

The Palace Letters remind us of the real issue: our democracy is flawed

Replacing the role of governor-general would fix one problem and create another. The harder work of fixing our flawed democracy would be a far better idea.

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The Palace Letters reveal that in 1975 the British monarchy, through the Queen's private secretary, directly interfered in Australia's politics by playing a significant role in the dismissal of the Whitlam government.

That act, offensive to Australia's notion of its own sovereignty, will give a boost to the republican movement. It reminds us of the utter weirdness of the constitutional arrangement that still has the Queen as our head of our state.

Ironically, if it was properly considered (it won't be), the 1975 saga adds no strength to the current republican cause and arguably undermines one of its key elements.

Australia's constitutional structure is a bastard child of the UK's Westminster democracy, itself an anachronistic collection of laws and conventions. While the Westminster system is routinely held up as the apotheosis of democracy, it has several fatally undemocratic flaws.

Democracy requires, as a base component, the separation of powers between the three branches of government: legislative, executive and judicial. In Australia, while

the judiciary is fully independent, the legislature (parliament) and executive arms are a confused mess.

The democratic principle that parliament (being directly representative of the people) should be sovereign is not reflected in our system. Instead, parliament is effectively subservient to the executive, as the government in power controls the parliament's legislative agenda through party room discipline.

In practical terms, it's obvious that the supreme power in our polity is not the parliament but the prime minister, a role not even mentioned in the constitution.

The problem is compounded by the constant creep of the executive into the realm of law-making, by multiple means such as delegated legislation, ministerial powers, unelected governmental authorities with wide discretionary powers and rampant spending of public money with no legal authority whatsoever. Parliament's impotence in response to sports rorts and other outrages proves who really holds the reins.

Then there is the governor-general, proxy under the constitution for the Queen; whatever the monarchists claim, she is our true head of state.

The Queen is the head of the executive government, theoretically conducting its operations through her ministers and the public service. That's why the ministers do that swearing-in thing at Yarralumla when they take office, because they serve at the governor-general's pleasure.

However, as the head of state, the governor-general signs parliament's acts into law, opens and closes parliament and commissions the prime minister to form government. In addition, they hold the controversial reserve powers, which Sir John Kerr used to dismiss Whitlam.

The result is a hopeless confusion between the governor-general, prime minister and parliament as to who is the boss of whom. As 1975's crisis exposed, only conventions (unwritten and unenforceable agreements as to how everyone will behave) allow it to function at all.

This mess is a historical overhang from the compromises that accompanied the progressive transference of power from the monarchy to parliament in the UK, from Magna Carta to the Glorious Revolution of 1689.

Parliament came out ahead in the end, but the hereditary monarchy hung on as titular head of government, mostly just going along with the government of the day but retaining undefined prerogative powers.

We inherited the anachronism of the monarchy, but along with it the odd notion that democracy requires a head of state. There is no reason in truth why that should be so; in a pure democracy, parliament — elected by the people — should be sovereign and answerable only to the people.

Parliament makes the laws and the executive implements them. The executive is parliament's delegate in that system, not the other way around as is the practical case in Australia.

We don't need parliament's acts to be approved by an unelected person once passed; the formal stuff is pointless pageantry only. That just leaves the reserve powers, which is where the real argument lies.

What if the government goes rogue? Don't we need an independent head of state who can step in and protect democracy?

The only reserve power required is one that would force the parliament back to the people by fresh elections. That power could comfortably reside with the High Court. No head of state required.

More importantly, what if the head of state goes rogue? As Kerr certainly did, encouraged by his imperial masters? Do you know how we get rid of a bad governor-general? We have to ask the Queen to sack them.

We are no less exposed today than in 1975 to an anti-democratic act like Kerr's.

It's of only historical interest to confirm the palace's involvement; that wouldn't happen today. However, there is nothing to stop a future governor-general from overriding the people's will as expressed through their election of members of parliament, using ill-defined powers and not breaking the law.

Imagine if one of our governments broke convention by installing a partisan hack as governor-general, someone who would happily burn down our fragile democracy for party gain? That could happen.

The republican movement in its current iteration calls for the minimal step of replacing the governor-general (and therefore the Queen) with a president. Same powers, just no monarchical link. Great, but it won't solve any of the problems I've mentioned.

In fact, if we ended up with an elected head of state as most republicans favour, that role would become necessarily political. And, inevitably therefore, the risks to our democracy which our flawed constitutional model has embedded would become even greater than they are today.

As attractive as is the notion of just doing a "replace all" to the constitution — president for governor-general throughout — the harder work of fixing our flawed democracy would be a far better idea.