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SIR JOHN KERR*Published
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The vilification, most of it irrational, of Sir John Kerr following the recent publication of Sir Garfield Barwick's account of the 1975 constitutional drama, demands that something is said in Sir John's defence, even if it does involve raking over nearly dead embers.

In 1975 I was an inexperienced member of parliament and no more than a bit player in the drama, so of course I did not see the whole scene nor even understand all that I did see. I supported the blocking of supply and argued both in public and in private that the Opposition was obliged to do so.

Notwithstanding necessary reservations about my objectivity, I have been forced to give the whole matter more thought than most who now with such abandon apportion blame for complex events.

With hind sight, I have some reservations about the Opposition's role and my own part in that, but I don't see that Sir John Kerr need have too many reservations about his role. Sir John's misfortune is that it suits too many on both sides of politics that he should be a scapegoat for events that took over from the players.

Fraser, who may have been hooked on elections, none the less had a good reason to force the 1975 election. The reason was not primarily the loans affair, reprehensible as that was, but the fiscal and monetary management of the then government. Fraser himself stressed that economic management was the election issue. Although there were, no doubt, many reasons to account for both election results, it might not be entirely coincidence that when Fraser himself lapsed into similar fiscal laxity he also was thrown from office.

Malcolm Fraser should not be blamed for not anticipating that, faced with blocked supply, Whitlam would refuse to call an election. Whitlam's action was inconsistent with popular expectation, Westminster tradition and the intentions of the founding fathers, as may be gleaned from the debates which gave us our constitution.

Although Whitlam, at least as much as Fraser, was responsible for the subsequent bitterness, Sir John Kerr was not. As events unfolded for Kerr he was left with very few options. In 1975 his one over-riding responsibility was the same as

Sir Paul Scoon's responsibility to Granada now - to ensure the legal government of the nation.

So long as the Executive Council, of which the Governor General is a member, acts lawfully, and so long as the people's representatives, in parliament, sanction a government's actions, the Queen's representative has only formal responsibilities. However, should the processes of legal government break down, then he has responsibility for restoring legality to the system. These are the so called reserve powers of the crown or its representative. Ironically the Australian authority on the use of these powers and responsibilities is "The King and His Dominion Governors" written by one time Labor leader, H.V. Evatt.

The existence of these powers places a Governor General, or a State Governor, in a very lonely position should for any reason the process of legal government break down. Should any government's authority, whether legally derived or not, break down, then clearly 'reserve powers' will be assumed by somebody; usually it is the generals, but the required status has been as low as a flight lieutenant and even sergeant. The genius of our system of government is that it provides a means to restore legality before the authority breaks down. The Queen's representatives have a clear responsibility, not just a mandate, to act to restore legality and ensure governmental authority. We are a democracy so they may not choose governments; that decision must be returned to the people at the first opportunity.

Sir John, faced with a government which was fast running out of the legal power to spend money on day to day government, had a responsibility to resolve the impasse. This was a responsibility he could not duck. To guide him he had little precedent, but only his own legal training, some learned writing, and in the end the advice of the Chief Justice. He resolved the impasse in a manner that has not been challenged at law, avoided even the temporary absence of government or illegal government, resulted in a government with a clear democratic mandate, and did not shed a drop of Australian blood. In fairness his critics might concede that we could have asked for little better outcome.

There were those who said he was obliged to wait until supply actually ran out - to wait until the circumstances he was charged with avoiding had actually occurred. Others say he acted several days too soon. Supply might have been stretched to cover a later election. Another week might have seen either the loss

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of the opposition's Senate equality or a government members revolt.

Sir John was in no position to make such fine judgements about the remaining supply or the efficacy of pruning a day or two off the time necessary to conduct an election. To have erred in the other direction would have been most serious. He had no reason to believe that anybody was about to change his mind. I don't think any Liberal was about to break; it would have required much courage. Even if one was, Sir John could not gamble.

Some say he should have explained to Whitlam what was about to happen. But the course of action actually followed cannot have been a complete surprise. It had been widely canvassed as the only possible option should neither party give in.

Others say he should not have received advice from the Chief Justice on a potentially justiciable matter. Surely no fair person can blame Kerr for checking his judgement in so momentous a matter. That criticism, if valid, is better directed to Sir Garfield.

Yet others, in effect, argue that Kerr should have given Whitlam the opportunity to ask the Queen to change Governors General. Had Whitlam asked, and the Queen acquiesced, that would have solved nothing. ^{What is more,} I don't believe Whitlam would have asked. His own sacking provided him with an outside chance of electoral success.

Sir John had to cope with a novel and bitter situation. It was not his fault that he did not please everybody. He deserves to be judged with more objectivity.