

## The Stability Myth

A common answer to calls for a republic is 'if it ain't broke, don't fix it'.

This answer brushes aside the 1975 crisis as if it didn't occur, or can't happen again. Why it can't is never explained. It mistakenly assumes an absence of subsequent crises means that crises cannot occur. And it ignores the Constitution's many defects, such as confusion over the extent of executive power.

Ignorance does not however wholly explain the 'if it ain't broke' view. Equally important is faulty reasoning: from the opinion that Australia has been relatively stable - true - the conclusion is drawn that our Constitution must guarantee stability - false. The supposed causal connection between our Constitution and political stability is a myth. Our stability actually comes from *ignoring* our Constitution.

Take the formation of governments. When we vote, we expect the majority in the lower house will govern. That's what winning the election means.

A democratic Constitution could simply say that the government is appointed by a majority vote of the House of Representatives. No such rule exists. Instead, our Constitution makes the Crown the legal head of government: s.61. Executive Councillors (s.62) and Ministers (s.64) hold office 'during the pleasure' of the Governor-General. Several High Court cases confirm the precise legal meaning of this phrase - the office-holder may be dismissed at any time, for any reason, without notice: see *Fletcher v Nott* (1938); *Coutts* (1985); *Jarrett* (2005).

Legally, a Whitlam-style dismissal could happen at any time, for any reason. So the legal rule is ignored. A more democratic rule - that the majority governs - is adopted in practice. The only time majority rule has been ignored was in 1975. Following the legal rule in the Constitution actually created that crisis. Had the Crown powers not existed, the Liberal and National parties could not have gained anything from blocking the budget. There would have been no mid-term challenge to Whitlam. In 1975, the instability was caused by the Constitution.

Another example is legislation. We expect that once passed by both houses, a proposed law will become law. But the Constitution says royal agreement is necessary: ss. 58-60. Legally, the Crown can veto a proposed law supported by Parliament, but as this could create a crisis, by preventing a law change which the peoples' representatives support, the legal rule is disregarded, and a more democratic practice is adopted.

Then we come to elections. The power to dissolve the House of Representatives is vested in the Crown: ss.5, 28. A Governor-General could severely disrupt Parliament and Government by calling an election whenever he or she thought the people might have changed their minds. So the legal power is only usually exercised when recommended by a Prime Minister with majority support in the House. Departures from that approach create controversy, uncertainty and disputes.

Our stability comes not from the Constitution, but from ignoring what it says. Enormous power is given to our royal ruler, and the system only works when the power is not used. Can

you think of any other system which only works when its written rules are ignored?

In practice, our politicians follow democratic, unwritten rules instead, called constitutional conventions - a second set of rules which exist alongside our written Constitution.

It is the conventions which provide our stability. They rest on a widely shared acceptance of democracy - that power is exercised by the majority of those we elect.

But the conventions are not legally enforceable. In any dispute, one side can sidestep the conventions and rely instead on the written rules. That happened in 1975. Those relying on the undemocratic written rules won.

Having two sets of rules means that those who lose elections have a second path into government - by gaining the favour of the Crown. Those who don't want legislation enacted have a second option to block it - by gaining the favour of the Crown. Those who don't like the result of the last election don't have to wait 3 years. They can trigger an early election - by gaining the favour of the Crown.

Crown powers are the chief source of instability in our Constitution. Abolish the Crown and we can re-write the Constitution to make it democratic. That is why we need a republic. Identity and independence don't matter much. Republicanism should be about bringing the use of power under democratic control, to guarantee our stability.

Philip Howell