

*Susan Magarey\**

## SHOULD vs CAN? ETHICS vs UNDERSTANDING?<sup>1</sup>

### ABSTRACT

My concern is with questions about public and private elements in biographies. My article opens with historical examples of disagreements over the inclusion of information that could be considered private in works which are, by definition, public. The disagreements are about whether or not private information is available, and if it is, whether or not it can or should be included in the publication. The examples range from Boswell's life of Johnson through some local Australian controversies in 2009 to Hazel Rowley's recent consideration of the lives of early twentieth-century French philosophers, Simone de Beauvoir and Jean-Paul Sartre. The second part of the article considers Dame Roma Mitchell's work as a Royal Commissioner on 'the Salisbury Affair' in South Australia in the 1970s and the different ethical conclusions that can be drawn about it from two distinct approaches to the inclusion of private information in an account of a public event.

My article has two parts. First, since the subject of our panel concerns questions about the public and the private, and possibilities of their mutual implication, I will begin with two stories about biographers and their decisions about what information about their subjects' private lives they *should* or *could* include in their published biographies. These are questions about ethics and understanding — my title. Secondly, I will address similar questions that Kerrie Round and I faced when we were researching our biography of Dame Roma Mitchell, in particular, questions about the role played by her private concerns in her public work as Royal Commissioner into what was popularly termed 'the Salisbury affair'.

The late months of 2009 saw the private lives of at least two prominent Australian politicians being blazoned across the media,<sup>2</sup> demonstrating some of the costs

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<sup>1</sup> Susan Magarey, 'Should vs Can? Ethics vs Understanding?' (Paper presented at 'A Judicious Life? Judicial and Political Biography', The University of Adelaide, 4 December 2009).

<sup>2</sup> Rhett Watson, 'Della Bosca Quits: Sex Scandal Claims Would-Be Premier', *Daily Telegraph* (Sydney), 1 September 2009, 1; 'Mike Rann Denies Sex with Former Waitress', *Advertiser* (online), 23 November 2009 <<http://www.news.com.au/national/mike-rann-denies-sex-with-former-waitress/story-e6frfkvr-1225801899754>>.

that can be associated with the private lives of public figures becoming generally known. Former Prime Minister Keating was concerned with a third instance, involving his daughter, when he pronounced:

Matters for which there is no public right to know ought to be the preserve of the citizenry in its privacy ... That includes details of their personal lives, altercations in marriages, love affairs, compromising photographs taken of them privately without their consent. These are all matters that should be off-limits for newspapers and other media.<sup>3</sup>

Should biographers agree with him?

There is a wonderful moment in English history when James Boswell, biographer of Dr Samuel Johnson, makes clear how he would have answered this question. It is in the autumn of 1790, a time when brilliant correspondent and novelist Frances ‘Fanny’ Burney was serving as second keeper of the robes to Queen Charlotte. At a gathering at Windsor Castle, in the midst of a multitude, Boswell causes her great embarrassment and discomfort. ‘Yes, madam’, he declares:

you must give me some of your choice little notes of the Doctor’s; we have seen him long enough upon stilts; I want to show him in a new light ... I want to show him as gay Sam, agreeable Sam, pleasant Sam: so you must help me with some of his beautiful billets to yourself.<sup>4</sup>

When she refuses, he intensifies his pleas, ‘[d]irectly in front of the Queen’s Lodge, “with crowds passing and repassing”’.<sup>5</sup> Only the approach of the royal family rescues her from his importunity. Reporting this moment to her sister, Burney affirms that ‘nothing will convince her “to print private letters, even of a man so justly celebrated, when addressed to myself”’.<sup>6</sup> She agrees with Keating. But what for her would have been a violation was, for biographer Boswell ‘a vindication — a vindication of his protagonist and a vindication of his biographical method’.<sup>7</sup> Such letters would allow him to show us Johnson’s heart as well as his mind, the private as well as the public man.

Present-day Australian biographer, Hazel Rowley, would have agreed with Boswell. As, indeed, did the two subjects of her most recently published biography: Jean-

<sup>3</sup> Emma Tom, ‘Keating Wants It Both Ways’, *Australian* (online), 7 November 2009 <<http://www.theaustralian.com.au/news/opinion/keating-wants-it-both-ways/story-e6f8g8l6-1225795218601>>.

<sup>4</sup> Fanny Burney and Charlotte Barrett, *Diary and Letters of Madame D’Arblay: 1788 to 1796* (Bickers and Son, 1796) 299.

<sup>5</sup> Ibid 300.

<sup>6</sup> Ibid 301.

<sup>7</sup> Bruce Redford, *Designing the Life of Johnson. The Lyell Lectures, 2001–2* (Oxford University Press, 2002) 113–4.

Paul Sartre and Simone de Beauvoir.<sup>8</sup> These two French intellectuals were as famous for the irregularity of their union with each other, and their love affairs with other people, as for Existentialism, the mid 20th century philosophy that they developed. They wanted everyone to know all about them and their lives, especially their private relationships with each other and with other people. ‘Never for a second’, writes Rowley,

did Sartre and Beauvoir, in their relationship with each other, stop living as writers ... Turning life into narrative was perhaps their most voluptuous pleasure.<sup>9</sup>

Both, she continues, ‘were heavily imbued with what Sartre called “the biographical illusion” — the idea that “a lived life can resemble a recounted life”’.<sup>10</sup> They also believed ‘passionately’ in telling the truth: ‘the notion of privacy was a relic of bourgeois hypocrisy’.<sup>11</sup> So they would keep all of their writings, deliberately and consciously making themselves into public myths, intending that the future would pore over narratives of their lives and find them ‘touching and strange’.<sup>12</sup>

It was not only the future who would read narratives of their lives, of course, since Beauvoir embarked on both works of fiction, which included disguised autobiography, and also on explicitly autobiographical writing. Her passionate relationship with Chicago writer, Nelson Algren, appears in both, with his own name in *Force of Circumstance*, its English translation heralded in the United States with appetiser extracts in *Harper’s Magazine* in November and December 1964.<sup>13</sup> In the first extract, Beauvoir announces that she became attached to Algren towards the end of her stay in the United States, and goes on to meditate on where such a connection fitted in her pact with Sartre. Other couples have made such pacts, she notes, ‘to maintain throughout all deviations from the main path a “certain fidelity”’.<sup>14</sup> If these are only ‘passing sexual liaisons’ she considers, ‘then there is no difficulty’.<sup>15</sup> But passing liaisons were no real test of the pact. What she and Sartre wanted, by contrast, was to experience ‘contingent loves’.<sup>16</sup> More difficult and demanding, no doubt. But also raising, as she does finally acknowledge, the ‘one question we have deliberately avoided: how would the third

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<sup>8</sup> Hazel Rowley, *Tête-à-Tête: The Lives and Loves of Simone de Beauvoir and Jean-Paul Sartre* (Chatto & Windus, 2006).

<sup>9</sup> Ibid xi.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Simone de Beauvoir and Richard Howard, ‘The Question of Fidelity’, *Harper’s Magazine* (New York), November 1964, 57; Simone de Beauvoir and Richard Howard, ‘An American Rendezvous: The Question of Fidelity, Part II’, *Harper’s Magazine* (New York), December 1964, 111.

<sup>14</sup> Simone de Beauvoir and Richard Howard, ‘The Question of Fidelity’, *Harper’s Magazine* (New York), November 1964, 57, 64.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

person feel about the arrangement?’<sup>17</sup> Unwarned, Algren was left out in the open, as Rowley notes graphically, swinging in the breeze.<sup>18</sup>

He responded. Writing in *Harper’s*, he quotes her passage about contingent loves with contempt: ‘Anybody who can experience love contingently has a mind that has recently snapped. How can love be *contingent*? Contingent upon what?’<sup>19</sup> Fifteen years later, he replied to an interviewer like this (we might note his racism, too, in passing):

‘I’ve been in warehouses all over the world and the woman there always closes the door, whether it’s in Korea or India,’ he said. ‘But this woman flung the door open and called in the public and the press ... I don’t have any malice against her, but I think it was an appalling thing to do.’<sup>20</sup>

But biographer Hazel Rowley did not think it was appalling. She had no need for any qualms as, by this time, it was all in print and public circulation anyway: Rowley not only could, but clearly should, include these exchanges in her narrative. Is this simply a matter of opinions changing as times change? Michael Holroyd considered, in Whiggish fashion, that the twentieth century had seen

the boundaries of biography ... enlarged, until its subject matter is pretty well now the whole range of human experience, insofar as it can be recovered. It is a matter not only of the legitimacy of subject matter, a new balance sheet containing the investment of income as well as sexual expenditure, but also of the variety of narrative modes ... We are beginning to grow up.<sup>21</sup>

More recently, prize-winning Australian historian, Peter Cochrane, argued for the mutual implication of private and public in an individual life, and at the same time contended that biographical narrative was crucial to historical and political understanding. ‘A dialogue between the public and the private spheres’, he wrote,

is an important part of good biographical narrative, and great biographers have set the standard in searching for a deep reading of the ‘humanity of the lived life’, and a vivid sense of the life once lived. What drives us? ... That was the story within the story.<sup>22</sup>

So, to turn to the second part of my article, what did Kerrie Round and I think about the relationships between the private and the public, when we were

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<sup>17</sup> Ibid.

<sup>18</sup> Rowley, above n 8, 299.

<sup>19</sup> Ibid 301.

<sup>20</sup> Ibid 303.

<sup>21</sup> Michael Holroyd, *Works on Paper: The Craft of Biography and Autobiography* (Little, Brown and Company, 2002) 26.

<sup>22</sup> Peter Cochrane, ‘Stories from the Dustbin’ (2008) 19 *Griffith Review* 69, 74.

researching and writing our biography of Roma Flinders Mitchell?<sup>23</sup> And — to connect this discussion directly to the subject of this symposium — did it make any difference that Roma Mitchell had been a judge?

Just in case people are not familiar with her, our subject, Dame Roma Mitchell (1913–2000)<sup>24</sup> was probably the most decorated and distinguished woman in Australia's history — at least until the Rudd Government appointed Quentin Bryce as Governor-General. Our research on Roma Mitchell led us to believe that the principal formative influence in her life was her father's death in France in 1917 when Roma herself was just four years old. As I wrote,

It was as though a great gong had sounded, a note that would reverberate throughout her life. Her mother would now be the single most important adult in her world until she was herself grown up, and she would protect her mother, take care of her with all her heart and mind and soul, because her father was no longer there to do so.<sup>25</sup>

It became a habit of the heart, far more than an effort of the will: a primary emotional impulse — to take care of people. And it grew to embrace her sister and brother-in-law, her cousins, her closest friends, her dearest colleagues, and her Associates — once she was a judge.

Miss Mitchell's elevation to the Bench of the Supreme Court occurred in 1965, an initiative of Don Dunstan, at that moment Attorney-General. Her response gives some indication of the difference that being a judge could make to an individual's private life. 'I didn't really want it at that stage',<sup>26</sup> Dame Roma was to recall. 'I was enjoying life as a Queen's Counsel and I really didn't want to go onto the bench. And I was very unhappy for the six weeks preceding my going on the bench ... And I thought I wouldn't enjoy it ... There's no excitement in connection with a judge's life'.<sup>27</sup> She thought that being a judge would lift her out of the gossip network, and she told an interviewer that she believed it would impose great constraints on her social life:

I remember a friend of mine who was and still is a bachelor who, when he heard the news said, 'oh, this'll be dreadful. There'll be so many things you

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<sup>23</sup> Susan Magarey and Kerrie Round, *Roma the First: A Biography of Dame Roma Mitchell* (Wakefield Press, 2007).

<sup>24</sup> Commander in the Royal Victorian Order (2000), Companion of the Order of Australia (1991), Dame Commander of the British Empire (1982), Commander of the British Empire (1971), Queen's Counsel (1962–65), Justice of the Supreme Court of South Australia (1965–83), Founding Chair of the Human Rights Commission (1981–86), Chancellor of the University of Adelaide (1983–90), Governor of South Australia (1991–96).

<sup>25</sup> Magarey and Round, above n 23, 2.

<sup>26</sup> *Ibid* 159, citing Roma Mitchell, 'Reflections on a Career in Law' in J F Corkery (ed), *A Career in Law* (Federation Press, 1989) 207.

<sup>27</sup> *Ibid* 159–60.

won't be able to do', and I said 'oh I don't know. I've only thought of one. I don't think I'll be able to go to', and I named a restaurant, I can't even think of its name, perhaps just as well, and that's why I made you take me there last week. Because it was in the Hindley Street area and it ... was frequented by some of the lower life in Adelaide. I didn't go back there.<sup>28</sup>

The Honourable Justice Mitchell was to serve for the ensuing seventeen years, as Sir William Deane was to remark, as 'a pivotal member of two of the landmark State Supreme Courts in our country's legal history', that is the courts of Chief Justice John Bray and Chief Justice Len King.<sup>29</sup>

One of the trickiest moments during what could justly be called 'the golden years' of the South Australian justice system occurred in the second half of the 1970s when John Bray was Chief Justice and Don Dunstan was Premier of South Australia, and the Dunstan Government sacked their Police Commissioner Harold Salisbury. The 'Salisbury Affair' is too complex a story to tell in a brief article; there is an account of it in our book.<sup>30</sup> May I say, simply, that the government asked the Police Commissioner for information about the activities of Special Branch and its surveillance of South Australian citizens, and the Police Commissioner, Harold Salisbury, consistently failed to provide proper information in response to the government's requests. After a good deal of to-ing and fro-ing, during which Police Commissioner Harold Salisbury seemed obtusely unable to understand the illegality of his position, the Dunstan government sacked Salisbury. But Salisbury had, by then, become a focus for conservative anti-Dunstan opinion in Adelaide, and the conservatives mobilised in protest at the government's action. Eventually, Dunstan decided that the best solution was a Royal Commission, which would calm down the furore and prevent further discussion as the whole matter would be *sub judice*.

Of course, an important dimension of the panic about the information that Special Branch had was that it might, or might not, have concerned homosexual sex — rendered legal in South Australia only in 1975. This was before the Salisbury Affair, to be sure, but eight years after there had been a very considerable fuss among the police about the appointment of John Bray as Chief Justice, because the police believed him to be homosexual. There was also some concern about Dunstan's sexuality. And about the fact that all of the information recorded by the South Australian Special Branch would have been accessible to the Commonwealth government's equivalent body, ASIO.

In February 1978, the government appointed Justice Roma Mitchell as Royal Commissioner to inquire into and report upon whether Salisbury misled the

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<sup>28</sup> Ibid 160.

<sup>29</sup> Sir William Deane, 'Memories' in Susan Magarey (ed), *Dame Roma: Glimpses of a Glorious Life* (Axiom Publishing and the John Bray Law Chapter of the Alumni Association of The University of Adelaide, 2002) 15.

<sup>30</sup> In this article the account of the Salisbury 'Affair' and Justice Mitchell's Royal Commission are taken from Magarey and Round, above n 23, chapter 6.

government about the nature and extent of the operations of Special Branch; whether the government's decision to dismiss Salisbury was justifiable; and whether there was reason to modify the prerogative rights of the Crown to dismiss the Commissioner of the Police. She submitted her report on 30 May. 'Yes', she wrote, Salisbury did mislead the government. 'Yes', the government's decision to dismiss him was justifiable in the circumstances. And 'yes', the *Police Act 1952* should be amended to provide for the Commissioner of Police to be removed from office by the government.

Roma Mitchell had worked extremely hard on this inquiry, consulting an array of authorities, interviewing everyone conceivably appropriate, and even going to visit Special Branch in the bowels of Police Headquarters to see the immense collection of cards and files kept there. She learned a lot. One thing was that the files which were supposed to record John Bray's homosexual activities in 1967 were nothing to do with Special Branch; they were ordinary police patrol reports. Another was that the card and file on Premier Don Dunstan did not contain all of the information that they might once have held. She reported that the officer examined about this card had said that 'one reason for culling the Premier's card [was] the possibility that the Premier might insist on seeing his own file'.<sup>31</sup> Roma Mitchell had a sardonic wit. 'This is certainly a good reason', she observed, 'for removing from that file matter which might reasonably be considered to be scandalously inaccurate'.<sup>32</sup> She ensured that John Bray was never mentioned by name and that the police patrol reports used to query his elevation were referred to only as an 'incident relating to a particular appointment in the '60s'.<sup>33</sup> And she interrupted a witness who seemed about to mention John Bray, saying firmly 'We do not want the details'.<sup>34</sup>

After it was all over, Her Honour Justice Mitchell wrote to her colleague John Bray. They were very good friends; she recalled dancing with him at her sister's coming-out dance in 1931. She believed, she told him, that all her findings were 'inevitable upon the evidence', and she 'endeavoured to make them as mild as possible'.<sup>35</sup> But then she let him know of the tension that she had suffered in weighing her loyalty to him in a balance against her commitment to the law. 'My own wish', she continued:

would have been not to have accepted the Royal Commission. I knew that I must receive opprobrium from one quarter or another and this has not been entirely absent. But I hoped that I could avoid any adverse publicity for you which would have been monstrously unfair. And I was not confident that anyone who was not fully apprised of the disgraceful performance of the then

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<sup>31</sup> Magarey and Round, above n 23, 217, citing South Australia, Royal Commission into Dismissal of Harold Hubert Salisbury, *Report* (1978) 134.

<sup>32</sup> Magarey and Round, above n 23, 217.

<sup>33</sup> Ibid 217, citing Transcript of Proceedings of the Royal Commission into Dismissal of Harold Hubert Salisbury, 693.

<sup>34</sup> Magarey and Round, above n 23, 218, citing Transcript of Proceedings of the Royal Commission into Dismissal of Harold Hubert Salisbury, 384–5.

<sup>35</sup> Magarey and Round, above n 23, 219, citing Letter from Roma Mitchell to John Bray, 9 June 1978.

Police Commissioner [JG McKinna] and others in 1967 would have done this. As it was, with the assistance of counsel, and by dint of interrupting one or two willing witnesses I succeeded in this and in my view any subsequent vilification was a small price.<sup>36</sup>

As prize-winning journalist Penelope Debelles commented: ‘Dame Roma stood sentinel from the bench to ensure the name of John Bray was never uttered in open court’.<sup>37</sup>

Debelles set this whole story in the context of:

the monstrous myth that has dogged Adelaide for so many years, that of a predatory ‘family’ of homosexual murderers whose dreadful practices flourished because they were protected by a secret cell of homosexuals in high places. This line of protective power and influence, so the rumours went, extended to the very top of government and the courts.<sup>38</sup>

Investigative journalists have failed to prove this ‘urban fabrication’, Debelles continued. And towards the end of her article, she offered a justification for Roma Mitchell’s action: ‘Nothing worthwhile’, she wrote, ‘could have flowed from the public disgrace of the state’s most eminent jurist whose sin was to be homosexual before the law and morality allowed it’.<sup>39</sup> But then she returned to ‘the monstrous myth’ of ‘the family’ with which she began. ‘But was it also a cover-up by a person of influence wielding her authority with something less than fear or favour?’, she asks rhetorically.<sup>40</sup> ‘Yes’, she decided, ‘it was that too. Dame Roma, the straight-laced idealisation of respectability and the law, used her position to protect a friend in high office, just as the Adelaide rumour mill said’.<sup>41</sup>

Debelles’s account is drawn from the information provided in our book, *Roma the First*. We did not balk at including Justice Mitchell’s frank admission of how she protected John Bray, in her letter to him, given to us by Bray’s friend Peter Ward. But Debelles’s is different in tone and emphasis from the account that I wrote. For, in my concern to understand rather than to judge, I decided that my earlier decision about the principal emotional motive force in Roma Mitchell’s life — the desire to take care of those dear to her — was the chief determinant in this case. I concluded this chapter of our biography observing the retirement of first Bray and then Dunstan by the end of the 1970s, both going early on the grounds of ill health. ‘Roma Mitchell could only have been grieved at the damage done to such giants of those times by the longstanding prohibition on homosexual relations, and at the

<sup>36</sup> Ibid.

<sup>37</sup> Penelope Debelles, ‘Putting the “Family” to Rest’, *Adelaide Review* (Adelaide) 15–28 February 2008, 8, 9.

<sup>38</sup> Ibid 8.

<sup>39</sup> Ibid 9.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.



limits to her ability to take care of them'.<sup>42</sup> I would not claim that my account is better than Penny Debelles. On the contrary: Debelles draws on the social history context of these events, just as does, for instance Stuart Macintyre in his biography titled *Militant: the Life and Times of Paddy Troy*;<sup>43</sup> I have argued strenuously that such contexts are essential to biographical writing.<sup>44</sup> But it connects to our discussions at this symposium because, unlike Debelles, my account derives from a knowledge and interpretation of Dame Roma Mitchell's private life.

Hazel Rowley compared writing biography to 'being in love'. She modified that statement immediately; after all, a biographer has to 'keep her lucidity' and 'remain in control of her subject matter',<sup>45</sup> she noted, and being in love is not like that. But 'there are striking parallels'. I have no difficulty in agreeing with her. In particular, I agree with her observation that rather than judging her subjects, 'my energy goes into understanding them, which is something I am prepared to do only with people I love'.<sup>46</sup> My account of the Salisbury Commission is different from Penelope Debelles because I was endeavouring to understand Roma Mitchell.

Let me conclude with a story told often about Roma Mitchell and John Bray, a story that Sir William Deane related at Dame Roma's funeral. During an interview a somewhat brash journalist asked Justice Mitchell, 'You are not married?' 'I am not' she replied. 'And you do not drive a car?' 'I do not'. Undeterred by the terseness of her answers, the journalist pressed on. 'The Chief Justice, Dr Bray, is also unmarried. Is there a chance that the two of you might get together?' 'No', Roma replied, 'that would be no good at all. He doesn't drive a car either'.<sup>47</sup>

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<sup>42</sup> Magarey and Round, above n 23, 219.

<sup>43</sup> Stuart Macintyre, *Militant: The Life and Times of Paddy Troy* (George Allen & Unwin, 1984).

<sup>44</sup> Susan Magarey, 'Three Questions for Biographers: Public or Private? Individual or Society? Truth or Beauty?' (2008) 4 *Journal of Historical Biography* 1.

<sup>45</sup> Hazel Rowley, 'The Ups, the Downs: My Life as a Biographer', *Australian Book Review* (Adelaide), 1 July 2007, 33.

<sup>46</sup> Ibid.

<sup>47</sup> Deane, above n 29, 17.