The Anscombe Bioethics Centre
Press Statement – 24 June 2019

Forced abortion is not the mark of a humane society

The Anscombe Bioethics Centre welcomes the Court of Appeal’s overturning of Court of Protection’s initial judgement that it would be in the ‘best interests’ of a mentally disabled woman in her 20s, who is pregnant at 22 weeks, to have an abortion against her wishes. The Court of Protection’s judgement had represented an overreach of the state’s powers of coercion and suggested serious inadequacies in the way the ‘best interests’ test is used by courts to make decisions where patients lack capacity.

It is useful to recall that in the present case, the pregnancy does not pose a risk to the physical health of the mother, nor has the unborn child been diagnosed with any disability. The woman in question does not want the abortion, and her own mother has offered to care for the baby. These are circumstances which do not of themselves suggest any legal grounds for abortion, much less a forced abortion which goes against the rhetoric of choice so often used to justify the procedure.

However, the judge in the Court of Protection, Mrs Justice Lieven, explained her decision by suggesting that the woman would suffer more if her baby had to be given up for adoption or to foster care after being born, compared with if she had an abortion. The judge also indicated she was unsure as to whether the woman understood what it meant to have a baby at this stage, suggesting that ‘she would like to have a baby in the same way she would like to have a nice doll’. The woman is said to have the mental capacity of a six- to nine-year-old child.¹

In response, this is surely a condescending view of someone with a learning disability, for even a child can tell the difference between a doll and a baby. Furthermore, at 22 weeks of pregnancy, the woman is likely to have undergone one or more ultrasound scans, and would be able to feel the baby kicking within her. What seems to have been insufficiently appreciated in Lieven J’s initial judgement is the genuine joy that the woman would feel on being able to carry her pregnancy to term and to meet and bond with her baby following its birth. Any legitimate account of her best interests must not fail to acknowledge this, as well as how traumatic a coerced late-term abortion might be.

What we see is that abortion was not offered for medical reasons, but imposed as an attempt to fix a problem that is essentially social – the possibility that the woman’s mother may not always be able to care for the baby. The Court of Protection’s ruling would have set a dangerous precedent, for it suggests that something so intimate and morally significant as a mother-child relationship can be trampled on by the state when there is an expectation of suffering caused by the lack of social support.

The Court of Appeal has now reversed a gravely unjust situation. It is but the first step in empowering the woman and her mother to welcome the child into their family life, as is their wish. It would be the mark of a truly humane society to continue resolutely on that path.