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THURSDAY, 15 NOVEMBER 2012

## Is my body my own?

Sadly, late last month, an Indian woman, Savita Halappanavar, died of septicemia in an Irish hospital. The source of her infection was her dying foetus. Yet doctors refused her the termination that would save her life, because the dying foetus still had a heartbeat. The life of this woman ended because, in accordance with the teachings of the Catholic Church, the 'life' (such as it was) of the foetus was paramount.

While press reports indicate that in Ireland obstetricians have a duty to act in the best interests of the mother, there is apparently a lack of clarity in this jurisdiction as to when the medical profession can intervene lawfully.

This case highlights, yet again, the issue of bodily integrity for women and the extent of State intervention into women's autonomy over themselves. This concern is not limited to Ireland, but exists around the world.

### Bodily autonomy

In this tragic Irish case, the State (giving voice to Church teaching) through its refusal to allow for terminations, prevented medical treatment in accordance with the woman's request.

It is accepted at law that an adult person, being a person of legal capacity, is in charge over their own body. This means that, amongst other things, an adult had the capacity to make decisions as to their medical treatment. In many Australian jurisdictions, this is taken further through legislation that allows adults with the requisite capacity, to make advance directives as to their medical treatment in case of their subsequent loss of capacity.

This right to bodily autonomy includes the right to refuse medical treatment. In Victoria for example, the Medical Treatment Act 1998 provides for a 'refusal of treatment' certificate. There have been recent cases also in Australia that support a person's right to make decisions to refuse treatment.

### Woman or pregnant woman?

In spite of this apparently fundamental principle of individual bodily autonomy, it seems to apply to women only to a limited extent. In particular, laws relating to rape and abortion indicate the extent to which the State imposes itself upon the integrity of women's bodies. In the case of abortion, and in medical treatment more broadly, the presumptuousness of the State in interposing its law upon women is based upon a failure to see 'woman'. Instead, it sees 'pregnant woman' and this pitches woman the individual against the foetus. This is, in the case of Savita Halappanavar and countless others, a battle to the death.

In terms of medical treatment there are many examples particularly in the US, of the State forcibly interfering with women's bodies against the woman's wishes. This can be as extreme as a court-ordered Caesarian section. (See examples [here](#) and [here](#).) A 2009 US decision (albeit overturned on appeal) upheld the application of a woman's boyfriend to prevent her terminating her pregnancy.

We see this legal mindset reinforced by social attitudes towards pregnant women, supported by almost daily medical reports about foetal health and its links to women's behaviour: what women eat, how much they exercise, how much they drink, how much they work etc. These attitudes generate norms about what is appropriate maternal behaviour, and women who deviate from this run the risk of legal sanction and perhaps even physical sanction, including forced medical treatment. (See eg [Bridgeman & Millns](#))

### Two sides of the same coin

#### ABOUT ME



Kate Galloway

I lecture in land law at James Cook University and I write and think about the nature of property and its representations in the law; about issues affecting women; about justice generally; and about legal education.

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It may seem paradoxical that on the one hand, women are subjected to medical treatment against their will and yet Savita Halappanavar was *refused* medical treatment in spite of her clear instructions.

Instead, I would submit, these are two sides of the same coin. Both of these consequences represent an overriding of women's own will, and their bodily integrity, by a State (or Church) that seeks to control and oppress, where pregnancy alters the view of women's own autonomy.

Women must become at law individuals with their own will, rather than simply as vessels for procreation. Until then it seems that it is only men who can lay claim to their own bodies, exercising full autonomy and self-determination.

Posted by Kate Galloway at 10:06

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Labels: feminism, foetus, human body, human rights, Savita, termination, women

## 2 comments:



**Anne Stephens** 15 November 2012 12:34

"...and women who deviate from this run the risk of legal sanction and perhaps even physical sanction, including forced medical treatment." And this is particularly true for Black Australian women. We've seen forced sterilizations, movement restrictions, arranged marriages and alcohol restrictions as just some of the methods used to control their bodies. Pregnancy of Black women has been a risk that needed to be managed. The issue of Foetal Alcohol Syndrome Disorder (FASD) has shockingly high rates in our contemporary Indigenous communities across Australia. It is interesting to hear the hyperbole and rhetoric around the issue of 'out of control' drunkenness, and how the issues of bodily integrity you raise, Kate, will play out in our policy responses to FASD.

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Replies



**Kate Galloway** 15 November 2012 12:42

Anne thanks for this comment. I agree that gender alone is not sufficient to highlight discrimination for all women: that race, class, ability, sexuality etc provide additional layers of complexity to this issue. FASD policy is indeed one to watch.

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