DISRUPTING CONSENSUS: THE ROLE AND NATURE OF MINORITY REPORTS OF COMMITTEES

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OVERVIEW

1. Minority Reports as institutionalised dissent
2. Nuanced dissent:
   - A taxonomy for classifying minority reports (developed based on reports of Victorian Joint Investigatory Committees)
   - Illustrations of 4 types of Minority Reports from Victoria
3. Minority Reports as a barometer of health in a democratic system?
INSTITUTIONALISED DISSENT – AN INTRODUCTION

• Joint Parliamentary committees deal with contested inquiry areas on behalf of the whole of Parliament

• The party in government usually controls the membership of committees, therefore there is the spectre of bias towards government-friendly findings

• Ways to address this bias are set out in legislation, standing orders/custom
MINORITY REPORTS AND DISSENT

- Minority reports are one of two paths to deal with conflict – representing a unique form institutionalised dissent
- A Committee minority (single member or a group of members) can write their own ‘report’ on the Inquiry topic.
  - MR deal with any matter raised during the Inquiry and can, and usually do, include alternate findings and recommendations.
WHY DO MINORITY REPORTS MATTER?

• Consensus norm in committees
  ➢ Unanimous committee reports seen as preferred
• Minority reports seen as a sign of Committee/parliamentary disfunction
  ➢ Particularly among overseas and commonwealth researchers
• Our research finds that dissent in the form of minority reports is nuanced, positive and plays an important role
  • But MR motivation is important
  • Political motives are more closely aligned with ideas of dysfunction
WHY DO MINORITY REPORTS MATTER?

• Minority reports represent broad parliamentary and democratic principles at play
  • Plurality: Providing a means to capture multiple views/voices (insiders and outsiders)
  • Normative influence (generating reaction from government or from civil society)
  • Canary and sentinel function: deal with gerrymander and committee abuses of power
MINORITY REPORTS IN ACTION
THE VICTORIAN EXPERIENCE

• Minority Reports a stable, and very consistent element of Victorian Joint Committees
  • Consistency over time, different political parties in power and government/non-government control of committees
• Dissent captured in MR almost always focused on ‘real’/’valid’ motivations (evidence/policy debate/abuse of process/power)
• Analysis shows they are almost never used as an extension of House tactics –political attacks
MINORITY REPORTS IN ACTION
THE VICTORIAN EXPERIENCE 2006-18

Minority Reports by Parliamentary term 2006-2018

Victorian Minority Reports by taxonomy 2006-18

- Political
- Evidence
- Malpractice
- Policy
TAXONOMY

4 CATEGORIES OF MINORITY REPORTS

- Policy (most common)
- Malpractice/malfeasance
- Evidence
- Political (least common)

IDENTIFIERS

- Objective/purpose
- Structure
- Language
- Evidentiary basis (reliance and use of evidence)

➢ Classification makes appropriate responses to different categories of reports conceivable
POLICY:
ALTERNATIVE DISPUTE RESOLUTION AND
RESTORATIVE JUSTICE
(LAW REFORM CTTEE) (2009)

• Highlights several recommendations in the main report that the minority do not support; detailed reasons
• Uses quotes from experts as supporting evidence
• Report is structured formally; with headings
• Language is rational and dispassionate
  ➢ E.g. “it is premature to reach that conclusion on the basis of the evidence available to date”

Colourful marine iguana
MALPRACTICE / MALFEASANCE: ARRANGEMENTS FOR SECURITY INFORMATION (LAW REFORM CTTEE) (2010)

- Raises concerns about Committee processes, including that no public hearings were held, submissions were not made public and an important report was not made available to the Committee
- Report is structured formally; headings; logical flow
- Language is critical and conspiratorial
  - E.g. “the consequent gagging of the minority members of this Committee is unprecedented”

Yellow land iguana
EVIDENCE:
APPROACHES TO
HOMEWORK IN VICTORIAN
SCHOOLS (EDUCATION &
TRAINING CTTEE) (2014)

- Short report, focusing on perceived lack of attention on one issue
- Refers to evidence of a student that the minority considers was overlooked in the main report
- Report is informal and short (2 pages)
- Language is accusatorial and conspiratorial
  - E.g. “the Government has removed the very financial assistance that is designed to help”

Grey marine iguana
Objective of the report is to criticise the position taken by the Labor Party during the inquiry.

It is a short report (1.5 pages) that quotes submissions and extracts from transcripts of public hearings.

The language used is antagonistic and critical.

E.g. “the position adopted by the ALP could be categorised as … in the words of Les Tentyman ‘a debasement of the political system’”
MINORITY REPORTS AS A MEASURE OF PARLIAMENTARY HEALTH

1. Parliamentary politics domestically and internationally are seen by some to be ‘dysfunctional’
   ➢ Minority Reports could be an extension of the ‘dysfunction’

2. We suggest minority reports are a good measure/barometer of parliamentary and political health
   ➢ Consistent trend in numbers and types between parliamentary terms/change in government, a proxy for good health
   ➢ Statistically significant changes in types or numbers may indicate dysfunction (not just more minority reports but also fewer)

3. Tracking minority reports should be seen as a way of measuring the health of a parliamentary democracy