup> Clarke envisaged two forms of dataveillance: the investigation of already identified individuals through data related to them, and 'mass dataveillance:' the use of data to find individuals of interest.<sup>580</sup> By 2014, Rob Kitchin and Tracey Lauriault had expanded the definition to "the sorting and sifting of datasets in order to identify, monitor, track, regulate, predict and prescribe:"<sup>581</sup> instead of using dataveillance as a tool to find individuals of interest, it is now an indiscriminate method in itself. Some people, however, are more subjected to dataveillance than others.

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<sup>577</sup> Dave Lee, 'Why Big Tech Pays Poor Kenyans to Programme Self-Driving Cars' *BBC News* (3 November 2018) <<https://www.bbc.com/news/technology-46055595>> accessed 7 November 2018.

<sup>578</sup> D'Ignazio and Klein (n 10) 180–1.

<sup>579</sup> Roger Clarke, 'Information Technology and Dataveillance' (1988) 31 *Communications of the ACM* 498, 499.

<sup>580</sup> Clarke (n 620) 502.

<sup>581</sup> Kitchin and Lauriault (n 86) 11–12.

Some scholars have argued that data systematically underrepresents certain groups and therefore governments should increase their participation in digital systems.<sup>582</sup> This is not without risk, however: for example, a focus group with sex workers in Amsterdam found that the ‘datafication’ of the city – the collection of data in public and private contexts - put them at risk, as it conflated their working identities with their legal identities.<sup>583</sup>

The idea of inclusion in a dataset, therefore, is inextricable from ideas of privacy. The right to privacy is a fundamental human right (as I have discussed in section 3.3.1.3 above), but it is one that is easier to access for some people than for others: and causes more harm for some than others, if the right has been violated. In particular, the closer someone is to dominant ‘norms’ of society, the less they have to fear from having information about themselves revealed.<sup>584</sup> Conversely, those who are perceived as defying these norms in some way may be put more at risk.

Increasing capacity for dataveillance also increases the risk that it will be used coercively. Virginia Eubanks points out that minoritized individuals and groups face higher levels of surveillance when they access public benefits.<sup>585</sup>

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<sup>582</sup> See for example Michal Saliternik, ‘Participation in Global Governance in the Age of Big Data’ (Cambridge International Law Journal 8th Annual Cambridge International Law Conference: ‘New Technologies: New Challenges for Democracy and International Law’, University of Cambridge, 20 March 2019).

<sup>583</sup> Shazade Jameson, Christine Richter and Linnet Taylor, ‘People’s Strategies for Perceived Surveillance in Amsterdam Smart City’ [2019] *Urban Geography* 1.

<sup>584</sup> Anja Kovacs, ‘Gendering Surveillance: An Introduction’ (*Gendering Surveillance*, February 2017) <<https://genderingsurveillance.internetdemocracy.in/intro/>> accessed 30 March 2018.

<sup>585</sup> Eubanks (n 14) 6–7.

#### 4.4.3 For sense-making: using data collection and sharing systems

Data analysis produce outputs. In many operational cases where these data collection systems are used in social services, these outputs are classifications.

Sometimes the classification is obvious, and is attached to a hierarchic categorisation. For example, in Austria, an algorithm is used to sort unemployed workers into three groups, termed A, B and C. Individuals in group C receive specialised resources, because they are deemed to have a low chance of finding work; individuals in group A receive few resources because they are deemed to have a high chance, leaving Group B to be prioritised for employment support.<sup>586</sup> A similar system, which classifies unemployed people into Profiles I, II and III, is in use in Poland.<sup>587</sup> The categorisation in both cases is abstract, but hierarchical: interestingly, both implicitly cast as ‘top’ (A or I) not those who will receive most support, but those who are deemed to be most capable of finding work. In both cases, the category reflects an underlying numerical score generated by an algorithm: in Poland, it is based on 24 questions in a questionnaire and data from the labour office, which are used to generate a points score.

In other cases, the classification may be more implicit, but still accompany a categorisation. For example, a report on the UK’s “Troubled Families” programme published in 2017 highlights the use by local authorities in Bristol of a database and predictive analytics to identify families who are “most likely to experience difficulties if

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<sup>586</sup> Paola Lopez, ‘Reinforcing Intersectional Inequality via the AMS Algorithm in Austria’ (2019) Preprint.

<sup>587</sup> Jędrzej Niklas, Karolina Sztandar-Sztanderska and Katarzyna Szymielewicz, ‘Profiling the Unemployed in Poland’ (Panoptikon Foundation 2015) <<https://en.panoptikon.org/articles/profiling-unemployed-poland-%E2%80%93-report>> accessed 13 August 2019.

early intervention is not provided.”<sup>588</sup> I will discuss this programme in more detail in Chapter 7: here I note that the categorisation is binary, and splits the set of families into those who meet this definition, and those unidentified families who implicitly, do not.

A third possibility is where both the classification and categorisation are implicit: for example, assigning a points score to an individual or group implicitly splits the set of individuals being classified by score. While some numerical scales may appear continuous, we know (as discussed in section 0 above) that in practice, each score will be given to a finite number of significant figures.<sup>589</sup>

#### 4.4.3.1 *Interpreting outputs*

Once a categorisation – whether a grade, a score, or a list of database entries - has been produced by data analysis, it is likely to be interpreted by a human. These systems are often termed ‘human-in-the-loop:’ systems which suggest possible actions but which require human consent to enact those actions.<sup>590</sup>

This human involvement is considered a safeguard, including in the EU’s General; Data Protection Regulation (GDPR),<sup>591</sup> and in some systems, a human caseworker is explicitly included for accountability.<sup>592</sup> This is at least in part for reputational reasons:

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<sup>588</sup> Department for Communities and Local Government, ‘Supporting Disadvantaged Families: Troubled Families Programme 2015-2020: Progress so Far’ (2017) 17.

<sup>589</sup> This is true for scores that are given in integer form, for example scores from the set {1,2,3,4,5}, as well as for scores that are expressed in decimals or fractions: in practice, a score of 2/3 will be stored in a computer rounded to the available number of significant figures, for example 0.666667.

<sup>590</sup> Human-in-the-loop systems are distinct from ‘human-on-the-loop’ systems - which are monitored by humans and which take actions unless humans intervene - and from ‘human-out-of-the-loop’ systems where actions are taken without any human monitoring, in the form of automated decision-making. See Wieringa (n 253) 3–4.

<sup>591</sup> Guido Noto La Diega, ‘Against the Dehumanisation of Decision-Making. Algorithmic Decisions at the Crossroads of Intellectual Property, Data Protection, and Freedom of Information’ (2018) 9 JIPITEC 3, 16.

<sup>592</sup> Lopez (n 627).

high-profile cases of failure in “algorithmic decision-making” have eroded trust in decisions made based on data, particularly in the public sector.<sup>593</sup> ‘Human-in-the-loop’ systems have, however, been criticised for not necessarily alleviating concerns about data-driven decision-making.<sup>594</sup> Virginia Eubanks has noted that computational scoring systems may cause human workers to question their own judgement.<sup>595</sup> Human workers may not feel able to challenge a data-driven classification, even if it clashes with their own professional judgements. The Information Commissioner’s Office, the UK’s information rights regulator and national data protection authority, identifies two biases which may be prompted by the use of data-driven systems: ‘decision-automation bias,’ in which users are overconfident in the outputs of a system, and ‘automation-distrust bias,’ in which users disregard outputs due to scepticism or distrust.<sup>596</sup>

Batya Friedman and Helen Nissenbaum have outlined ways in which computer systems can be biased: including ‘emergent bias:’ bias that emerges in the context of use, usually some time after the design of the system has been completed. This can emerge from developments in society that are not incorporated into the system (sometimes called ‘concept drift’<sup>597</sup>), from mismatch between assumed and actual users, from assumptions about the knowledge base of users that are not borne out in

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<sup>593</sup> See for example Louise Amoore, ‘Why “Ditch the Algorithm” Is the Future of Political Protest’ *The Guardian* (London, 19 August 2020) <<http://www.theguardian.com/commentisfree/2020/aug/19/ditch-the-algorithm-generation-students-a-levels-politics>> accessed 16 February 2021.

<sup>594</sup> McGregor, Murray and Ng (n 55) 317.

<sup>595</sup> Eubanks (n 14).

<sup>596</sup> ICO and The Alan Turing Institute, ‘Explaining Decisions Made with AI’ (ICO 2022) 81–2 <<https://ico.org.uk/for-organisations/guide-to-data-protection/key-dp-themes/explaining-decisions-made-with-artificial-intelligence/>> accessed 26 January 2023.

<sup>597</sup> David Leslie, ‘Understanding Artificial Intelligence Ethics and Safety: A Guide for the Responsible Design and Implementation of AI Systems in the Public Sector’ (The Alan Turing Institute 2019) 15 <<https://zenodo.org/record/3240529>> accessed 13 January 2020.

reality, or when the users of the system have different values from those that the designers assumed.<sup>598</sup> Safiya Noble has also noted that the context within which information is received is crucial: this is particularly relevant for algorithmic decision-making in which humans make a decision informed by an algorithmic output.<sup>599</sup>

In addition, many data systems employ thresholds: these are clear lines between one part of a classification and another. In section 4.2.1.2 above, I described different types of classification: practical, prototypical and Aristotelian. Aristotelian classification – which assesses whether an entity either presents, or does not present, a set of binary characteristics - has been implemented in some classification algorithms. For example, a common algorithmic technique called logistic regression uses a threshold to split data into two classes: above or below that threshold. A more complicated type of algorithm, called Support Vector Machines (SVMs), separates data points into two classes, based on their representation as vectors<sup>600</sup> in a multi-dimensional space: the class of a particular point is determined by which side of a hyperplane<sup>601</sup> it falls.<sup>602</sup>

However, even if the SVM threshold or hyperplane is determined by the algorithm, this is still based on human decisions: humans set success criteria and tolerances, and choose how to represent data as points. Even in more complicated algorithms, such

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<sup>598</sup> Batya Friedman and Helen Nissenbaum, 'Bias in Computer Systems' (1996) 14 ACM Transactions on Information Systems 330.

<sup>599</sup> Noble (n 294) 149.

<sup>600</sup> The mathematical object 'vector' extends the idea of two-dimensional coordinates into multi-dimensional space: it is a way of plotting data that has multiple different variables on a multi-dimensional graph.

<sup>601</sup> A line splits a 2-dimensional plane into two areas, while a plane splits a 3-dimensional space into two spaces. The mathematical object 'hyperplane' extends this idea to higher dimensions: an (N-1)-dimensional hyperplane splits an N-dimensional space into two spaces.

<sup>602</sup> Keith McNulty, 'A Lay-Person's Guide to the Algorithm Jungle' (*Medium*, 16 July 2019) <<https://towardsdatascience.com/a-lay-persons-guide-to-the-algorithm-jungle-2bc77dc30faf>> accessed 15 January 2021.

as neural-network algorithms,<sup>603</sup> the success criteria are set by humans. When exploring the nature of classification and categorisation, then, it is important to keep in mind that these are strongly influenced - if not entirely the result of - decisions made by humans, with human agendas and interactions.

When it comes to public services, these thresholds are political decisions: consider for example income-related benefits, which are only available to people earning under a certain income in many countries. This is further complicated by the fact that some thresholds are based on legal standards, which are hard to compute: for example, the definition of 'child in need.'<sup>604</sup> The decisions about how to encode these are taken by designers and engineers, and may not be clear or transparent.

#### 4.4.3.2 ***The 'looping effect'***

The process of categorisation does not only label individuals: it also, in some sense, creates them. Ian Hacking has argued that the process of categorisation<sup>605</sup> interacts with the people who are affected by this categorisation in a 'looping effect': the categorisation is reified through a cycle of self-identification with a term, application of the categorisation within bureaucracies, knowledge generation about the categorised group, and expert concretisation.<sup>606</sup> Individuals who do not fit within a classification or categorisation system experience a 'torquing' effect.<sup>607</sup> Classification systems fit some

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<sup>603</sup> Modelled after the network of neurons observed in the brains of mammals, these algorithms feed inputs through a model which acts as a network of connected nodes. These algorithms 'learn' by changing the connections ('weights') between the neurons, and as a result varying the outputs. See Bernhard Mehlig, 'Introduction', *Machine Learning with Neural Networks: An Introduction for Scientists and Engineers* (1st edn, Cambridge University Press 2021).

<sup>604</sup> Leslie and others (n 39) 16.

<sup>605</sup> Hacking uses the term 'classification' to mean what I have here termed 'categorisation': I am using the latter term for consistency with the rest of the chapter.

<sup>606</sup> Ian Hacking, 'Kinds of People: Moving Targets', *Proceedings of the British Academy, Volume 151, 2006 Lectures* (British Academy 2006).

<sup>607</sup> Bowker and Star (n 160) 223.

lives better than others: some people can exist smoothly within them, while for others, their failure to 'fit' both illustrates and exacerbates the problem of being outside the systems of power that create categorisations. Data can also have an 'othering' effect: those who collect or work on data may not be represented within it.<sup>608</sup>

This bureaucratic effect is not neutral: it incorporates the biases and assumptions of the different systems and institutions, and reinforces them through the cycle.<sup>609</sup> Within children's social care systems, these biases and assumptions may already be in place in the form of stigma: concretising and labelling families as 'problem,' 'high-risk' or 'Troubled' may in itself alter how families see themselves, and how they are seen by the systems within which they interact. These systems risk perpetuating and cementing existing hierarchies.<sup>610</sup> In addition, as forms of infrastructure, may become 'naturalised.'<sup>611</sup> This may happen through differing treatment: within data collection systems, it may be as simple as a label in a database that is difficult to remove.

#### 4.4.3.3 ***Operationalising 'fairness'***

It is also useful to consider what is actually examined when assessing data collection systems, and the classifications and categorisations that they produce, for 'fairness.' In law, 'fair' decisions are linked to equality, but in computer science, 'fairness' is a technical concept, linked to the statistical concept of 'unbiasedness.'<sup>612</sup> Statistical bias is defined narrowly as the difference between an estimator's expected value and the true value:<sup>613</sup> in other words, the difference between what is actually happening in the

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<sup>608</sup> Dalton, Taylor and Thatcher (n 7) 4.

<sup>609</sup> Abeba Birhane, 'Algorithmic Colonization of Africa' (2020) 17 SCRIPTed 389, 406.

<sup>610</sup> Couldry and Mejias (n 233) 144–9.

<sup>611</sup> D'Ignazio and Klein (n 10) 104.

<sup>612</sup> Sofia Olhede and Patrick Wolfe, 'When Algorithms Go Wrong, Who Is Liable?' (2017) 14 Significance 8.

<sup>613</sup> *Tutorial: 21 Fairness Definitions and Their Politics* (n 555).



world and what a statistical model (which by necessity must be simpler than the world) predicts should happen.<sup>614</sup>

Laurel Eckhouse et al have identified what they call “three layers of bias” in algorithmic decision-making but which might more clearly be understood as three levels of fairness: is the model fair? Is the data used to build a model fair? And is it fair to make decisions about individuals based on groups?<sup>615</sup> Selbst et al go further, proposing five problems – which they term “traps” – which algorithmic systems could fall into and thereby become unfair: using their methodology, it is necessary (but perhaps not sufficient) that for a particular kind of algorithmic decision-making problem, the makers analyse whether a technical solution is appropriate for the problem, and ensure that the proposed solution doesn’t shift the problem itself, can handle social constraints, can model the context appropriately, and includes the relevant actors.<sup>616</sup>

As a result, implementers – and auditors - of data systems must make a decision about what is considered ‘fair’. As discussed in section 4.3 above, this can include making sure datasets are a ‘fair’ representation of the situation under analysis.<sup>617</sup> It can also include trying to ensure ‘fairness’ in outcomes from data systems: in practice, this means trying to ensure that outcomes - and errors - are evenly distributed among different groups of people.<sup>618</sup> Arvind Narayan has noted that it is “surprisingly

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<sup>614</sup> Vishal Maini, ‘Machine Learning for Humans, Part 2.1: Supervised Learning’ (*Medium*, 19 August 2017) <<https://medium.com/machine-learning-for-humans/supervised-learning-740383a2feab>> accessed 13 February 2019.

<sup>615</sup> Eckhouse and others (n 555).

<sup>616</sup> Selbst and others (n 80).

<sup>617</sup> Government Digital Service and Office for Artificial Intelligence, ‘A Guide to Using Artificial Intelligence in the Public Sector’ (*GOV.UK*, 2019) <<https://www.gov.uk/government/collections/a-guide-to-using-artificial-intelligence-in-the-public-sector>> accessed 13 January 2020.

<sup>618</sup> Leslie and others (n 39) 48.

common”<sup>619</sup> for computer scientists to believe that statistical bias is an adequate criterion for whether an algorithm is biased: even though an statistically-unbiased algorithm can clearly be harmful in some situations, and that harm may not be evenly distributed.<sup>620</sup>

The oft-cited ProPublica investigation into discrimination in software designed to predict recidivism<sup>621</sup> looked specifically at discrimination against black people. The Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) algorithm did not include explicit information about an individual’s race. Analysis by the state of New York looked at its performance across the entire probation population in the state and found it to be “both effective and predictively accurate.”<sup>622</sup> testing by Northpointe, the company which developed the COMPAS algorithm itself, did not systematically look at racial or gender disparities, although it did find that predictive accuracy was similar for white men and for African-American men.<sup>623</sup> Nonetheless, it was designed, distributed and used without testing whether it gave higher scores to black people. ProPublica found that it did: using a different method of analysis, they found that the recidivism risk for black people was generally lower than the COMPAS algorithm predicted, and for white people, generally higher.<sup>624</sup>

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<sup>619</sup> Tutorial: 21 Fairness Definitions and Their Politics (n 555).

<sup>620</sup> Micah Altman, Alexandra Wood and Effy Vayena, ‘A Harm-Reduction Framework for Algorithmic Fairness’ (2018) 16 IEEE Security & Privacy 34, 39–40.

<sup>621</sup> Angwin and others (n 47).

<sup>622</sup> Sharon Lansing, ‘New York State COMPAS-Probation Risk and Need Assessment Study: Examining the Recidivism Scale’s Effectiveness and Predictive Accuracy’ (Division of Criminal Justice Services, Office of Justice Research and Performance 2012) Criminal Justice Research Report.

<sup>623</sup> Tim Brennan, William Dieterich and Beate Ehret, ‘Evaluating the Predictive Validity of the Compas Risk and Needs Assessment System’ (2009) 36 Criminal Justice and Behavior 21.

<sup>624</sup> Jeff Larson and others, ‘How We Analyzed the COMPAS Recidivism Algorithm’ (*ProPublica*, 23 May 2016) <<https://www.propublica.org/article/how-we-analyzed-the-compas-recidivism-algorithm>> accessed 16 July 2019.

The example of COMPAS demonstrates that even considering only numerical measures of fairness, there are multiple possible choices and definitions: and an implementation that is 'fair' on one group may not be fair on another. In fact, these numerical definitions of fairness almost always contradict each other.<sup>625</sup> As a result, there are different ways to define a 'good' outcome<sup>626</sup> and the choice made by a designer or implementer as to which one to implement is not a neutral choice.

Complicating the concept of 'fairness' still further, grouping people for the purpose of fairness assessment is a form of classification. Not only do implementers have to choose how to assess fairness, but since many of the numerical definitions require groups, implementers must choose which groups to compare, and know which people fall into which groups.

## 4.5 Conclusion

In this chapter, I have examined the ways in which classifications – temporal and/or spatial segmentations of the world – and categorisations – namings of those segments – enter into computer systems. In particular, I have argued that all classifications and categorisations take place as a result of human decisions: but these decisions are made by different actors, at different stages, with different levels of consultation and different participation. I have also drawn attention to how classification and categorisation can be 'naturalised' - treated as natural and unchangeable – particularly in the development of hardware and software, even though these infrastructures are the result of human decisions.

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<sup>625</sup> *Tutorial: 21 Fairness Definitions and Their Politics* (n 555).

<sup>626</sup> Olhede and Wolfe (n 653).

In order to render the specifics of individual lives machine-readable, data systems implement classification and categorisation. As a result, designers and users of data collection and sharing systems must recognise the limits of what they can do, and of what they are designed to do. Anyone involved in the process of conceptualising, designing, implementing and/or evaluating a data collection and sharing system must recognise that they are making choices at every stage, and that those choices have consequences, including the risk of reproducing both harmful biases and systematic inequalities. In the next chapter, I will examine how these classifications and categorisations are specifically built into the data collection and sharing systems used in children's social care.

## Chapter 5 The emergence of data collection and sharing in children's and family social service systems in England

### 5.1 Introduction

The meaning of 'social services' has shifted over time and varies in different places. In this chapter, I will use what Flavia Martinelli calls a 'narrow' definition of social services: "services for the care, protection and inclusion of children and minors, older people, people with mental or physical disabilities, substance abusers, and other vulnerable groups."<sup>627</sup> This 'narrow' definition is in contrast to a broad definition which would also include education, health, housing, and sport and leisure activities, but does not preclude some overlap with these other services.<sup>628</sup>

I have chosen to use the 'narrow' definition in order to focus specifically on the institutions that are deemed responsible for care, protection and inclusion, and the decisions that are made with respect to these aspects of individual lives. In the UK, responsibility for social services and local government has been devolved since the late 1990s.<sup>629</sup> In my analysis, while some of the historical policy and relevant legislation covers other nations of the UK as well, I will focus on law, policy and practice in England.

Under the UN Convention on the Rights of the Child, a child is a "human being below the age of eighteen years unless under the law applicable to the child, majority is

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<sup>627</sup> Flavia Martinelli, 'Social Services, Welfare States and Places: An Overview' in Flavia Martinelli, Anneli Anttonen and Margitta Mätzke (eds), *Social Services Disrupted: Changes, Challenges and Policy Implications for Europe in Times of Austerity* (Edward Elgar Publishing 2017) 13.

<sup>628</sup> Martinelli (n 668) 13.

<sup>629</sup> Cabinet Office and others, 'Guidance on Devolution' (GOV.UK) <<https://www.gov.uk/guidance/guidance-on-devolution>> accessed 2 November 2020.

attained earlier:<sup>630</sup> in UK law, a child is a “person under the age of eighteen,”<sup>631</sup> and social services in England consider a child to be a person who has “not yet reached their 18<sup>th</sup> birthday.”<sup>632</sup> I will, therefore, refer in this chapter to ‘children’s services:’ services provided for the care, protection and inclusion in society of people under the age of 18.

Defining ‘family social services’ is more complex. As I will discuss in Chapter 6, family policy relies on a shifting, ill-defined conception of who belongs to a ‘family.’ As a result, my definition of ‘family social services’ is less concrete: I will consider a broad range of services whose aim is the care, protection and inclusion of families (as opposed to individual adults, or individual children), however (un-)defined the definition may be.

In this chapter, I will discuss the contributing factors which have led to the increased collection and sharing of data in children’s and family social services. First, I will discuss how information has been collected for investigations into child maltreatment and harm. I will then detail how different approaches to managing uncertainty and risk have influenced different approaches to data collection and documentation. I will then discuss how the increased use of data and IT systems is part of broader trends towards digitisation in the UK public sector as a whole. I will explore how children’s services have embraced data analysis, first as a form of longitudinal public health investigation, and then as a way to target and reduce social service provisions. Finally, I will discuss how data collection and sharing has been an integral part of preventative and ‘early intervention’ services for children.

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<sup>630</sup> UN Convention on the Rights of the Child 1989 s 1.

<sup>631</sup> Children Act 1989 s 105(1).

<sup>632</sup> HM Government, ‘Working Together to Safeguard Children: A Guide to Inter-Agency Working to Safeguard and Promote the Welfare of Children’ (HM Government 2018) 102.

In this chapter (as well as in subsequent chapters), I will draw on my fieldwork, as described in Chapter 2. I interviewed a range of people connected to children's social care data: as social workers, local government employees, or civil society groups with an interest in data.<sup>633</sup> The quotes I use below draw on these interviews to supplement my broader research. They are not definitive findings, but rather representations of how the individuals I spoke to saw the systems with which they worked or which they observed. Each of these individuals has a different standpoint: as I discussed in section 2.3.2.1.1 above, these are each what Donna Haraway calls "partial, locatable, critical knowledges."<sup>634</sup> Instead of pursuing a single 'objective' viewpoint, I draw on these interviews to provide additional perspectives on the many elements which make up the data systems in use in children's social care.

### **5.1.1 Classification, categorisation and limitations in children's social care data**

In Chapter 4, I discussed my use of Geoffrey Bowker and Susan Leigh Star's definition of a classification as "a spatial, temporal, or spatio-temporal segmentation of the world,"<sup>635</sup> and my use of 'categorisation' to describe the naming of these segmentations. In particular, I identified three areas in which classification and categorisation can enter into data systems: in the conceptualisation and design of the systems (section 4.4.1); in the collection of data itself (section 4.4.2); and in sense-making (section 4.4.3)

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<sup>633</sup> In total, I carried out 18 interviews with individuals who work (or have worked) with data in children's social care in England: as local authority workers (7 individuals), as members of civil society organisations (9 in total), or as academics (2 in total).

<sup>634</sup> Haraway, 'Situated Knowledges' (n 105) 584.

<sup>635</sup> Bowker and Star (n 160) 10.

In this chapter, I will also discuss the different points and places at which classification and categorisation can enter into the specific forms of data collection and data sharing used in children's social care. I will consider the different kinds of human decisions which influence the choice of both classification – separation of the world; and categorisation – naming those separations. I will argue that in each case, classifications and categorisations are implemented for specific reasons, and have different effects: but in each case, the classification and categorisations act to make the specifics of individual lives readable by machines. I will also explore some of the limitations of collecting and using this data.

Classification and categorisation in children's social care data systems are inherently influenced by systems of power and privilege that already exist. The emerging field of critical data studies is working, in part, to unpack and make visible these systems. Understanding how and why classifications are used is crucial for understanding how stereotyping enters into data collection and sharing systems at different stages; understanding how classification is used differently in different places allows for the possibility of effective measures to address stereotyping. I will explore the impacts of classification and categorisation on stereotyping – and its subsequent effects – in Chapter 7.

## **5.2 Investigatory data collection: data as evidence**

The 'modern' system of child protection – which considered the risks to children in spaces that included their home – emerged in England in the 1870s and 1880s. Prior



to the 1870s, children had almost no rights within their home, except what was covered by criminal law.<sup>636</sup>

Awareness of the need to protect children in certain spaces *outside the home and family* has a longer history. The need to care for orphans was a concern dating back at least as far back as the Middle Ages,<sup>637</sup> while the 1601 Act for the Relief of the Poor (the 'Elizabethan Poor Law') provided for children to be bound as apprentices if their parents were thought unable to maintain them, in order to prevent them from becoming paupers as adults.<sup>638</sup> The 19<sup>th</sup> century saw the emergence of specific legislation to protect child workers and apprentices, and to separate child offenders from adults,<sup>639</sup> and the Infant Life Protection Act, was passed in 1872 in response to baby-farming scandals.<sup>640</sup> From the 1870s onwards, however, cruelty to children *within homes and families* became the subject of public campaigning and of legislation.

The National Society for the Prevention of Cruelty to Children (NSPCC), which had been founded in the 1880s,<sup>641</sup> collected data in the form of statistics: which it used to demonstrate the scale of cruelty to children, as well as the form that this cruelty took. In its early years, the NSPCC investigated large numbers of cases of abuse – in its first 4.5 years, 523 cases of the nearly 1,200 investigated were assault cases – but its

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<sup>636</sup> Roy Parker, 'A Brief History of Child Protection' in Elaine Farmer and Morag Owen, *Child Protection Practice: Private Risks and Public Remedies* (Stationery Office Books 1995) 4.

<sup>637</sup> Parker (n 677) 3.

<sup>638</sup> 'Poor Law 1601' (*Socialist Health Association*) <<https://www.sochealth.co.uk/national-health-service/health-law/poor-law-1601/>> accessed 14 October 2020.

<sup>639</sup> Parker (n 677) 4.

<sup>640</sup> Taking in of infants in exchange for pay: baby-farmers profited from the death of children in their 'care,' and some were hanged as a result.

<sup>641</sup> The Liverpool Society for the Prevention of Cruelty to Children was founded in 1883, followed by the London Society for the Prevention of Cruelty to Children in 1884: the London Society expanded to 32 branches across England, Scotland and Wales and was formally named the National Society in 1889. See NSPCC, 'A Pocket History of the NSPCC' (NSPCC 2008) 4–7.

focus soon shifted; by 1900 only 16% of its cases dealt with violence, while the majority were cases of neglect.<sup>642</sup>

As well as statistical evidence, the NSPCC collected information about individual cases. NSPCC Inspectors were tasked with identifying and intervening in cases of abuse and/or neglect. By the start of the 20<sup>th</sup> century, the NSPCC had 163 inspectors:<sup>643</sup> the majority were former policemen<sup>644</sup> (the first female inspectors were not appointed until the First World War<sup>645</sup>). NSPCC inspectors were expected to record their investigations in great detail: not just that a child was dirty, for example, but in what way.<sup>646</sup>

In 1889, the Prevention of Cruelty to, and Protection of, Children Act was passed: it criminalised ill-treatment, neglect, and abandonment of children,<sup>647</sup> and allowed courts to remove children out of the custody of the person harming them and into the care of a relative or another 'fit person named by the court.'<sup>648</sup> In practice, children who were removed were often taken to shelters such as those operated by the NSPCC.<sup>649</sup> In 1904, the Prevention of Cruelty to Children Amendment Act allowed NSPCC inspectors to remove a child without police accompaniment.<sup>650</sup>

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<sup>642</sup> Harry Hendrick, 'Providing for the "Children of the Nation", 1880s-1918', *Child Welfare: Historical Dimensions, Contemporary Debate* (1st edn, Bristol University Press 2003) 30  
<<http://www.jstor.org/stable/j.ctt1t898gt.6>> accessed 13 July 2022.

<sup>643</sup> NSPCC (n 682).

<sup>644</sup> Monica Flegel and Professor Claudia Nelson, 'Conclusion: Inspector Stories: The Inspector's Directory and the Cruelty Man', *Conceptualizing Cruelty to Children in Nineteenth-Century England: Literature, Representation, and the NSPCC* (Taylor & Francis Group 2009) 183–4.

<sup>645</sup> NSPCC (n 682).

<sup>646</sup> Flegel and Nelson (n 685) 186–7.

<sup>647</sup> Prevention of Cruelty to, and Protection of, Children Act 1889 s 1.

<sup>648</sup> Prevention of Cruelty to, and Protection of, Children Act s 5(1).

<sup>649</sup> Harry Ferguson, 'The Protection of Children in Time: Child Protection and the Lives and Deaths of Children in Child Abuse Cases in Socio-Historical Perspective' (1996) 1 *Child & Family Social Work* 205, 207–8.

<sup>650</sup> Hendrick (n 683) 29.

Efforts to protect children in the early 20<sup>th</sup> century thus focused on removing children from dangerous situations, using investigations by NSPCC inspectors and the criminal justice system. Child deaths, as Harry Ferguson has argued, were not seen as failures of the system: at a time of high child mortality, these deaths were not necessarily seen as preventable, and increased child death figures in cases documented by the NSPCC were instead seen as indicators that more children were being reached by the nascent child protection system.<sup>651</sup>

### 5.3 Managing uncertainty: data collection to justify and control risk

While the NSPCC had 'Prevention' in its title from the beginning – as did the 1889 Act - this was largely conceptualised as preventing *further* cruelty: by identifying abuse and neglect in the home, and 'reforming' the home to prevent further cruelty.<sup>652</sup> By the 1920s, however, child protection practices had moved from investigations of harm, to practices based on the belief that children could (and therefore should) be protected before harm was done to them.<sup>653</sup> Harm to children was seen as a problem which could be addressed by giving more power to child protection and social services,<sup>654</sup> who were now seen as capable of action that could *prevent* harm to children.

In the following sections, I will explain the development of data collection as a way to assess and manage risk to children. In the early 20<sup>th</sup> century, data was collected on individual cases as evidence for action. As social work practice modernised, practitioners became aware of the ways in which the child protection system itself

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<sup>651</sup> Ferguson (n 690) 207–8.

<sup>652</sup> Hendrick (n 683) 25–6.

<sup>653</sup> Harry Ferguson, 'Protecting Children in New Times: Child Protection and the Risk Society' (1997) 2 Child & Family Social Work 221, 223.

<sup>654</sup> Ferguson (n 694) 223.

could create risks for children: the rise of the 'politics of outrage' at high profile cases of child death led to a system in which documentation again became evidence: in this case, that practitioners and agencies had acted correctly.

### **5.3.1 Justifying intervention in the home: information for coordination**

Preventative interventions expose the tensions inherent in social work - between intervening to protect children, and respecting the autonomy of the home. When a preventative intervention takes place, it is, of course, impossible to prove that a child would definitely have been harmed without that intervention. As a result, there is an element of uncertainty even in the most effective children's services.

From the 1920s, the practice of child protection underwent a process that Harry Ferguson has called 'simple modernisation:' child protection practitioners situated themselves as experts (as opposed to the families with which they worked) and claimed scientific backing for their methods.<sup>655</sup> It is clear that these practitioners – from the NSPCC inspectors in the pre-war period, to the post-war local authority social services discussed below – were positioned as the 'objective observers' criticised by feminist theory, as I have discussed in section 2.3.2.1.1 above. Child deaths were seen as failures which could be remedied by giving more power to these 'objective' investigators.<sup>656</sup>

In the late 1940s, as the post-war British welfare state was being constructed, women's groups renewed their campaigning for the protection of children from neglect and cruelty, and for the state to take on this responsibility to protect.<sup>657</sup> The state was

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<sup>655</sup> Ferguson (n 694) 223.

<sup>656</sup> Ferguson (n 694) 223.

<sup>657</sup> Parker (n 677) 10.

wary, however, of increasing surveillance and becoming a 'family policeman.'<sup>658</sup> The Children Act 1948 had a limited remit: children's departments in local authorities<sup>659</sup> were obliged to treat children *in care* as "individuals deserving of the same care as other children," but had no obligations towards other children within their geographical area.<sup>660</sup> A government working party produced an internal report in 1950 which did not find justification to change policy in the form of evidence that either child neglect or child cruelty were increasing.<sup>661</sup>

### 5.3.2 'Reflexive modernisation:' risks to children from the system itself

The 1950 internal government report did, however, recommend better coordination between the different public and voluntary sector organisations who were involved in protecting children,<sup>662</sup> in what appears to be the first recognition that systemic failings could affect the effectiveness of child protection efforts. Later investigations identified that local responses to both abuse and neglect were in fact patchy and weak: where systems were more robust, they were identifying more children in need of assistance, but local authorities did not have the staff to handle these cases.<sup>663</sup>

In the 1960s, social services departments - which had previously focused only on the children already in their care - started to consider the possibility of intervening *before* a child was taken into care. The Children and Young People's Act 1963 for the first

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<sup>658</sup> Parker (n 677) 10–11.

<sup>659</sup> The specific local government entity responsible for social services varies between areas. In England, the Children Act 1989 uses the term "local authority" to mean "the council of a county, a metropolitan district, a London Borough or the Common Council of the City of London" (S.105(1)).

<sup>660</sup> Nigel Parton, *The Politics of Child Protection: Contemporary Developments and Future Directions* (Palgrave Macmillan 2014) 17.

<sup>661</sup> Parker (n 677) 10–11.

<sup>662</sup> Parker (n 677) 10–11.

<sup>663</sup> Parker (n 677) 10.

time provided for services that aimed to prevent children going into care,<sup>664</sup> and was followed by increases in the number of staff to handle these cases.<sup>665</sup> Local authorities began to integrate their children's services with other parts of their services to create 'family services' staffed by professional social workers: social services departments began to be seen as part of the welfare state, along with (although much smaller than) health, education, social security and public housing, in what Nigel Parton has called "the high point of optimism and confidence in social work."<sup>666</sup>

The 1970s, however saw a shift in the worldview of child protection practitioners: the emergence of what Harry Ferguson calls 'reflexive modernity,' in which institutions engage with their own failings and problems.<sup>667</sup> This period saw the first high profile failure of social services: the killing of Maria Colwell by her stepfather in 1973, and the subsequent independent inquiry, prompted by public pressure. The inquiry attributed responsibility to the 'system,' not individual workers, for her death, and placed particular emphasis on the lack of communication and collaboration between different social care workers.<sup>668</sup>

The following year, the Department of Health and Social Security produced their first circular on the topic, 'Non-Accidental Injury to Children,' which Nigel Parton argues marked the start of the contemporary child protection system in the UK.<sup>669</sup> By 1980, the government guidance had started to use – and define – the term 'child abuse:'

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<sup>664</sup> Parton (n 701) 18.

<sup>665</sup> Parker (n 677) 12.

<sup>666</sup> Parton (n 701) 19.

<sup>667</sup> Ferguson (n 694) 224.

<sup>668</sup> PD Scott, 'The Tragedy of Maria Colwell' (1975) 15 *The British Journal of Criminology* 88.

<sup>669</sup> Nigel Parton, 'The Increasing Length and Complexity of Central Government Guidance about Child Abuse in England: 1974--2010.' (University of Huddersfield 2011) Discussion Paper 5.

according to DHSS guidance, this encompassed physical injury, emotional abuse, neglect, and failure to thrive.<sup>670</sup>

The 1980s also saw a number of public inquiries, both into child deaths, and into cases where social services were deemed to have overreached and intervened in cases where children were not at risk of being harmed.<sup>671</sup> The possibility of social services overreach was made clear in the events of 1987 which came to be called the 'Cleveland Child Abuse Crisis.'<sup>672</sup> 125 children were diagnosed at the Middlesbrough General Hospital as having been sexually abused, based on a diagnosis of 'reflex anal dilation' made by one of two doctors, and removed from their parents: under the legislation at the time, these removals were difficult to appeal, and the sheer number put tremendous pressure on hospitals and social services.<sup>673</sup> While the crisis did identify some cases of sexual abuse, most of the children were later returned to their families.<sup>674</sup> The investigation into the Cleveland Crisis recommended that the child should be treated as "a person not an a object of concern,"<sup>675</sup> and that actions in investigations into child sexual abuse should be carried out in the best interests of the child: which did not always mean removal from the home.<sup>676</sup> The crisis led to a recognition that, even in cases where abuse had taken place, the child protection

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<sup>670</sup> Parton (n 710) 5.

<sup>671</sup> Parton (n 701) 21.

<sup>672</sup> Martin Forster, 'Cleveland Child Abuse Crisis - Twenty Years On' *BBC Tees* (21 May 2007) <[http://www.bbc.co.uk/tees/content/articles/2007/05/21/child\\_abuse\\_feature.shtml](http://www.bbc.co.uk/tees/content/articles/2007/05/21/child_abuse_feature.shtml)> accessed 13 October 2020.

<sup>673</sup> Robert E Rains, 'Protecting Children--and Their Families--From Abuse: The Cleveland Crisis and England's Children Act 1989' (1991) 23 *Case Western Reserve Journal of International Law* 255.

<sup>674</sup> 98 had been returned by 1988. See 'Summary of the Cleveland Inquiry' (1988) 297 *BMJ* 190, 190.

<sup>675</sup> Baroness Butler-Sloss, author of the 1988 *Report of the Inquiry into Child Abuse in Cleveland 1987*, quoted in Eileen Munro, 'The Munro Review of Child Protection: A Child-Centred System' (Department for Education 2011) para 1.8 <<https://www.gov.uk/government/publications/munro-review-of-child-protection-final-report-a-child-centred-system>> accessed 18 May 2020.

<sup>676</sup> 'Summary of the Cleveland Inquiry' (n 715) 191.

system should not compound this abuse,<sup>677</sup> and the introduction of the Children Act 1989.<sup>678</sup>

### 5.3.3 Managing outrage: recording and sharing information to justify decisions

*Content warning: the following section include discussion of specific cases of child abuse and child death.*

The Children Act aimed to balance the two competing aims – of intervening to protect children, and respecting the privacy of families - as well as to “update and rationalize childcare legislation.”<sup>679</sup> It imposes a duty on local authorities to “safeguard and promote the welfare of children within their area who are in need.”<sup>680</sup> A child is considered “in need” if they are unlikely to be able to achieve or maintain a “reasonable standard of health or development”, or their health or development is “likely to be significantly impaired,” if the local authority does not provide services for them, or if the child is disabled.<sup>681</sup>

The Children Act also introduced the term ‘safeguarding,’ though government guidance did not start to use this term until a 1999 paper titled ‘Working Together,’ which located safeguarding within the wider government framework on ‘social exclusion.’<sup>682</sup> Government guidance for assessing children in need, produced the following year, drew attention to three areas – the developmental needs of the child,

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<sup>677</sup> Parker (n 677) 16.

<sup>678</sup> Rains (n 714).

<sup>679</sup> Parton (n 701) 22.

<sup>680</sup> Children Act 1989 s 17(1)(a).

<sup>681</sup> Children Act 1989 s 17(10).

<sup>682</sup> Parton (n 701) ch 6.



parenting capacity, and family and environmental factors – and the linkages between them.<sup>683</sup>

Following the investigation into the death of eight-year-old Victoria Climbié in 2000, responsibility for safeguarding and welfare became broader than just local authorities.<sup>684</sup> The Laming Report into Victoria's death investigated the institutional and management failings of three housing authorities, four social service departments, two police child protection teams, and a specialist NSPCC centre, to investigate and act on the horrific abuse that she suffered. In his recommendations, Lord Laming advised that safeguarding children should become the responsibility of multiple actors: social services, police, health services, and others:<sup>685</sup> he placed particular emphasis on the need for legal frameworks to allow information to be shared between these different actors.<sup>686</sup>

The importance of collecting and sharing information as part of a broader safeguarding responsibility was highlighted in the response to a second child death. 17-month old Baby P – later identified by his family as Peter Connolly - died in August 2007 after suffering a series of horrific injuries throughout his life. The case received considerable media attention, in part because it had taken place in Haringey, the same borough where Victoria Climbié had lived.<sup>687</sup>

A Serious Case Review (SCR) was commissioned by Haringey Local Safeguarding Children Board, in accordance with the procedure set out in the 2006 'Working

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<sup>683</sup> Parton (n 701) ch 6.

<sup>684</sup> Sue Peckover, Christopher Hall and Sue White, 'From Policy to Practice: The Implementation and Negotiation of Technologies in Everyday Child Welfare' (2009) 23 *Children & Society* 136, 136.

<sup>685</sup> Lord Laming, 'The Victoria Climbié Inquiry: Report' (2003) 370.

<sup>686</sup> Laming (n 726) 373.

<sup>687</sup> Parton (n 701) ch 5.

Together' guidance.<sup>688</sup> The SCR report was drafted prior to the criminal trial, in July 2008, but not finalised until criminal proceedings were completed.<sup>689</sup> Peter Connelly's mother, her boyfriend, and his brother were found guilty in 2008 of causing his death.<sup>690</sup>

The SCR was chaired by Sharon Shoemith, then the director of Haringey Children and Young People's Service.<sup>691</sup> While in accordance with the guidelines in use at the time, this meant that the investigation was chaired by the person who had oversight of the service that was under review, creating a perception that the investigation lacked independence and impartiality.<sup>692</sup> The media outcry prompted the government to order urgent reviews, an independent inquiry and a task force.

A second SCR, completed in March 2009, found that the practices of the staff who were in contact with Peter Connelly were in line with practices in the rest of the country, but that "the practice of the majority, both individually and collectively expressed as the culture of safeguarding and child protection at the time, was incompetent and their approach was completely inadequate to meet the challenge presented by the case."<sup>693</sup> The media interpretation included arguments that Labour's Every Child matters programme (see section 5.5 below) had failed,<sup>694</sup> a line also taken by David Cameron,

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<sup>688</sup> Haringey Local Safeguarding Children Board, 'Serious Case Review "Child A": March 2009' (Department for Education 2010) s 1.1.1.

<sup>689</sup> Haringey Local Safeguarding Children Board, 'Serious Case Review "Child A": November 2008' (Department for Education 2010) 1.

<sup>690</sup> 'Timeline of Baby P Case' *BBC News* (8 October 2013) <<https://www.bbc.com/news/uk-11626806>> accessed 22 September 2020.

<sup>691</sup> Haringey Local Safeguarding Children Board (n 730) s 2.2.1.

<sup>692</sup> Polly Curtis, 'The Long Shadow of Baby P' [2019] *Tortoise* <<https://members.tortoisemedia.com/2019/07/06/baby-p/content.html>> accessed 22 September 2020.

<sup>693</sup> Haringey Local Safeguarding Children Board (n 729) s 4.1.

<sup>694</sup> Parton (n 701) ch 5.

then Leader of the Opposition, who framed the case as symptomatic of a 'broken system' in Britain.<sup>695</sup>

Ed Balls, then Secretary of State, ordered Shoemith to be removed from her role.<sup>696</sup> Morale amongst social workers around the country sunk and it became harder to recruit and retain staff.<sup>697</sup> In the midst of a media and policy storm against under-intervening, social workers were more incentivised to act defensively and the number of children taken into care increased dramatically.<sup>698</sup> A former social worker told me about their experience of this defensive practice:

*"Every social worker lives just one step away from a media scandal, you don't want your name to be in the paper. It's wrong to practise like that but it's human – because of what we work with, we work with real shit, very unstable circumstances, it's just luck...the medial picks up [the case of Peter Connolly], bad luck for those social workers...the fear is there, the most powerful way to protect is to create the procedures, professional opinion can be contested...procedures mean you don't have to think" – former family social worker<sup>699</sup>*

The death of Peter Connolly, and the subsequent media attention and public alarm, are emblematic of what Nigel Parton has called a 'politics of outrage:' directed not at the perpetrators of child abuse but at the social workers and systems that are perceived to have failed the children.<sup>700</sup> 'Institutional failure' becomes not only an

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<sup>695</sup> Curtis (n 733).

<sup>696</sup> Nigel Parton and David Berridge, 'Child Protection in England' in Neil Gilbert, Nigel Parton and Marit Skivenes (eds), *Child Protection Systems: International Trends and Orientations* (Oxford University Press 2011) 79–80.

<sup>697</sup> Parton (n 701) ch 5.

<sup>698</sup> Curtis (n 733).

<sup>699</sup> Interview 21 April 2021

<sup>700</sup> Parton (n 701) 11.

explanation of what has happened, but a reason why the event is newsworthy:<sup>701</sup> and for politicians, the scandal provides the opportunity for policy change that might otherwise have been difficult to achieve.<sup>702</sup>

As already discussed, children's social care is a field in which uncertainty is inherent, and social workers must negotiate the tensions between the risks of under-intervening and over-intervening. The Munro Review of Child Protection reports, commissioned by the Secretary of State for Education and published in 2011, found that this politics of outrage had created a defensive system of child protection. A fear that individuals or agencies would be blamed for problems had led to a focus on recording information and documenting process, to the extent that "insufficient attention is given to developing and supporting the expertise to work effectively with children, young people and families."<sup>703</sup>

#### **5.3.4 Social work orientations and attitudes to risk**

*"As a social worker, the feeling is that we are the dam - the social workers are here to see that the shit doesn't spill" – former family social worker<sup>704</sup>*

The social work literature has historically distinguished between different schools of thought when it comes to working with children. Social work orientations influence how preventative services are conceptualised, implemented, and evaluated. At a policy level, these orientations influence how need for children's services – services for the care, protection and inclusion of children – is defined, what kinds of interventions

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<sup>701</sup> Parton (n 701) ch 5.

<sup>702</sup> Parton (n 701) ch 11.

<sup>703</sup> Munro (n 716) 6.

<sup>704</sup> Interview 21 April 2021

should be provided, and to whom. At an individual level, they influence how individual children and families are assessed, and what interventions are deemed appropriate to meet their needs. Social work orientations also influence how risk and uncertainty is handled.

In the following sections, I will discuss different orientations which have affected how uncertainty and risk is handled in children's services in England. This orientation has moved from child protection to child-focused and back, but along the way it has taken in elements of child welfare-, public health- and child rights-orientations, all of which handle risk and uncertainty differently. For the last decade, however, a child protection orientation has predominated: this treats harm to children as an individualised problem, to be investigated in an adversarial way, and focuses on narrow, 'objective' predictors of risk.

#### 5.3.4.1 ***Child protection: the dominant orientation***

The dominant orientation of social work in England has been a child protection orientation. This tends to consider harm to children in the form of specific acts, committed by relatives (usually parents), from which children need to be protected.<sup>705</sup> This orientation focuses narrowly on families that are deemed 'high-risk,' taking a legalistic and investigatory approach that is underpinned by an adversarial relationship between the guardian and the state.<sup>706</sup> This adversarial approach arises from the tensions between respecting the privacy of the family, and protecting children from harms that are done within their own home.<sup>707</sup> I will discuss in more detail the

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<sup>705</sup> Parton (n 701) 5.

<sup>706</sup> Rhys Price-Robertson, Leah Bromfield and Alister Lamont, 'International Approaches to Child Protection: What Can Australia Learn?' (Australian Institute of Family Studies 2014) 4.

<sup>707</sup> Parton (n 701) 7.

conception of these 'high-risk' families, and the wider conception of 'problem' families, in Chapter 6.

This adversarial system demands data: whether it is statistical data that evidences the scale of abuse or neglect, or individual data that is used to justify decisions to a court. In particular, this orientation values expert and/or objective assessment: the opinions and assessments of social workers and other experts are valued above the inputs of parents or children.

#### 5.3.4.2 ***Child welfare: collaboration and support***

A child welfare orientation focuses on long-term prevention of harm and on enabling the potential of the child: it tends to link the best interests of the child to the interests of the family, assessing both strengths and challenges, and is linked to social democratic ideas<sup>708</sup> and ideas of solidarity, and the collective responsibility of the community for creating an environment that cares for children.<sup>709</sup> Also called a family service orientation, this approach places more emphasis on flexible, supportive services, and on a partnership relationship between the state and the guardian of the child.<sup>710</sup> Under this model, child abuse is conceptualised as “a problem of family conflict or dysfunction that arose from social and psychological difficulties but which responded to help and support.”<sup>711</sup> The integration of different systems and service providers requires that data is not only collected, but that it is shared between different providers and entities within a community.

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<sup>708</sup> Keddell (n 34) 2–3.

<sup>709</sup> Parton (n 701) 7.

<sup>710</sup> Price-Robertson, Bromfield and Lamont (n 747) 4.

<sup>711</sup> Parton (n 701) 5.

A child welfare orientation has been documented in other European countries including Denmark, Belgium and Sweden,<sup>712</sup> but has never been properly implemented in the UK. Elements of this orientation can be seen, however, in the focus on data sharing between different entities, as I will discuss further in section 5.5 below; I discuss this in detail as a strategy of the 'Troubled/Supporting Families Programme,' in more detail in Chapter 7.

#### 5.3.4.3 ***Child-focus: producing a productive citizen***

A child-focused orientation reflects the general shift in welfare states towards objectives of investing in human capital, and of producing healthy and productive citizens.<sup>713</sup> A child-focused orientation is concerned with the overall development and wellbeing of the child, and considers the risk of abuse as just one potential factor which might impact on wellbeing.<sup>714</sup> Parton argues that a child-focused orientation emerged in part as a response to the increased recognition of children's human rights and the 1989 UN Convention on the Rights of the Child.<sup>715</sup> The state takes on more involvement in children's lives through the provision of preventative and early-intervention services: the child is deemed to have a relationship with the state independent of its parents and family,<sup>716</sup> but this does not necessarily extend, as it would in a child rights-based approach (discussed in the following section), to fully recognising the agency of the child.

A child-focused approach was documented in countries that had historically favoured either a child welfare or a child protection approach but which were starting to

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<sup>712</sup> Price-Robertson, Bromfield and Lamont (n 747) 3.

<sup>713</sup> Parton (n 701) 9.

<sup>714</sup> Parton (n 701) 9.

<sup>715</sup> Parton (n 701) 9.

<sup>716</sup> Parton (n 701) 9–10.

incorporate elements of the other.<sup>717</sup> In England, this shift from a child protection orientation had started in the 1970s, but despite the Children Act 1989 requiring local authorities to carry out preventative work, the limited availability of resources meant that these services were in practiced rationed and available only to children who were already known to social services.<sup>718</sup>

#### 5.3.4.4 ***A child rights approach: respecting children's agency***

While the emergence of a child-focused orientation was arguably influenced by the UN Convention on the Rights of the Child, it falls short of a child rights approach. In their General Comment 13 on the right of the child to freedom from all forms of violence, the Committee on the Rights of the Child (which oversees the implementation of the Convention on the Rights of the Child) articulated that a child rights approach requires “respecting and promoting the human dignity and the physical and psychological integrity of children as rights-bearing individuals” instead of seeing them only as potential victims of violence or abuse.<sup>719</sup> A child rights approach requires recognising children as individuals with agency,<sup>720</sup> and ensuring that the child is heard and their views are taken into account when decisions that affect them are made.<sup>721</sup> This includes during investigation into violence and abuse, which should be a child-sensitive process that avoids subjecting the child to further harm.<sup>722</sup>

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<sup>717</sup> Parton (n 701) 8.

<sup>718</sup> Alan France and David Utting, ‘The Paradigm of “Risk and Protection-Focused Prevention” and Its Impact on Services for Children and Families’ (2005) 19 *Children & Society* 77, 77–8.

<sup>719</sup> UN Committee on the Rights of the Child, ‘General Comment No. 13 (2011): The Right of the Child to Freedom from All Forms of Violence’ (2011) UN Doc CRC/GC/13 para 3.

<sup>720</sup> Kimberly A Svevo-Cianci and others, ‘The New UN CRC General Comment 13: “The Right of the Child to Freedom from All Forms of Violence” — Changing How the World Conceptualizes Child Protection’ (2011) 35 *Child Abuse & Neglect* 979, 985.

<sup>721</sup> Stuart N Hart, Yanghee Lee and Marie Wernham, ‘A New Age for Child Protection – General Comment 13: Why It Is Important, How It Was Constructed, and What It Intends?’ (2011) 35 *Child Abuse & Neglect* 970, 976.

<sup>722</sup> UN Committee on the Rights of the Child (n 760) para 51.



A child rights approach recognises that children are entitled to fundamental rights as individuals, not simply to welfare provided by benevolent adults.<sup>723</sup> The ultimate goal should be not only to prevent violence and abuse, but to secure a child's health, well-being, and development:<sup>724</sup> not only in the present but also in the child's future.<sup>725</sup> Hart et al argue that a child rights approach can help address some of the weaknesses evident in other child protection system, including the risk of further abuse and retraumatisation within the system, and the stigmatisation of families who are wrongly deemed to be abusive.<sup>726</sup>

The Committee on the Rights of the Child also underlines, in General Comment (GC) 13, the importance of coordination between sectors and urges states to develop national coordinating frameworks to ensure a "common frame of reference."<sup>727</sup> GC 13 further emphasises the importance of data collection and analysis to monitor the implementation of the CRC as a whole and Article 19 in particular, noting that indicators should focus not simply on the absence of violence or abuse but on "the child's positive development and well-being as a rights-bearing person."<sup>728</sup>

CRC General Comment 13 takes as one of its starting assumptions that primary prevention of violence and abuse is paramount.<sup>729</sup> it argues that while states have an obligation to respond to violence that does take place, they are also obliged to ensure

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<sup>723</sup> Hart, Lee and Wernham (n 762) 974.

<sup>724</sup> UN Committee on the Rights of the Child (n 760) para 18.

<sup>725</sup> Hart, Lee and Wernham (n 762) 974.

<sup>726</sup> Hart, Lee and Wernham (n 762) 972.

<sup>727</sup> UN Committee on the Rights of the Child (n 760) para 69.

<sup>728</sup> UN Committee on the Rights of the Child (n 760) para 58.

<sup>729</sup> UN Committee on the Rights of the Child (n 760) para 3.

that caregivers (defined expansively) are able to respect and protect child rights,<sup>730</sup> and that prevention policies are developed on the basis of evidence.<sup>731</sup>

GC 13 also notes the need to identify both resilience and protection factors,<sup>732</sup> and risk factors, including “parental risk factors such as substance abuse, mental health problems and social isolation as well as family risk factors such as poverty, unemployment, discrimination and marginalization.”<sup>733</sup> As Kimberly Svevo-Cianci et al have argued, a child-rights focused approach requires taking into account local settings, local actors, and “local forms of violence, risk and protective factors, and the environmental factors affecting each.”<sup>734</sup> Both prevention activities and assessment of risk factors, therefore, can be consistent with a child rights approach.

A child rights approach is also recognisable in some developments in children's services in England. For example, the Cleveland Child Abuse Crisis in 1987 (discussed in section 5.3.2 above) led both to the introduction of the Children Act 1989,<sup>735</sup> and a recognition that the child protection system should not compound abuse.<sup>736</sup> Subsequent policies focused on safeguarding and recognised that protection was part of this: the Every Child Matters programme included safety from

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<sup>730</sup> UN Committee on the Rights of the Child (n 760) para 46.

<sup>731</sup> Svevo-Cianci and others (n 761) para 47.

<sup>732</sup> Hart, Lee and Wernham (n 762) 977.

<sup>733</sup> UN Committee on the Rights of the Child (n 760) para 72.

<sup>734</sup> Svevo-Cianci and others (n 761) 985–6.

<sup>735</sup> Rains (n 714).

<sup>736</sup> Parker (n 677) 16.

abuse as one component.<sup>737</sup> However, policy in England has yet to adopt a child rights approach.<sup>738</sup>

The Committee on the Rights of the Child has noted that the UK Government continues to violate child rights in specific ways, most recently in the Concluding Observations to the UK's most recent periodic review.<sup>739</sup> In GC 13, for example, the Committee emphasises that crises – including economic crises – should not result in states neglecting child rights, including resources for child protection, and that in fact, support should increase in crisis situations because of the potential for increased harm to children.<sup>740</sup> In the 2016 Concluding Observations on the UK's report, the Committee recommended that the UK conduct child rights impact assessments on the introduction of laws and policies that affect children in general,<sup>741</sup> and on cuts to funding for childcare and family services in particular.<sup>742</sup>

#### **5.4 Modern public services: digitisation and efficiency**

In sections 5.2 and 5.3 above, I have traced the history of how and why information has been collected by social work professionals in the course of children's social care in England. From information as evidence of harm, to collecting data to address risk, to sharing information in order to justify decisions after the fact, social services have

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<sup>737</sup> Parton (n 701) 47–53.

<sup>738</sup> This is in contrast to Scotland, for example, which in September 2020 introduced the UNCRC Incorporation Bill (Scotland) to the Scottish Parliament, which intends to incorporate all possible children's rights into Scottish legislation within the limits of their devolved power. See Scottish Government, 'The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill' (2020) <<https://www.gov.scot/publications/united-nations-convention-rights-child-incorporation-scotland-bill-leaflet/>> accessed 5 November 2020.

<sup>739</sup> Committee on the Rights of the Child, 'Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland' (2016) UN Doc CRC/C/GBR/CO/5.

<sup>740</sup> Svevo-Cianci and others (n 761) 984.

<sup>741</sup> Committee on the Rights of the Child (n 780) para 10.

<sup>742</sup> Committee on the Rights of the Child (n 780) para 51.

increasingly collected and held data about the children and families that they worked with. While initially this data would have been stored in notebooks and paper records, social services – like other public and private sector actors – began to computerise in the last quarter of the 20<sup>th</sup> century. As early as the 1970s, computer information systems in social services proved effective at “administrative attractiveness:” social service agencies using computerised systems appeared to be effectively administered, and so were seen as more legitimate, and therefore more attractive to funders.<sup>743</sup> A local government researcher described their experience of data use as success criteria:

*“it’s quite a long-standing idea [in local government] that we can count everything, and if we count everything we can find an answer...how we consider what success looks like is definitely still a lot to do with how many people did this thing, how many people achieve this outcome...and I suppose it’s maybe an extension of that, isn’t it, we’ve counted all these things to work out if we’re doing a good job or not, what else could we do with that data?” – freelance local government researcher<sup>744</sup>*

#### **5.4.1 Digitisation as modernisation**

Computerised social services have a surprisingly long history: a computerised client data system was being used by social services in a North American city in the 1970s.<sup>745</sup> In the UK, the New Labour government, which came to power in the UK in 1997, instigated a number of modernisation projects in the UK public sector: many of

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<sup>743</sup> Rob Kling, ‘Automated Welfare Client-Tracking and Service Integration: The Political Economy of Computing’ (1978) 21 Communications of the ACM 484.

<sup>744</sup> Interview 8 April 2021.

<sup>745</sup> Kling (n 784).

these relied on the use of information technology systems.<sup>746</sup> The implementation of these systems, however, was notoriously difficult: a 2009 survey found that of 1027 projects, only 130 had been delivered on time, to spec and to cost.<sup>747</sup>

One of these ICT systems was the Integrated Children's System (ICS): comprising a nationally-imposed workflow and a set of electronic forms, it was designed to be implemented by systems created by other vendors.<sup>748</sup> The government departments which oversaw ICS (first the Department of Health, then after a 2001 reorganisation the Department for Children, Schools and Families<sup>749</sup>) claimed that there was evidence for the benefits of this system, but these claims were based on short, non-peer-reviewed studies. The implementation and guidance was led by civil servants and a small group of academics: not one member of the project's steering group was a frontline social worker.<sup>750</sup>

By the time local authorities were no longer required to use ICS, many remaining computer systems had been designed with ICS in mind: the Munro Review of Child Protection found in 2011 that many social workers who contributed to the review "reported that their locally procured computer systems were substantial obstacles to good practice."<sup>751</sup> The Munro review also noted the need for user-centred design in social work IT projects, and recommended the use of socio-technical systems design

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<sup>746</sup> Sue White and others, 'When Policy o'erleaps Itself: The "Tragic Tale" of the Integrated Children's System' (2010) 30 *Critical Social Policy* 405, 407.

<sup>747</sup> White and others (n 787) 408.

<sup>748</sup> White and others (n 787) 408.

<sup>749</sup> White and others (n 787) 413.

<sup>750</sup> White and others (n 787) 416–7.

<sup>751</sup> Munro (n 716) 111.

to develop systems based on the needs of the frontline social workers who would be using them.<sup>752</sup>

This move to digitisation as a form of modernisation has not been limited to the systems used by local authority staff. While the direct experiences of individuals interacting with public services is outside of the scope of this thesis, it is worth noting that the UK has pursued a 'digital by default' strategy for access to these services for the general public since 2014. The strategy has the ambition "to develop digital services that are so straightforward and convenient that all those who can use them will choose to do so."<sup>753</sup> This 'digital by default' strategy has been criticised on human rights grounds, including by the UN Special Rapporteur on Extreme Poverty and Human Rights, who commented that making Universal Credit 'digital by default' created a "digital barrier" that excluded many people from accessing welfare benefits, particularly women, older people, non-English speakers, and disabled people.<sup>754</sup> Nonetheless, the use of digital technologies continues to be seen as innovative in local government, as one freelance researcher pointed out:

*"politically, there can be egos involved...look at us, we're the innovative local authority, we're using new technology, we're groundbreaking" – freelance local government researcher<sup>755</sup>*

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<sup>752</sup> Munro (n 716) 424.

<sup>753</sup> Cabinet Office and Government Digital Service, 'Government Digital Inclusion Strategy' (GOV.UK, 4 December 2014) <<https://www.gov.uk/government/publications/government-digital-inclusion-strategy/government-digital-inclusion-strategy>> accessed 1 September 2020.

<sup>754</sup> 'Statement on Visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on Extreme Poverty and Human Rights' (n 55) 8.

<sup>755</sup> Interview 8 April 2021.

#### 5.4.2 Digitisation for efficiency: cost-cutting in an age of austerity

After the 2010 election, in contrast to under the previous government, children and young people were no longer seen as a priority.<sup>756</sup> Following the global recession which began in 2008, successive Governments in the UK have implemented 'austerity measures:' cutting welfare and public sector spending. Austerity measures in the UK have disproportionately impacted women and children, as well as elderly and disabled people.<sup>757</sup> Low-income families with children experienced the biggest losses in income as a result of austerity measures.<sup>758</sup>

Local government spending was particularly harshly affected: over ten years, funding for children's services was cut by 20% in real terms, leading to cuts particularly in preventative and early intervention services,<sup>759</sup> as well as understaffing.<sup>760</sup> Local authorities had their social services budget for children's services cut by an average of 23% in the year 2010/11.<sup>761</sup> Areas with the highest levels of child poverty experienced the largest cuts in funding,<sup>762</sup> while specialist services, for example supporting children of mothers who had experienced domestic violence, were reduced.<sup>763</sup>

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<sup>756</sup> Parton (n 701) ch 9.

<sup>757</sup> Phipps (n 133) 18–19.

<sup>758</sup> Jonathan Bradshaw, Yekaterina Chzhen and Gill Main, 'Impact of the Recession on Children in the United Kingdom' in Bea Cantillon and others (eds), *Children of Austerity: Impact of the Great Recession on Child Poverty in Rich Countries* (Oxford University Press 2017).

<sup>759</sup> Redden, Dencik and Warne (n 41) 6–7.

<sup>760</sup> Leslie and others (n 39) 29.

<sup>761</sup> Parton (n 701) ch 9.

<sup>762</sup> Bradshaw, Chzhen and Main (n 799).

<sup>763</sup> Erin Sanders-McDonagh, Lucy Neville and Sevasti-Melissa Nolas, 'From Pillar to Post: Understanding the Victimisation of Women and Children Who Experience Domestic Violence in an Age of Austerity' [2016] *Feminist Review* 60, 64–5.

### 5.4.3 The rise of public sector predictive analytics

Under pressure to cut costs and improve services, many local authorities have turned to data analytic systems, which promise better and more efficient ways to collect and analyse data.<sup>764</sup> As I have discussed in more detail in section 3.2 above, there is a growing interest in many domains in using data as the basis for predictive analytics and algorithms, and children's social care is no exception. As a result, increasing numbers of local authorities are using predictive analytics, which promise to identify not just existing problems but future ones. I will discuss the use of data in early interventions specifically in section 5.6 below.

Participants in focus groups looking specifically at machine learning in children's social care in the UK cited a number of reasons why this tool might be used, including understanding how the children's social care system functioned as a whole, identifying families that needed additional support, providing personalised services, and supporting community initiatives.<sup>765</sup> Personalised support in social services has been shown to be effective: an investigation into welfare conditionality found that while sanctions had a negligible benefit on motivating people to prepare for, find or start work (the stated aim of the conditionality), personalised, targeted support was a key factor.<sup>766</sup> One data scientist told me about their work on identifying small groups, seeing it as natural precursor to identifying individuals:

*“when we started [analysing data on a specific risk to children], we started to look at a high level...but in the end we decided that*

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<sup>764</sup> Dencik and others (n 23) 8.

<sup>765</sup> Leslie and others (n 39) 15.

<sup>766</sup> Patrick Butler, 'Benefit Sanctions Found to Be Ineffective and Damaging' *The Guardian* (21 May 2018) <<https://www.theguardian.com/society/2018/may/22/benefit-sanctions-found-to-be-ineffective-and-damaging>> accessed 3 March 2020.



*actually what we want to be able to do is find small communities where [the risk] is disproportionately high...what we've done has not been about targeting individuals but it could be and I feel that's probably one of the next natural steps at some stage...target is probably the wrong word, looking to prioritise certain individuals, it's always going to be about giving them additional services, never really about the removal of services" – local authority data scientist<sup>767</sup>*

The UK government has put out guidance for government agencies who are considering using "artificial intelligence"<sup>768</sup> in the public sector: this includes considering whether the datasets that are used are relevant, generalisable, and of high quality.<sup>769</sup>

In a survey of 129 social workers conducted by What Works for Children's Social Care specifically on predictive analytics, 29% of respondents were in favour of the use of these tools to "support social workers to identify early help for families,"<sup>770</sup> suggesting that at least some social workers do see a role for predictive analytics systems. As one local authority data scientist pointed out, however, both the quality of the data and the way that it has been collected are crucial for the success of any such system:

*"I can build you an algorithm but you have to monitor how it's used...we don't know how the data is collected, about the unconscious bias of social workers: even if you look at attitudes to*

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<sup>767</sup> Interview 15 January 2021. I have redacted details of the specific risk discussed in this interview, to avoid identifying the local authority.

<sup>768</sup> The term used in the government guidance. 'Artificial intelligence' is notoriously difficult to define, comprising everything from complex machine learning to best-fit lines on graphs.

<sup>769</sup> Government Digital Service and Office for Artificial Intelligence (n 658).

<sup>770</sup> Vicky Clayton and others, 'Machine Learning in Children's Services: Does It Work?' (What Works for Children's Social Care 2020) 24.

*boys and girls, we tend to take more risks with boys and intervene earlier with girls” – local authority data scientist<sup>771</sup>*

As discussed in section 5.8.2 below, children's social care data may not be accurate or relevant for this purpose, but this has not prevented numerous local authorities from experimenting with these systems: even if they eventually end these trials due to ineffectiveness.<sup>772</sup> In one example, local authorities in the London Borough of Hackney used a scoring system designed by a company called Xantura to identify children at risk of neglect and abuse:<sup>773</sup> as of March 2018, the system was generating lists of 10-20 families a month where there was “evidence of future concern.”<sup>774</sup> By 2019, Hackney had ceased to use the Xantura system, citing “variable data quality.”<sup>775</sup> I will discuss additional limitations to the use of data systems – both analytic and predictive – in section 5.8 below.

## **5.5 ‘Joined-up thinking:’ data for collaboration between different state entities**

Section 47 of the Children Act 1989 (discussed in section 5.3.3 above) established investigative duties for local authorities.<sup>776</sup> When local authorities are informed that a child in their area is in police protection or is the subject of an emergency protection order, or they “have reasonable cause to suspect that a child who lives, or is found, in

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<sup>771</sup> Interview 19 March 2021

<sup>772</sup> Sarah Marsh, ‘One in Three Councils Using Algorithms to Make Welfare Decisions’ *The Guardian* (15 October 2019) <<https://www.theguardian.com/society/2019/oct/15/councils-using-algorithms-make-welfare-decisions-benefits>> accessed 20 January 2020.

<sup>773</sup> Dencik and others (n 23).

<sup>774</sup> Luke Stevenson, ‘Artificial Intelligence: How a Council Seeks to Predict Support Needs for Children and Families’ (*Community Care*, 1 March 2018) <<https://www.communitycare.co.uk/2018/03/01/artificial-intelligence-council-seeks-predict-support-needs-children-families/>> accessed 29 January 2019.

<sup>775</sup> Marsh (n 813).

<sup>776</sup> Parton (n 701) 24.

their area is suffering, or is likely to suffer, significant harm,” that local authority is required to “make, or cause to be made, such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child’s welfare.”<sup>777</sup> These investigations require information: in practice, information from multiple sources.

Information sharing in the public sector is recognised to be inefficient: as a result, technological solutions are attractive.<sup>778</sup> As discussed in section 5.3.2 above, the need for better collaboration between the different public sector and voluntary sectors organisations working with children and families has been a service improvement recommendation since at least the 1950s. Improvements in computer technology, however, meant that by the early 21<sup>st</sup> century efforts to improve collaboration had a much stronger emphasis on information as data.

The Every Child Matters programme was launched in 2004, presented as a response to the Laming Report into the death of Victoria Climbié<sup>779</sup> (see section 5.3.3 above), although its reforms were far broader. For the first time, it covered all children, not just children who had already been identified as potentially at risk, and it proposed wide-ranging reforms to social services.<sup>780</sup> The programme explicitly linked these reforms to information-sharing between agencies:<sup>781</sup> this reflected New Labour’s mantra of ‘joined-up’ government, which relied on IT systems as part of a modernising

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<sup>777</sup> Children Act 1989 s 47(1).

<sup>778</sup> Peckover, Hall and White (n 725) 138.

<sup>779</sup> Parton and Berridge (n 737) 65.

<sup>780</sup> Parton (n 701) 47–53.

<sup>781</sup> Parton and Berridge (n 737) 66–7.

agenda.<sup>782</sup> Better information sharing would lead, the programme argued, to better outcomes.

### **5.5.1 Epidemiological data collection: child maltreatment as a public health issue**

A public health approach to child maltreatment has been supported by the World Health Organisation, amongst others:<sup>783</sup> it emphasises primary prevention services that are available to everyone, the collection and analysis of data both to understand contributory factors and identify trends, and the identification of indicators and proxies for child welfare.<sup>784</sup> Based on an epidemiological approach, this orientation includes four key processes: a conceptual definition of the problem of child maltreatment and a numerical assessment of its scale; identification of causes and risk factors that are related to maltreatment susceptibility; the design of interventions that are targeted towards these risk factors; and research and dissemination of evidence supporting which interventions are effective.<sup>785</sup> The Every Child Matters programme was one of the few examples of a public health approach in children's services in England: it aimed to use longitudinal data to identify risk factors and design targeted interventions.<sup>786</sup>

It is important to note that while an epidemiological approach places considerable emphasis on the importance of data collection and analysis, this does not mean that all data-driven systems are epidemiological. Epidemiological information is

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<sup>782</sup> Parton (n 701) 35.

<sup>783</sup> Alexander Butchart and others, 'Preventing Child Maltreatment: A Guide to Taking Action and Generating Evidence' (World Health Organization 2006).

<sup>784</sup> Parton (n 701) ch 11.

<sup>785</sup> Butchart and others (n 824) 14.

<sup>786</sup> Parton and Berridge (n 737) 65.

characterised by its focus on a defined population, group (not individual) observations and predictions, and comparison-based conclusions.<sup>787</sup> Data and information that is obtained only from cases where child maltreatment has been observed by services (such as the police, social services, or hospitals) is not epidemiological information, because the attention of (and use of) these services is not uniform across the population.<sup>788</sup>

### **5.5.2 Better targeting: data sharing for identifying families at risk.**

The need for information sharing continued to be emphasised into the Coalition and Conservative governments: but no longer with an epidemiological focus. Instead, data sharing was seen as a way to identify specific individuals and families who would benefit from targeted support. Frank Field's 2010 report for the Cabinet Office on early intervention (see section 5.6 below) recommended data sharing – from local authorities as well as from doctors and hospitals<sup>789</sup> - to identify families in need.<sup>790</sup>

A 2017 progress report on the 'Troubled/Supporting Families Programme' (discussed in more detail in Chapter 7) argued for information sharing, both as a way to identify "the most complex and costly families," and as a benefit that would have wider implications than just within the programme.<sup>791</sup> The 2018 guidance on information sharing for social work practitioners recommends that information shared should be necessary, proportionate, relevant, adequate, accurate, timely, secure, and

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<sup>787</sup> Butchart and others (n 824) 18.

<sup>788</sup> Butchart and others (n 824) 17.

<sup>789</sup> Frank Field, 'The Foundation Years: Preventing Poor Children Becoming Poor Adults: The Report of the Independent Review on Poverty and Life Chances' (HM Government 2010) 67 <<https://www.bl.uk/collection-items/foundation-years-preventing-poor-children-becoming-poor-adults-the-report-of-the-independent-review-on-poverty-and-life-chances>> accessed 18 August 2020.

<sup>790</sup> Field (n 830) 8.

<sup>791</sup> Department for Communities and Local Government, 'Supporting Disadvantaged Families' (n 629) 20.

recorded,<sup>792</sup> while the 2018 'Working Together' guidance notes specifically that concerns about information sharing should not be a barrier to child protection work, and that processes should be in place to share information between agencies.<sup>793</sup> By 2018, local authorities were required to work with the police, and clinical commissioning groups<sup>794</sup> - defined as the three 'safeguarding partners', as well as with other local agencies, to take responsibility for the safeguarding and welfare of children in their areas.<sup>795</sup>

By the late-2010s, therefore, safeguarding and welfare of children had become the collective responsibility of several organisations: local authorities, police and clinical commissioning groups, together with other agencies, necessitating sharing of information between different actors. Focusing on information-sharing, however, carries a risk of what social work practitioners refer to as "availability bias:" over-relying on information that is easily obtained.<sup>796</sup> Information held by a particular agency may not necessarily be the most relevant information, but prioritising information-sharing over collecting relevant information may lead to poorer decision-making.

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<sup>792</sup> HM Government, 'Information Sharing: Advice for Practitioners Providing Safeguarding Services to Children, Young People, Parents and Carers' 9–10 <<https://www.gov.uk/government/publications/safeguarding-practitioners-information-sharing-advice>>.

<sup>793</sup> HM Government, 'Working Together to Safeguard Children: A Guide to Inter-Agency Working to Safeguard and Promote the Welfare of Children' (n 673) 17–19.

<sup>794</sup> Responsible for commissioning healthcare services for the patients living in their geographical area.

<sup>795</sup> HM Government, 'Working Together: Transitional Guidance' (HM Government 2018) 5.

<sup>796</sup> Hazel Kemshall, Wilkinson and Kerry Baker, 'The Art of Decision Making', *Working with Risk: Skills for Contemporary Social Work* (Wiley 2013) 66.

## **5.6 Data for early intervention and preventative services: predicting outcomes and making parents be good parents**

In this section, I will discuss the ways in which data has been collected and analysed with the aim of informing preventative services: by which I mean action taken by social services with regards to the child's future, not just in response to its present. Martinelli has described this kind of approach to social services as a 'social investment approach,' in which social services are treated as building capacity for the future while responsibility remains with the individual.<sup>797</sup> a future-oriented model of social services necessarily focused more on children than on other groups.<sup>798</sup>

These services may also sometimes be referred to as 'early intervention' services. In England, services referred to with this term cover different forms of intervention with different aims. In many cases these overlap, and policies with one aim explicitly stated may also implicitly cover other aims. According to Nigel Parton and David Berridge, in the history of social services, early intervention programmes are one of the factors that have contributed to an overall decline in maltreatment, along with positive economic changes and changes in social attitudes and behaviours.<sup>799</sup>

### **5.6.1 Good and bad families: preventative services and better family models**

As discussed in section 5.3 above, harm to children was recognised as something preventable as early as the 1920s, and interventions – in the form of advice about parenting – were part of the role of the NSPCC inspector. At the same time, however, concerns about a fall in maternal birthrate and about mothers who lacked the

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<sup>797</sup> Martinelli (n 668) 21.

<sup>798</sup> Parton (n 701) 32.

<sup>799</sup> Parton and Berridge (n 737) ch 11.

intelligence to parent<sup>800</sup> influenced an alternative strategy in the 1910s and 1920s: women's movement activists started to adopt and advocate for eugenic policies. As well as so-called 'positive' eugenic theories, which promoted conditions that allowed the nurture of healthy offspring, these included negative eugenic theories which argued that "persons considered irresponsible" should be excluded from reproduction, including through institutionalisation or sterilisation.<sup>801</sup> An alternative prevention strategy advocated by eugenicists was to prevent these 'irresponsible' people from having children at all.

Eugenic ideas fell out of favour by the mid 1940s and the end of World War II, which John Welshman attributes to decreased concern about birth rates, as well as the association between eugenics and the Nazis.<sup>802</sup> Concerns about 'good' or 'bad' parenting remained, however: but until the 1970s, these practices were focused on control of the behaviour of individual parents.<sup>803</sup> Harry Hendrick has argued that cases of neglect, in particular, were seen as the fault of ignorant or incompetent parents: especially mothers.<sup>804</sup> Therefore, increasing the knowledge and competence of mothers was seen as one way to prevent neglect. The emerging British welfare state was based on the assumptions both of full employment, and of families operating as units in which the male breadwinner earned a 'family wage' while his wife carried out work in the home, and it aimed to support this model, not replace it.<sup>805</sup> Harry Ferguson

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<sup>800</sup> Parker (n 677) 8.

<sup>801</sup> Ann Taylor Allen, 'Feminism and Eugenics in Germany and Britain, 1900-1940: A Comparative Perspective' (2000) 23 *German Studies Review* 484–5 <<https://0-www-jstor-org.serlib0.essex.ac.uk/stable/1432830>> accessed 5 November 2020.

<sup>802</sup> John Welshman, 'The Social History of Social Work: The Issue of the "Problem Family", 1940–70' (1999) 29 *The British Journal of Social Work* 457, 460–1.

<sup>803</sup> Ferguson (n 694) 223.

<sup>804</sup> Hendrick (n 683) 30.

<sup>805</sup> Parton (n 701) 17–18.



has argued that this focus on parental behaviour – aiming to make “women better mothers/housewives and fathers better wage-labourers/providers”<sup>806</sup> – as a prevention strategy continued until the 1970s. I will discuss the gendered assumptions inherent in these strategies further in Chapter 7.

### **5.6.2 Researching good parenting: data collection to understand good and bad outcomes for children**

While the Children Act 1989 had required local authorities to carry out preventative work, the limited availability of resources meant that these services were in practiced rationed and available only to children who were already known to social services.<sup>807</sup> In the final years of the Conservative government in the UK in the mid-1990s, the government introduced the Looking After Children project. Influenced by the 1995 publication of a report that identified emotional neglect as a driver of long-term negative outcomes, and parenting as a key area of improvement,<sup>808</sup> this project aimed to improve outcomes for children in care. Part of the project aimed to identify what good parenting looked like, so that local authorities could provide this for children in their care.<sup>809</sup>

The ‘Looking After Children’ project included ‘Action and Assessment Records’ designed to collect data about children in the care of the state.<sup>810</sup> The records were promoted as progress assessments which could be used to improve outcomes, but

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<sup>806</sup> Ferguson (n 694) 229.

<sup>807</sup> France and Utting (n 759) 77–8.

<sup>808</sup> Parton (n 701) 26.

<sup>809</sup> Parton (n 701) 27–8.

<sup>810</sup> Paul Michael Garrett, ‘Producing the Moral Citizen: The “Looking After Children” System and the Regulation of Children and Young People in Public Care’ (1999) 19 *Critical Social Policy* 291, 295.

they were criticised for placing a heavy burden of data entry on social workers.<sup>811</sup> The Action and Assessment Records were also criticised for blurring the lines between good outcomes for children themselves, and good outcomes for communities who were deemed to need protecting *from* bad outcomes: even in its early years, the records were used by the Home Office to collect data on criminal behaviour by adolescents in care.<sup>812</sup>

### **5.6.3 Family support for everyone – New Labour and longitudinal approaches**

The New Labour government which came to power in 1997 embraced the idea of preventative – usually termed ‘early intervention’ - programmes which focused on setting children on a path towards positive outcomes in the future. This increased attention to outcomes was accompanied by a rise in the use of performance metrics: New Labour also introduced targets and league tables across a wide range of public services, in an attempt to find what Parton has called “an objective, rational and quantified” way to measure performance.<sup>813</sup> As a result, the performance of manager, practitioners and social work clients became inextricably linked.

Preventative services were seen as crucial for addressing child poverty, but also social exclusion, crime and social problems in later life.<sup>814</sup> Like the Looking After Children project discussed above, ‘outcomes’ covered both protection for children against harm, but also protection for communities against harm which could be caused by children who, in the absence of intervention, might grow up to commit crimes.

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<sup>811</sup> White and others (n 787) 413–4.

<sup>812</sup> Garrett (n 851) 305.

<sup>813</sup> Parton (n 701) 35.

<sup>814</sup> France and Utting (n 759) 77.

The New Labour government saw family support programmes as part of their broader agenda to address 'social exclusion.'<sup>815</sup> an approach underpinned by the idea that working-class families, communities and cultures had borne the brunt of globalisation and faced a combination of problems as a result.<sup>816</sup> Part of this included a focus on 'parental responsibility' as a way to tackle the 'causes of crime:' policies were based on assumptions that struggling communities with low levels of employment and high levels of crime produced children – especially boys – who would go on to repeat this pattern, and that improving the work ethic of these communities would improve outcomes.<sup>817</sup> Parenting was therefore crucial for shaping the (working) adults of the future.

Alan France and David Utting link the development of this approach – which they term the “risk-focused prevention paradigm” to developments in science and technology which supported the emergence of 'prevention science' and a belief that risk factors could be identified using longitudinal studies.<sup>818</sup> As discussed in section 5.5 above, the Every Child Matters programme, launched in 2004, was an attempt to use longitudinal studies: one of its aims was to identify problems facing children early, before they could lead to negative outcomes for the child which included low education attainment and unemployment.<sup>819</sup>

The later years of the New Labour government continued to focus on all children. A 2006 update to the 'Working Together' guidance (discussed in section 5.3 above) aimed to strengthen the safeguarding framework to support all families and children

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<sup>815</sup> Parton and Berridge (n 737) 62.

<sup>816</sup> Parton (n 701) 37–8.

<sup>817</sup> Parton (n 701) 40.

<sup>818</sup> France and Utting (n 759).

<sup>819</sup> Parton and Berridge (n 737) 65.

achieve all the outcomes identified in Every Child Matters,<sup>820</sup> while the 2007 Children Plan published under Brown aimed to maximise all children's potential.<sup>821</sup> The 2010 update to the 'Working Together' guidance aimed to respond to the calls for child protection improvements following the Peter Connolly case (discussed in section 5.3.3 above), while also retaining the existing policy of wide-ranging broad services under Every Child Matters.<sup>822</sup> It was published just prior to the 2010 general election, which saw the election of a coalition government comprising the Conservative and Liberal Democrat parties.

#### **5.6.4 Targeting and narrowing of the welfare state: the Coalition government**

Like its predecessor, the Conservative-Liberal Democrat coalition government elected in 2010 focused on work as a route out of poverty, but their measures were more coercive. At a time when the economic downturn and rise in costs of living were hitting the poorest families (including those with children) hard, the government cut benefits and imposed caps, reduced access to legal aid making it harder to challenge benefit denials or reductions, and imposed draconian sanctions for minor infractions.<sup>823</sup> These changes were part of a neoliberal shift, in which public spending was framed as masking the actual causes of social problems, and which argued for a narrower, more targeted welfare state.<sup>824</sup>

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<sup>820</sup> Parton (n 701) ch 6.

<sup>821</sup> Parton (n 701) 63.

<sup>822</sup> Parton (n 701) ch 6.

<sup>823</sup> 'Statement on Visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on Extreme Poverty and Human Rights' (n 55).

<sup>824</sup> Jay Wiggan, 'Austerity Politics' in Pete Alcock and others (eds), *The Student's Companion to Social Policy* (5th edn, Wiley-Blackwell 2016) 147–9.

In 2010-11, under the Coalition government, two independent reports from MPs advocated for early intervention in the lives of children, to improve their outcomes as well as to reduce the cost of social services.<sup>825</sup> Both Frank Field MP and Graham Allen MP emphasised the importance of intervening early in the lives of children in order to improve their outcomes, as well as for cost-effectiveness reasons. Both Field and Allen criticised the concerns and limits on data-sharing that were in place at the time, and argued for the use of data to track children in need of help and support.<sup>826</sup> The 2010 report by Frank Field MP specifically advocated for local authorities to collect and share data on children most in need of support, so that they “understand where the children who are most deprived are, and how their services impact upon them.”<sup>827</sup>

These prevention programmes were based on the idea of identifying ‘risk factors’ for poor outcomes later on: by understanding how social problems emerged, proponents argued, cost-effective solutions could be found. However, they differ from a public health approach (discussed in section 5.5.1 above) in that data was collected only on certain children – not on the population as a whole – as part of the narrowing of social service provision mentioned above.

### **5.6.5 Authoritarian intervention**

At the same time, despite the neoliberal rhetoric calling for less state involvement, there was an increase in safeguarding activity: including child protection plans and the number of children in care, and an increased focus on the benefits of child removal, including of adoption.<sup>828</sup> By 2012, the then-Secretary of State for Education was

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<sup>825</sup> Field (n 830); Graham Allen, ‘Early Intervention: The Next Steps’ (HM Government 2011).

<sup>826</sup> Field (n 830) 8; Allen, ‘Early Intervention’ (n 866) 54.

<sup>827</sup> Field (n 830) 8.

<sup>828</sup> Parton (n 701) ch 9.

arguing for earlier removal of children from their families as part of child protection.<sup>829</sup>

The 2013 edition of the 'Working Together' guidance included the central idea of 'rescuing' children from harm:<sup>830</sup> Nigel Parton has characterised the coalition government's child protection policies as "authoritarian neoliberal:" combining a reduction in both universal benefits and secondary services, greater use of private or third sector actors to provide services previously provided by the state, an increased willingness to intervene, and a higher priority of adoption as a method of intervention.

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As of 2018, guidance for practitioners defines "safeguarding and promoting the welfare of children" together, and states that this includes: "protecting children from maltreatment; preventing impairment of children's health or development; ensuring that children grow up in circumstances consistent with the provision of safe and effective care; and taking action to enable all children to have the best outcomes."<sup>832</sup> In other words, the duties of protecting children and securing their welfare are combined in the same guidance, even though they may require different practices.

## **5.7 Conceptualising and designing data systems for children's social care**

In section 4.4.1 above, I identified the conceptualisation and design of a data system as an area in which classification and categorisation can enter. In the following

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<sup>829</sup> Michael Gove, 'The Failure of Child Protection and the Need for a Fresh Start' (*GOV.UK*, 19 November 2012) <<https://www.gov.uk/government/speeches/the-failure-of-child-protection-and-the-need-for-a-fresh-start>> accessed 18 August 2020.

<sup>830</sup> Parton (n 701) ch 8.

<sup>831</sup> Parton (n 701) ch 11.

<sup>832</sup> HM Government, 'Working Together to Safeguard Children: A Guide to Inter-Agency Working to Safeguard and Promote the Welfare of Children' (n 673) 5–6.

sections, I will consider how this works specifically in the domain of data collection and sharing systems in children's social care.

### **5.7.1 Data systems are infrastructures**

As I have discussed earlier in the chapter, the use of data in children's social care dates back to the early days of the 'modern' child protection system in the 1880s. The use of computerised systems to collect this data emerged in the late 20<sup>th</sup> century, and accelerated under the digitisation programme which began with the election of the New Labour government in 1997. As discussed in section 5.4.1 above, these previous infrastructures include national systems like the Integrated Children's System (ICS) as well as any systems set up at a local authority level.

As a result, while children's social care is one of the mandatory services delivered at council level,<sup>833</sup> the data systems in use even at local authority level are built on top of existing systems which include constraints and choices implemented outside of the control of that local authority. Data systems in children's social care are built on top of other previous systems, from which they inherit both limitations and strengths: a characteristic which they share with infrastructures in general, as defined by Susan Leigh Star and Karen Ruhleder.<sup>834</sup> A 2020 report from the Centre for Data Ethics and Innovation pointed out that the ongoing impact of these 'legacy systems' is to make maintaining data systems more difficult, as well as increasing the difficulty of sharing data and reducing its quality.<sup>835</sup>

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<sup>833</sup> James Goddard, 'Local Authority Provision of Essential Services' (House of Lords Library 2019) 1 <<https://lordslibrary.parliament.uk/research-briefings/lln-2019-0006/>> accessed 15 September 2022.

<sup>834</sup> Susan Leigh Star and Karen Ruhleder, 'Steps Toward an Ecology of Infrastructure: Design and Access for Large Information Spaces' (1996) 7 *Information Systems Research* 25, 113.

<sup>835</sup> Centre for Data Ethics and Innovation, 'Review into Bias in Algorithmic Decision-Making' (2020) 77.

Designing new systems, therefore, comes with an additional cost to local authorities – that of addressing the infrastructural constraints. While this may be done in-house at a local authority level, it may also be outsourced to a private company – either through the purchase of an off-the-shelf program, or through hiring a private company to develop an existing program to fit the needs of a local authority.<sup>836</sup>

As a result, many of the design decisions made in the course of conceptualising and developing data systems are constrained by the limitations of previous systems. Geoffrey Bowker and Susan Leigh Star note that “in many ways software is frozen organisational and policy discourse.”<sup>837</sup> It is important to note that this ‘freezing’ may not be the policy and practice at the time that a given data system was designed, but an agglomeration of previous policy and practice that underpinned the components of the infrastructure that the data system is being built upon.

Classifications and categorisations that were introduced in previous computerised (or even paper) systems for managing data and information may therefore propagate through into new systems.<sup>838</sup> As Catherine D’Ignazio and Lauren Klein point out, these classifications become ‘naturalised’ – taken for granted – once they are established as part of infrastructure, and may only become visible when they are seen to break down. I will discuss the question of *who* is in a position to see this breaking down of infrastructural categories in the following section.

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<sup>836</sup> Redden, Dencik and Warne (n 41) 10–11.

<sup>837</sup> Bowker and Star (n 160) 135.

<sup>838</sup> A much-circulated urban legend draws on this concept in its assertion that the standard width between railway tracks in the US – 4 feet, 8.5 inches – is based on the distance between the wheels of Roman chariots. See David Mikkelson, ‘Are U.S. Railroad Gauges Based on Roman Chariots?’ (*Snopes.com*, 16 April 2001) <<https://www.snopes.com/fact-check/railroad-gauge-chariots/>> accessed 15 October 2022.



### **5.7.2 Data systems are built by people**

Data systems used in children's social care may be built by the local authority, by private companies, or by a partnership of the two. As a result, as I have discussed in section 4.4.1.2 above, the people involved in designing and implementing a data system may have varying levels of experience of the domain being addressed by the system: in this case, children's social care. They may or may not have direct experience of using the data systems – as social workers or other professionals – or of being subjected to decisions made by these systems as children or families 'known to social services.'

This distinction between social services workers and the people they work with is not a new development. Critical examination of social work has included arguments for more involvement of social work users in the design and operation of services since at least the mid-1990s,<sup>839</sup> and, as Clive Diaz and Lauren Hill argue, social workers play a "mediating role between those who are actually or potentially excluded, and mainstream members of society."<sup>840</sup>

The increasing professionalisation of social work has exacerbated this gap between social workers and the users of social work services. Ole Petter Askheim et al note that this professionalisation has led to more widespread views of service users as passive consumers with deficiencies as problems, and of social workers as experts. Askheim et al point out that despite some efforts to involve service users in training

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<sup>839</sup> See for example Ricardo Blaug, 'Distortion of the Face to Face: Communicative Reason and Social Work Practice' (1995) 25 *The British Journal of Social Work* 423, 434.

<sup>840</sup> Clive Diaz and Lauren Hill, 'A Critical Evaluation of the Extent to Which the Reform and Modernisation Agenda Has Impacted on the Professionalisation of Social Work in England' (2020) 26 *Child Care in Practice* 272, 280.

and service designs, and to recruit more people with experiences of social services into the social work workforce, social work continues to devalue experiential knowledge and social workers may even share stigmatising and negative opinions of social problems.<sup>841</sup> At the same time, measures which aim to 'improve the quality' of candidates for professional social work courses in the UK – often through graduate training schemes - have raised concerns about the devaluing of lived experience and diversity in selecting and training future social workers.<sup>842</sup> Social workers and service users, therefore, may fall into two groups with little overlap: the overlap may be even less for computer scientists and developers working in local authorities.

Even when data systems are created in-house at a local authority, the teams responsible for building the system may have little or no contact with social workers directly, let alone with the nature of social work practice, adding extra distance between the designers of the systems and those who may be most affected by them. These teams are now often called data science teams, although they may also be known by related terms such as 'business intelligence,' or 'analytics' teams.<sup>843</sup> Historically, they may, as Cathy O'Neil has pointed out, have thought of themselves as technicians who do not need to consider the outcomes of their work,<sup>844</sup> although as Jonathan Bright et al point out, growing awareness of the potential for damaging

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<sup>841</sup> Ole Petter Askheim, Peter Beresford and Cecilia Heule, 'Mend the Gap – Strategies for User Involvement in Social Work Education' (2017) 36 *Social Work Education* 128.

<sup>842</sup> Joe Hanley, "'The Best and the Brightest": Widening Participation and Social Justice in Contemporary English Social Work Education' [2019] *European Journal of Social Work* 1.

<sup>843</sup> Jonathan Bright and others, 'Data Science for Local Government' (Oxford Internet Institute 2019) 35 <<https://www.ssrn.com/abstract=3370217>> accessed 16 March 2021.

<sup>844</sup> Upchurch (n 305).

effects has made some local authority data practitioners more conscious of the possibilities of harm: though not necessarily how to ameliorate this.<sup>845</sup>

The children and families whose data is used in these systems, meanwhile, are unlikely to be fully informed about the uses to which these systems are put – or even of their existence. A report on data-driven systems in local government by the Data Justice Lab at the University of Cardiff found that engagement with civil society – let alone the general public – was patchy and ad hoc.<sup>846</sup>

This lack of engagement may be a result of limited resources: but in some cases, information may be deliberately withheld. A 2018 response to a Freedom of Information Request about a data system used in Hackney Council in relation to child safeguarding stated that "Data subjects will not be informed, informing the data subjects would be likely to prejudice the interventions this project is designed to identify."<sup>847</sup> Both factors, however, contribute to data systems being rolled out without any consultation, let alone meaningful participation, from the people they most directly affect.<sup>848</sup>

### 5.7.3 Systems have multiple purposes

It is also useful to note, when considering how data is entered into systems, that there are different purposes for recording different pieces of information as data. These different goals may not fit neatly together, and data collected in service of one goal

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<sup>845</sup> Bright and others (n 884) 2.

<sup>846</sup> Arne Hintz and others, 'Civic Participation in the Datafied Society: Towards Democratic Auditing?' (Data Justice Lab 2022) ch 1.

<sup>847</sup> 'Documents Relating to the Children's Safeguarding Profiling System - a Freedom of Information Request to Hackney Borough Council' (*WhatDoTheyKnow*, 15 January 2018)

<[https://www.whatdotheyknow.com/request/documents\\_relating\\_to\\_the\\_childr](https://www.whatdotheyknow.com/request/documents_relating_to_the_childr)> accessed 20 January 2020.

<sup>848</sup> D'Ignazio and Klein (n 75).

may not be useful for another, as I will explore in section 5.7.4 below. One data scientist pointed out that different council staff have different needs when it comes to understanding data systems.

*“there needs to be a raising of data literacy amongst decision-makers, because they don't need to understand all of the things under the bonnet in terms of these kinds of data models, but they need to find a way of having confidence that what we are showing them is correct and robust” – local authority data scientist<sup>849</sup>*

For example, data collection in relation to children's social care may be primarily designed for performance monitoring.<sup>850</sup> Other data systems, like Manchester's Research and Intelligence Database, aim to provide “holistic” views of individuals through combining multiple datasets.<sup>851</sup> This local approach supports the UK Government's stated aim of carrying out holistic assessments of children deemed to be in need of help, according to their safeguarding strategy.<sup>852</sup>

A lack of clarity about what data to record can also cause confusion for social workers and other professionals who are required to carry out data entry as part of their work. An evaluation of an electronic implementation of the Common Assessment Framework, a data tool used in children's services (discussed in more detail in section 5.4.1 above), found that the tool was used both for assessment and for referral, and that social workers approached the tool differently depending on the use.<sup>853</sup>

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<sup>849</sup> Interview 15 January 2021

<sup>850</sup> Leslie and others (n 39) 13.

<sup>851</sup> Redden, Dencik and Warne (n 41) 6.

<sup>852</sup> HM Government, 'Working Together to Safeguard Children: A Guide to Inter-Agency Working to Safeguard and Promote the Welfare of Children' (n 673) 24–5.

<sup>853</sup> Andrew Pithouse and others, 'A Tale of Two CAFs: The Impact of the Electronic Common Assessment Framework' (2009) 39 *The British Journal of Social Work* 599, 607.

UK local authorities have a duty to “promote and safeguard the welfare of children in their area.”<sup>854</sup> the Children Act 2004 also requires local authorities to promote cooperation in order to “improve the wellbeing of children in the authority’s area.”<sup>855</sup> These duties inform the stated goals of data assemblages in children’s services: but how these goals are operationalised is influenced by the prevailing policy and organisational discourse.

In section 5.6.3 above, I described the increasing use of targets in public services since the New Labour government which came to power in 1997. The need for data to document whether these targets are being met has led to a rise in the collection of data about activities, as two interviewees pointed out to me:

*“my impression was that people were holding on to the data for audit essentially, it wasn’t a tool for making decisions” – former user researcher for a children’s charity<sup>856</sup>*

*“the data was definitely not collected for [data science]...it’s collected so that the [central government department] has oversight...it’s very input and output driven rather than outcomes driven” – civil society researcher investigating local authority data use<sup>857</sup>*

As discussed in section 5.3.3 above, some data collection in children’s services is part of a defensive practice, and is collected to document that actions have been taken, as one former social worker described to me:

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<sup>854</sup> HM Government, ‘Working Together to Safeguard Children: Statutory Framework’ (HM Government 2018) 6.

<sup>855</sup> HM Government, ‘Working Together to Safeguard Children: Statutory Framework’ (n 895) 3.

<sup>856</sup> Interview 27 April 2021

<sup>857</sup> Interview 25 March 2021

*“we literally had to tick boxes that said ‘I saw the child’, ‘I saw the child’s bedroom,’...there were some elements of it that were jumping through the hoops of what it is to do that role...you’re partly recording it to be then later used in assessments to show the work that you’ve done...what it feels like sometimes is making sure that you’ve done your bit so that if anything goes wrong” – former social worker<sup>858</sup>*

Social workers who are tasked with recording data may experience tensions as a result of these multiple purposes. A study of the Integrated Children's System (ICS, discussed in section 5.4.1 above) found that social workers, who were responsible for entering data into computerised ICS implementations, were reluctant to record data that they saw as unnecessary or irrelevant to particular cases, or that related to actions rather than assessment.<sup>859</sup> One former social worker described to me their frustration with what they saw as unhelpful data collection:

*“Forms are for Ofsted, for managers, for tendering to local authorities...then you have central government data, central government is all about data...it’s so much easier to count, you have to have a social worker visit, it doesn’t matter if the child hates the social worker, doesn’t matter if the visit was useful, what matters is that you did the visit...but [social work] doesn’t work on numbers, it works on personal relationships, things that you cannot quantify” – former family social worker<sup>860</sup>*

As discussed in section 4.3 above, having data is not the same as having relevant and useful data for a particular purpose. Nonetheless, data science practitioners in local

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<sup>858</sup> Interview 24 March 2021

<sup>859</sup> Ian Shaw and others, 'An Exemplary Scheme? An Evaluation of the Integrated Children's System' (2009) 39 *The British Journal of Social Work* 613, 617.

<sup>860</sup> Interview 21 April 2021

authorities may focus on what data is available: through local authority data collection, as well as other open datasets for their area, rather than what data is relevant. The questions that researchers ask – and try to answer – are influenced by the data that is available.<sup>861</sup> This extends to predictive analytics, discussed in section 5.4.3 above: researchers and data scientists may base their predictive models not on what is useful to service providers, but on the data that they have.

#### **5.7.4 Tensions between the multiple purposes of data systems**

Data systems may also have multiple goals. For example, a manager at Bristol's Integrated Analytics Hub told researchers from Cardiff University's Data Justice Lab that their system – which combines data from 35 datasets, covering around 54,000 families – aimed to help improve strategic planning, improve resource allocation, understand the risks and vulnerabilities of the families in the dataset, and understand who was working with which clients.<sup>862</sup> Bristol's system includes predictive analytics which aim to help early identification of potential problems, including child sexual exploitation.<sup>863</sup>

In section 5.7.3 above, I described how some data collection is for audit purposes, and may not align with the information which social workers find useful. Data input may also be time-consuming and demanding. A pilot Family Safeguarding project includes an Electronic Workbook for case management: an evaluation in July 2020 found that this system had not reduced time spent on administration tasks for nearly half the practitioners surveyed, and that practitioners remained unclear about what information

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<sup>861</sup> Passi and Barocas (n 601).

<sup>862</sup> Dencik and others (n 23) 27–8.

<sup>863</sup> Department for Communities and Local Government, 'Supporting Disadvantaged Families' (n 629) 17.

should be entered, or how much,<sup>864</sup> a feeling echoed by one former social worker who I interviewed:

*“the data collection got worse...at the beginning [mid 2000s] I could do this on my own, I knew the parents and the child...but by the time I left [late 2010s] I had no clue, I didn't have time to spend with the carers, I have so much bureaucracy to deal with, I realised I didn't know the families enough to complete the forms” – former family social worker<sup>865</sup>*

Where systems require data that social workers do not see as useful, there is little incentive for them to update data, or make sure that it is accurate and timely, as several interviewees told me:

*“social workers don't have a strong incentive to have everything up to date: it's most useful for the data teams and for senior managers to have an overview for what's going on, and my understanding is that frontline social workers don't necessarily get any kind of feedback on what the data looks like...so why would they bother spending lots of time ensuring it's up to date?” – civil society researcher investigating local authority data use<sup>866</sup>*

*“The local authority sends me the [list of meetings], I have to write the date, I wasn't even required to attend...why do I have to write the date of the meeting? Sometimes I even put the wrong date, nobody ever came back to me saying that is the wrong date...why do you ask me for data that you already should have, that you're responsible for?...now you have to show progress...when [Ofsted] decided this, all the foster agencies started using questionnaires to measure improvement...the people in power won't see the*

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<sup>864</sup> Department for Education, 'Family Safeguarding: Evaluation Report' (2020) 19.

<sup>865</sup> Interview 21 April 2021

<sup>866</sup> Interview 25 March 2021



*questions, they just see the numbers, so if I mark 3 and 4 my manager asked questions...it's not useful to me or the families, questionnaires are very time consuming and not useful to me or the families, the families don't care about the questionnaires, if they are struggling with behaviour they want help with behaviour" – former family social worker<sup>867</sup>*

Tensions between different purposes may lead to situations where it is impossible for social workers to input data into a system which reflects the world as they see it: there is simply not a field or an option to record that information. As a result, the data is not entered – or it is entered in a way which is not optimal, resulting in inaccurate categorisation. One civil society activist described to me one example of these inaccuracies:

*[on recording data about children receiving alternative education provision] "there's often more than one reason, or a complexity of reasons, and so where a parent or family may feel that the reason [that a child was not] able to stay in mainstream education was because of lack of provision of the services they need...the reasons don't allow for that, so the 'reason' will say something like, you know, mental health or behavioural issues, which puts the onus back on the child...that labelling becomes an individual profile factor...there's a significant fundamental problem with those data because they're putting emphasis on something wrong with the child...whereas if you speak to families, [they] will suggest that the system didn't provide for this child's education." – civil society activist<sup>868</sup>*

Examining a similar system in place at the same time as ICS, the Electronic Common Assessment Framework (CAF) for children's services, Andrew Pithouse et al found

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<sup>867</sup> Interview 21 April 2021

<sup>868</sup> Interview 25 May 2021

that workers entered data differently into the CAF, depending on whether they intended to use it as an assessment tool or as a referral tool to another agency.<sup>869</sup>

The sheer volume of information recorded may also make it more difficult to identify and extract information in a way that is useful for practitioners and frontline workers, as one interviewee explained to me:

*“there’s so much information that we record and keep about individuals but extracting them usually involves a medical student or a trainee [doctor] sitting down for several weeks and trying to get those pieces of information out in a way that’s then useful for us to change the way we work or affect policy” – medical doctor and safeguarding lead for an NHS trust<sup>870</sup>*

## **5.8 Limitations and ethical challenges: data solutionism in social service data systems**

The motivations behind the use of data systems in social services varies: a single system, therefore, may have multiple overarching goals. It is important, therefore, to consider the cases where these goals may be in tension with each other: particularly when these tensions are opaque or not considered in the conception, development and implementation of data systems. One local government researcher described their understanding of these tensions:

*“What’s quite interesting for me is this sort of meeting of worlds, the ‘technology will solve all of our problems and it’s infallible and perfect and neutral’ world, and what’s actually the reality of public services, of social policy, which is messy and difficult and*

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<sup>869</sup> Pithouse and others (n 894) 607.

<sup>870</sup> Interview 22 April 2021

*complicated...the idea that the technology world can just come and clean all that up, which if you come from the social policy [side] you know it's nonsense, but it's kind of attractive.” – freelance local government researcher<sup>871</sup>*

In section 1.1.2 above, I described the rise of 'data solutionism' in the public sector. The 'solutionism trap,' as described by Andrew Selbst et al, is an assumption that all problems can and should be solved with technology.<sup>872</sup> In the following sections, I will note some of the critiques that have been made of technological solutionism in social services, in the UK and elsewhere.

### **5.8.1 Financial costs and outsourcing to 'black-box' systems**

As I have discussed in section 5.4.2 above, data systems are promoted as increasing efficiency and reducing costs: which is attractive in a political climate of austerity and cuts. In practice, however, there are significant costs associated with the development and maintenance of data systems in social services. According to Meredith Broussard, 60% of the cost of software development is spent on routine maintenance.<sup>873</sup> One researcher told me about their interpretation of the impact of these ongoing costs:

*“the idea is that everything in technology is on a continuum between custom stuff that you have to create specifically for this project, and a commodity like electricity that's ubiquitous...the principle is that you shouldn't be wasting money trying to build the best power station, you should be trying to build the best unique thing that you provide” – former user researcher for a children's charity<sup>874</sup>*

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<sup>871</sup> Interview 8 April 2021.

<sup>872</sup> Selbst and others (n 80).

<sup>873</sup> Broussard (n 134) ch 12.

<sup>874</sup> Interview 27 April 2021

The high costs of development and maintenance can lead to some local authorities developing partnerships with private companies,<sup>875</sup> or buying off-the-shelf packages from private developers.<sup>876</sup> This can lead to the use of so-called 'black box' systems, in which the inner workings of the system are concealed.<sup>877</sup> As Kirsten Martin has argued, users who see systems as black boxes may not consider themselves accountable for the outputs of that system and the decisions made using them.<sup>878</sup> Joanna Redden et al have also argued that the use of systems that are deliberately black-box – or which effectively become so, as a result of being constructed by a range of different actors at different times – makes it more difficult for the people whose data is being analysed to challenge the outcomes of the analysis.<sup>879</sup> One data scientist talked about their understanding of this prioritising of systems over human staff:

*“the council wants to make use of data, but if I told them to set aside £3 million for it, they would just get a company in...if you have £3 million, wouldn't you just hire more social workers?” – local authority data scientist<sup>880</sup>*

As well as high ongoing costs, the introduction of new systems can also create additional work – and potential negative impacts - for local authorities, as one local government data scientist I spoke to told me:

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<sup>875</sup> Dencik and others (n 23) 10.

<sup>876</sup> Redden, Dencik and Warne (n 41) 10–11.

<sup>877</sup> The term 'black box' comes, according to Taina Bucher, from descriptions of technologies used during World War II: the workings of crucial pieces of equipment had to be designed to be difficult to scrutinise, in case they fell into enemy hands. See Bucher (n 252) 43.

<sup>878</sup> Kirsten Martin, 'Ethical Implications and Accountability of Algorithms' (2019) 160 *Journal of Business Ethics* 835, 836.

<sup>879</sup> Joanna Redden, 'Predictive Analytics and Child Welfare: Toward Data Justice' (2020) 45 *Canadian Journal of Communication* 101.

<sup>880</sup> Interview 19 March 2021

*“I was part of a local government predictive analytics advisory group– I can’t name the council – in a confidential meeting, [talking about] retrofitting ethics around [a system purchased from a private provider], they had already committed the licence fees, it’s a sunk cost bias, they didn’t want to get rid of the system” – local government data scientist<sup>881</sup>*

In 2019, some local authorities reported that commercially-developed predictive analytics systems were not working well enough to justify the fees – which could run to seven figures – and that as a result they were terminating contracts with commercial providers.<sup>882</sup> As Ruha Benjamin has noted, lower costs and increased efficiency arguments for technologies often do not consider the social costs.<sup>883</sup> One researcher talked about the problems with inadequate systems:

*“the [specific children’s service] were paying for what we’d normally call a ‘burning platform’ they wished to no longer pay for, it wasn’t very good, it was almost impossible to use on mobile and the majority of caseworkers were doing data entry on their mobiles once they’d finished seeing a client.” – former user researcher for a children’s charity<sup>884</sup>*

The costs of social worker time to input data into a system – or multiple systems - may also incur a cost, as one civil society researcher pointed out:

*“the system that [specific children’s service has] has, any information that [staff] put in, they also have to input it into the system for the local authority, which is a massive pain in the arse, like, you know,*

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<sup>881</sup> Interview 19 March 2021

<sup>882</sup> Marsh (n 813).

<sup>883</sup> Benjamin (n 50) 38–9.

<sup>884</sup> Interview 27 April 2021

*you're trying to make it easier for people to do that work." – former user researcher for a children's charity<sup>885</sup>*

### **5.8.2 Inaccuracies and low-quality data**

A dataset on children held by a local authority might include administrative data, such as name, date of birth, and address data for each child: it might also include case notes, information about other professionals working with a child, and records of which social workers have worked on a case. The sources of this information may vary: it may be shared from other datasets, or typed directly into a computer program by a social worker.

As discussed in section 4.4.1 above, the choice of fields that are available in a dataset influences the information that is stored. However, just because there is a field for entering a particular kind of data, it does not mean that that data will be entered by the social worker, which can lead to gaps in understanding:

*"Social workers [in this area] aren't collecting ethnicity data. I don't know why... they probably have a good reason: but we can't even check for bias because we don't have data on ethnicity." – local authority data scientist<sup>886</sup>*

And data may not capture information that is dynamic. Once data has been recorded, without clear updating procedures, it may become out of date very quickly. The data stored in a data system about an individual child or family may no longer reflect their

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<sup>885</sup> Interview 27 April 2021

<sup>886</sup> Interview 19 March 2021

lives: but the categorisations may remain attached to them through the persistence of data, as a civil society activist working on children's data rights told me:

*“you've got data that's recorded at a point in time which may have been accurate at that point in time but it may no longer reflect the person's choices or characteristics or status and yet there's no method in the system to see if this data is still accurate” – civil society activist<sup>887</sup>*

Different accurate sources of information may introduce inaccuracies when different measures are erroneously grouped together: this can often occur when different measurements are used for the same statistics, as an activist working with children's data pointed out:

*[when collecting data on children in alternative education provision]*  
*“the accuracy of, the quality of the data was extremely problematic because some councils were counting full time equivalent children...some were counting children even if they were only in [alternative provision] one day a week, and some were only counting children who were in on the day of the census” – civil society activist<sup>888</sup>*

Data entry may, of course, have errors unrelated to the data system: including where practitioners make assumptions about families. A medical doctor I spoke to expressed their concerns about the risks of these assumptions:

*“definitely, I can imagine that you have a middle class couple come in with a child with bruising and you believe immunisations are up to date when they say they are and perhaps you don't double check*

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<sup>887</sup> Interview 25 May 2021

<sup>888</sup> Interview 25 May 2021

*them because you just believe it...you're not being as rigorous with checking...you see these well-educated people in front of you and you make that assumption that they're going to be providing adequate care" – medical doctor and safeguarding lead for an NHS trust<sup>889</sup>*

### 5.8.3 Transparency and engagement

Even when systems are developed internally to avoid the 'black box' problems discussed in section 5.8.1 above, many local authorities do not necessarily take steps to make data collection and sharing systems transparent to the people they affect, let alone engage with those populations on whether the systems should be used at all.

Children and their family members have agency, and in England, social care decisions should be made with a child-centred approach: the 2018 *Working Together* guidance states that this means "keeping the child in focus when making decisions about their lives and working in partnership with them and their families."<sup>890</sup>

However, some children's social care data collection and sharing systems are implemented in a way that means that families and children are not kept informed. For example, in response to a Freedom of Information request about their Children's Safeguarding Profiling System, Hackney Council reported that "data subjects [children and family members] will not be informed [that their data was being used in the system], informing the data subjects would be likely to prejudice the interventions this project is designed to identify."<sup>891</sup> One activist told me that they thought this issue did not receive

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<sup>889</sup> Interview 22 April 2021

<sup>890</sup> HM Government, 'Working Together to Safeguard Children: A Guide to Inter-Agency Working to Safeguard and Promote the Welfare of Children' (n 673) 8.

<sup>891</sup> 'Documents Relating to the Children's Safeguarding Profiling System - a Freedom of Information Request to Hackney Borough Council' (n 888).



much attention because of a sense that decisions were being made in the best interests of the child:

*"I think the press and media and charities that work in the children's sector don't see [data collection] as an issue because they do think there's some sort of additional permissions or consents...we have the permission to do this to children because it's in their best interests, we know best, we're the adults and we will make decisions on their behalf" – civil society activist<sup>892</sup>*

One data scientist working in a local authority told me explicitly that they were not concerned about potential problems, because their work was underpinned by good intentions:

*"I'm never worried about the things that we're doing, we're a public sector organisation, we're doing things for good, we're not doing data science for evil" – local authority data scientist<sup>893</sup>*

There is also a general lack of engagement, including in design process, with affected individuals. This lack of engagement is linked to the devaluing of lived experience, discussed above. It may also be linked to stigma and perception. This includes both stigmatising views held by social workers towards their clients,<sup>894</sup> and service users' concerns about how information that they provide will be used. For example, family members report feeling pressured to give positive feedback for services they and their children have received, in order to ensure that they can access future services.<sup>895</sup> It may also be linked to a perception (held both by designers and by service users) that

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<sup>892</sup> Interview 25 May 2021

<sup>893</sup> Interview 15 January 2021.

<sup>894</sup> Askheim, Beresford and Heule (n 882) 130.

<sup>895</sup> Leslie and others (n 39) 41.

the systems are too complex for service users to understand: however, as Nick Seaver has argued, it is neither sufficient, nor necessary, to have access or expertise in computational systems in order to understand their role and impact.<sup>896</sup>

#### 5.8.4 Ideological decisions framed as technical constraints

Data systems in children's social care in England may be used as recommender systems: defined by Yeung as systems that support human decision-making, for example by returning a list of 'prioritised' items.<sup>897</sup> The criteria for prioritisation are political: but so too is the decision to provide services only to those who meet the criteria for inclusion on the priority list. Proponents of these systems deny that this is a form of rationing, but the fact remains that those who are not prioritised may not receive services.

*“working where I worked, in a more affluent and privileged area, the threshold for involvement was probably much lower...in some [areas], the cases are so high that they have to make very early decisions...I think that alters the local authorities' capacity, I'm sure it does kind of alter their threshold” – former social worker<sup>898</sup>*

Virginia Eubanks has argued that efficiency arguments effectively reframe political decisions – about who deserves state support – as systems engineering decisions that can be quietly outsourced,<sup>899</sup> an argument echoed by one interviewee:

*“there's a lack of diligence...people [in local authorities] who make decisions bought a solution, they don't want to know if something is*

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<sup>896</sup> Seaver (n 33) 413.

<sup>897</sup> Yeung (n 242) 507–8.

<sup>898</sup> Interview 24 March 2021

<sup>899</sup> Eubanks (n 14) 197–8.

*going wrong, there's an 'outsourcing of risk' so that it's the solution's problem" – civil society activist<sup>900</sup>*

I will discuss the specific ideological underpinnings of one specific data collection and sharing system – the 'Troubled/Supporting Families Programme' – in Chapter 7.

### **5.8.5 Privacy and surveillance**

*"[data collection on children] has expanded year on year, and because this is incremental, nobody has ever stopped to say hang on a minute, which data do we actually need, do we need all of this data, should we minimise this dataset, should we have different retention across different aspects of the data?" – civil society activist<sup>901</sup>*

By definition, the public sector must be accessible and inclusive of 'the public': in practice, this almost always means that more effort, time and resources must be put into reaching some individuals and groups than others. In the USA, for example, public welfare benefit access is increasingly contingent on surveillance – and policing – of behaviours.<sup>902</sup> Poor women may be particularly affected, to the point that some have argued they effectively exist in a separate legal system.<sup>903</sup> Individuals who have relatively more privilege have far less to lose in revealing information about themselves,<sup>904</sup> and so may be happier to have data about themselves stored in datasets. But this over-represents individuals who are privileged in these datasets,

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<sup>900</sup> Interview 1 March 2021

<sup>901</sup> Interview 25 May 2021

<sup>902</sup> Eubanks (n 14) 29.

<sup>903</sup> Kim Phillips-Fein, 'Privatizing Poverty' (*The Baffler*, 2 July 2018) <<https://thebaffler.com/salvos/privatizing-poverty-phillips-fein>> accessed 27 August 2018.

<sup>904</sup> Kovacs (n 625).

and so systems built from this data will skew towards their behaviours, lives and interests, while excluding others, as one interviewee pointed out:

*“the risk is always who is not in the data: if you’re doing all your analysis, who is not in the data or poorly represented...for instance, homelessness, how are people who don’t have an address captured in household analysis?” – public health data science researcher<sup>905</sup>*

Privacy concerns have received attention in the context of the gathering, storage and analysis of big datasets, but they are also important when this data is shared in order to inform decision-making. This is particularly relevant where the decisions being made are related to access to welfare benefits: in order to access these benefits, individuals must submit to surveillance. This is not a new concern, as Virginia Eubanks notes in her analysis of US welfare systems, arguing that these systems require “that poor people trade their rights - to bodily integrity, safe work environments, mobility, political participation, privacy, and self-determination - for meager aid for their families.”<sup>906</sup> In order to access welfare benefits, individuals and families have to submit to analysis of their choices, decisions and lives: data collection and sharing to support decision-making enables this to happen on a larger scale. One interviewee told me about their ethical concerns with this practice in their local council:

*“I’ve been pushing for data ethics for years at the council...our operating model in the future should be that things go through a data ethics review...I’ve tried to avoid using personalised data because we don’t have an ethics process in place.” – local authority data scientist<sup>907</sup>*

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<sup>905</sup> Interview 19 March 2021

<sup>906</sup> Eubanks (n 14) 29.

<sup>907</sup> Interview 19 March 2021

### 5.8.6 The challenges of cross-agency data sharing

The rise in the amount of data collected and stored by different public sector entities working on children's social care does not mean that all data is available to all social care professionals. Even if information is available to one professional, it may not be available to others, even if they are working with the same children, as one interviewee – a medical doctor – told me:

*“for children in care, from the safeguarding side, we don't have any access to the local authority information: we're very dependent on what a social worker tells us, which is usually a short paragraph” – medical doctor and safeguarding lead for an NHS trust<sup>908</sup>*

Data may not be accurate, or may be out-of-date: this presents particular challenges when different sources of information are collected at different intervals, but compared to each other as if they were contemporaneous. One local government interviewee told me about one specific challenge of using outdated data:

*“we had a caseworker from the Bangladeshi community, she was pretty certain that they were underrepresented in census data...you can only work with the data you have access to and the census data is from ten years ago” – local government data worker<sup>909</sup>*

Sharing information may be difficult due to technical mismatches, which create frictions both for the sender and the recipient, as one former social worker pointed out:

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<sup>908</sup> Interview 22 April 2021

<sup>909</sup> Interview 3 March 2021. At the time, the most recent census data available was from 2011. The 2021 England and Wales took place in March 2021, and the first results were published in June 2022. See Office for National Statistics, 'Census 2021: Release Plans' (*Office for National Statistics*) <<https://www.ons.gov.uk/census/aboutcensus/releaseplans>> accessed 10 September 2022.

*“[starting in the late 2010s], we had to password protect or encrypt documents, emails...different local authorities use different encryption services, how many different accounts I had to use...I had social workers refusing to open emails from me because they weren't going to create yet another account.” – former family social worker<sup>910</sup>*

## 5.9 Conclusion

In this chapter, I have discussed the different contributing factors to and motivations for the widespread and growing use of data collection and sharing in children's and family services in England. The rise of a risk-based system and documentation practice which aims to evade outrage and blame, the digitisation of public services and the introduction of modern IT systems to manage them, the increasingly collaborative approach to safeguarding, and the growing use of 'early intervention' programmes have all contributed to this increasing use of data.

This history of more and more data collection and sharing also demonstrates that the UK government, like many other countries, is susceptible to 'tech solutionism:' the idea that "given the right code, algorithms and robots, technology can solve all of mankind's problems,"<sup>911</sup> and its more extreme relative 'technochauvinism,' which Broussard defines as "the belief that tech is always the solution" in which "efficient code is prioritised above human interactions."<sup>912</sup> Together, these two sets of beliefs argue that technology – including data technologies – is not only sufficient but also necessary for solving any human problem, no matter how complex. The increased demand for

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<sup>910</sup> Interview 21 April 2021

<sup>911</sup> Tucker (n 11).

<sup>912</sup> Broussard (n 134) ch 1,6.

information-sharing across different institutions, decreasing costs of computing power and data analytics, and the prevailing winds of tech solutionism therefore set the stage for widespread use of data collection and sharing in children's services in England.

There are fundamental tensions in sharing and reusing data for different purposes. In the next chapter, I will explore in more detail how this datafication reinforces the use of neat, computer-readable classifications and categorisation systems, whether or not these are accurate descriptions of people's lives, or even useful tools for the provision of social services.

## Chapter 6 Classifying and categorising the 'family' in England: law, policy, practice, and experience

### 6.1 Introduction

In Chapter 2, I discussed social constructionism: an approach which considers that it is not possible to have impartial facts, and that instead, as Vivien Burr describes, facts “are always the product of someone asking a particular question, and questions always derive from, albeit often implicit, assumptions about the world.”<sup>913</sup> According to Pierre Bourdieu, the family is a construction: but a construction that is reproduced and normalized by the state, and which acts to reproduce social structures.<sup>914</sup> As a result, understanding the way(s) that the state defines ‘family’ – and the assumptions on which these definition(s) are based - is crucial in understanding which social structures are reproduced.

In this chapter, I will argue that in England, the concept of ‘family’ has been historically used as a categorisation in the sense I have discussed in Chapter 4: the naming of a segmentation of the world. I will further argue that the use of ‘family’ as a categorisation in this way is cemented by the longstanding view of some families as ‘problem families:’ and the widespread – if sometimes implicit – assumption that those families can be located within the population. I will trace the development of the idea of a ‘problem family’ in England, and how this idea has supported targeted interventions towards those families which aim to address broader social problems. I will explore how ‘problem families’ have been conceptualised by different actors, and how these

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<sup>913</sup> Burr (n 113) ch 8.

<sup>914</sup> Pierre Bourdieu, ‘On the Family as a Realized Category’ (1996) 13 *Theory, Culture & Society* 19.



actors have conceived of, and approached internal and external problems experienced by families. This usage is widespread despite the fact, as I will argue, that people cannot be neatly segmented into mutually exclusive and completely exhaustive 'families.' 'Family' as a concept resists the idea of classification, even imperfectly, and imposing a classificatory system on 'families' ignores the realities of many people's lives.

In Chapter 5, I described the widespread and growing use of data collection and sharing in children's and family services in England. Later in this thesis, in Chapter 7, I will examine how the use of data in one specific case study in existing programming in children's social care in England - the 'Troubled/Supporting Families Programme' – further encourages and naturalises this simplistic categorisation of individuals into families, and families into 'normal' and 'problem' families.

## **6.2 Classifying the family: prototypes in law, policy and practice**

In this section, I will explore how 'family' as a concept has been defined in England for the purposes of children's services in different domains and contexts: how this definition has varied over time, and how implicit or explicit understandings of 'family' have in practice focused on specific legal and social relationships.

Definitions in these different contexts have to some extent been based on stereotypes, including the stereotypes about gender and about family roles which I have discussed in Chapter 3. Changes in law, policy and practice have changed the extent and nature to which the definition of family has relied on these gender stereotypes and in so doing, have challenged gender inequalities which were perpetuated by these stereotypes.

### 6.2.1 Defining the 'family' in law

The legal system of England and Wales does not have a legal definition of 'family.' As a result - unlike many other countries which maintain a family register system: for example, the *Libro de Familia* ('family book') in Spain<sup>915</sup> or the *koseki seido* ('household registration system') in Japan<sup>916</sup> - there is not a centralised state legal framework for assigning individuals to a family.

In section 4.2.1.2 above, I discussed Bowker and Star's definition of a prototypical classification, which they describe as starting from a broad picture of what an object is, and use metaphor and analogy to extend this picture to decide if a given thing is or is not an example of that object.<sup>917</sup> I will argue that the current law in England uses a prototypical classification to decide who is part of a family, and that this prototype is based on stereotypes about what a family 'should' look like.

#### 6.2.1.1 *Relationships between adults: marriage from requirement to prototype*

Until the 20<sup>th</sup> century, heterosexual marriage was a central component of a 'family,' at least where adults were concerned. In *Gammans v Ekins* [1950] 2 KB 238, the Court of Appeal noted that case law up until that point had limited "membership of the same 'family'" to three kinds of relationships: between a child and parent, between one person acting *in loco parentis* to another, and between husband and wife. The Court ruled that a couple who had been cohabiting for twenty years were "masquerading" as husband and wife and therefore to describe them as members of the same family

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<sup>915</sup> 'Official Translation of the Libro de Familia (Spanish Family Book)' (*Nockolds*, 25 June 2020) <<https://www.nockolds.co.uk/official-translation-of-the-libro-de-familia-spanish-family-book/>> accessed 21 April 2021.

<sup>916</sup> David Chapman, 'Geographies of Self and Other: Mapping Japan through the Koseki 自己と他者の配置-- 戸籍を通して日本を見る' (2011) 9 *The Asia-Pacific Journal* 20.

<sup>917</sup> Bowker and Star (n 160) 62.

would be “an abuse of the English language.”<sup>918</sup> Couples who were unmarried were therefore excluded from this definition.<sup>919</sup>

Over time, however, the recognition of who constitutes a family has broadened. The law recognizes that individuals who share lives, intimacy and stability – even if they have no legal relationship - can be part of a family.<sup>920</sup> In the Family Law Act 1996, Part IV, which deals with “Family Homes and Domestic Violence,” sets out a definition of ‘associated person:’ enabling an individual to obtain a non-molestation or occupation order against a “person who is associated” with them.<sup>921</sup> This definition aimed to address the fact that previous domestic violence legislation limited protections to “the specific categories of husbands and wives and those living together as husbands and wives.”<sup>922</sup> Helen Reece has argued that the creation of this category of ‘associated persons’ was underpinned by an expectation that this concept would be synonymous with ‘members of the family:’ and that its boundaries were the boundaries of the concept of the family.<sup>923</sup>

By 2000, the law explicitly recognized that ‘family’ was not a term restricted to marriage or blood relations. In *Fitzpatrick v Sterling Housing Association Ltd* [2001] 1 AC 27,

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<sup>918</sup> The decision does note that this case may have been decided differently had the couple had children together, but as Lord Evershed MR stated in his judgement, absent “any complication of that character,” the decision shows that “in the Christian society in which we live, one, at any rate, of the privileges which may be derived from marriage is not equally enjoyed by those who are living together as man and wife but who are not married.” The privilege, in this case, was continuing as a tenant in a rent-controlled house.

<sup>919</sup> David Pearl, ‘The Legal Implications of a Relationship Outside Marriage’ (1978) 37 *The Cambridge Law Journal* 252, 252.

<sup>920</sup> Jonathan Herring, ‘What Is Family Law?’, *Family law* (8th edn, Pearson 2017) <<https://read.kortext.com/reader/epub/236510>>.

<sup>921</sup> Family Law Act 1996 s 62.

<sup>922</sup> See Helen Reece, ‘The End of Domestic Violence’ (2006) 69 *Modern Law Review* 770, 771. I have observed the effectiveness of this expansion: in my work as a domestic violence caseworker in 2010-11, (discussed in section 2.4.3.1), I do not recall a single occasion where a client’s ability to get a non-molestation or occupation order was in question because their relationship with the abuser did not fit under this category.

<sup>923</sup> Reece (n 963) 7880–789.

the House of Lords<sup>924</sup> ruled that two men who had been in a relationship and shared a flat for 18 years were a family,<sup>925</sup> pre-dating the legal recognition of same-sex couples in the form of civil partnerships in 2005 and marriage in 2014.

There is a recognition in case law that marriages come in lots of different types,<sup>926</sup> and that marital relationships may begin before a formal legal marriage has been enacted (and end before a divorce is finalised).<sup>927</sup> In practice, however, formal, legalistic definitions remain important, and marriage is still considered an ideal against which other relationships are measured. The Family Law Act 1996 has been amended to recognise the existence of civil partnerships, but still defines cohabitants as “two persons who are neither married to each other nor civil partners of each other but are living together if they were.”<sup>928</sup> A 2017 textbook on family law notes that “the closer a relationship is to the ‘ideal’ of marriage, the more likely it is to be recognized as a family.”<sup>929</sup> Marriage – as legally defined in the UK – is therefore a key characteristic of the prototype for a family. In contemporary law, the classification of people into a ‘family’ is a prototypical classification which uses a married couple as a ‘best example,’

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<sup>924</sup> Until the inception of the UK Supreme Court in 2009, the House of Lords held the judicial role of the final court of appeal in the UK, in the form of the 12 members who were Lords of Appeal in Ordinary. See ‘Law Lords’ (*UK Parliament*) <<https://www.parliament.uk/about/mps-and-lords/about-lords/lords-types/law-lords/>> accessed 4 November 2022.

<sup>925</sup> Herring (n 961).

<sup>926</sup> My friend Charlotte Hartley – a family law barrister – kindly reviewed this chapter for me, and pointed me towards this example of a judgement by Mr Justice Haddon-Cave (as he then was), which stated that there is no legal definition of what constitutes a ‘normal’ marriage; marriages come in all shapes and sizes; and, the law rightly does not encourage “*a general rummage through the attic*” of a marriage (per Coleridge J in *G v. G* (Financial Provision: equal division):” see *AAZ v BBZ* [2016] EWHC Fam 3234, [2018] 1 FLR 153.

<sup>927</sup> I am grateful again to Charlotte Hartley (see note 926) for drawing my attention to two relevant cases here on the beginning and end respectively of a marital relationship: *IX v IY* [2018] EWHC Fam 3053, [2019] 2 FLR 449; *MB v EB* [2019] EWHC Fam 1649, [2019] 2 FLR 899.

<sup>928</sup> Family Law Act s 62.

<sup>929</sup> Herring (n 961).

from which to extrapolate when determining whether other groups of people are families.

#### 6.2.1.2 ***Relationships between adults and children: becoming part of the prototype***

Historically, the presence of children - while important for marriage in some religions - was not particularly relevant to legal definitions of 'family:' but marriage was a key determinant of parental rights. The Bastardy Act 1874 gave the mothers of children born to unmarried parents full parental rights, while the fathers of such children were not automatically granted parental responsibility until 2003.<sup>930</sup> The mothers of children born to married parents did not receive equivalent rights to their husbands until 1926.<sup>931</sup> In other words, the law recognized that parental rights were important, but assumed that parental rights were not required for women who were married, giving full rights only to the father.

In the late 20<sup>th</sup> century, however, with the rise in the recognition of children as individuals with rights and agency (discussed in more detail in section 5.3.4.4 above), children began to be recognized as having families and family relationships in law. The Children Act 1989 defines 'family' in relation to a child in need as including "any person who has parental responsibility for the child and any other person with whom he has been living."<sup>932</sup> In response to the increasingly wide use of assisted reproduction technologies, the Human Fertilisation and Embryology Act 1990 revised definitions related to parenthood, including allowing for the recognition of same-sex parents, and

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<sup>930</sup> I am grateful again to Charlotte Hartley (see note 926) for pointing out that this only came into force for children born after 1 December 2003. Individuals to whom the previous laws applied are all adults at the time of writing: but only just. Adoption and Children Act 2002 s 111.

<sup>931</sup> Parker (n 677) 6.

<sup>932</sup> Children Act 1989 s 17(10).

unmarried couples, as legal parents of children born via the use of these technologies.<sup>933</sup>

In law, therefore, the prototype for a 'family' bears a strong resemblance to the stereotypical 'nuclear' or 'traditional' family: a married heterosexual couple cohabiting with their (legal) children. The closer a group of people is to this prototype, the more likely they are to be considered a 'family' for the purposes of law. This legal definition is reflected in official statistics. The Office for National Statistics (ONS) defines a family as "a married, civil partnered or cohabiting couple with or without children, or a lone parent with at least one child."<sup>934</sup>

### 6.2.2 Defining the 'family' in policy

Jane Lewis has argued that governments in the UK only began to formulate explicit family policy in the 1990s. There is, however, a much longer history of policy that affected families:<sup>935</sup> often forming part – deliberately or inadvertently – of other policy areas.<sup>936</sup> In this section, I will discuss how family policy (explicit or implicit) in England considers families. I will argue that like family law, family policy uses a prototypical classification – but that it differs from the prototype used in law.

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<sup>933</sup> Kirsty Horsey, 'Revisiting the Regulation of Human Fertilisation and Embryology' in Kirsty Horsey (ed), *Revisiting the Regulation of Human Fertilisation and Embryology* (Taylor & Francis Group 2015).

<sup>934</sup> Office for National Statistics, 'Dataset: Families and Households' (*Office for National Statistics*, 2 March 2021)

<<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/datasets/familiesandhouseholds>> accessed 18 August 2021.

<sup>935</sup> Jane Lewis, 'Family Policy in the Post-War Period' in Sanford N Katz, John Eekelaar and Mavis MacLean (eds), *Cross Currents: Family Law and Policy in the US and England* (Oxford University Press 2000) 81.

<sup>936</sup> Paul Cairney and Emily St Denny, 'Early Intervention for "Troubled Families"', *Why Isn't Government Policy More Preventive?* (Oxford University Press 2020) 179

<<https://doi.org/10.1093/oso/9780198793298.001.0001>> accessed 11 May 2021.

### 6.2.2.1 ***The family in welfare benefits policy: from 'family wage' to parental responsibility***<sup>937</sup>

One area of policy that affects families is the welfare benefits system. The modern welfare benefits system in the UK is generally dated from the 'post-war settlement' under Clement Attlee's Labour government (which was elected in 1945). Drawing on the 1942 Beveridge report, the post-war welfare system was premised on the ideal of universal and destigmatised support.<sup>938</sup> In practice, however, the implementation of these reforms exposed the tensions between the responsibilities of the state and of families: and the state was unwilling to take on what it saw as family responsibilities.<sup>939</sup> The actual distribution of benefits was, as a result, based on the assumption that a family included a male breadwinner who earned a 'family wage,' married to a woman who worked in the home as a full-time carer:<sup>940</sup> the family was treated as a unit and it was assumed that benefits distributed to men would also benefit women and children.<sup>941</sup>

During the second half of the 20<sup>th</sup> century, however, welfare benefits policy began to shift towards treating adults as economically independent individuals, partly in response to the fact that women were increasingly part of the labour market<sup>942</sup> and rising numbers of families were headed by a single parent.<sup>943</sup> As in family law (discussed in section 6.2.1.2 above), the position of children also became more salient

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<sup>937</sup> This section draws on work I have previously published elsewhere: see Laura Carter, 'Prescribed Living: Gender Stereotypes and Data-Based Surveillance in the UK Welfare State' (2021) 10 *Internet Policy Review* <<https://policyreview.info/articles/analysis/prescribed-living-gender-stereotypes-and-data-based-surveillance-uk-welfare-state>> accessed 8 December 2021.

<sup>938</sup> Virginia Noble, *Inside the Welfare State: Foundations of Policy and Practice in Post-War Britain* (1st edn, Routledge 2009) 8–9.

<sup>939</sup> Noble (n 979) 46.

<sup>940</sup> Parton (n 701) 17–18.

<sup>941</sup> Fredman (n 365) 18–30.

<sup>942</sup> Hunter (n 119) 93.

<sup>943</sup> Tina Haux, 'Family Policy' in Pete Alcock and others (eds), *The Student's Companion to Social Policy* (5th edn, Wiley-Blackwell 2016) 411.

in family policy. By the 1980s and 1990s, family policy had become based on parenthood and parental responsibility:<sup>944</sup> the New Labour government, elected in 1997, was primarily concerned with families with children.<sup>945</sup>

#### 6.2.2.2 ***Explicit family policy: the 'Family Test' and multiple prototypes***

The New Labour government was the first UK government to prioritise families at a departmental level: the Department for Children, Schools and Families was created in 2007, only to be renamed the Department for Education in 2010 under the new Coalition government.<sup>946</sup> Nonetheless, family policy remained under consideration. In 2014, the then Prime Minister David Cameron introduced the Family Test for government policy: recognizing that policy tended to focus on individuals, workers, service users, or "narrowly defined household units,"<sup>947</sup> the Family Test aimed to "introduce a family perspective to policy making."<sup>948</sup>

Unusually, government guidance for the Family Test made an attempt to define what it meant by 'family.' Noting that its list was not exhaustive, the guidance nonetheless laid out eight types of "strong and stable family relationships:"

- *Couple relationships (including same-sex couples) including marriage, civil partnerships, co-habitation and those living apart, together;*

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<sup>944</sup> Anthony Rafferty and Jay Wiggan, 'The Time-Related Underemployment of Lone Parents during Welfare Reform, Recession and Austerity: A Challenge to In-Work Conditionality?' (2017) 51 *Social Policy & Administration* 511, 90–1.

<sup>945</sup> Lewis (n 976) 99.

<sup>946</sup> The Department for Children, Schools and Families had taken over some of the functions of the former Department for Education and Skills. See Jessica Shepherd, 'Goodbye Department for Curtains and Soft Furnishings' *The Guardian* (13 May 2010) <<https://www.theguardian.com/education/2010/may/13/dcsf-new-name-department-education>> accessed 4 November 2022.

<sup>947</sup> Department for Work and Pensions, 'The Family Test: Guidance for Government Departments' (2014) 3.

<sup>948</sup> Department for Work and Pensions, 'The Family Test: Guidance for Government Departments' (n 988) 3.



- *Relationships in lone parent families, including relation between the parent and children with a non-resident parent, and with extended family*
  - *Parent and step-parent to child relationships*
- *Relationships with foster children, and adopted children*
  - *Sibling relationships*
  - *Children's relationship with their grandparents*
- *Kinship carers [relatives or friends looking after children who cannot live with their parents]*
- *Extended families, particularly where they are playing a role in raising children or caring for older or disabled family members*<sup>949</sup>

The Family Test can be seen as an attempt to move away from the assumption – which had explicitly or implicitly underlined family policy since World War II – that a family should fit the 'nuclear' prototype mentioned in section 6.2.1.2 above. Family policy in the mid 2010s aimed to be prototypical: but allowed for a large number of prototypes. I will discuss the extent to which this was actually implemented below.

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<sup>949</sup> Department for Work and Pensions, 'The Family Test: Guidance for Government Departments' (n 988) 4.

### 6.2.3 Defining the 'family' in children's services practices: focusing on the mother

Family policy in relation to children is largely implemented, in practice, by children's services: and by social workers who have their own set of professional values.<sup>950</sup> 'Children's services'<sup>951</sup> is the term for the domain of social services which centre on the child and their family. In practice, social workers interact with parents, especially mothers. While much policy guidance – at both high-level, and practitioner level – is written in gender-neutral language, in practice mothers and fathers (in current or past heterosexual relationships) were considered differently:

*"[Birth fathers] are not in our mind, no-one questions that the father was not there...I don't think I have met five birth fathers in my life, and I worked with 50 foster children at least." Former supervising social worker.<sup>952</sup>*

*"There are lots of assumptions about what it means to be a mum: if the dads were perceived to be the risk, they could get away with not coming to meetings, there's lots of pressure on the mum to meet all the children's needs. Even when the mum was the more perceived risk...there was not the same pressure on the dad to mitigate [the risk] – if the shoe had been on the other foot, we would have been putting pressure on the mother to mitigate...A lot of the time the dads weren't in the picture, couldn't get hold of them, they seemed less relevant to the day to day things going well for the child, dads*

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<sup>950</sup> Cairney and St Denny (n 977) 196–7.

<sup>951</sup> In some local authorities, Children's Services is the name of the department, but not in all: I am using the uncapitalised term to capture both.

<sup>952</sup> Interview 21 April 2021, Zoom

*could hide a lot behind work, lots of stuff happens in working hours, lots of mums weren't working" - Former children's social worker<sup>953</sup>*

in practice social workers find that they focus on the mother of the child in their work. Arguably, therefore, social workers often use their own prototype for families: which consists of a mother and her child(ren). Professionals who work with these families may further rely on assumptions about family composition, as one interviewee pointed out:

*"There are a lot of assumptions made, that the male living in the family is the father of that child; if there's more than one child, he's the family of all the children – or even that the mother is the mother of all the children, or that the mother is the biological mother." – medical doctor and safeguarding lead for a London NHS trust<sup>954</sup>*

This is supported by broader frameworks which, as Nicole Busby and Michelle Weldon-Johns argue, uphold a gendered model of who is responsible for care.<sup>955</sup> Kate Andersen argues that in practice, by the late 2010s, implicit definitions of a 'good mother' included both doing paid work and doing unpaid care work.<sup>956</sup>

### 6.3 Categorising the 'problem family'

Classifying which individuals form part of which families is not an inherent requirement to providing social services to those individuals. In section 5.3.4 above, I described different approaches to children's social care: not all of them require children to be part

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<sup>953</sup> Interview 24 March 2021, Zoom

<sup>954</sup> Interview 22 April 2021, Zoom

<sup>955</sup> Nicole Busby and Michelle Weldon-Johns, 'Fathers as Carers in UK Law and Policy: Dominant Ideologies and Lived Experience' (2019) 41 *Journal of Social Welfare & Family Law* 280.

<sup>956</sup> Kate Andersen, 'Universal Credit, Gender and Unpaid Childcare: Mothers' Accounts of the New Welfare Conditionality Regime' (2020) 40 *Critical Social Policy* 430, 435.

of a family in order to receive care. A child rights-focused approach, for example, evaluates the rights of children as individuals, irrespective of their family. The Convention on the Rights of the Child recognises in the preamble that “the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,”<sup>957</sup> but despite conservative attempts at an international level to narrowly define ‘family’ (as I have discussed in section 3.4.2.5 above), no rights are contingent on the presence or composition of this family.

In policy in England,<sup>958</sup> however, one key motivation for classifying individuals – adult and children – into families is the drive to identify ‘problem families:’ which are deemed to be the locus for social problems both within and external to the family environment. David Morgan has argued that the concepts of ‘problem families,’ ‘troubled families,’ and ‘troubling families’ are frequently collapsed together, and that it is hard to draw a clear line between internal and external problems experienced by families.<sup>959</sup>

In this section, I will explore how ‘problem families’ have been conceptualised by different actors, and how these actors have conceived of, and approached internal and external problems experienced by families. I will trace the development of the idea of a ‘problem family’ in England, and how this idea has supported targeted interventions towards those families which aim to address broader social problems. I will examine how these ideas have led to the 2010s approach to so-called ‘troubled

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<sup>957</sup> UN Convention on the Rights of the Child.

<sup>958</sup> Social care is a devolved responsibility in the UK, so different policies operate in the other nations.

<sup>959</sup> David HJ Morgan, ‘Family Troubles, Troubling Families, and Family Practices’ (2019) 40 *Journal of Family Issues* 2225.

families,' and thus the 'Troubled/Supporting Families Programme:' which I will discuss in more detail as a case study in Chapter 7.

### 6.3.1 A separate, problem, group: the idea of the 'underclass'

The idea of locating social problems within a specific group of people, rather than looking at structural problems, is not new. John Welshman has argued that the idea of an 'underclass' in society has existed since at least the 1880s.<sup>960</sup> In his work, the underclass is characterised as left behind by social or technical progress, as a separate group from the 'working class', and believed to have behavioural problems that are passed down through generations.<sup>961</sup>

Sometimes (especially in the 19<sup>th</sup> century) called the 'social residuum,' this group is seen as a threat to the 'respectable' working class, out of fear that the behavioural problems of this 'underclass' will contaminate them.<sup>962</sup> By the 1920s, the underclass was seen as 'psychologically unemployable,' and the figure of the 'scrounger' had begun to emerge: the unemployment benefits administrators in the interwar period were focused on finding these 'scroungers:' those who were not 'deserving' of benefits payments.<sup>963</sup>

'Scroungers' in the 1910s and 1920s were implicitly gendered and raced, because unemployment support prioritised white British men. Migrants were excluded from an

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<sup>960</sup> John Welshman, "'Troubled Families": The Lessons of History, 1880-2012' (*History & Policy*, 1 October 2012) <<http://www.historyandpolicy.org/index.php/policy-papers/papers/troubled-families-the-lessons-of-history-1880-2012>> accessed 19 August 2020.

<sup>961</sup> Welshman, 'Troubled Families' (n 1001).

<sup>962</sup> John Welshman, *Underclass: A History of the Excluded Since 1880* (2nd edn, Bloomsbury Academic 2013) 16–17.

<sup>963</sup> Welshman, *Underclass* (n 1003) ch 2.

increasingly centralised welfare scheme,<sup>964</sup> while women were not, in general, seen as legitimate claimants. The 1911 Unemployment Insurance Act focused on male workers, and excluded jobs that employed large numbers of women.<sup>965</sup> Following the First World War, former women war workers who refused low-paid laundry or domestic work were denied an 'out-of-work-donation:' no such restriction was placed on men.<sup>966</sup> In the 1920s, married women with employed husbands were denied benefits on the grounds that they were not 'genuinely seeking work.'<sup>967</sup>

### 6.3.2 The concept of the 'problem family'

By the 1930s, more attention was being paid to the living conditions of women and children – and the choices made by women. A new category began to emerge: that of the 'problem family.' In 1939, at the start of the Second World War, large numbers of children were evacuated from cities in the UK to the countryside: making visible the conditions of inner-city children, and calling into question how effective health and welfare systems were for these children.<sup>968</sup> In London, the disruption caused to families by war was seen as a main cause for delinquency in children and young people,<sup>969</sup> while a 1943 report on the living conditions in the towns from which children had been evacuated named the 'problem families' as those "always on the edge of pauperism and crime, riddled with mental and physical defects, in and out of the Courts

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<sup>964</sup> Nadine El-Enany, 'Aliens: Immigration Law's Racial Architecture', *(B)ordering Britain* (Manchester University Press 2020) 71.

<sup>965</sup> Noble (n 979) 16.

<sup>966</sup> Noble (n 979) 16.

<sup>967</sup> Noble (n 979) 16.

<sup>968</sup> Welshman, *Underclass* (n 1003) ch 4.

<sup>969</sup> David F Smith, 'Delinquency and Welfare in London: 1939-1949' (2013) 38 *London Journal* 67, 78.

for child neglect, a menace to the community, of which the gravity is out of all proportion to their numbers."<sup>970</sup>

This idea of the 'problem family' was also picked up by the eugenics movement. As discussed in section 5.6.1 above, in the 1930s, this movement had perceived certain women as being of low intelligence, at risk of neglecting their children, and in need of guidance, or even sterilisation to prevent them reproducing.<sup>971</sup> At the end of the Second World War, such ideas were less attractive, not least because of the association of eugenic ideas with the Nazis, and so the eugenics movement redirected their attentions towards more contemporary ideas.<sup>972</sup> In 1947, the Eugenics Society argued that 'problem families' were the result of a parent's "temperamental instability."<sup>973</sup>

Other actors began to focus on the 'problem family.' Unlike the eugenics movement – which sought to prevent births - they aimed to 'rehabilitate' these families: in practice, however, this 'rehabilitation' focused on the mothers.<sup>974</sup> By the 1950s, government circulars, including from the Ministry of Health, began to discuss 'problem families' in terms of addressing child neglect.<sup>975</sup> As discussed in section 5.3.4 above, government approaches to the welfare of children in the 1950s and 1960s remained firmly rooted in a 'child protection orientation', which focused narrowly on 'high-risk' families and

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<sup>970</sup> Women's Group on Public Welfare (England) Hygiene Committee, *Our Towns: A Close Up* (Oxford University Press 1943) xiii.

<sup>971</sup> Parker (n 677) 8–9.

<sup>972</sup> Smith (n 1010) 78.

<sup>973</sup> Welshman, *Underclass* (n 1003) 82–3.

<sup>974</sup> Welshman, *Underclass* (n 1003) 96–7.

<sup>975</sup> Welshman, *Underclass* (n 1003) 91.

used a legalistic and investigatory approach to identify children at risk. The idea of a 'problem family' fitted within this approach.

### 6.3.3 Identifying the problem family: defining characteristics

As discussed in section 6.2.1.1 above, a series of legal and policy reforms in the post-war period increased state attention to – and responsibility for – children, at the same time as marriage became less of a focus in law and policy. Nonetheless, societal concerns about divorce, separation and single parents persisted. There is a long tradition of blaming family breakdown for crime and other violent events.<sup>976</sup>

Now that the 'problem family' had been named and defined, its characteristics began to be delineated. Most of the actors who discussed 'problem families' appeared to believe not only that they were a discrete group, but one that could be easily identified. During the Second World War, groups of conscientious objectors formed Pacifist Service Units in cities in the UK: they increasingly began to turn their attentions to 'problem families,' which they called 'rehabilitation families.' These Pacifist Service Units believed that these families were easy to spot, marked as they were by dirty homes, a lack of possessions, a mother unable to manage the home and children, and an irregularly-employed father.<sup>977</sup> In 1944, the London City Council established Problem Case Committees which aimed to identify children with behavioural problems early, and improve their family environment, with the intent of 'normalising' problem families.<sup>978</sup>

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<sup>976</sup> Geoffrey Pearson, 'Everything Changes, Nothing Moves: The Longue Durée of Social Anxieties about Youth Crime' in Daniel Briggs (ed), *The English Riots of 2011: A Summer of Discontent* (Waterside 2012) 45.

<sup>977</sup> Welshman, *Underclass* (n 1003) 87.

<sup>978</sup> Smith (n 1010) 78.



Other organisations also believed they could identify such families. In 1947, the Eugenics Society identified four key characteristics that marked a 'problem family:' "intractable ineducability"; 'instability or infirmity of character'; 'the presentation by the family of multiple social problems'; and a 'squalid home,'" <sup>979</sup> and asked local authorities to prepare lists of these families. In 1952, their report on 'problem families' was reviewed favourably by medical journals, who agreed that there were a set of symptoms that were consistently displayed.<sup>980</sup>

Social work journals, however, were more sceptical.<sup>981</sup> A 1957 book, *The Problem of the 'Problem Family,'* argued that previous work had been based on assumptions, and usually worked on the basis that "the 'problem family' was 'hard to define, but easy to recognize.'" <sup>982</sup> Social workers were less convinced that 'problem families' constituted a discrete segmentation of the world, or that such families could be unambiguously identified. Nonetheless, as I will discuss further in Chapter 7, the idea that 'problem families' could be identified by a set of characteristics remains an underpinning – if not an explicit assumption – of the modern social services system.

#### **6.3.4 Problem families and family breakdown.**

During the Second World War, delinquency amongst children was blamed in large part on the disruption of the two-parent family during wartime.<sup>983</sup> The post-war welfare state allowed for the possibility of women-headed households, but still tried, where possible, to encourage men to maintain them.<sup>984</sup> By the post-war period, it was working-class

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<sup>979</sup> Welshman, *Underclass* (n 1003) 82–3.

<sup>980</sup> Welshman, *Underclass* (n 1003) 82–3.

<sup>981</sup> Welshman, *Underclass* (n 1003) 93.

<sup>982</sup> Welshman, 'The Social History of Social Work' (n 843) 470.

<sup>983</sup> Smith (n 1010) 73.

<sup>984</sup> Rafferty and Wiggan (n 985) 82.

mothers who were being held responsible for any behavioural problems of their children.<sup>985</sup>

Despite the rhetoric of destigmatised and universal welfare provision, state welfare institutions were in practice reluctant to support women who they felt should be supported by others. In 1953, the National Assistance Board issued an internal circular that warned that state assistance should not be considered the "normal mode of maintenance" for separated women or those with an illegitimate child.<sup>986</sup> There was an active attempt to 'restigmatise' support for lone women, including by encouraging them to pursue legal action against former partners. Women who were reluctant to take this action – including because they were afraid that abusive ex-partners would find out where they were, or seek custody of their children – were treated as potential fraudsters.<sup>987</sup> (I will return to the discussion of support for women experiencing domestic violence in my case study discussion in section 7.6.5 below).

As discussed in section 5.6 above, early intervention into children's lives – including to prevent delinquency - became a more common approach in the 1950s.<sup>988</sup> By the start of the 1970s, there was a degree of confidence in the welfare state's ability to address social problems. Patterns of family life, however, began to change rapidly in the 1970s: both the percentage of families headed by a single parent, and the employment rate for single mothers, began to grow.<sup>989</sup> Confidence in the welfare state began to decline: as John Mesher has argued, spending on social services increased

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<sup>985</sup> Smith (n 1010) 73.

<sup>986</sup> Noble (n 979) 47.

<sup>987</sup> Noble (n 979) 52–63.

<sup>988</sup> Parton (n 701) 17.

<sup>989</sup> Haux (n 984) 411–2.

while tax thresholds had been lowered, placing more of a financial burden on working people.<sup>990</sup>

Margaret Thatcher became Prime Minister in 1979. Under her government, social security was no longer seen as something that should be universally accepted: instead, welfare support was considered a public burden, and blamed for 'moral degeneration.'<sup>991</sup> The idea of the 'scrounger' (see 6.3.1 above) resurfaced, as a social problem which needed to be dealt with. Instead of a universal service, welfare discourse returned to the idea of the separate, problem group: dependent on benefits, and potentially defrauding the state. The implied membership of this group, however, had changed. John Welshman notes that while in the 1910s the stereotypical benefit claimant was a white male casual labourer living in rented accommodation, by 1980 they were a council-housed ethnic minority single mother dependent on state benefits.<sup>992</sup> The face of welfare dependency had become racialised and gendered.

In the 1980s, welfare dependency was stigmatised, and blamed for a host of other social ills. Linked to this was the idea that family breakdown was responsible both for welfare dependency, and for these other social problems. John Welshman has argued that in comparison to the US (where the discussion of problem families was heavily racialised), discussions in the UK were much more focused on changes in the family structure.<sup>993</sup> US commentator Charles Murray<sup>994</sup> argued in the early 1990s that the UK welfare benefits system needed to be overhauled to reduce the number of people

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<sup>990</sup> John Mesher, 'The 1980 Social Security Legislation: The Great Welfare State Chainsaw Massacre?' (1981) 8 *British Journal of Law and Society* 119, 120.

<sup>991</sup> Mesher (n 1031) 120.

<sup>992</sup> Welshman, *Underclass* (n 1003) 173.

<sup>993</sup> Welshman, *Underclass* (n 1003) 184.

<sup>994</sup> Murray is more famous for co-writing *The Bell Curve*, a widely-discredited book espousing racist ideas about intelligence.

choosing to access benefits instead of working, and that it needed to encourage marriage and discourage births outside of marriage, which he linked to an unwillingness to work.<sup>995</sup> The 'problem family' became a public topic of debate in the media and in policy discussions.

### **6.3.5 New Labour and 'social exclusion'**

The New Labour government, which came to power in 1997, started to use the language of 'social exclusion',<sup>996</sup> which was underpinned by the idea that globalisation had collapsed working-class communities, cultures and values, creating communities in which illegitimacy, crime and worklessness were common and in which children – especially boys – were inadequately socialised and not prepared to participate in society.<sup>997</sup> In practice, this was interpreted as exclusion from the labour market.<sup>998</sup> The model built on Tony Blair's 'Third Way' framework, which emphasised the need to establish a new set of values, including rights entailing responsibilities and benefits entailing contributions.<sup>999</sup>

As discussed in section 5.6.3 above, New Labour also started to focus more on defining these 'socially excluded' groups more and more precisely in order to target them for services and preventative measures: as a result, they increased the tracking and mapping of individuals and households.<sup>1000</sup> Initially, the intent of identifying these

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<sup>995</sup> Welshman, *Underclass* (n 1003) 169.

<sup>996</sup> Parton and Berridge (n 737) 62.

<sup>997</sup> Parton (n 701) 40.

<sup>998</sup> Parton and Berridge (n 737) 62.

<sup>999</sup> Parton (n 701) 32.

<sup>1000</sup> Nicholas Pleace, 'Workless People and Surveillant Mashups: Social Policy and Data Sharing in the UK' (2007) 10 *Information, Communication & Society* 943, 947–8.

groups was for 'societal reintegration.'<sup>1001</sup> which in practice, largely meant getting people into paid work.<sup>1002</sup>

In the early 2000s, however, New Labour policy began to focus on punishing 'deviant' behaviour.<sup>1003</sup> The Anti-social Behaviour Act 2003 reflected a shift in social work: from protection of children to addressing anti-social behaviour.<sup>1004</sup> By 2006, Blair's Respect Action Plan explicitly singled out 'poor parenting' and 'problem families' as a root cause of anti-social behaviour.<sup>1005</sup> Family breakdown was one of the factors blamed for anti-social behaviour, and parents were blamed for their children's behaviour.<sup>1006</sup>

In 2007, the new Prime Minister Gordon Brown established a new Department for Children, Schools and Families, headed by Ed Balls.<sup>1007</sup> The Department produced a Children Plan which, while it aimed to maximise the potential of all children, included plans to reach families with multiple problems, which were said to account for disproportionate amounts of public resources.<sup>1008</sup>

### **6.3.6 'Broken Britain' – the Coalition and Conservative Approaches**

At the end of the 2000s, the Conservative opposition, led by David Cameron, had begun to talk in terms of 'Broken Britain.' This term was arguably influenced by a 2006 report from the Centre for Social Justice, a think tank led by former Conservative leader Iain Duncan Smith, called 'Breakdown Britain.' It was followed by a 2007 report,

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<sup>1001</sup> Cairney and St Denny (n 977) 181.

<sup>1002</sup> Pleace (n 1041) 947.

<sup>1003</sup> Cairney and St Denny (n 977) 181.

<sup>1004</sup> Cairney and St Denny (n 977) 182.

<sup>1005</sup> Parton (n 701) 60–2.

<sup>1006</sup> Cairney and St Denny (n 977) 181.

<sup>1007</sup> As discussed in section 6.2.2.2, however, this department was short-lived, becoming the Department for Education shortly after the Coalition government was elected in 2010.

<sup>1008</sup> Parton (n 701) 62–4.

'Breakthrough Britain,' which argued that people were responsible for their own choices, but that government should help them make good choices. The Centre for Social Justice think-tank was also responsible for some of the ideas which influenced the development of Universal Credit (discussed in more detail in section 6.3.7 below), arguing that poverty could be addressed by work, as well as by supporting "traditional families" and "avoiding family breakdown."<sup>1009</sup>

The Conservative-Liberal Democrat Coalition government, which came to power in 2010, pursued a policy of austerity, including cuts to public services (as I have discussed in section 5.4.2 above), and freezes and caps on benefits.<sup>1010</sup> Austerity policies reframed the financial crisis which began in 2008 as a problem caused not by private sector banking practices, but by extravagant state spending.<sup>1011</sup> The Coalition government used austerity measures to legitimise welfare state restructuring, arguing that public spending was concealing welfare dependency and worklessness, and that benefit conditionality and sanctions were needed in order to incentivise people to make good choices.<sup>1012</sup>

### **6.3.7 Welfare conditionality in the UK**

The introduction of Universal Credit continued a long trend of increasing conditionality in the UK benefits system. As I have discussed in tracing the parallel history of the 'problem family' above (see section 6.2.2.1), the post-war welfare state aimed to

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<sup>1009</sup> Marilyn Howard and Fran Bennett, 'Payment of Universal Credit for Couples in the UK: Challenges for Reform from a Gender Perspective' (2020) 73 *International Social Security Review* 75, 80.

<sup>1010</sup> Jane Millar, 'Self-Responsibility and Activation for Lone Mothers in the United Kingdom' (2019) 63 *American Behavioral Scientist* 85, 89–90.

<sup>1011</sup> Wiggan (n 865) 148.

<sup>1012</sup> Wiggan (n 865) 149.

destigmatise the claiming of welfare benefits.<sup>1013</sup> This included, for example, abolishing the household means tests required by the 1934 Unemployment Act, which Virginia Noble has described as intrusive and humiliating for claimants.<sup>1014</sup> Nonetheless, welfare claimants continued to be subjected to state intrusion into their lives over the next century. The National Assistance Board, established in 1948 to oversee the provision of assistance for those not eligible for National Insurance, included a special investigative unit which had 60 staff by 1959: some of its investigations resulted in criminal prosecutions, but far more in denied or withdrawn claims for assistance.<sup>1015</sup>

By the early 1980s, the political view of welfare had shifted from universal, community-based support to a 'public burden,' which was placed on 'society,' a group that was implicitly differentiated from welfare recipients.<sup>1016</sup> The figure of the 'scrounger' began to re-emerge in discourse: continuing the century-old rhetoric of distinguishing between the 'deserving' and the 'undeserving' poor.<sup>1017</sup> Identifying fraudulent benefit claimants became an increasing priority for the government.<sup>1018</sup>

In the same period, the Conservative government (which came to power in 1979) introduced the idea of conditionality for welfare benefits: benefits which were distributed on the basis not only of need, but also of behaviour. One of the first measures was the introduction of 'Jobsearch Diaries:' records of job-searching activity which claimants had to fill out in order to be eligible for unemployment benefits. These

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<sup>1013</sup> Noble (n 979) 8–9.

<sup>1014</sup> Noble (n 979) 17.

<sup>1015</sup> Noble (n 979) 64–5.

<sup>1016</sup> Mesher (n 1031) 119–20.

<sup>1017</sup> Kayleigh Garthwaite, "'The Language of Shirkers and Scroungers?'" Talking about Illness, Disability and Coalition Welfare Reform' (2011) 26 *Disability & Society* 369, 370.

<sup>1018</sup> Mesher (n 1031) 121.

measures gave front-line advisers legal backing to require specific actions from the unemployed, who faced sanctions if they did not comply.<sup>1019</sup>

This combination of increased attention to possible fraud, and increased surveillance of behaviours, continued into the New Labour years. Post-1997 policy continued to blame the post-war welfare state for increasing dependency:<sup>1020</sup> the New Labour government focused on incentivising as many people as possible into work, including people—such as lone mothers—who had not previously been encouraged to work.<sup>1021</sup> The government also took measures to increase compliance requirements for lone mothers.<sup>1022</sup>

### 6.3.8 Conditionality, data and surveillances

As welfare conditionality was becoming more widely used, the rise of data processing techniques enabled increasing amounts of data about welfare applicants to be processed, with the stated aim of preventing fraud.<sup>1023</sup> Access to state support is by definition more important for people who are more marginalised: but as a result, as I have discussed in previous work, people who are relatively powerful are less likely to be subjected to surveillance and data collection by the state.<sup>1024</sup>

The New Labour government spearheaded the use of technological tools as part of its modernisation agenda. The government's focus on combating 'social exclusion'—and

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<sup>1019</sup> Del Roy Fletcher and Sharon Wright, 'A Hand up or a Slap down? Criminalising Benefit Claimants in Britain via Strategies of Surveillance, Sanctions and Deterrence' (2018) 38 *Critical Social Policy* 323, 327–330.

<sup>1020</sup> Noble (n 979) 146.

<sup>1021</sup> Nick Taylor, 'A Job, Any Job: The UK Benefits System and Employment Services in an Age of Austerity' [2017] *Observatoire de la société britannique* 5.

<sup>1022</sup> Tina Haux, 'Activating Lone Parents: An Evidence-Based Policy Appraisal of Welfare-To-Work Reform in Britain' (2012) 11 *Social Policy and Society* 1, 2.

<sup>1023</sup> Simitis (n 332) 714–6.

<sup>1024</sup> Carter (n 978).



getting the 'socially excluded' (back) into work—led to an increased effort to define 'socially excluded' groups more and more precisely, in order to target them for preventative measures and/or services, and thus to an increased effort to track and map individuals and households which might fall into this group.<sup>1025</sup> In this period, the government also considered more invasive tools: in 2007, the government proposed (but did not implement) the use of phone-based lie detectors to assess benefit claimants and reduce fraud.<sup>1026</sup>

The ongoing programme of increasing welfare conditionality was accelerated by the Coalition government, who came to power in 2010. This government continued promoting the rhetoric of 'strivers and skivers'—the latest iteration of the idea of 'deserving' and 'undeserving poor'—while pursuing an aggressively neoliberal agenda which, Kesia Reeve has argued, considered virtually no-one as 'deserving' of support.<sup>1027</sup> The aftermath of the 2008 financial crisis was used to legitimise a programme of austerity measures, which included restructuring the welfare state<sup>1028</sup> as well as shifting from supporting unemployed people to access work to monitoring their compliance with behavioural rules.<sup>1029</sup>

Surveillance and conditionality have continued under the Conservative government, which was elected in 2015. At the same time, the increased focus on data collection and processing has allowed increased use of 'dataveillance' in the UK. New measures

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<sup>1025</sup> Pleace (n 1041) 947–8.

<sup>1026</sup> Noble (n 979) 149.

<sup>1027</sup> Kesia Reeve, 'Welfare Conditionality, Benefit Sanctions and Homelessness in the UK: Ending the "something for Nothing Culture" or Punishing the Poor?' (2017) 25 *Journal of Poverty and Social Justice* 65.

<sup>1028</sup> Wiggan (n 865) 147–8.

<sup>1029</sup> Sharon Wright, Del Roy Fletcher and Alasdair BR Stewart, 'Punitive Benefit Sanctions, Welfare Conditionality, and the Social Abuse of Unemployed People in Britain: Transforming Claimants into Offenders?' (2020) 54 *Social Policy & Administration* 278, 291.

such as the 'Universal Jobmatch' system allowed officials to remotely monitor the job-searching activity of claimants - and sanction (punish) them for not complying with requirements.<sup>1030</sup> As of 2017, Chichester Council was using software designed by a company, Xantura, to sort benefits claims into 'low,' 'medium' or 'high-risk' categories: the Council streamlined low-risk claims, and applied additional checks to high-risk ones.<sup>1031</sup>

### 6.3.9 Digital-by-default: Universal Credit

Universal Credit - a single benefit which replaces six individual-claimed 'legacy benefits:' Child Tax Credit; Housing Benefit; Income Support; income-based Jobseeker's Allowance (JSA); income-related Employment and Support Allowance (ESA) and Working Tax Credit<sup>1032</sup> - was enacted through the Welfare Reform Act in 2012. Universal Credit implementation has been 'digital-by-default,' causing problems for claimants who struggle to access digital services, or for claimants whose information is recorded incorrectly through no fault of their own.<sup>1033</sup> Even when all data is correct, assumptions built into the digital system can also cause harm. Human Rights Watch has documented how Universal Credit calculations are based on data collected over time periods that do not match the periods in which people in work receive their pay, over- or under-estimating their income as a result and leaving claimants struggling when they receive less than what they are entitled to.<sup>1034</sup>

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<sup>1030</sup> Fletcher and Wright (n 1060) 332.

<sup>1031</sup> Chichester District Council, 'Risk Based Verification Policy 2017' (2017) <<http://chichester.moderngov.co.uk/documents/s10306/Housing%20Benefit%20and%20Council%20Tax%20Reduction%20Risk%20Based%20Verification%20Policy%202018-2019%20-%20Appendix.pdf>>.

<sup>1032</sup> GOV.UK, 'Universal Credit' (GOV.UK) <<https://www.gov.uk/universal-credit>> accessed 13 September 2021.

<sup>1033</sup> Robert Booth, 'Computer Says No: The People Trapped in Universal Credit's "Black Hole"' *The Guardian* (14 October 2019) <<https://www.theguardian.com/society/2019/oct/14/computer-says-no-the-people-trapped-in-universal-credits-black-hole>> accessed 14 October 2019.

<sup>1034</sup> Human Rights Watch (n 335).

The UN Special Rapporteur on Extreme Poverty and Human Rights issued a report after 2018 his visit to the UK, in which he stated his findings that all welfare applicants were treated as suspicious and “screened for potential wrongdoing in a system of total surveillance”<sup>1035</sup>. The UK is not alone in this trend: in his 2019 global report, the same Special Rapporteur warned of the risk of a “digital welfare dystopia” characterised by increased surveillance, increased welfare conditionality and increased punishment of beneficiaries who are deemed to “step out of line.”<sup>1036</sup>

For lone mothers, on the other hand, the introduction of Universal Credit continues a trend dating to the 1990s Conservative government led by John Major, which, driven by the belief that single motherhood is a moral problem, used benefit conditionality to pressure lone mothers to join the labour force.<sup>1037</sup> This was introduced at the same time as a broader government policy – continued by subsequent governments - which encouraged a low-wage, flexible economy in general, putting more pressure on women to enter the workforce.<sup>1038</sup>

Universal Credit also assumes stable circumstances. Even for claimants who are in stable employment and whose wages are accurately calculated, the system used to calculate payments only covers wages, not other changes of circumstances. For low-income people, the number of people in a household can also change quickly: for example, children may live with different parents or relatives at different points in

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<sup>1035</sup> ‘Statement on Visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on Extreme Poverty and Human Rights’ (n 55).

<sup>1036</sup> UN Special Rapporteur on Extreme Poverty and Human Rights (n 279) para 77.

<sup>1037</sup> Noble (n 979) 6.

<sup>1038</sup> Rafferty and Wiggan (n 985) 91.

time.<sup>1039</sup> I will discuss the assumptions inherent in Universal Credit, and how they combine with stereotypes, in more detail in Chapter 7.

#### **6.4 Defining our own families: resisting classification**

In section 4.2.1 above, I used Geoffrey Bowker and Susan Leigh Star's definition of a classification as "a spatial, temporal, or spatio-temporal segmentation of the world,"<sup>1040</sup> and noted that Bowker and Star, in their definition of classification systems, state that an ideal classification system should use consistent and unique principles to classify, cover the world in its entirety, and segment the world into mutually exclusive spaces: they do, however acknowledge that few, if any, real-world systems meet this definition.<sup>1041</sup> In this section, I will argue that 'family' as a concept resists the idea of classification, even imperfectly. I will also argue that imposing a classificatory system on 'families' ignores the realities of many people's lives.

While law, policy and practice use prototypical classifications to define who constitutes a 'family,' this is not necessarily how people define their own families. In practice, individuals determine their own family relationships. In this section, I will draw on the feminist and queer perspectives that I described in Chapter 2, in order to explore how family relationships resist more formal classifications. I will look at both prototypical classification (defined by Bowker and Star as classifications which start with a broad picture of what an object is and use metaphor and analogy to extend this<sup>1042</sup>), as used in law (see section 6.2.1 above) and policy (section 6.2.2 above); as well as

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<sup>1039</sup> Jane Millar and Fran Bennett, 'Universal Credit: Assumptions, Contradictions and Virtual Reality' (2017) 16 *Social Policy and Society* 169, 172–3.

<sup>1040</sup> Bowker and Star (n 160) 10.

<sup>1041</sup> Bowker and Star (n 160) 10–11.

<sup>1042</sup> Bowker and Star (n 160) 62.

Aristotelian classification, in which an entity either presents, or does not present, a set of binary characteristics.<sup>1043</sup>

#### **6.4.1 Covering the world in its entirety**

For 'family' to be an 'ideal' classification, the 'space' of families should completely cover the 'space' of individuals. In other words, every individual should be part of a family. Applying a queer perspective, as I have discussed in section 2.3.2.2.3 above, allows for the 'troubling' of this part of the definition. Following Eve Kosofsky Sedgwick, a queer strategy includes interrogating what the concept of 'family' performs and what relations it is creating.<sup>1044</sup> David Morgan, in his interrogation of this question, has argued that 'family' as a term is deployed in everyday life as a useful localized term, but that using it more generally is unnecessarily concrete.<sup>1045</sup> While his work recognizes that family life and families are important to individuals, he proposes the analysis of 'family practices' rather than abstract family units:<sup>1046</sup> seeing family as not a structure, but as something that is 'done' by real people in real situations.<sup>1047</sup>

Using this analysis, we can see that individuals may resist the concept of family by not carrying out family practices – or by carrying them out in different ways, as I will explore in section 6.4.3 below. Thus, not every individual may see themselves – or be seen by others, including in law and policy – as part of a family.

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<sup>1043</sup> Bowker and Star (n 160) 62.

<sup>1044</sup> Sedgwick (n 180) 83.

<sup>1045</sup> David HG Morgan, 'Locating "Family Practices"' (2011) 16 Sociological Research Online 14.

<sup>1046</sup> Morgan (n 1000) 2231.

<sup>1047</sup> Morgan (n 1086).

### 6.4.2 Segmentation into mutually exclusive spaces

For 'family' to be an 'ideal' classification, it must also meet the second part of the definition: the 'space' of individuals should be segmented into mutually exclusive 'families.' In other words, no individual can belong to more than one family, and families cannot overlap: they must exist as discrete groups of one or more people.

For many individuals, however, this is not the case. While in the UK many people may be familiar with the model of the 'traditional' or 'nuclear' family, comparatively few people would see themselves or their families in this model, which is usually defined as heterosexual parents and their dependent children.<sup>1048</sup> As discussed in section 6.2.2.2 above, the UK's 'family test' recognizes families outside of this simplistic model – and outside of discrete units. Family relationships recognized in the 'family test' include non-transitive<sup>1049</sup> or overlapping relationships. For example, a child might consider both her mother's mother and her stepmother's mother to be part of her family, but the two grandmothers may not consider each other to be part of their own families: it will depend on their interpersonal relationships, their histories, and their family practices.

Family relationships are not even necessarily symmetrical:<sup>1050</sup> if one person considers another to be a family member, this may not mean that the second person considers the first in the same way. This lack of symmetry – and transitivity – in family

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<sup>1048</sup> Herring (n 961).

<sup>1049</sup> In mathematics, a relation between two values is *transitive* if, if A relates to B, and B relates to C, then A relates to C. For example, >, 'greater than,' is transitive: if  $A > B$ , and  $B > C$ , then  $A > C$ . Non-transitive relations do not fit this definition: for example, in the 'Scissors-paper-stone' children's game (also called rock-paper-scissors, or *janken-pon*), scissors beats paper, paper beats stone, but stone beats scissors.

<sup>1050</sup> In mathematics, a relation between two values is *symmetrical* if, if A relates to B, then B relates to A. Not all relations are symmetrical. For example, >, 'greater than,' is not symmetrical: if  $A > B$ , then B is not  $> A$ .

relationships means that separating the population into discrete families is, in practice, artificial, and does not necessarily recognise the realities of people's lives.

### 6.4.3 Consistent and unique principles

For 'family' to be an 'ideal' classification, finally, it must also meet the third part of the definition: the principles for separating individuals into families must be consistent and unique. In other words, it should always be clear to which family an individual belongs, and the classification of individuals into families.

In practice, however, different people define their own families in different ways. A 1998 qualitative study with children aged 8-14 in England, for example, found that children did not define their families based on biological ties, nor on norms of the 'nuclear' family: instead, they included their parents, their relatives – including siblings, but also extended family members – their friends, and even their pets.<sup>1051</sup> One person's description of a family may not be recognized by another person as such.

It is easy to see moralistic judgements creep in when families are discussed. As I have discussed in section 6.3 above, defining the 'family' is a crucial first step to defining the 'problem family.' For example, a 2009 report by Policy Exchange, a right-wing think tank, on "non-traditional family structures," argued (without evidence) that "the decline of traditional family forms has led to an increase in family instability,"<sup>1052</sup> and that, "although there is no data to date to suggest that certain family types are more likely to have children involved in antisocial or criminal behaviour, it seems logical that those

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<sup>1051</sup> Virginia Morrow, 'Children's Perspectives on Families' (Joseph Rowntree Foundation 1998).

<sup>1052</sup> Sarah Jenkins, Isabella Pereira and Natalie Evans, 'Families in Britain: The Impact of Changing Family Structures and What the Public Think' (Ipsos MORI 2009).

parents experiencing deprivation are more likely to find their children involved in antisocial and also criminal behaviour.”<sup>1053</sup>

Recognition that families may take different forms can be seen in the development of family policy, as I have discussed in section 6.2.2 above. This has in part been in response to the increasing visibility of different forms of families, from the recognition of lone parent families as I have discussed in 6.2 above, to the expansion of marriage to include same-sex couples: in part as a response to campaigns for lesbian and gay equality.

Both queer and feminist theorists, however, have critiqued hegemonic ideas about how families 'should' be defined.<sup>1054</sup> Marriage equality, in particular, has been lauded as state recognition of same-sex relationships and more broadly of families of choice<sup>1055</sup> or 'chosen families.'<sup>1056</sup> Much of the campaigning for this particular legal right, however, has been criticized by queer theorist and activists for its aim, as Kath Weston describes, to "relocate [gay and lesbian] relationships within the fold of social respectability."<sup>1057</sup> For gay and lesbian people in the UK, claims to be 'ordinary' have been a key part of inclusion campaigns, particularly those that focused on legislative inclusion, like the campaign for marriage equality: but in practice, 'ordinariness' has been easier to obtain for some gay and lesbian people (in particular white, able-bodied

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<sup>1053</sup> Jenkins, Pereira and Evans (n 1093) 25.

<sup>1054</sup> Craig (n 148).

<sup>1055</sup> Kath Weston, *Families We Choose: Lesbians, Gays, Kinship* (Columbia University Press 1991).

<sup>1056</sup> In the final year of my research for this thesis, queer musicians Rina Sawayama and Elton John released a song reflecting the widespread understanding of this concept, including the lyrics: "we don't need to be related to relate, we don't need to share genes or a surname," Claire Shaffer, 'Rina Sawayama, Elton John Release Duet Version of "Chosen Family"' (*Rolling Stone*, 14 April 2021) <<https://www.rollingstone.com/music/music-news/rina-sawayama-elton-john-chosen-family-1155510/>> accessed 14 November 2022.

<sup>1057</sup> Kath Weston, 'Made to Order: Family Formation and the Rhetoric of Choice', *Long Slow Burn : Sexuality and Social Science* (Routledge 1998) 89.



cis people from secular or religiously liberal backgrounds) than others.<sup>1058</sup> This echoes 'normalisation' campaigns in other countries, for example in the US, where campaigns for inclusion have focused on the legalization of marriage between same-sex couples.<sup>1059</sup>

## 6.5 Conclusion

In this chapter, I have argued that law and policy in England has used – and continues to use – the concept of 'family' as a categorisation in the sense I have discussed in Chapter 4: the naming of a segmentation of the world. This is despite the fact that attempts to categorise all people into mutually exclusive 'families,' using consistent principles, ignores the realities of family life. I have also argued that this categorisation of people into 'families' is necessary in order to identify so-called 'problem families;' and underpinned by the widespread – if sometimes implicit – assumption that those families can be located within the population.

In the next chapter, I will explore the implementation of this categorisation in data and the identification of 'troubled families' in England, using as a case study the government's 'Troubled/Supporting Families Programme.' I will argue that the use of data in this programme encourages and naturalises simplistic classification: both to categorise people into 'families' which do not necessarily correspond with how the concept of 'family' is defined in law, policy or practice, and in order to classify families into 'troubled' and (implicitly) 'normal.'

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<sup>1058</sup> Brian Heaphy, 'Ordinary Sexuality' in Andrew King, Ana Cristina Santos and Isabel Crowhurst (eds), *Sexualities Research : Critical Interjections, Diverse Methodologies, and Practical Applications*, vol First edn (Routledge 2017).

<sup>1059</sup> Dean Spade, *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law* (Duke University Press 2015) 33.

## **Chapter 7 Categorising the 'troubled family': data sharing, binary classifications and family role stereotyping in children's social care in England**

### **7.1 Introduction**

In this chapter, I build on my discussion of the increased collection and sharing of data in children's and family social services in Chapter 5, and my discussion of classifying and categorising the family in Chapter 6, to examine one specific case study in existing programming in children's social care in England: the 'Troubled/Supporting Families Programme.' This programme has increasing the data maturity of local authorities. I will argue that the concept of 'family' in this data normalises a 'model family' which does not correspond with how the concept is defined in law, policy or practice, nor with the realities of people's lives. this model family has two (preferably heterosexual) parents in a stable cohabiting relationship, in which one parent (preferably male) works and the other (preferably female) prioritises childcare. The further away a family is from this model, the more likely they are to be labelled – implicitly if not explicitly – as 'troubled.'

I argue that the use of data in this programme encourages and naturalises simplistic, Aristotelian classification (as defined in Chapter 4, classification by the use of a set of binary characteristics): both to categorise people into families, and in order to classify families into 'troubled' and (implicitly) 'normal.' In order to render the complexity of individual lives and family relationships legible to individual data systems, information is simplified so that it becomes data; where the data is shared between different

systems and different entities, this categorisation may be further simplified into data variables that are legible to more than one system. This simplification, like all simplifications, amounts to a loss of information: individuals and families are considered not on their own terms, nor those of their relationships, but based on stereotypes: including stereotypes about gender.

I will argue that the 'Troubled/Supporting Families' Programme – together with other state policies, particularly the introduction of Universal Credit (which I have discussed in more detail in section 6.3.9 above) incentivise (and implicitly label 'normal') a particular form of family around dependent children: a cohabiting, heterosexual couple, where the father works and the mother takes primary responsibility for childcare, and where this arrangement is stable over time. This idea of what constitutes a 'normal family' is based on gender stereotyping, to an extent that may violate Article 5 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), as discussed in Chapter 3.

## **7.2 Case study: The Troubled/Supporting Families Programme**

In this section, I will examine as a case study the 'Troubled Families' (as of 2021, renamed 'Supporting Families') Programme<sup>1060</sup> in England.<sup>1061</sup> I will explore its antecedents in welfare policy in the UK, as well as how the programme has developed since its inception in 2012. In particular, I will show how data has become a key

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<sup>1060</sup> My research was carried out in 2018-2022, during which the programme was renamed. As a result, I will throughout this chapter refer to the 'Troubled/Supporting Families Programme,' or for ease of reading, 'the Programme:' unless directly quoting from materials which use one or other of the names. As I discuss in section 7.7.3, the programme remained largely unchanged under the new name.

<sup>1061</sup> Responsibility for social care is devolved in Scotland, Wales and Northern Ireland: as a result, the 'Troubled/Supporting Families Programme' has only operated in England.

component of the programme, and that as of 2021, the existence of the programme is incentivising data sharing arrangements and the use of data in the identification of families for the programme.

### **7.2.1 Case study as method**

As I have discussed in section 2.3.1 above, I am approaching my case study using methods from Science and Technology Studies (STS): combining empirical observation (in this case, of government documentation related to the Troubled/Supporting Families Programme) with theoretical analysis.

In this case, I am examining the Troubled/Supporting Families Programme as a sociotechnical system: imposed by government decision-makers, implemented within existing children's services structures by local authorities. I am examining the Programme through its documentation: official documents issued by government ministries, as well as statements and speeches given by government ministers and senior officials, which communicate intent. I am supporting my analysis through examining literature on social services and welfare systems: my analysis of the broader context is also supported through a small number of interviews.

### **7.2.2 The history of the programme: 'problem families' as 'troubled families'**

In section 6.3 above, I discussed the history of the categorisation of 'problem families' in the context of the drive, in law and policy, to categorise individuals into families: despite the fact that this form of classification and categorisation does not reflect the realities of family forms relationships for many (if not most) people. The most recent incarnation of the idea of the 'problem family' in the UK has been in the 'Troubled/Supporting Families Programme', which began in 2012.

This programme was in part a response to the 2011 riots in England. The fatal shooting of Mark Duggan by police in Tottenham (north London) sparked a series of riots and looting which spread – in part as a result of underlying tensions between police and communities – to other cities.<sup>1062</sup> An estimated 12,000-15,000 people took part in rioting – particularly in London, Birmingham, Liverpool, Manchester and Nottingham – between 6 and 10 August 2011.<sup>1063</sup> Political commentary on the riots quickly attributed the violence, which killed five people, and the property damage, estimated at £300 million, to individuals who were variously labelled as 'feral youth' or 'the underclass'.<sup>1064</sup> The response to the 2011 riots – which focused on family breakdown and poor parenting – followed a long tradition of blaming young people for violence, and attributing specific violent events to these failures in parenting.<sup>1065</sup>

#### 7.2.2.1 ***Identifying 'troubled families'***

The aims of the 'Troubled/Supporting Families Programme' were based on the idea that the high costs of social services were the result of a poor parenting in a small number of families:<sup>1066</sup> these families were framed as burdens on the rest of the community, and they needed to be identified in order to address their problems.<sup>1067</sup> This was not a new innovation: as I have discussed in section 6.3.3 above, a variety of government and charity organisations had set out to identify lists of 'problem families' as early as during World War II. The Coalition government<sup>1068</sup> claimed that they had

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<sup>1062</sup> Eamonn Carrabine and others, *Criminology: A Sociological Introduction* (Taylor & Francis Group 2020) 442.

<sup>1063</sup> Daniel Briggs, 'Introduction' in Daniel Briggs (ed), *The English riots of 2011: a summer of discontent* (Waterside 2012) 10–13.

<sup>1064</sup> Briggs (n 1104) 10–3.

<sup>1065</sup> Pearson (n 1017).

<sup>1066</sup> Redden, Dencik and Warne (n 41) 18.

<sup>1067</sup> Andrew J Quin, 'Against the Odds: Success and Collaboration in Safeguarding Children' (PhD thesis, Anglia Ruskin University 2015) 8 <<https://arro.anglia.ac.uk/701280/>> accessed 17 August 2020.

<sup>1068</sup> In 2011, a Conservative-Liberal Democrat coalition government was in power in the UK, led by Prime Minister David Cameron.

identified 120,000 'troubled' families in England (1 in 50 families) and that these 'troubled families' cost the taxpayer £9 billion a year.<sup>1069</sup> Initially, the programme did not include a focus on child welfare or child protection.<sup>1070</sup>

The Programme – which aimed to bring the work of different agencies together to help individual families through focused support provided by a dedicated keyworker – aimed to reach these 120,000 families between 2012 and 2015. Initially, families qualified for the programme if they met three of four given criteria: 1) family member(s) involved in youth crime or anti-social behaviour; 2) children regularly truanting or not in school; 3) an adult in the family on out-of-work benefits; 4) the services being provided to the family were deemed to be 'high cost' for the taxpayer.<sup>1071</sup> Local authorities received payments based on results – up to £4,000 per family.<sup>1072</sup> The recognition that challenges for individuals and families could be complex and interlinking was attractive to local authorities, as one interviewee pointed out:

*“there is this growing awareness of complexity: if someone's having challenges with housing for example, it's not unlikely that there will also be other challenges for them...if they're living in temporary accommodation, the kids may be struggling at school, all sorts of interlinked issues...there is some growing awareness that you can't just deal with people in little boxes, and so the idea that there could be an intelligent sort of decision-making system that could help you*

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<sup>1069</sup> Carol Hayden and Craig Jenkins, '“Troubled Families” Programme in England: “Wicked Problems” and Policy-Based Evidence' (2014) 35 *Policy Studies* 631, 631.

<sup>1070</sup> Hayden and Jenkins (n 1110) 645.

<sup>1071</sup> Department for Communities and Local Government, 'Working with Troubled Families: A Guide to the Evidence and Good Practice' (2012) 9 <<https://www.gov.uk/government/publications/working-with-troubled-families-a-guide-to-evidence-and-good-practice>> accessed 19 August 2020.

<sup>1072</sup> Department for Communities and Local Government, 'The First Troubled Families Programme 2012 to 2015: An Overview' (2016) 6–7 <<https://www.gov.uk/government/publications/the-first-troubled-families-programme-2012-to-2015-an-overview>> accessed 19 August 2020.

*understand people's needs and find the right solution...is also really quite appealing" – freelance local government researcher<sup>1073</sup>*

#### 7.2.2.2 **'Headline' problems**

The second iteration of the programme – which started in 2015 and ran until 2021<sup>1074</sup> – aimed for "significant and sustained progress" in 400,000 families, reduced the payments-by-results per family by 80 per cent, and had an even greater focus on savings for the taxpayer. The criteria for inclusion in the programme were broadened. Families now had to meet at least two of six criteria, termed 'headline problems:' worklessness and financial exclusion; poor attendance at school; crime and/or anti-social behaviour; children deemed in need of help; physical and mental health problems; and domestic violence.<sup>1075</sup>

What was deemed a successful outcome for families in the programme was determined locally, with one exception: a family in which one adult moved into continuous employment was deemed have made progress.<sup>1076</sup> Despite claims that the programme promoted social justice, the UK Government failed to define what this meant for the programme:<sup>1077</sup> evaluation of the programme failed to find an impact on

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<sup>1073</sup> Interview 8 April 2021.

<sup>1074</sup> Ministry of Housing, Communities & Local Government, 'Next Phase of £165 Million Programme for Vulnerable Families Launched' (*GOV.UK*, 26 March 2021) <<https://www.gov.uk/government/news/next-phase-of-165-million-programme-for-vulnerable-families-launched>> accessed 21 August 2021.

<sup>1075</sup> Department for Communities and Local Government, 'The First Troubled Families Programme 2012 to 2015' (n 1113) 18.

<sup>1076</sup> Department for Communities and Local Government, 'Supporting Disadvantaged Families' (n 629) 15.

<sup>1077</sup> Stephen Crossley, 'The UK Government's Troubled Families Programme: Delivering Social Justice?' (2018) 6 *Social Inclusion* 301, 302.

the proportion of children in need of help,<sup>1078</sup> although it did find that for every £1 spent on the programme, it delivered £2.28 in economic benefits.<sup>1079</sup>

In 2021, the programme was renamed the Supporting Families programme,<sup>1080</sup> and the then Ministry of Housing, Communities and Local Government<sup>1081</sup> committed to delivering a "refreshed" version of the programme as part of their priority outcome 4, "A sustainable and resilient local government sector that delivers priority services and empowers communities."<sup>1082</sup>

### **7.2.3 Interaction with the wider children's social care system**

As described in section 7.2.2.2 above, one of the six 'headline areas' of the 'Troubled/Supporting Families Programme' is "Improving children's life chances: children who need additional support, from the earliest years to adulthood." In the list of indicators for this headline area, local authorities are expected to obtain "Information/data feeds from Children's Services" to identify children meeting the indicators, which include children who are considered 'in need' according to S.17 of the Children Act 1989, who have been subject to an enquiry under S.47, or subject to

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<sup>1078</sup> Ministry of Housing, Communities & Local Government, 'National Evaluation of the Troubled Families Programme 2015 - 2020: Family Outcomes – National and Local Datasets, Part 4' (2019) 45.

<sup>1079</sup> Ministry of Housing, Communities & Local Government, 'National Evaluation of the Troubled Families Programme 2015 - 2020: Family Outcomes – National and Local Datasets, Part 4' (n 1119) 57–59.

<sup>1080</sup> Department for Education, 'DfE Outcome Delivery Plan: 2021 to 2022' (*GOV.UK*, 15 July 2021) <<https://www.gov.uk/government/publications/department-for-education-outcome-delivery-plan/dfe-outcome-delivery-plan-2021-to-2022>> accessed 20 August 2021.

<sup>1081</sup> Renamed the Department for Levelling Up, Housing and Communities later that year: see Prime Minister's Office, 10 Downing Street, and Ministry of Housing, Communities & Local Government, 'Ambitious Plans to Drive Levelling up Agenda' (*GOV.UK*, 19 September 2021) <<https://www.gov.uk/government/news/ambitious-plans-to-drive-levelling-up-agenda>> accessed 10 February 2023.

<sup>1082</sup> Ministry of Housing, Communities & Local Government, 'MHCLG Outcome Delivery Plan: 2021 to 2022' (*GOV.UK*, 15 July 2021) <<https://www.gov.uk/government/publications/ministry-of-housing-communities-and-local-government-outcome-delivery-plan/mhclg-outcome-delivery-plan-2021-to-2022>> accessed 20 August 2021.



a Child Protection Plan.<sup>1083</sup> The document directs readers to the 'data sharing annex' for guidance on the data sharing legislation,<sup>1084</sup> which pointed readers towards specific powers in the Digital Economy Act 2017 which enabled "government to share personal information across organisational boundaries to improve the delivery of certain public services."<sup>1085</sup>

Children's Services, therefore, are expected to provide information to the 'Troubled/Supporting Families Programme,' for the purposes of identifying children who meet the indicators for the Programme. As described in section 7.2.2.2 above, families must meet at least one indicator in two of the headline areas in order to come within the remit of the programme: therefore, the family of a child who is referred to children's social care and whose referral is accepted, may be assessed against the indicators but not considered eligible for the 'Troubled/Supporting Families Programme' Programme if they meet no indicators in other headline areas. However, information about them will be shared with the Programme.

### **7.3 Incentivising data use in the Troubled/Supporting Families Programme**

In Chapter 5, I described the growing use of metrics and computations in children's social care: in this section, I will examine how current legislation and guidance to support the Troubled/Supporting Families Programme, as well as broader social policy

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<sup>1083</sup> Ministry of Housing, Communities & Local Government, 'Supporting Families Programme Guidance 2021-22: Chapter 4: Evidencing Outcomes' (2021) 25.

<sup>1084</sup> This document was not available on gov.uk, but I was eventually able to obtain it via a Freedom of Information Request: Department for Levelling Up, Housing & Communities FOI Team to author, 'Freedom of Information Act 2000 - 24837777' (8 March 2023).

<sup>1085</sup> 'Troubled Families Data Sharing Annex - FINAL' (Ministry of Housing, Communities & Local Government 2021) 2.

and practice, incentivize not just the collection of increasing amounts of data, but the sharing of this data between different local authority entities.

The ‘Troubled/Supporting Families Programme’ uses a ‘payment-by-results’ model. In a context of austerity measures and cuts, as described in section 5.6 above, there is a strong financial incentive for councils to identify and work with families who meet the criteria to be included in the ‘Troubled/Supporting Families Programme,’ through collecting and linking data,<sup>1086</sup> as well as to record positive results from the Programme.<sup>1087</sup>

### **7.3.1 Legislation and guidance**

*“We will be an unashamedly pro-technology government in all that we do,” – Baroness Morgan, then Secretary of State for Digital, Culture, Media and Sport, speaking in 2020<sup>1088</sup>*

As I discussed in section 1.1.2 above, the UK government increasingly looks to data and technology as solutions for a wide range of problems. In particular, there is a strong emphasis on sharing data between different agencies in order to improve services. The inquiry into the death of Victoria Climbié (who died in 2000 at the age of eight after months of ill-treatment, as I have discussed in section 5.3.3 above) identified that a contributing factor to her death was the failure of different state agencies to share information with each other: in his recommendations, Lord Laming

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<sup>1086</sup> Redden, Dencik and Warne (n 41) 8–9.

<sup>1087</sup> Leslie and others (n 39).

<sup>1088</sup> Department for Digital, Culture, Media & Sport, ‘Baroness Morgan Speaking on How We Can Make Technology Work for Everyone’ (GOV.UK, 15 January 2020) <<https://www.gov.uk/government/speeches/baroness-morgan-speaking-on-how-we-can-make-technology-work-for-everyone>> accessed 3 February 2022.

(who led the inquiry) placed particular emphasis on the need for legal frameworks to allow information to be shared between these different actors.<sup>1089</sup>

Data sharing for service provision was explicitly codified in the Digital Economy Act 2017, which allows for data to be shared between public sector actors in order to improve or target the provision of public services or benefits to individuals or households, if the objective of that data sharing, "has as its purpose the improvement of the well-being of individuals and households,"<sup>1090</sup> and this belief in the power of data is part of government rhetoric:

*"Data sharing projects can make real world improvements to support for children and families." - Eddie Hughes, Minister for supporting families<sup>1091</sup>*

Children's social care in general – and the 'Troubled/Supporting Families Programme' in particular – are no exception to this trend. The 2021 guidance for the Programme explicitly references the new powers in Part 5 of the Digital Economy Act 2017, which permit the sharing of personal information "across organisational boundaries to improve the delivery of certain public services."<sup>1092</sup> This power includes a specific 'multiple disadvantages' objective:<sup>1093</sup>

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<sup>1089</sup> He cited in particular the inhibitory effects on data sharing of the legal framework in place at the time of Victoria's death: "the Data Protection Act 1998, the Human Rights Act 1998, and common law rules on confidentiality." Laming (n 726) 373.

<sup>1090</sup> Digital Economy Act 2017 s 35.

<sup>1091</sup> Ministry of Housing, Communities & Local Government, 'Local Data Accelerator Fund for Children and Families: Prospectus' (n 20).

<sup>1092</sup> 'Troubled Families Data Sharing Annex - FINAL' (n 1126) 2.

<sup>1093</sup> Set out in the Schedule of the Digital Government (Disclosure of Information) Regulations 2018 s 2(1).

*to provide assistance to individuals or households who are affected by multiple disadvantages by—*

*(a) assisting in the identification of individuals or households with multiple disadvantages;*

*(b) the improvement or targeting of a public service or facilitation of the provision of a benefit provided to individuals or households; and*

*(c) the improvement of the physical, mental, emotional, social or economic well-being of individuals or households.*

2020 guidance for the 'Troubled/Supporting Families Programme' stated that there was an expectation that local authorities will share data unless there "are very strong reasons not to."<sup>1094</sup> The 2021 guidance went even further, stating that "local partnerships can expect to be challenged if they are not making use of the new power where it would be appropriate to do so."<sup>1095</sup>

Data sharing is encouraged not only by the guidance for the 'Troubled/Supporting Families Programme,' but by guidance for safeguarding, as discussed in Chapter 5. Guidance for safeguarding services provision practitioners on information sharing emphasises that "the Data Protection Act 2018 includes 'safeguarding of children and individuals at risk' as a condition that allows practitioners to share information **without consent**" (emphasis in original).<sup>1096</sup> The Working Together guidelines (see section 5.3.3 above), which were written in 2018, note that; "Fears about sharing information

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<sup>1094</sup> No examples of such reasons are given in the guidance. Ministry of Housing, Communities & Local Government, 'Financial Framework for the Troubled Families Programme: April 2020 (Annex: Data Sharing Guidance and Principles)' (2020).

<sup>1095</sup> 'Troubled Families Data Sharing Annex - FINAL' (n 1126) 1.

<sup>1096</sup> HM Government, 'Information Sharing: Advice for Practitioners Providing Safeguarding Services to Children, Young People, Parents and Carers' (n 833) 5.

must not be allowed to stand in the way of the need to promote the welfare, and protect the safety, of children, which must always be the paramount concern"<sup>1097</sup> (emphasis in original). Nonetheless, as one interviewee pointed out, local authorities may still be reticent to share data about individuals:

*“one of the challenges [in linking local authority data] is that there is no single identifier across those different datasets that makes the linkage immediately possible, like an NHS number or a national identity number, so the challenge with that is that you are then being asked to share identifiable information...age, date of birth, name, sex...no-one wants to be the party that transfers the identifiable data” – public health data science researcher<sup>1098</sup>*

As discussed in section 5.3.3 above, children's social care in England is characterised by a politics of outrage. Social workers, who work in a field in which uncertainty is inherent, must negotiate the tensions between the risks of under-intervening and over-intervening. The last decade has seen a media and policy storm against under-intervening, which has resulted in social workers being more incentivised to act defensively.<sup>1099</sup> In the context of data collection and sharing, defensive action is arguably to record and share information. Data sharing is assumed to be necessary – if not sufficient – for child protection and safeguarding.

By 2017, some local authorities had already put data sharing systems in place to support the 'Troubled/Supporting Families Programme,' for example, the Manchester Research and Intelligence Database: a data warehouse which aims to match data for

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<sup>1097</sup> HM Government, 'Working Together to Safeguard Children: A Guide to Inter-Agency Working to Safeguard and Promote the Welfare of Children' (n 673) 17.

<sup>1098</sup> Interview 19 March 2021

<sup>1099</sup> Curtis (n 733).

individuals, and identify connections between individuals and families, was set up – and purchased an off-the-shelf system from IBM – as part of their implementation of the 'Troubled/Supporting Families Programme.'<sup>1100</sup> According to a 2017 mid-term review of the Programme, the local authority in Bristol used a 'Troubled Families Service Transformation Grant' to develop predictive analytics, including for "children at risk of sexual exploitation."<sup>1101</sup> The same review reported data analysis done by the local authority in Hartlepool, to identify problems common in cases of 'looked after children.' The analysis found four significant factors: three of which (domestic violence, substance misuse, and challenges with mental health and emotional wellbeing) occur in some form(s) in the criteria for inclusion in the 'Troubled/Supporting Families Programme,' while one – "grief and loss" – is not included.<sup>1102</sup>

### **7.3.2 Information sharing as an explicit goal: a 'data-intensive programme'**

Successive iterations of the 'Troubled/Supporting Families Programme' have placed an increasing emphasis on data sharing. By 2017, information sharing was being argued for as an explicit goal: in order to identify "the most complex and costly families."<sup>1103</sup> The 'Troubled/Supporting Families Programme' became an incentive for the use of data-driven technologies by local authorities. Bristol's Integrated Analytics Hub was singled out for special mention in a 2017 government report,<sup>1104</sup> while Manchester implemented their Research and Intelligence Database specifically to identify referrals to their programme,<sup>1105</sup> and by 2018 the 'Troubled/Supporting

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<sup>1100</sup> Dencik and others (n 23) 66–8.

<sup>1101</sup> Department for Communities and Local Government, 'Supporting Disadvantaged Families' (n 629) 17.

<sup>1102</sup> Department for Communities and Local Government, 'Supporting Disadvantaged Families' (n 629) 17.

<sup>1103</sup> Department for Communities and Local Government, 'Supporting Disadvantaged Families' (n 629) 20.

<sup>1104</sup> Department for Communities and Local Government, 'Supporting Disadvantaged Families' (n 629) 16.

<sup>1105</sup> Dencik and others (n 23) 66.

Families Programme', as implemented by local authorities, was recognised as a "data-intensive programme."<sup>1106</sup>

The 'Troubled/Supporting Families Programme' used an explicitly multi-agency model, with one keyworker supporting a particular family: as a result, evaluation reports of the programme noted the improvements in data-sharing as a benefit arising from the programme. Nonetheless, data sharing at local authority levels remained a challenge, as one interviewee pointed out:

*"for local authority data, there is no standard process that you can go through [to link datasets], there are no forms you can fill in, and so I think one of the challenges for each local authority wanting to do this is that they have to figure it out...everything is open to interpretation, there's legislation but it's how is it interpreted...you can have two different parties interpreting it in slightly different ways"*  
– public health data science researcher<sup>1107</sup>

As of 2021, there are two main objectives to the 'Troubled/Supporting Families Programme.' One is to support vulnerable families, which is covered in four lines of text in the guidance document. The other, which in comparison takes up more than a page, is focused on 'service transformation:' the programme aims "to drive wider reforms to the way public services are delivered."<sup>1108</sup> As I will discuss in section 7.4 below, inclusion in the Programme is based on whether or not criteria for certain indicators are met. In the 2021 Programme Guidance, each indicator is accompanied

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<sup>1106</sup> Dencik and others (n 23) 110.

<sup>1107</sup> Interview 19 March 2021

<sup>1108</sup> Ministry of Housing, Communities & Local Government, 'Supporting Families Programme Guidance 2021-22: Chapter 1: Introduction and Objectives' (2021) 5.

by 'Suggested Information Source and data feeds',<sup>1109</sup> suggesting that data sharing is a route by which information can be obtained to determine whether a family meets the criteria for a specific indicator.

### **7.3.3 Data maturity as a key part of the programme**

In April 2021, the Ministry of Housing, Communities & Local Government released a new set of guidance documents for the newly renamed 'Supporting Families' Programme. Local authority Chief Executives were asked to sign up to key commitments as part of the programme's 2021-22 iteration. As well as providing 'measurable outcomes' for families, local authorities are now asked to commit to "milestones of data maturity."<sup>1110</sup>

The guidance states that "mature data systems are a key part of the infrastructure supporting families and practices, providing a strong evidence base to help support families and commission appropriate services."<sup>1111</sup> In a climate of austerity, it also states that up-front funding is available for these data systems:<sup>1112</sup> a month earlier, the Ministry of Housing, Communities & Local Government made extensive reference to the Supporting Families programme in a call for applications to the Local Data Accelerator Fund for Children and Families, which aimed to make £7.9 million available over two years to local authorities.<sup>1113</sup> This up-front funding is in contrast to

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<sup>1109</sup> Ministry of Housing, Communities & Local Government, 'Supporting Families Programme Guidance 2021-22: Chapter 4: Evidencing Outcomes' (n 1124). Inconsistent capitalisation in original.

<sup>1110</sup> Ministry of Housing, Communities & Local Government, 'Supporting Families Programme Guidance 2021-22: Chapter 2: Delivering Supporting Families' (2021) 5.

<sup>1111</sup> Ministry of Housing, Communities & Local Government, 'Supporting Families Programme Guidance 2021-22: Chapter 2: Delivering Supporting Families' (n 1151) 13.

<sup>1112</sup> Ministry of Housing, Communities & Local Government, 'Supporting Families Programme Guidance 2021-22: Chapter 2: Delivering Supporting Families' (n 1151) 13.

<sup>1113</sup> Ministry of Housing, Communities & Local Government, 'Local Data Accelerator Fund for Children and Families: Prospectus' (n 20).



the payment-by-results model for family outcomes. In other words, local authorities are expected to demonstrate that their direct service provision for families is working before they can claim for it: no such evidence is required in order to pay for data systems.

As part of their data maturity milestones, local authorities are expected to obtain, at a minimum, "regular person level data feeds" in the areas of crime and education, and to "work towards or establish data sharing agreements for person level data on health, council tax exemptions, housing (rent arrears and antisocial behaviour) and homelessness)."<sup>1114</sup> As of 2021, therefore, data sharing is not only seen as potentially useful for working with these 'troubled families': it is now a crucial part of that work.

#### **7.3.4 Limits of data sharing**

There is an expectation that through implementing the 'Troubled/Supporting Families Programme', local authorities will increase their 'data maturity.' As discussed in section 7.3.1 above, several councils have implemented systems which use data matching and even predictive analytics as part of the programme. However, these expansive systems are not representative of local authorities as a whole.

The 'Troubled/Supporting Families Programme' uses a data maturity model with six levels. By 2020, 47% of local authorities were in the second of these levels, 'Basic,' characterized by "basic data software which is used to match and store data" as well

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<sup>1114</sup> Ministry of Housing, Communities & Local Government, 'Supporting Families Programme Guidance 2021-22: Chapter 2: Delivering Supporting Families' (n 1151) 13–14.

as manual input of outcomes and key indicators for the Programme (and a further 2% were still in the first level, 'Manual').<sup>1115</sup>

A 2018 evaluation of the Troubled Families Programme found that local authority staff had found that sharing data was valuable for identifying or targeting families for early intervention, as well as for supporting effective practice and monitoring outcomes (both for impact assessment and payment claims). The local authorities who were part of the case studies, however, were sharing data manually, or using case management software accessible by some organisations working with the Programme.<sup>1116</sup>

In the evaluation, local authority staff reported challenges with accessing the data, especially for voluntary sector partner organisations, and with producing reports,<sup>1117</sup> suggesting that these local authorities could be classified as being at the third of six levels of data maturity, 'Building blocks,' in which "most" data sources are brought together, but keyworkers can only access this data in report form "once or twice during a case."<sup>1118</sup> It is therefore not clear that there is evidence supporting the usefulness of the more 'mature' level – the top level, 'Advanced,' is characterized by the use of a data warehouse or lake with open feeds of data including the entirety of children's services or even the council<sup>1119</sup> – in identifying families who need support.

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<sup>1115</sup> Ministry of Housing, Communities & Local Government, 'Local Data Accelerator Fund for Children and Families: Prospectus' (n 20) 9–10.

<sup>1116</sup> Isabella Pereira, Claudia Mollidor and Ed Allen, 'Troubled Families Programme: Qualitative Case Study Report: Phase 2: Wave 2' (Ipsos MORI 2019) 28–30.

<sup>1117</sup> Pereira, Mollidor and Allen (n 1157) 30.

<sup>1118</sup> Ministry of Housing, Communities & Local Government, 'Local Data Accelerator Fund for Children and Families: Prospectus' (n 20) 9–10.

<sup>1119</sup> Ministry of Housing, Communities & Local Government, 'Local Data Accelerator Fund for Children and Families: Prospectus' (n 20) 9–10.

In order to render the complexity of individual lives and family relationships legible to individual data systems, information is simplified so that it becomes data; where the data is shared between different systems and different entities, this categorisation may be further simplified into data variables that are legible to more than one system. This simplification, like all simplifications, amounts to a loss of information: individuals and families are considered not on their own terms, nor those of their relationships, but based on stereotypes: including stereotypes about gender, as I will discuss further below.

#### **7.4 The 'family' in the 'Troubled/Supporting Families Programme'**

As discussed in Chapter 6, the UK does not have a legal definition of 'family,' and family policy in the UK has, in general, not specifically defined 'family' with one clear exception in the form of the 'Family Test.'<sup>1120</sup> The 'Troubled/Supporting Families Programme,' however, does not explicitly define families, nor does it use the broad definitions laid out in the 'Family Test.' In this section, I will explore the ways in which this results in *implicit* definition for what the Programme considers to be a 'family:' normalising certain family forms and labelling others as 'troubled.'

##### **7.4.1 Adults, parents and dependent children**

The Supporting Families Programme Guidance 2021-22 lists extensive and detailed criteria which children and adults within a given family must meet for inclusion in the

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<sup>1120</sup> As discussed in section 6.2.2.2, the family test aimed to "introduce a family perspective to policy making," and laid out eight types of "strong and stable family relationships:" Department for Work and Pensions, 'The Family Test: Guidance for Government Departments' (n 988) 3.

programme, and advocates for a “whole family” approach, but does not specify which family members should be considered.<sup>1121</sup>

Instead, the Programme implicitly defines the ‘family’ in terms of the relationship between a child and the adult(s) responsible for parenting them. As of 2021, eligibility for inclusion in the programme (as defined by local authority payment eligibility) required the family to have “dependent children and/or expectant parents.”<sup>1122</sup> For the purposes of the programme, a ‘dependent child’ is defined to be “a person aged 0-15 or aged 16-18 and in full-time education and/or training and/or unemployed and living with their family.”<sup>1123</sup>

To be eligible to participate in the Programme, families must also meet at least two of six criteria:<sup>1124</sup>

- Parents or children involved in anti-social behaviour or crime
- Children not regularly attending school
- Children need additional support
- Families at risk of, or experiencing, worklessness, homelessness, or financial difficulties
- Families affected by domestic abuse
- Parents or children with health needs

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<sup>1121</sup> Ministry of Housing, Communities & Local Government, ‘Supporting Families Programme Guidance 2021-22: Chapter 4: Evidencing Outcomes’ (n 1124).

<sup>1122</sup> Ministry of Housing, Communities & Local Government, ‘Supporting Families Programme Guidance 2021-22: Chapter 3: Identifying and Working with Families’ (2021) 5.

<sup>1123</sup> Ministry of Housing, Communities & Local Government, ‘Supporting Families Programme Guidance 2021-22: Chapter 3: Identifying and Working with Families’ (n 1163) 8.

<sup>1124</sup> Ministry of Housing, Communities & Local Government, ‘Supporting Families Programme Guidance 2021-22: Chapter 3: Identifying and Working with Families’ (n 1163) 5.

The guidance for some specific criteria refer to the circumstances of the child: for example, one of the criteria for “children who have not been attending school regularly” is “a child who has been excluded from school within the last 3 school terms.”<sup>1125</sup> Others refer specifically to parents: for example one of the specific criteria for health needs is “an adult (who has parenting responsibilities) with mental ill-health across mild, moderate or severe needs.”<sup>1126</sup>

Other criteria, however, simply require that the family includes an adult in a specific circumstance, for example “an adult in receipt of out of work benefits, or an adult who is claiming Universal Credit.”<sup>1127</sup> Parenting responsibilities is not explicitly included. It is not clear whether a local authority should include a family where the adult receiving out-of-work benefits is a non-resident parent, the sibling of a child, a grandparent, or an extended family member - all of which could be considered to have a family relationship with a dependent child, according to the Family Test guidance discussed in section 6.2.2.2 above – or any other adult who the child might consider part of their own family.

#### **7.4.2 Gender neutrality in policy, maternal responsibility in practice**

Documents related to the ‘Troubled/Supporting Families Programme’ – as with most UK government guidance – are written to be gender-neutral.<sup>1128</sup> In practice, however,

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<sup>1125</sup> Ministry of Housing, Communities & Local Government, ‘Supporting Families Programme Guidance 2021-22: Chapter 4: Evidencing Outcomes’ (n 1124) 22.

<sup>1126</sup> Ministry of Housing, Communities & Local Government, ‘Supporting Families Programme Guidance 2021-22: Chapter 4: Evidencing Outcomes’ (n 1124) 36.

<sup>1127</sup> Ministry of Housing, Communities & Local Government, ‘Supporting Families Programme Guidance 2021-22: Chapter 4: Evidencing Outcomes’ (n 1124) 29.

<sup>1128</sup> This has been government policy since 2007: see ‘Gender Neutral Drafting’ (*UK Parliament*, 8 March 2007) <<https://hansard.parliament.uk//Commons/2007-03-08/debates/07030896000015/GenderNeutralDrafting>> accessed 19 November 2022.

family demographics are not. According to the Office for National Statistics (ONS), in 2020, there were 2.9 million lone parent families – 14.7% of families – in the UK.<sup>1129</sup> Of these, 2.4 million – 85% - were lone mother families.<sup>1130</sup>

As discussed in section 6.2.3 above, social workers, in their assessment and work with families, place more expectations on mothers than on fathers. It is reasonable, then, to assume that in many cases, the 'adult' included in the family in the 'Troubled/Supporting Families Programme' indicator is likely to be the mother.

This echoes a broader trend in family policy. For example, as Nicole Busby and Michelle Weldon-Johns have argued, the current legal and policy framework upholds a gendered care model in two-parent heterosexual families: while policy reforms have aimed to encourage fathers to take on more care activity within the family, a failure to reform broader workplace culture, as well as tax and social security law, has meant that responsibility for childcare still rests primarily with women.<sup>1131</sup>

Feminist criticism of 'the family' has a long history. Sandra Fredman argues that we need to recognize the family not as an individual unit but as its own structure, with interactions, power relationships, and external impact.<sup>1132</sup> For this reason, feminist researchers have criticized research which "takes the family as the smallest unit of analysis."<sup>1133</sup>

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<sup>1129</sup> Office for National Statistics, 'Dataset: Families and Households' (n 975).

<sup>1130</sup> Office for National Statistics, 'Dataset: Families and Households' (n 975).

<sup>1131</sup> Busby and Weldon-Johns (n 996).

<sup>1132</sup> Fredman (n 365) 36–7.

<sup>1133</sup> Sprague (n 74) 92.

As discussed in Chapter 6, law, policy and practice in England has traditionally done just that: treated the family as a unit. In the 19<sup>th</sup> and early 20<sup>th</sup> centuries, this was enacted through conferring more rights within the family and external to it on a man: men were expected to earn a 'family wage' in order to support their wife and children. If the man – considered the 'head of household' – did not in fact provide this support, there was little recourse for his partner and children.

While neither the law nor the ONS definition genders the adults or the children, the popular conception of the 'nuclear' family is gendered. In practice, children's services focus on the relationship between a child and their primary caregiver: usually a mother. Another parent may or may not be considered: this is often a father. One former social worker that I interviewed, who had worked in a local authority in London, reported that she had never worked with a child who had parents in a same-sex relationship.<sup>1134</sup>

### **7.4.3 Individual indicators**

In practice almost every indicator for eligibility for the 'Troubled/Supporting Families programme specifies that it applies not to a 'family' as a whole – however defined - but to an *individual* within that family. For example, one of the indicators relating to children who have not been attending school regularly is that "The family includes...A child who has been excluded from school within the last 3 school terms."<sup>1135</sup> Other indicators specifically refer to adults with parenting responsibilities, for example an indicator related to crime and anti-social behaviour refers specifically to "An adult currently serving a community order or suspended sentence, who has parenting

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<sup>1134</sup> Interview, 24 March 2021, Zoom.

<sup>1135</sup> Ministry of Housing, Communities & Local Government, 'Supporting Families Programme Guidance 2021-22: Chapter 4: Evidencing Outcomes' (n 1124) 22.

responsibilities.”<sup>1136</sup> Still others refer simply to an adult, regardless of their parenting responsibilities: in the section on worklessness, one of the indicators is “The family includes...An adult in receipt of out of work benefits, or An adult who is claiming Universal Credit and subject to work-related conditions.”<sup>1137</sup>

There are six ‘headline’ problems, each of which has a number of indicators in the 2021 guidance.<sup>1138</sup> Of the 42 indicators in total, 39 refer explicitly – or in practice - to an individual within the family:

**“Staying safe in the community: Parents or children involved in crime or anti-social behaviour:”** 7 indicators, of which 6 refer to individuals: one to a child, 3 to an adult, and 2 to a child or adult.

The remaining objective is phrased in the plural: “Adults and children nominated by professionals because of their potential to offend or offending behaviour is of equivalent concern to the indicators above, for instance where family members are at risk of radicalisation,”<sup>1139</sup> but from the context, it is clear that one such individual is sufficient to meet the criterion.

**“Getting a good education and skills for life: Children who have not been attending school regularly:”** 6 indicators, all of which refer to an individual child in the family

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<sup>1136</sup> Ministry of Housing, Communities & Local Government, ‘Supporting Families Programme Guidance 2021-22: Chapter 4: Evidencing Outcomes’ (n 1124) 14.

<sup>1137</sup> Ministry of Housing, Communities & Local Government, ‘Supporting Families Programme Guidance 2021-22: Chapter 4: Evidencing Outcomes’ (n 1124) 29.

<sup>1138</sup> Ministry of Housing, Communities & Local Government, ‘Supporting Families Programme Guidance 2021-22: Chapter 4: Evidencing Outcomes’ (n 1124).

<sup>1139</sup> Ministry of Housing, Communities & Local Government, ‘Supporting Families Programme Guidance 2021-22: Chapter 4: Evidencing Outcomes’ (n 1124) 15.



**“Improving children’s life chances: children who need additional support, from the earliest years to adulthood:”** 12 indicators, 11 of which refer to an individual child.

The remaining objective refers to a whole family: "A family who is or has been entitled to 15 hours free early education for two-, three- or four-year-olds and has not taken this up."<sup>1140</sup> As of 2021, all three- and four-year olds were entitled to the 15 hours of free early education,<sup>1141</sup> while parents of two-year-olds may also claim this if they are claiming Universal Credit or some legacy benefits (or some pension benefits).<sup>1142</sup> Therefore, in practice, a single child who is entitled to early education - and is not in it - is enough to meet this criterion.

**“Improving living standards: families experiencing or at risk of worklessness, homelessness or financial difficulties:”** 5 indicators, 3 of which refer to individuals: one to an adult, one to a child, and one to a ‘young person’

**“Staying safe in relationships: families affected by domestic abuse:”** 7 indicators, 6 of which refer to an individual “young person or adult”

**“Living well, improving physical and mental health and wellbeing: Parents and children with a range of health needs:”** 5 indicators, 3 of which refer to an individual child or adult. The other two: "Expectant or new parents, with a mental health or substance misuse problem and other health factors which may affect their parenting,

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<sup>1140</sup> Ministry of Housing, Communities & Local Government, ‘Supporting Families Programme Guidance 2021-22: Chapter 4: Evidencing Outcomes’ (n 1124) 26.

<sup>1141</sup> GOV.UK, ‘15 Hours Free Childcare for 3 and 4-Year-Olds’ (*GOV.UK*) <<https://www.gov.uk/help-with-childcare-costs/free-childcare-and-education-for-2-to-4-year-olds>> accessed 13 September 2021.

<sup>1142</sup> GOV.UK, ‘Free Education and Childcare for 2-Year-Olds’ (*GOV.UK*) <<https://www.gov.uk/help-with-childcare-costs/free-childcare-2-year-olds>> accessed 13 September 2021.

or a young child where there are concerns regarding their physical, social or emotional development;"<sup>1143</sup> and "Adults with parenting responsibilities or children who are nominated by health professionals as having any mental and/or physical health needs of equivalent concern to the indicators above. This may include unhealthy behaviours, resulting in problems like obesity, malnutrition or diabetes,"<sup>1144</sup> are also framed as plural, but again from the context, it is clear that a single such individual would meet the criteria.

As discussed in section 6.2.2 above, the government does recognise in some other areas of policy that family relationships go beyond those between children and the adult(s) who have parental responsibilities. But the extent to which other family relationships should be considered in "whole family" assessments – such as, for example, between children and a non-resident parent, or between children and grandparents – is not clear in the programme guidance.

As discussed above, some of the indicators for the 'Troubled/Supporting Families Programme' refer to an individual adult with parenting responsibilities. But others refer only to an individual child or adult. It is not clear, from the guidance, whether other adults or other children who the child might consider part of their 'family' are considered when assessing whether these indicators are met.

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<sup>1143</sup> Ministry of Housing, Communities & Local Government, 'Supporting Families Programme Guidance 2021-22: Chapter 4: Evidencing Outcomes' (n 1124) 37.

<sup>1144</sup> Ministry of Housing, Communities & Local Government, 'Supporting Families Programme Guidance 2021-22: Chapter 4: Evidencing Outcomes' (n 1124) 37.

#### **7.4.4 Whole family Indicators**

In section 7.4.3 above, I noted that of the 42 total indicators for the 'Troubled/Supporting Families Programme,' 39 referred to individuals within the family.

The three exceptions are the following indicators:

- **“Improving living standards: families experiencing or at risk of worklessness, homelessness or financial difficulties:”**
  - "Families at risk of homelessness or living in accommodation which it is not reasonable for them to continue to occupy"<sup>1145</sup>
  - "Parents and families nominated by professionals as being at significant risk of financial difficulties. This may include those with problematic / unmanageable levels and forms of debts, those with significant rent arrears and those experiencing in work poverty"<sup>1146</sup>
- **“Staying safe in relationships: families affected by domestic abuse:”**
  - "The household or a family member has...Been subject to a police call out for at least one domestic incident, including for so-called 'honour-based' abuse, in the last 12 months."<sup>1147</sup>

The first and third indicators in this list conflate household and family: I will return to the implications of this conflation in section 7.5.2 below.

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<sup>1145</sup> Ministry of Housing, Communities & Local Government, 'Supporting Families Programme Guidance 2021-22: Chapter 4: Evidencing Outcomes' (n 1124) 30.

<sup>1146</sup> Ministry of Housing, Communities & Local Government, 'Supporting Families Programme Guidance 2021-22: Chapter 4: Evidencing Outcomes' (n 1124) 31.

<sup>1147</sup> Ministry of Housing, Communities & Local Government, 'Supporting Families Programme Guidance 2021-22: Chapter 4: Evidencing Outcomes' (n 1124) 34.

Information about **risk of homelessness**, or residing in unreasonable accommodation, in the indicators, can come from information provided by local authority housing departments and Registered Social Landlords.<sup>1148</sup> This can clearly conflate shared residence and family: if the residence becomes unavailable, that will affect all the people living there, regardless of whether they consider themselves family members.

On the other hand, other acceptable information for this indicator is, "information from the local authority and housing providers about 16- and 17-year olds at risk of estrangement from their family which could lead to homelessness."<sup>1149</sup> This is in practice an individual indicator, for similar reasons to those described above: a single 16- or 17-year old child is sufficient to meet the criterion. However, this criterion recognises that family relationships may be more complex than simply shared residence.

Information about **risk of financial difficulties** can come from referrals, "organisations specialising in debt and finance, such as the Money Advice Service, Jobcentre Plus and housing providers."<sup>1150</sup> The indicator specifies either parents or family at such risk. A parent at risk of financial difficulties is an individual indicator (one parent is sufficient to meet the criterion); whether a family is at such risk depends,

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<sup>1148</sup> Ministry of Housing, Communities & Local Government, 'Supporting Families Programme Guidance 2021-22: Chapter 4: Evidencing Outcomes' (n 1124) 30.

<sup>1149</sup> Ministry of Housing, Communities & Local Government, 'Supporting Families Programme Guidance 2021-22: Chapter 4: Evidencing Outcomes' (n 1124) 30.

<sup>1150</sup> Ministry of Housing, Communities & Local Government, 'Supporting Families Programme Guidance 2021-22: Chapter 4: Evidencing Outcomes' (n 1124) 31.

therefore, on the definition of 'family,' used by other professionals in referring organisations.

Information on police call-outs for “**domestic incidents**” is expected to come from the police, from multi-agency safeguarding and risk assessment groups, or from schools.<sup>1151</sup> Once again, it is possible for this indicator to refer only to an individual - one family member may be sufficient – but it can also refer to a 'household.' This is the only one of 42 indicators to refer to a 'household,' and the meaning of the term in this context is not defined. It is plausible that 'household' could refer to a family living in a shared residence, or non-family members who share a residence: it could also refer to incidents involving non-resident family members.

The three whole-family indicators, therefore, can also function as individual indicators. Where they do not, they are no clearer on the definition of 'family' than other parts of the guidance for the 'Troubled/Supporting Families Programme.' Shared residence may play a role in deciding whether or not risks of homelessness, risks of financial difficulties, or police incidents affect a family, and as a result which families are potentially eligible for inclusion in the programme.

## **7.5 Family is a categorisation – and one that is normalized, based on residence**

I have, in Chapter 4, used the term 'categorisation' to cover the concept of *naming* the different spaces into which a classification system separates the world. In this section, I will argue that in practice, the use of data collection and sharing systems in children's

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<sup>1151</sup> Ministry of Housing, Communities & Local Government, 'Supporting Families Programme Guidance 2021-22: Chapter 4: Evidencing Outcomes' (n 1124) 34.

social care and especially in the 'Troubled/Supporting Families' Programme, incentivizes the classification – per Geoffrey Bowker and Susan Leigh Star's definition - of individual people into 'families' that *do* meet this definition of categorisation. I will also argue that shared residence is a key determinant for this categorisation.

I argue that data systems impose a classification on the world, in which individuals are assigned to exactly one family: and that this in turn normalises naming those classifications as families. In section 7.6 below, I will discuss how this imposition reinforces stereotypical ideas about what it means to be part of a family – and what it does not mean.

### **7.5.1 Enforcing a classification system on families:**

In this chapter, I will – as I did in Chapter 4 - use Bowker and Star's definition of a classification as "a spatial, temporal, or spatio-temporal segmentation of the world."<sup>1152</sup> Bowker and Star note that an ideal classification system should use consistent and unique principles to classify, cover the world in its entirety, and segment the world into mutually exclusive spaces.<sup>1153</sup> In this section, I will demonstrate that data systems treat 'family' as a classification system, even though – as I have demonstrated in section 6.4 above – family relationships resist this classification.

#### **7.5.1.1 *Covering the world in its entirety***

Children, historically, had few rights in law. As I discussed in Chapter 5, the 'modern' child protection system emerged in the 1870s and 1880s in England, recognizing for the first time that a system of protection was needed for children being harmed in their

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<sup>1152</sup> Bowker and Star (n 160) 10.

<sup>1153</sup> Bowker and Star (n 160) 10–11.

own homes. This framework, however, did not focus on children as part of a family: in fact, many of the early child protection measures aimed to remove children from parents – particularly mothers – who were deemed unfit.

With the rise in recognition of children's rights globally, and an increasingly child-centred approach to family law, there has been an increasing recognition that children are not simply family members of adults, but individuals with family relationships of their own. This shift started around the UN International Year of the Child, in 1979, when there was progress towards recognizing children as people (rather than as property, of value only insofar as they were considered of value to society or to their families).<sup>1154</sup> This was articulated in international human rights law in General Comment 13 on the Convention on the Rights of the Child, which for the first time recognized that children were not the property of their parents (or their husbands, for girls who married under the age of 18) but holders of their own rights, including to protection and well-being.<sup>1155</sup>

As discussed in Chapter 5, the approach to child protection in England is not, however, a strictly child rights approach. Instead, it can be broadly characterized as a child-focused approach: the state takes a paternalistic role, recognizing the relationship between the state and the child that exists independent of its parents and families, but not necessarily fully recognizing the agency of the child.<sup>1156</sup>

In contrast to family law, which (as I discussed in section 6.2.1 above) focuses on marriage, policy that impacts families cares much more about children and their

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<sup>1154</sup> Hart, Lee and Wernham (n 762) 972.

<sup>1155</sup> Svevo-Cianci and others (n 761) 981.

<sup>1156</sup> The differences between a child-focused and a child rights approach are discussed further in section 5.3.4.

relationships. This is in line with policy that has been introduced in the last two decades in the UK, which has focused on parenting and which blames parenting for a whole range of social ills, as I discuss in section 6.3 above. In this, data systems in children's social care are no exception: they require that all children are linked to a family. Returning to Bowker and Star's definition: the implementation of the children's social care system in England requires that the 'space' of children (in this case, all children) must be completely 'covered:' in other words, every child must be assigned to a family.

#### 7.5.1.2 ***Segmentation into mutually exclusive spaces***

Historically, family policy has considered families as mutually exclusive units. For example, until the Social Security Act in 1980, welfare benefits systems in the UK were based on the assumption of a male breadwinner who supported other family members.<sup>1157</sup> The UK is far from the only country which has adopted these policies, which are also known as Keynesian models: universalistic welfare models in principle, which in practice support a model of a male breadwinner.<sup>1158</sup> 'Breadwinner models' that stereotype men as the head of households and exclude women's economic contributions have been criticised by the CEDAW Committee,<sup>1159</sup> as I have discussed in Chapter 3.

Data systems also consider families to be mutually exclusive: in other words, individuals can only be a member of one family. In a practical example, when developing machine learning models for children's social care, data analysts at What Works for Children's Social Care were able to access data which included information

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<sup>1157</sup> Fredman (n 365) 171.

<sup>1158</sup> Martinelli (n 668) 19.

<sup>1159</sup> Holtmaat (n 361) 157–8.



about sibling groups: in one local authority, for children who were part of multiple groups, they combined together all sibling groups which shared a child.<sup>1160</sup> If Child B was part of the same sibling group as Child A and Child C, the analysts considered that Child B and Child C were part of the same sibling group: regardless of whether B and C considered themselves to be siblings.

In other words, family relationships are treated as transitive by the data system, even though – as I have discussed in section 6.4.2 above – family relationships do not necessarily behave in this way. This has the effect of treating families as mutually exclusive units: if a person is a family member of Child A, then they are a family member of all of Child A's family members, and thus are themselves part of Child A's family.

#### 7.5.1.3 ***Consistent and unique principles***

In Chapter 4, I discussed how data systems impose classification and categorization on real-world systems. As I described in Chapter 5, data systems in children's social care are built in order to render the specifics of human lives machine-readable: as a result, they order information in ways that fit the classification and categorization methods used in the data system.

In the case of sibling groups, described above, data analysts (in this case, working with What Works for Children's Social Care, a research organization, rather than directly for local authorities) implemented consistent principles within each local authority. However, these principles were not necessarily based on evidence other

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<sup>1160</sup> Clayton and others (n 37) 23.

than the data to which they already had access: and they were not consistent across different local authorities.

### **7.5.2 Conflating family and household: shared residence as an identifier.**

In this section, I will discuss how the data systems used in the 'Troubled/Supporting Families Programme,' and in children's social care in England more broadly, often conflate 'family' with 'household' or 'shared residence.' In other words, data systems work on the assumption that all individuals who live at a given address are part of the same family, regardless of the reality of their lives or relationships.

As I discussed in section 6.2.1 above, the UK – unlike some other countries – does not have a formal household register system. As a result, data about families often relies on connections that are made by people outside the family, for different specific purposes. For example, the Integrated Children's System (ICS) had separate records for each child, but no overall 'family' record.<sup>1161</sup> One social worker I interviewed who had used an ICS system noted that it was "very easy to lose information in the system,"<sup>1162</sup> which implies that that the system did not easily keep track of which family members were connected to each other.

As a result, data analysis related to families may resort to the use of proxies. At a national level, the Office for National Statistics defines a family as "a married, civil partnered or cohabiting couple with or without children, or a lone parent with at least one child."<sup>1163</sup> In their analysis, the ONS also uses shared residence as a proxy: "The

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<sup>1161</sup> White and others (n 787) 411.

<sup>1162</sup> Interview 24 March 2021, Zoom

<sup>1163</sup> Office for National Statistics, 'Dataset: Families and Households' (n 975).

definition of a lone parent does not make any distinction between situations where a child has regular contact and/or partly resides with their other parent and a child who solely resides with and is cared for by one parent. Only the parent living with their children is included in the estimated number of lone parent families and households.”<sup>1164</sup> In other words, in national statistics, parents who do not live with their children – even if they have legal parenting responsibilities – are not counted as lone parents.

Shared residence is also used as a proxy for family relationships at a smaller research level. An academic interviewee described how her research used residence as a proxy for household, which in turn became a proxy for relationships within a household:

*“You’ve got to be really careful about how you’re defining that household so if it’s children and parents, looking at the size of that, the number of adults...it’s difficult to infer relationship with the age categories, what happens when there’s a three-year-old, a 20-year-old and a 40-year old, what are the relationships between those people? You need to start making some assumptions around who’s a child and who’s an adult...the inference we made was that it is a carer-child relationship - without making the assumption that it is necessarily a parent, that if you are an adult living in a household with a child, you will have some form of caring responsibilities.” – PhD student, researching linkages between local authority data and health records<sup>1165</sup>*

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<sup>1164</sup> Office for National Statistics, ‘Dataset: Families and Households’ (n 975).

<sup>1165</sup> Interview 19 March 2021, Zoom.

A civil society researcher found a similar problem in a local authority data management system, which also used shared address as a proxy for family:

*"It works on residential address, right, so there was another person who was part of the family, possibly had been in a relationship before and was involved with the family but obviously the system didn't pick it up and the social worker said obviously that's a really important thing that we have to think about, when we're thinking about what makes a family, but the machine, you know, it's not going to pick that up." – civil society researcher, describing a data management platform in development at a local authority<sup>1166</sup>*

Using shared residence as a proxy for family relationship is, unlike the classification systems in law and policy, an Aristotelian classification (see section 4.2.1 above).<sup>1167</sup>

Either two individuals share a residence – and are therefore considered part of the same family – or they do not. This differs from law, policy and social work practice: as I have discussed in section 6.2 above: all three of these areas use prototypical classifications – albeit different ones – to determine who is part of a given family.

## **7.6 The 'model' family**

In section 6.3 above, I discussed the dominant ideology that frames 'problem families,' rather than structural problems, as individually responsible for social problems. This ideology supports targeted interventions – increasingly authoritarian and paternalistic, as I discussed in section 5.6.5 above, even as its proponents advocate for a smaller, leaner state – towards these families. Data systems, which, as I discussed in section

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<sup>1166</sup> Interview 13 April 2021, Zoom.

<sup>1167</sup> Bowker and Star (n 160) 62.

7.5 above, promise to classify individual into families – a necessary precursor to identifying 'problem families' - are therefore attractive tools for these individualised interventions.

In this section, I will argue that the 'Troubled/Supporting Families' Programme – together with other state policies, particularly the introduction of Universal Credit (which I have discussed in more detail in section 6.3.9 above) incentivise (and implicitly label 'normal') a particular form of family around dependent children: a cohabiting, heterosexual couple, where the father works and the mother takes primary responsibility for childcare, and where this arrangement is stable over time. These programmes in England are by no means unique. Pierre Bourdieu noted that state policies – including record-keeping, and economic policies – tend to “favour a certain kind of family organization.”<sup>1168</sup> Paul Cairney and Emily St Denny argue that 'family' as a concept becomes not just descriptive but prescriptive: government policy draws “boundaries between normal and deviant family life,”<sup>1169</sup> and uses these boundaries as justifications for state interventions into families which are 'deviant.'<sup>1170</sup>

### **7.6.1 Normalising cohabiting couples and punishing lone mothers**

In this section, I will argue that the 'Troubled/Supporting Families Programme,' particularly in combination with the introduction of Universal Credit, supports the normalisation of cohabitation, and works to classify lone parents as 'troubled.'

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<sup>1168</sup> Bourdieu (n 955).

<sup>1169</sup> Cairney and St Denny (n 977) 178.

<sup>1170</sup> Cairney and St Denny (n 977) 178.

As discussed in section 6.2 above, the importance of marriage or civil partnership has declined when considering who constitutes a family – although the existence of a marriage or civil partnership does still impact the presence or absence of parental responsibility of an adult for a child. Marriage still serves as a model, however: the Department of Work and Pensions considers two people to be in a couple if they are married, in a civil partnership, or “living together as if they were married.”<sup>1171</sup>

One of the indicators within the Troubled/Supporting Families Programme (families must meet at least two from different categories, as I have discussed in section 7.2.2.2 above) is that the family includes an adult claiming out of work benefits, or Universal Credit.<sup>1172</sup> Out of work benefits are legacy benefits, which are being phased out with the introduction of Universal Credit (discussed in more detail in section 6.3.9 above). These include Jobseekers Allowance and Income Support, and are claimed by individuals. The UK government has committed to fully implementing Universal Credit by September 2024, replacing legacy benefits.<sup>1173</sup>

The introduction of Universal Credit has risked returning partnered women to dependence on men, and undermines women's financial independence.<sup>1174</sup> For women in a cohabiting heterosexual relationship, the Universal Credit regime means that it is not always financially beneficial for them to take on work.<sup>1175</sup> Universal Credit

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<sup>1171</sup> Department for Work and Pensions, 'Universal Credit: Further Information for Couples' (GOV.UK, 1 July 2020) <<https://www.gov.uk/government/publications/universal-credit-and-couples-an-introduction/universal-credit-further-information-for-couples>> accessed 21 August 2021.

<sup>1172</sup> Ministry of Housing, Communities & Local Government, 'Supporting Families Programme Guidance 2021-22: Chapter 4: Evidencing Outcomes' (n 1124) 29.

<sup>1173</sup> Sky News, 'Universal Credit Rollout Hit with Further Delay at a Cost of £500m' *Sky News* (3 February 2020) <<https://news.sky.com/story/universal-credit-rollout-hit-with-further-delay-at-a-cost-of-500m-11925746>> accessed 21 August 2021.

<sup>1174</sup> Hunter (n 119) 96.

<sup>1175</sup> Haux (n 984) 415.

has been shown to undermine women's financial independence.<sup>1176</sup> Couples claiming Universal Credit jointly are required to designate a 'lead carer':<sup>1177</sup> as a result of gender pay disparities, this means in practice that mothers are incentivised to stay home and care for children, while fathers are incentivised to work. However, their access to benefits is conditional not only on their own behaviours but also on that of their partners.<sup>1178</sup>

For women with children who are the only adult living at their address, on the other hand, it is likely that they will be required to look for work as a condition of receiving Universal Credit. Lone parents are automatically designated 'lead carer' for their child(ren) and claimants are expected to be employed or actively look for work once the youngest child is 3, with the number of hours spent increasing as the child grows.<sup>1179</sup> Research published in 2020 found that mothers of young children were expected to job-search for more hours during the week than their children were in school or childcare, and were afraid to even challenge these expectations for fear of being sanctioned and losing benefit income.<sup>1180</sup>

Universal Credit policies, like benefit sanctions and conditionality more generally, assume that lone mothers don't want to work and need to be coerced into paid work. In fact, research finds that most lone mothers *do* want to work, but want to (re-)enter the labour market at a time that makes sense for them and their families, and under

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<sup>1176</sup> Hunter (n 119) 96.

<sup>1177</sup> Department for Work and Pensions, 'Universal Credit and Your Claimant Commitment' (GOV.UK, 1 July 2020) <<https://www.gov.uk/government/publications/universal-credit-and-your-claimant-commitment-quick-guide/universal-credit-and-your-claimant-commitment>> accessed 25 August 2021.

<sup>1178</sup> Andersen (n 997) 444.

<sup>1179</sup> Department for Work and Pensions, 'Universal Credit: Further Information for Families' (GOV.UK, 9 October 2020) <<https://www.gov.uk/government/publications/universal-credit-and-your-family-quick-guide/universal-credit-further-information-for-families>> accessed 25 August 2021.

<sup>1180</sup> Andersen (n 997) 438–9.

conditions that make paid work viable.<sup>1181</sup> In practice, however, many mothers who do paid work are low-paid and precariously employed.<sup>1182</sup> This is particularly true for Black and minority ethnic women, who are paid less, more likely to be overqualified, and more likely to be in temporary or insecure work.<sup>1183</sup>

Despite the fact that paid work does not in itself address poverty – by 2013, most people living in poverty lived in a house where at least one person was in work<sup>1184</sup> - paid work continues to be seen as a route out of poverty. The Department for Education's strategy for 2021-22 emphasises as a priority outcome "address[ing] poverty through enabling progression into the workforce and increasing financial resilience."<sup>1185</sup> This is reflected in the Troubled/Supporting Families Programme, which counts as a success a family member who enters paid work.

For cohabiting couples, a success in the 'Troubled/Supporting Families Programme' programme would include one of the couple entering paid work. For lone mothers, however, they are incentivised to find work, regardless of whether this is a rational financial decision. Failure to do so means that they may remain part of the 'Troubled/Supporting Families Programme' Programme, and may face financial sanctions under the Universal Credit regime if they are not deemed to be spending sufficient time looking for work. Lone parents – 85% of whom are mothers<sup>1186</sup> – are incentivised to work. This is not a new development: lone mothers have historically

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<sup>1181</sup> Emily Grabham and Jenny Smith, 'From Social Security to Individual Responsibility (Part Two): Writing off Poor Women's Work in the Welfare Reform Act 2009' (2010) 32 *Journal of Social Welfare & Family Law* 81, 85.

<sup>1182</sup> Andersen (n 997) 436.

<sup>1183</sup> Grabham and Smith (n 1222) 82–3.

<sup>1184</sup> Taylor, 'A Job, Any Job' (n 1062) 5.

<sup>1185</sup> Department for Education (n 1121).

<sup>1186</sup> Office for National Statistics, 'Dataset: Families and Households' (n 975).



faced stigma in both social and political attitudes. In the post-war welfare state, for example, as I have discussed in section 6.3.4 above, support for lone mothers was contingent on there being no male present in the household.<sup>1187</sup>

### **7.6.2 From heteronormativity to the 'self-reliant couple'**

As discussed in Chapter 6, until the 20<sup>th</sup> century, heterosexual marriage was a central component of a 'family.' Same-sex couples received little to no legal recognition until 2000, when the Law Lords ruled in *Fitzpatrick v Sterling Housing Association Ltd* [2001] 1 AC 27 that two men who had been in a relationship and shared a flat for 18 years were a family for the purposes of succeeding to a housing association tenancy.<sup>1188</sup>

However, legal inclusion has also come at a financial cost, especially for low-income people. The Civil Partnership Act 2004 recognised *all* cohabiting same-sex couples as couples for the purposes of claiming welfare benefits.<sup>1189</sup> This led to, as Kath Browne has argued, financial losses for individuals who had previously been making single-person claims, and exposing the same-sex relationships of low-income people to the state for consideration of whether or not their relationships are genuine for the purpose of claiming welfare benefits.<sup>1190</sup>

The recognition of same-sex couples in UK law (first through civil partnerships, and later through marriage) is a form of formal equality, as discussed in Chapter 3. This

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<sup>1187</sup> Rafferty and Wiggan (n 985) 95.

<sup>1188</sup> Herring (n 961).

<sup>1189</sup> Gavin Brown, 'Marriage and the Spare Bedroom: Exploring the Sexual Politics of Austerity' (2015) 14 *ACME: An International Journal for Critical Geographies* 975, 981.

<sup>1190</sup> Kath Browne, "'By Partner We Mean ...': Alternative Geographies of "Gay Marriage"" (2011) 14 *Sexualities* 100, 117–8.

normalisation of certain same-sex couples has been echoed in other countries, and criticised by queer theorists such as Dean Spade, who argues that focusing on the legalisation of marriage does not challenge oppressive structures.<sup>1191</sup>

Shifting sexual politics in the UK have increasingly normalised same-sex couples - as long as they conform to other norms. As Yvette Taylor argued in 2013, civil partnerships for same-sex couples – and then-forthcoming marriage equality – conferred value and legitimacy on middle-class, tax-paying same-sex couples, while undermining working-class people in relationships which did not fit this model.<sup>1192</sup>

Statistics for claiming Universal Credit or other benefits are not disaggregated by sexual orientation.<sup>1193</sup> One social worker that I interviewed, who worked for two years in a London local authority, reported that she did not work with any parents in same-sex relationships:

*“Without having worked with same-sex partners, I’m not sure how different it would have been.”<sup>1194</sup>*

The Marriage (Same Sex Couples) Act 2013 was supported by politicians from the three main parliamentary parties at the time in the UK. As Gavin Brown has argued, however, this has been part of a reconfiguring of ‘family values’ which centres and supports stable, long-term same-sex couples, as long as they are self-reliant.<sup>1195</sup> This

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<sup>1191</sup> Spade (n 1100) 33.

<sup>1192</sup> Yvette Taylor, ‘The Ties That Bind: Intimacy, Class, Sexuality’ in Tam Sanger and Yvette Taylor (eds), *Mapping intimacies: relations, exchanges, affects* (Palgrave Macmillan 2013) 31.

<sup>1193</sup> Statistics disaggregating by age and gender are available. See: Department for Work and Pensions, ‘Universal Credit Statistics, 29 April 2013 to 8 July 2021’ (*GOV.UK*, 17 August 2021) <<https://www.gov.uk/government/statistics/universal-credit-statistics-29-april-2013-to-8-july-2021/universal-credit-statistics-29-april-2013-to-8-july-2021>> accessed 26 August 2021.

<sup>1194</sup> Interview, 24 March 2021

<sup>1195</sup> Brown, ‘Marriage and the Spare Bedroom’ (n 1230) 985.

is echoed in the findings of scholars like Brian Heaphy, who looked at claims to 'ordinariness' in civil-partnered couples who were under 35 when they entered the civil partnership. Heaphy found that claims to 'ordinariness' were facilitated by the growing visibility and acceptance of same-sex relationships, but that socio-cultural status mediated the claim to 'ordinariness.'<sup>1196</sup>

The legalisation of civil partnership – and then marriage – between individuals of the same legal sex has not fundamentally disrupted the 'model' partnership discussed in Chapter 6. What remains the same is that in the 'normal' partnership – and by extension, the 'normal' family – care and support comes not from the state, but from within the family.

### **7.6.3 An employed family is an 'untroubled' family**

Under successive iterations of the 'Troubled/Supporting Families Programme,' there are two possible 'successful outcomes' for families:

- 1. Achieved significant and sustained progress against all problems identified at the point of engagement and during the intervention; or*
- 2. An adult in the family has moved into continuous employment.<sup>1197</sup>*

For claimants of legacy benefits, such as Jobseekers Allowance or Income Support, 'continuous employment' is measured in terms of weeks worked (13 or 26 continuous weeks, depending on the benefit claimed). Universal Credit claimants, on the other

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<sup>1196</sup> Heaphy (n 1099).

<sup>1197</sup> Ministry of Housing, Communities & Local Government, 'Supporting Families Programme Guidance 2021-22: Chapter 2: Delivering Supporting Families' (n 1151) 9.

hand, must reach the Average Earnings Threshold or above for 26 continuous weeks out of the previous 30.<sup>1198</sup>

As discussed in section 7.3 above, the programme operates on a payment-by-results model: once a family has met one of the two outcomes, the local authority receives a payment. A second claim for the same family can only be made two years after a first, and the number of second claims must be declared by the local authority when reporting.

Only one of the two conditions must be met for a 'successful outcome' to be recorded and claimed for by the local authority. In other words, if an adult in the family qualifies as 'continuously employed,' the family is deemed to have been successful, even if other problems have not been addressed.

#### **7.6.4 Gendered roles within the family**

As discussed in section 6.2.3 above, the social work system in England already makes decisions based on gendered assumptions about roles within the family. For cohabiting couples where neither partner is working, a 'success' in the 'Troubled/Supporting Families Programme' could include one of the couple entering paid work: this outcome could be recorded – and the local authority paid – as a success, even if no progress was made against other 'headline problems.'

In section 7.4.2 above, I explored how family policy is written in gender-neutral terms. However, gender discrimination remains a problem in the working world. Women who

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<sup>1198</sup> Ministry of Housing, Communities & Local Government, 'Supporting Families Programme Guidance 2021-22: Chapter 2: Delivering Supporting Families' (n 1151) 10.

work are disproportionately likely to be low-paid and/or precariously employed, and employment opportunities for mothers are further limited by access to childcare.<sup>1199</sup>

#### 7.6.4.1 **Gendered financial dependence**

One of the most insidious ways in which Universal Credit normalises and incentivises cohabiting couples is through increasing financial dependence between the couple. Cohabiting couples are required to apply for Universal Credit as a couple: both individuals set up accounts, which are then linked.<sup>1200</sup> Payments are made into a single account, which may be a joint account or in the names of one of the claimants.<sup>1201</sup> From the inception of Universal Credit,<sup>1202</sup> feminist and women's rights campaigners have argued that paying benefits into a single account risks enabling or exacerbating financial abuse.<sup>1203</sup>

Universal Credit claimants are required to accept a Claimant Commitment, which is designed to mimic a work contract.<sup>1204</sup> Couples must each accept an individual Commitment. Unlike an individual work contract, however, failure by one partner to comply can lead to sanctions – reductions in benefits – for the couple.<sup>1205</sup> Couples

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<sup>1199</sup> Andersen (n 997) 435–6.

<sup>1200</sup> GOV.UK, 'Universal Credit: How to Claim' (*GOV.UK*) <<https://www.gov.uk/universal-credit/how-to-claim>> accessed 21 August 2021.

<sup>1201</sup> Department for Work and Pensions, 'Universal Credit' (n 1212).

<sup>1202</sup> The day that the plans for Universal Credit were announced in 2010, I was working in a charity supporting victims of domestic violence (as I have discussed in section 2.4.3.1). My colleagues and I read the newspaper reports that day with horror: most of our clients experienced some form of financial abuse, and often their only income was Jobseekers Allowance or Income Support, both of which would be replaced by Universal Credit.

<sup>1203</sup> Marilyn Howard, 'Universal Credit and Financial Abuse: Exploring the Links' (The Women's Budget Group 2018).

<sup>1204</sup> Millar (n 1051) 93.

<sup>1205</sup> Department for Work and Pensions, 'Universal Credit' (n 1212).

claiming Universal Credit, therefore, are potentially more dependent on each other than couples who are both employed.

According to the guidance for claiming Universal Credit as a couple, if one person is withholding the payments, the other is recommended to contact the Universal Credit helpline.<sup>1206</sup> Alternative payments arrangements, according to official government guidance, are “considered on a case-by-case basis” and expected to be temporary “wherever possible.”<sup>1207</sup> In practice, the IT system which administers Universal Credit payments is set up to make single payments per claim, and alternative payment arrangements must be delivered manually,<sup>1208</sup> in a marked departure from the ‘digital-by-default’ practice which underpins the rest of the Universal Credit system, as I have discussed in section 6.3.9 above.

As of July 2021, 5.9 million people in the UK were claiming Universal Credit, of whom 53% - around 3.1 million - were women.<sup>1209</sup> According to the Crime Survey for England and Wales, 7.3% of women experienced domestic abuse in the year to March 2020.<sup>1210</sup> Assuming these figures to be broadly similar to those in Scotland and Northern Ireland, and assuming that Universal Credit claimants are no less likely to experience domestic abuse than those who do not claim, leads to an estimated 220,000 women across the UK who are both claiming Universal Credit and experiencing domestic abuse. As of February 2020, only 115 split payments had been

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<sup>1206</sup> Department for Work and Pensions, ‘Universal Credit’ (n 1212).

<sup>1207</sup> Department for Work and Pensions, ‘Universal Credit’ (n 1212).

<sup>1208</sup> Howard and Bennett (n 1050) 88.

<sup>1209</sup> Department for Work and Pensions, ‘Universal Credit Statistics, 29 April 2013 to 8 July 2021’ (n 1234).

<sup>1210</sup> Office for National Statistics, ‘Domestic Abuse Victim Characteristics, England and Wales: Year Ending March 2020’ 26, 2.

made across the whole UK.<sup>1211</sup> It seems clear that the potential for financial abuse due to the Universal Credit payment policy is not being addressed.

### **7.6.5 Domestic abuse, Universal Credit, and 'troubled' families**

As discussed in section 7.3 above, a family meeting two of six criteria is considered eligible for the Troubled/Supporting Families Programme: one of the criteria is related to worklessness. If an adult in the family is claiming Universal Credit, this is considered as meeting one of the criteria, and the family is eligible if another criterion is also in place.

Domestic abuse is another criterion, and a family may be eligible for the Troubled/Supporting Families programme if: a young person or adult has experienced, is experiencing, or is at risk of experiencing domestic abuse; or if a young person or adult has perpetrated an incident of domestic abuse in the last year.<sup>1212</sup> The programme uses a "cross-government definition" of domestic abuse, which includes financial abuse, and does note that identification of domestic abuse is more likely to come through referrals (from local government entities, statutory services, and voluntary sector organisations), than through data analysis.<sup>1213</sup>

A family in which a couple is claiming Universal Credit, and one adult is financially abusing the other, is therefore eligible for the Troubled/Supporting Families Programme. If "a family is already in work but a claim for universal credit is used as

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<sup>1211</sup> Howard and Bennett (n 1050) 88.

<sup>1212</sup> Ministry of Housing, Communities & Local Government, 'Supporting Families Programme Guidance 2021-22: Chapter 4: Evidencing Outcomes' (n 1124) 33.

<sup>1213</sup> Ministry of Housing, Communities & Local Government, 'Supporting Families Programme Guidance 2021-22: Chapter 4: Evidencing Outcomes' (n 1124) 32.

an identifying problem,” then a successful outcome must include progress towards financial stability, as well as addressing the abuse (and any other problems).<sup>1214</sup> However, a successful outcome will also be recorded if “an adult in the family has moved into continuous employment,”<sup>1215</sup> regardless of progress against other issues. In our hypothetical family, the abusive partner entering work is unlikely to change the fact that they are committing financial abuse, but the Troubled/Supporting Families programme implicitly deems this to be a successful outcome.

Financial abuse is not monitored separately in official statistics, but research by Women's Aid for the Trade Unions Congress found that it is a form of domestic abuse experienced by most domestic abuse survivors.<sup>1216</sup> In particular, financial abuse can prevent or make it more difficult to leave an abusive partner.<sup>1217</sup> As one interviewee pointed out, however, failure to leave can escalate children's services involvement:<sup>1218</sup>

*“there was a lot of pressure on mums that were victims of domestic abuse, to either leave their partners or they were failing to protect and then that was escalating very quickly” – former social worker<sup>1219</sup>*

As a result, while the Troubled/Supporting Families Programme recognises domestic abuse – including financial abuse – as a problem, it creates conditions under which

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<sup>1214</sup> Ministry of Housing, Communities & Local Government, 'Supporting Families Programme Guidance 2021-22: Chapter 4: Evidencing Outcomes' (n 1124) 10.

<sup>1215</sup> Ministry of Housing, Communities & Local Government, 'Supporting Families Programme Guidance 2021-22: Chapter 2: Delivering Supporting Families' (n 1151) 9.

<sup>1216</sup> Marilyn Howard and Amy Skipp, 'Unequal, Trapped & Controlled: Women's Experience of Financial Abuse and Potential Implications for Universal Credit' (Trades Union Congress 2015) 4.

<sup>1217</sup> Sarah Davidge and Lizzie Magnusson, 'The Domestic Abuse Report 2019: The Economics of Abuse' (Women's Aid 2019) 23.

<sup>1218</sup> This echoes my own experience working as a domestic violence support worker, which I discussed in section 2.4.3.1. As caseworkers, we were required to report the presence of domestic violence in a household to (what was then called) Children and Young People's Services in our local authority. This meant that we routinely had to inform clients – almost all women – that this could result in their children being removed.

<sup>1219</sup> Interview 24 March 2021



financial abuse can be ignored when considering whether a family has made progress with their problems. For cohabiting, heterosexual couples, where the male partner is financially abusing the female partner, the combination of the Troubled/Supporting Families Programme and Universal Credit creates a situation which potentially incentivises remaining in an abusive relationship.

### **7.6.6 Stability over time**

The Troubled/Supporting Families Programme also normalises families in which both the residence and the family composition are stable over time. This reflects government policy documents, such as the Family Test discussed in section 6.2.2.2 above, which argues that “*strong and stable* families, in all their forms, play an important role in our society”<sup>1220</sup> (emphasis mine).

Universal Credit claimants are required to report a change in circumstances, or face being taken to court or penalised. In the list of examples given on changing circumstances, “moving in with your partner” is given as an example, but not “your partner moving out,”<sup>1221</sup> which may illustrate the kinds of families envisaged to be claiming. As discussed in section 7.5.2 above shared residence is, in practice, used as a proxy for family groupings within data systems.

The Troubled/Supporting Families Programme emphasises the importance of data sharing for identifying families eligible for the programme (as I have discussed in section 7.3 above), and places particular emphasis on obtaining “regular person level

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<sup>1220</sup> Department for Work and Pensions, ‘The Family Test: Guidance for Government Departments’ (n 988) 3.

<sup>1221</sup> GOV.UK, ‘Universal Credit: How to Claim’ (n 1241).

data feeds.”<sup>1222</sup> The programme guidance for 2021-22 sets expectations for local authorities that they will meet a set of ‘data maturity’ milestones at minimum. These milestones include direct access to person-level data on offending (from the police and from the youth offending service), and on education (from schools and local authority departments). They also include that the local authority should “work towards or establish data sharing agreements for person-level data on health, council tax exemptions, housing (rent arrears and antisocial behaviour) and homelessness.”<sup>1223</sup>

The implication of such a strong focus on data is that this data will be useful for identifying families to include in the programme. However, this assumes that data will be shared before it is out of date or inaccurate. In practice, as discussed in Chapter 4, data that is shared is not necessarily data that is accurate. Data that is shared at infrequent intervals may not capture the current composition of households, particularly low-income households who are more likely to experience frequent changes in household costs and household composition.<sup>1224</sup> As a result, assessments of who is part of a family may vary over time, and depend on the frequency of data sharing as well as its accuracy.

When considering whether a second claim for successful outcomes can be made by local authorities, the guidance does consider “significant change in family composition:” but the examples given clearly point to a permanent change: the two examples are a situation where a child within a family which has previously had a

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<sup>1222</sup> Ministry of Housing, Communities & Local Government, ‘Supporting Families Programme Guidance 2021-22: Chapter 2: Delivering Supporting Families’ (n 1151) 13.

<sup>1223</sup> Ministry of Housing, Communities & Local Government, ‘Supporting Families Programme Guidance 2021-22: Chapter 2: Delivering Supporting Families’ (n 1151) 13–14.

<sup>1224</sup> Millar and Bennett (n 1080) 172–3.

'successful outcome' has had a child themselves, and where an adult "has left and has now joined a new family who are being supported by services."<sup>1225</sup> What constitutes 'leaving' or 'joining' a family is not specified in the guidance.

The Supporting/Troubled Families Programme Guidance, in its section on data maturity, mentions both data sharing and data feeds, but does not define either.<sup>1226</sup> Some government systems already share data in ways that aim to provide up-to-date data, for example the Real Time Information system which uses employer payroll software to provide HM Revenue and Customs (HMRC)<sup>1227</sup> with details about who employees are, and how much and when they are paid. This data is shared with the Department of Work and Pensions (DWP), which administers Universal Credit. The Real Time Information System has been in place since 2013, but as a 2020 Human Rights Watch report documented, even when this data is accurate, it does not include pay period data.<sup>1228</sup> so is insufficient to ensure that Universal Credit claimants receive the benefits to which they are entitled.

## **7.7 'Troubled family' is a categorisation – and one that is ideological**

Once a family has been defined, policy allows for that family to be considered in relation to the "Troubled/Supporting Families Programme" programme. As discussed above, data systems in children's social care impose a categorization of 'family' on

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<sup>1225</sup> Ministry of Housing, Communities & Local Government, 'Supporting Families Programme Guidance 2021-22: Chapter 2: Delivering Supporting Families' (n 1151) 11.

<sup>1226</sup> Ministry of Housing, Communities & Local Government, 'Supporting Families Programme Guidance 2021-22: Chapter 2: Delivering Supporting Families' (n 1151) 13–14.

<sup>1227</sup> The UK government department responsible for collection of tax and the administration of some financial benefits (though not Universal Credit): see HM Revenue & Customs, 'HM Revenue & Customs' (*GOV.UK*, 2 February 2023) <<https://www.gov.uk/government/organisations/hm-revenue-customs>> accessed 12 February 2023.

<sup>1228</sup> Human Rights Watch (n 335).

individuals and their relationships. To this imposed categorization – which does not necessarily line up with real lives, experiences, or relationships, the idea then adds a further marker: 'troubled' (or, implicitly, when unmarked, 'normal').

As I have argued in section 7.3 above, in the most recent iteration of the 'Troubled/Supporting Families Programme,' the collection and sharing of data has become not just a way of working, but an end in itself: local authorities are asked to commit not only to improving outcomes for families, but to developing their own 'data maturity.' As I have discussed in Chapter 6, challenges in identifying 'problem families' have persisted as long as the concept has been around. Governments and local authorities have turned to data to address these problems: this use of data in the 'Troubled/Supporting Families Programme, as I will demonstrate, normalises a simplified definition of what constitutes a 'normal' family, and risks classifying those who do not fit this simplified definition as 'troubled.'

### **7.7.1 Classification and categorisation**

The 'Troubled/Supporting Families Programme' sets risk criteria at a central government level: the same criteria apply across England. These criteria have changed over the years that the Programme have been implemented, but they represent an attempt to consistently classify who is in (and implicitly, who is not in) the set of 'troubled families.'

The iteration of the Programme that I will examine in detail, which ran from 2021-2022, considers a family eligible for the programme if it includes dependent child(ren) and/or

expectant parents, and two of six criteria (as I have discussed in section 7.2.2.2 above):<sup>1229</sup>

- Parents or children involved in crime or anti-social behaviour
- Children not attending school regularly
- Children who need additional support
- Families at risk of worklessness, homelessness, or financial difficulties
- Families affected by domestic abuse
- Parents or children with health needs

Finally, a family cannot be both 'Troubled' and untroubled: this classification divides the set of families into two discrete groups. This is a Aristotelian classification according to Bowker and Star's definition, which functions using binary characteristics, as I have discussed in section 4.2.1.2 above.

### **7.7.2 Targeted, not universal, services**

Data collection and sharing for this purpose are also supported by the neoliberal ideology that underpins the idea of 'troubled families.' As discussed in section 5.6.4 above, this approach to welfare favours the focusing of resources on a narrower and narrower group of people, shrinking the population deemed entitled to state assistance.<sup>1230</sup> As Nick Couldry and Ulises Mejias have argued, a neoliberal ideology focused on marketisation and commodification underpins what they have termed 'data colonialism:' the extraction of data from every facet of human life.<sup>1231</sup> Couldry and

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<sup>1229</sup> Ministry of Housing, Communities & Local Government, 'Supporting Families Programme Guidance 2021-22: Chapter 3: Identifying and Working with Families' (n 1163) 5.

<sup>1230</sup> Redden, Dencik and Warne (n 41) 7.

<sup>1231</sup> Couldry and Mejias (n 233).

Mejias argue that this is done in search of profit. In the context of social services in England, it is perhaps more correct to say that this is done in service of austerity measures, as discussed in section 5.6 above.

### **7.7.3 Labelling families 'troubled'**

Once classified, the group of families is then explicitly categorised, as part of the 'Troubled/Supporting Families' Programme. A 2011 speech by then Prime Minister David Cameron explicitly acknowledged that name was a choice:

*"... today, I want to talk about troubled families.*

*Let me be clear what I mean by this phrase.*

*Officialdom might call them 'families with multiple disadvantages'.*

*Some in the press might call them 'neighbours from hell'.*

*Whatever you call them, we've known for years that a relatively small number of families are the source of a large proportion of the problems in society."<sup>1232</sup>*

Conceptions of 'problem families' support the idea that problems are individualised: problems are deemed to be inherent within individual families that need to be found and 'fixed,' not functions of society that can be addressed with non-stigmatising universal services.<sup>1233</sup> David Morgan has argued that the concepts of 'problem families,' 'troubled families,' and 'troubling families' are frequently collapsed together,

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<sup>1232</sup> David Cameron, Cabinet Office, and Prime Minister's Office, 'Troubled Families Speech' (GOV.UK, 15 December 2011) <<https://www.gov.uk/government/speeches/troubled-families-speech>> accessed 11 May 2021.

<sup>1233</sup> Keddell (n 34) 17.

and that it is hard to draw a clear line between internal and external problems experienced by families.<sup>1234</sup> As discussed in Chapter 6, the 'Troubled/Supporting Families Programme' draws on a history of identifying 'problem families,' but is also motivated by the 'trouble' that these families pose to others: in this case, the cost to the state.

The programme was renamed the 'Supporting Families' Programme in 2021. According to the press release from the then Ministry of Housing, Communities & Local Government, this name change aimed to, "better reflect the role that keyworkers play,"<sup>1235</sup> in the Programme. The criteria for inclusion were largely unchanged from previous iterations of the programme, and the text of the press release equated 'finding work' with leaving abusive relationships and obtaining support for mental health issues.<sup>1236</sup> While the name may have changed, the underlying assumptions have not.

## **7.8 Stereotyping the 'family' in the 'Troubled/Supporting Families Programme**

As I have discussed in Chapter 3, the Women's Committee, which monitors the implementation of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), has expressed concerns about stereotyping of women as primary carers of children and/or family members.<sup>1237</sup> As I have argued, the 'Troubled/Supporting Families Programme' promotes and normalises a particular form

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<sup>1234</sup> Morgan (n 1000) 40.

<sup>1235</sup> Ministry of Housing, Communities & Local Government, 'Next Phase of £165 Million Programme for Vulnerable Families Launched' (n 1115).

<sup>1236</sup> Ministry of Housing, Communities & Local Government, 'Next Phase of £165 Million Programme for Vulnerable Families Launched' (n 1115).

<sup>1237</sup> Holtmaat (n 361) 154–5.

of family around dependent children: a cohabiting heterosexual couple, where the father works and the mother takes primary responsibility for childcare, and where this arrangement is stable over time. In this section, I will argue that the use of data in this programme is a key component of upholding these stereotypes.

*“people that are already discriminated against are likely to be further discriminated against in data-driven services unless they're extremely well designed...whether it's possible to really design out [bias] completely, I don't know” – freelance local government researcher<sup>1238</sup>*

As discussed in section 7.2.3 above, children who become known to social services are extremely likely to have information about them shared with the 'Troubled/Supporting Families Programme.' As a result, they are either part of families deemed eligible for the programme, or they are not. The eligibility assessment, as I have discussed in section 7.4 above, uses a set of binary indicators: either a family does or does not meet these criteria. This kind of classification is Aristotelian, as I explored in Chapter 4: an entity either presents, or does not present, a set of binary characteristics.<sup>1239</sup>

As a result, while the Programme touts its 'whole-family approach,' discussed in section 7.4 above, families are assessed based on whether they (in fact usually, as I have discussed in section 7.4 above, one individual within the family) present, or do not present, binary characteristics. In practice, the Programme aggregates information from a host of other actors: it incentivises data sharing, so that the information about

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<sup>1238</sup> Interview 8 April 2021.

<sup>1239</sup> Bowker and Star (n 160) 62.



whether or not an individual criterion is met can come from any number of local authority or external agencies or organisations. Rather than being assessed holistically, or even on the basis of strengths, families are assessed against a finite set of criteria, and categorised as 'troubled' - or not – based on whether they meet this criteria.

## **7.9 Normalising the stereotypical 'model family' and CEDAW Article 5**

Through the 'Troubled/Supporting Families Programme,' families who meet at least one criterion in two or more of the 'headline' categories are deemed 'troubled.' Implicitly, families who do not are considered 'normal.'

As discussed in section 7.6 above, the interaction between the 'Troubled/Supporting Families Programme,' and other government policies (particularly the introduction of Universal Credit) works to label certain families as 'troubled.' The Programme normalises and promotes a narrowly-defined definition of 'family.' In particular, families are incentivized to have two heterosexual parents in a stable cohabiting relationship, and for the male partner to work while the female partner carries out childcare. This is supported by broader trends in social work with families, which default to women as caregivers for children, as I have discussed in section 7.4 above.

In Chapter 3, I examined the position of gender stereotyping in international human rights law. I noted that the Women's Committee, which monitors the implementation of the CEDAW, has expressed concerns about stereotyping of women as primary carers of children and/or family members.<sup>1240</sup> As Rebecca Cook and Simone Cusack

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<sup>1240</sup> Holtmaat (n 361) 154–5.

have argued, "When a state applies, enforces, or perpetuates a gender stereotype in its laws, policies, and practices, it institutionalises that stereotype, giving it the force and authority of the law and of custom."<sup>1241</sup>

The use of data sharing to identify 'troubled families,' together with the introduction of Universal Credit, work together to perpetuate a stereotype that a 'normal family' is one that fits the model described above: two heterosexual cohabiting parents in a stable relationship, living with their children in a stable residence. The data-driven system underpinning the 'Troubled/Supporting Families Programme' is set up to rely on a set of binary characteristics to assess whether a family fits this model. The less closely that a family fits this model – in a way that is legible to data systems - the more likely they are to be labelled as 'troubled.'

Moralistic and legal condemnation of other forms of families – including single-parent families – is not new, nor is the use of policy to incentivize these. The collection and sharing of data about families in the UK, however, has increased substantially over the past decade, at the same time as austerity measures have reduced the support and resources available to support children and their families who need help.

The Troubled/Supporting Families Programme not only presents 'family troubles' as intrinsic to a set of individuals, rather than reflecting broader structural problems. It also presents work – in the form of 'continual employment,' even at a low income – as a solution to all the individual and interpersonal problems identified by local authorities within a particular family. Implicit in these policies is a particular role for women: they should be in a stable relationship with a male partner, they should depend on their

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<sup>1241</sup> Cook and Cusack (n 341) 36–7.

male partner for financial support, and they are responsible for the wellbeing of their children.

This is not just stigmatizing to single mothers, or to mothers who work outside the home: it may rise to the level of a violation of Article 5 of the CEDAW. By enacting and enforcing policies related to the 'Troubled/Supporting Families Programme,' the UK government is actively stereotyping women as primary carers for children and as domestic carers dependent on a male partner.

According to the Women's Committee, the CEDAW obliges States parties, "to address prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through individual acts by individuals but also in law, and legal and societal structures and institutions."<sup>1242</sup> As I have discussed in Chapter 3, this includes the specific case of what Alexandra Timmer and Rikki Holtmaat refer to as "fixed parental gender roles:"<sup>1243</sup> the stereotyping of women as mothers and housewives, and of men as breadwinners. The UK government, therefore, has an obligation to address this stereotyping. Under its obligations under international human rights law, the UK should examine the extent to which its current welfare programming: including the 'Troubled/Supporting Families Programme,' upholds these stereotypes, and take steps to improve these policies.

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<sup>1242</sup> UN Committee on the Elimination of Discrimination against Women (CEDAW), 'General Recommendation No.25' (n 400) para 7.

<sup>1243</sup> Timmer and Holtmaat (n 417) 229.

## **7.10 Conclusion**

In this chapter, I have described the 'Troubled/Supporting Families Programme' as the case study on which my analysis focuses. I have traced the history of the programme, its roots in 19<sup>th</sup> and 20<sup>th</sup> century approaches to social welfare, and its emergence in a climate of austerity. I have linked the programme to other key developments, in particular the introduction of Universal Credit. Finally, I have shown how the use of data has become a key part of family support, as practiced by the Conservative government in power.

I have examined the ways that 'family' is defined in policy documents related to the 'Troubled/Supporting Families' Programme. I have argued that this programme – in combination with other government programmes, particularly the implementation of Universal Credit – promotes and normalises a particular type of family around children. I have argued that this model family has two (preferably heterosexual) parents in a stable cohabiting relationship, in which one parent (preferably male) works and the other (preferably female) prioritises childcare. The further away a family is from this model, the less likely they are to receive welfare support and benefits that help them as a family.

This is not a new problem: what is growing, however, is the use of data sharing between organisations and local authority entities to identify families who are not 'normal': who fall within the remit of the 'Troubled/Supporting Families' Programme.' In contexts of austerity and savage cuts to local authorities, simple Aristotelian classification is used to identify whether families meet criteria for inclusion in this programme and are, as a result, denoted as 'troubled.' Data sharing and information

sharing is actively incentivised: at the same time, a simple solution is promoted: 'troubled' families need only find paid work, to no longer be regarded as troubled.

Data collection and sharing is portrayed as actively beneficial for child welfare provision in the UK. In this chapter, however, I have argued that it promotes a simplistic view of what makes a good family. In place of families that work together, and state support that works to support them, these government programmes support an antiquated idea of what makes a good family, and promote work as the solution to all ills.

As I argued in Chapter 3, the Women's Committee, which oversees the implementation of CEDAW, is open to naming and examining stereotypes with the aim of challenging harmful gender stereotyping: its jurisprudence, however, depends in large part on the extent to which complainants name and examine these stereotypes themselves. There is therefore value in naming the normalisation of the a particular type of 'model' family – a family with two (preferably heterosexual) parents in a stable cohabiting relationship, in which one parent (preferably male) works and the other (preferably female) prioritises childcare – as a gender stereotype. This naming brings it clearly within the ambit of Article 5 of CEDAW and obliging the UK government to engage in a process of examining this stereotype and developing policies that not only do not uphold this stereotyping – as the 'Troubled/Supporting Family Programme' does, but which actively combat the harm that they do.

## Chapter 8 Futurity: naming and eliminating categorisation that perpetrates harmful gender stereotyping

### 8.1 Conclusion

In this thesis, I have argued that, although data collection and data sharing are portrayed as actively beneficial for child welfare provision in the UK, this data solutionist approach in fact promotes a simplistic view of what makes a ‘good family.’ The process of making human lives machine-readable exerts classification – segmentation of the world – and categorisation – naming of those segments - on individual lives. Using feminist and queer methodologies, I have unpacked the extent to which this categorisation and classification is not neutral: in fact, it ignores the realities of individual lives and of family relationships. My research, therefore, adds a gender lens and a queer approach to the analysis of the use of data in the public sector in England generally, and in children’s services in particular. It demonstrates the values of feminist critiques of objectivity, and queer critiques of categorisation, in the study of how data is collected and shared.

In the area of children’s services in the UK, much of the existing critical data studies literature has focused on *what is being done* with data once it has been collected, including its use to create data-driven predictive and synthetic analytic tools. My thesis extends this literature through critically examines the *collection and sharing of this data* itself. I have situated the collection and sharing of data within the history of information-gathering and decision-making in children’s services and in relation to the political choices that have shaped service delivery and datafication. In this way, I link critical

data studies with the longer history of critically engaging with metrics and IT systems in social care.

Classification and categorisation are used to define the ‘family’ as a unit of analysis, which enables the identification of the ‘problem family,’ and further its definition as implicitly outside of the norm. Through examining the ways in which data systems classify, categorise and stereotype individuals who are known to social services, I have shown how the expectation that individual and family lives are legible to computers is used to normalise certain forms of families, and stereotype those who do not comply as ‘troubled.’

I have argued that in the case of the ‘Troubled/Supporting Families Programme,’ these classifications and categorisations are used to implicitly define a ‘normal’ family, drawing on gender stereotypes about family roles and in particular the role of work within the family. This model family has two (preferably heterosexual) parents in a stable cohabiting relationship, in which one parent (preferably male) works and the other (preferably female) prioritises childcare. The further away a family is from this model, the more likely they are to be labelled – implicitly if not explicitly – as ‘troubled.’

I argue that this gender stereotyping may breach Article 5 of the Convention on the Elimination of All Forms of Discrimination Against Women, which obliges states to eliminate, “...customary and all other practices which are based on...stereotyped roles for men and women.” As a result, in place of state support that works to support individuals as part of whichever families they choose, the data collection and sharing systems in government welfare programming are used to support and promote a starkly gendered idea of what makes a ‘good’ family, and to define other forms of family as ‘troubled.’

As I have noted in Chapter 3, the UK government has an obligation under CEDAW to identify and address policies that are based on, or reinforce, gender stereotypes. In the case of the 'Troubled/Supporting Families Programme,' the government should ensure at minimum that future evaluations of the Programme assess its reliance on and contribution to gender stereotypes. I hope that my work can support this analysis, as I have identified key concerns that arise from the collection and sharing of data. Evaluation of the Programme and its compliance with CEDAW may also want to take into account ethnographic study of the experiences of individuals who are part of the Programme – an area not covered in this thesis - as well as the interaction between the Programme and other policies in children's social services in England.

In this concluding chapter, I will present some links between my research and other areas of work. I will also offer ideas for building on this research, with a focus on human rights, justice, and building a better society for everyone to live in.

## **8.2 Links with other work in other areas**

As I have described in Chapter 2, my research is underpinned by a futural approach, seeing human rights as a constant unfinished project supported not only by research but by activism. As a result, I hope that my research will be useful not only to other researchers but to those campaigning and advocating for change: for an end to austerity politics, for a more nuanced approach to social problems, for more thoughtful uses of technology in general and algorithms in particular, and for a world in which family relationships are valued in all their forms.

My research also supports a broader trend in Science and Technology Studies, which critically engages with algorithmic decision-making. As I have discussed in Chapter 4,



'algorithmic' is a term with multiple interconnected meanings. My research, which focuses on a specific, deterministic classification method, can therefore support this broader field. It also contributes to the growing field of critical data studies, which examines how the collection and use of data interact with systems of power: they shape who can know what about the world, and to what uses this knowledge can be put.

As I have discussed in Chapter 5, a significant motivator for the adoption and promotion of data collection and data sharing in children's welfare systems has been the post-2010 austerity agenda in the UK, and the hope by local authorities that data can ameliorate some of the damage done to these services by a decade of cuts. My research adds to the extensive and growing evidence that data collection and analysis is not a substitute for public services that meet the needs of the public: which is itself part of a broader evidence base demonstrating that social problems cannot solely be solved by technology.

In addition, my research documents a particular example of the reframing of ideological decisions as technical ones. The focus on data sharing in the 'Troubled/Supporting Families Programme' is framed as a method for speeding up services and for making more accurate decisions: however, as I have demonstrated, it actually serves as a way to sort families into 'troubled' and implicitly 'normal:' a regressive return to the ideology of a 'problem family' from whom society needs to be protected, which I describe in Chapter 7. Again, this is part of a broader trend of research documenting the 'algorithmic turn' and the use of technology to sanitise political agendas and decision-making, to which I hope that my work will contribute.

While my human rights analysis focuses on the obligations to address gender stereotyping under Article 5 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), it can also contribute to a broader human rights impact. As I have discussed in Chapter 3, Article 5 (part 5(a) in particular) of the CEDAW plays a dual role: it both imposes specific obligations, and serves as an interpretative tool for other provisions of CEDAW.<sup>1244</sup> As a result, naming this stereotyping as a violation offers an opportunity not just to articulate the UK government's obligations in relation to addressing gender stereotyping, but also provides a gender lens through which to view other potential human rights violations. My methodology could also be extended to address other forms of stereotyping covered by international human rights law, such as the provisions on stereotypes related to persons with disabilities in Article 8 of the Convention on the Rights of Persons with Disabilities, or related to race in Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. It also offers the possibility of combining these approaches – and attention to other forms of stereotyping - in an intersectional approach, as I have discussed in Chapter 2.

Finally, my work supports the broader field of research which challenges gender stereotyping in general, and normative assumptions about family more broadly. During the course of my research, I became acutely aware of the different places in which I encountered definitions of 'family' – explicit or implicit – and the barriers placed in the way of families and relationships which did not conform to these definitions. The privileging of certain forms of family in different areas of social policy - including welfare

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<sup>1244</sup> Sepper (n 368) 597–8; Holtmaat (n 361) 143.

systems but also other areas such as immigration - are well documented: my research adds to this documentation.

### **8.3 Area for future research**

This thesis represents the research that I have conducted in pursuit of a PhD in Human Rights Research Methods. As I discuss in Chapter 2, I hope to make my work more broadly available and useful in campaigning for human rights more broadly. In addition, however, there are several potential avenues for continuing and building on this work. I outline several in this section, which focus on positive obligations of states, as well as futurity and human rights as a constant unfinished project.

There is scope for exploring in more detail some of the technical aspects covered in this thesis. One area which merits further exploration is the use of 'gender' as a feature and category in databases and technological systems. In particular there is scope to research how 'gender' is used to cover any or all of the following aspects of a person's position in the world:

- Legal gender: for example, an F on a birth certificate gives a person a female gender in law;
- Physiological characteristics: for example, a newborn with a penis is likely to be gendered male by the adult(s) present at the birth;
- Gender expression, presentation, or behaviour: these are highly culturally and historically contingent, and are often linked to social norms about what is 'appropriate' for men or woman, for example dress, occupation, role within a family;
- Gender identity: a person's own sense of their gender.

Drawing on this research in this thesis indicates that there is merit in researching the frictions for people who do not 'fit' within the same category across – or even within – these aspects. Understanding these frictions could help us to build better systems which meet the needs of everyone using them – or alternatively, to cease the use of 'gender' as a shorthand in data and categorisation, if it proves to no longer be useful for many purposes.

A similar analysis of friction could be applied to examine the assumption within data collection and sharing systems that families reside in shared residences that are stable over time (discussed in section 7.6.6). In late 2022 and early 2023, as I was finalising this thesis, the cost of living crisis in the UK pushed many individuals and families close to – or into – homelessness.<sup>1245</sup> As central government incentives for data collection and sharing continue, it will be important to understand the impact of this assumption on the ability of individuals and families living in precarious situations to access welfare support. In particular, a key area to investigate will be the effectiveness of data sharing systems which rely on accurate residence details to match data about individuals from different sources: for whom do these systems work, and who is left without access to support?

A third avenue for further exploration could be the wider area of data collection within the welfare benefits system, in the UK and in other jurisdictions. The over-surveillance of poor people and of welfare benefits recipients has been well-documented, but there is scope for a more nuanced examination of what data is collected and why. In

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<sup>1245</sup> 'Cost of Living Crisis Is Making Housing Problems Worse for 7 in 10 Callers to Shelter's Emergency Helpline, as Charity Warns of Surge in Homelessness' (*Shelter England*, 10 November 2022) <[https://england.shelter.org.uk/media/press\\_release/cost\\_of\\_living\\_crisis\\_is\\_making\\_housing\\_problems\\_worse\\_for\\_7\\_in\\_10\\_callers\\_to\\_shelters\\_emergency\\_helpline\\_as\\_charity\\_warns\\_of\\_surge\\_in\\_homelessness\\_](https://england.shelter.org.uk/media/press_release/cost_of_living_crisis_is_making_housing_problems_worse_for_7_in_10_callers_to_shelters_emergency_helpline_as_charity_warns_of_surge_in_homelessness_)> accessed 7 April 2023.

particular, the tensions between asset-based data collection (documenting strengths and opportunities), and deficit-based data collection which focuses on problems, as I have described here in the example of the 'Troubled/Supporting Families Programme,' could be further examined, in order to contribute to the wider understanding of what data is collected, on whom, and with what purpose, and to challenge widespread assumptions in the public (as well as private) sector that more data is always beneficial and leads to better decision-making.

A fourth area in which this work could be developed is in examining the underlying data storage hardware, software and algorithmic processes. My thesis looks at the collection of and sharing of data about families, but does not examine the software or hardware used to record this data, nor its use in other algorithmic processes. As interest in public sector use of data, machine learning, and AI increases, researching this area could usefully extend my findings and point to additional technical and social steps that could be taken to address potential human rights violations.

Finally, a fifth avenue for further work in this area builds on the futural approach: while my thesis has examined problems and challenges with the use of data in the welfare benefits system, there is scope for work which takes a positive view, and which aims to build systems that centre the needs of those who require support in the form of welfare. These systems may include – and may even benefit from the inclusion of – digital components when designed and deployed thoughtfully. Instead of a tech solutionist approach, however, the needs of the people who need welfare support should be the main driving force.

## Appendix 1: Interviewees

I carried out the following interviews

1. Civil society activist, 14 January 2021, Zoom
2. Local authority data scientist, 15 January 2021, Zoom
3. Academic, 18 February 2021, Zoom
4. Civil society activist, 26 February 2021, Zoom
5. Civil society activist, 1 March 2021, Zoom
6. Local authority officer, 3 March 2021, WhatsApp voice call
7. Former school safeguarding officer, 9 March 2021, Zoom
8. Academic data scientist, 19 March 2021, Zoom
9. Local authority data scientist, 19 March 2021, MS Teams
10. Former social worker, 24 March 2021, Zoom
11. Civil society activist, 25 March 2021, Zoom
12. Civil society activist, 7 April 2021, Zoom
13. Civil society activist, 8 April 2021, Zoom
14. Civil society activist, 13 April 2021, Zoom
15. Former social worker, 20 April 2021, Zoom
16. Doctor/safeguarding lead, 22 April 2021, Zoom
17. Civil society activist, 27 April 2021, Zoom
18. Civil society activist, 25 May 2021, Zoom, recorded

## **Appendix 2: Key documents on the 'Troubled/Supporting Families Programme'**

My in-depth analysis of the 'Troubled/Supporting Families Programme' relied primarily on the following documents:

Ministry of Housing, Communities & Local Government, 'National Evaluation of the Troubled Families Programme 2015 - 2020: Family Outcomes – National and Local Datasets, Part 4' (2019)

—, 'Financial Framework for the Troubled Families Programme: April 2020 (Annex: Data Sharing Guidance and Principles)' (2020)

—, 'Supporting Families Programme Guidance 2021-22: Chapter 1: Introduction and Objectives' (2021)

—, 'Supporting Families Programme Guidance 2021-22: Chapter 2: Delivering Supporting Families' (2021)

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