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JUDGES WHO PLAY POLITICS: TWO CURRENT JUDICIAL ISSUES

Hon J B Thomas AM

“Devising out of the brilliance of one’s own mind laws that govern mankind with promises of jurisprudential immortality is tempting”: United States Supreme Court Justice Scalia, quoted by J Albrechtson, “Tradition says Judges should butt out of Politics”, *The Australian*, 27 March 2002. It certainly is. Unfortunately not all judges resist the temptation to make their own law. The quotation provoked this writer to reflect upon two weaknesses, each of them ego-driven, to which some judges succumb from time to time. 173

WHO OWNS YOUR BODY?

Rosalind Atherton

The question, “who owns your body”, is a complex one. It involves ideas of the conceptualisation or classification of the body itself (“person” or “property” for example); the relationship between a person (as spirit) and the body the person inhabits (as flesh); the relationship between the will (the intention) of a person and the person as a corpse; the relationship between the person as community member and the institutions of the state (for example the coroner); and the problems of developing an appropriate legal regulatory regime for dealing with claims to bodies and body parts. In this article I will consider these questions in the context of the body as a corpse and the conceptualisation of the body after death. It is essentially a philosophical question involving a wide sphere of thought and perspectives – encompassing the legal, the moral, the cultural, the metaphysical, the religious, and the ethical. All of these are necessary threads in the consideration of our philosophical relationship to the body – and particularly the body after death. This article explores how autonomy has its place, but also its limits, in the context of the

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 - 5. Austin, n 4, p 56.

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 - 6. Sheehy EA, Stubbs J and Tolmie J, “Defending Battered Women on Trial: The Battered Woman Syndrome and its Limitations” (1992) 16 Crim LJ 220.
 - 7. Sheehy et al, n 6 at 221.

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