

The Unusual Suspects: Divisions on the Mental Capacity Bill

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The debate on the Report Stage of the Mental Capacity Bill on 14 December 2004 was remarkable for some fairly chaotic scenes in the Commons. It also produced some landmark rebellions amongst the PLP.

The legislation, if passed by the House of Lords, will give legal status to 'living wills' – documents outlining an individual's wish to withhold medical treatment if they become severely incapacitated - and gives the power of attorney to a third party or 'advocate' to tell doctors to withdraw treatment. Opponents of the Bill claimed the changes could allow 'killing by omission' through withdrawal of treatment. Ministers insisted that the Bill does not sanction euthanasia, citing the fact that doctors could apply to a court of protection to challenge the right of a third party to remove a life support machine. There is also a clear presumption in the Bill in favour of the preservation of life.

Not all the PLP were convinced. Yesterday's votes saw seven separate Labour rebellions against various aspects of the Bill. None were especially large but they took the total number of backbench revolts by Labour MPs since Labour was elected in 1997 to over 300 – a milestone that no-one in the Government will be particularly pleased about.

Labour's rebellions

In the largest rebellion, 34 Labour backbenchers voted in favour of a cross-party amendment in the name of the former Conservative leader, Iain Duncan Smith that would have prevented doctors from taking any action that would hasten the end to a patient's life. The amendment was defeated by 297 votes to 203. Although Duncan Smith lost the vote, support for his amendment surpassed his original expectations: in the run-up to the vote - 91 MPs had put their names to his amendment, well under half the number eventually to vote for it.

Various reports have claimed that around a further 100 Labour MPs had abstained. This figure appears to have been calculated by subtracting the numbers voting from the total number of Labour MPs to produce a figure of 'abstentions'. But this is usually very misleading. Analysis of the division lists indicates that around 340 Labour MPs were at the Commons last night. Of course, some others may have abstained throughout the votes, as Kevin McNamara did, and yet others may have asked to be absent from the voting on grounds of conscience, but it seems unlikely therefore that 100 Labour MPs actively abstained.

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There were six other rebellions, listed below:

- Thirty-three Labour MPs supported New Clause 2 in the name of Ann Winterton that which would have insisted that nothing in the Act would authorise the withdrawal of palliative care, including the relief of pain, suffering and discomfort and nutrition and hydration, however provided. The amendment was defeated by 198 votes to 296.
- Six Labour backbenchers supported Liberal Democrat New Clause 5, relating to the appointment of independent advocates. This amendment was defeated by 106 votes to 345.
- Fourteen Labour MPs supported a second amendment in the name of Duncan Smith which would have insisted that a person's life and health be basic to their 'personal welfare' when determining what was in their 'best interests'. The amendment was defeated by 174 votes to 326.
- Another 14 Labour MPs supported an amendment in the name of Dr Brian Iddon that would have left out Clause 24 – on advance decisions to refuse treatment (in other words, removing 'living wills' from the Bill). The amendment was defeated by 110 votes to 366.
- Four Labour MPs supported an amendment in the name of Dominic Grieve stopping research on incapacitated patients, unless it could be shown to be in their best interests. The amendment fell by 148 votes to 321.
- Eighteen Labour backbenchers voted against the Third Reading of the Bill. In addition, David Taylor cast a deliberate abstention by voting in both lobbies, as he had done on Second Reading. The Bill then passed by 354 votes to 118.

Labour's rebels

These rebellions involved a total of 39 MPs.* They are listed in Appendix 1, along with the way that they voted on each of the votes.

Most of the 39 had voted against their whip before during this Parliament. Just two - Frank Roy and Claire Curtis-Thomas - were rebelling for the first time, the latter having made very public her experience with her late mother's illness. 'What we're actually sanctioning here', she said, 'is starving someone to death and – even worse – allowing them to die of thirst. In this country, we prosecute people who starve their dogs or cause them to die of thirst, but we are now suggesting doing it to our own relatives'.

Although very few of these MPs were rebelling for the first time, it is also clear that this was far from a rebellion consisting of the usual suspects. Although almost two-thirds (62%) of those who had previously rebelled had done so on fewer than 10 occasions in the first three sessions of this Parliament. And of the 11 most rebellious Labour MPs – those who have rebelled on 50 or more occasions before – just three (Denzil Davies, Robert Wareing and Lynne Jones) took part in last night's rebellions. The bulk of last night's rebellion therefore comprised MPs who do not make a habit out of rebelling, but who felt especially strongly about the issue: MPs like Joe Benton, Jim Cunningham, Helen Jones, Calum MacDonald and Bill Tynan. This was, therefore, a rebellion consisting largely of the unusual suspects.

* Although not included in this total – because he is no longer in receipt of the Labour whip - George Galloway voted against the Government in five out of the seven votes last night. Since his suspension from the PLP in May 2003 (and subsequent expulsion from the party) Galloway has voted only eleven times in the Commons; all his votes have been cast against the Government.

Unnecessary whipping?

One further notable feature of the debate was that the Government had issued a whip to the PLP, as they had over other recent votes, such as those on gambling and smacking, where the other parties had allowed free votes. This has attracted the usual complaints – from MPs and the media – that the Government was being autocratic in denying MPs the freedom to vote as they wanted. During the debate, one Labour MP, Brian Iddon complained that the Government were granting free votes on beginning of life issues, but not on end of life issues.

Yet in many ways issuing a whip was the more logical and consistent position to take. It is difficult logically to justify dealing with these sorts of issues – so-called ‘issues of conscience’ – as a breed apart from other issues.[†] Why should the Government whip on, say, the Iraq war but then give a free vote on smacking? Does anyone really think that the latter is more of a moral issue than the former? In principle, therefore, there is much to recommend the Government’s stance.

Yet in practice, the tactic has its drawbacks. For one thing, it attracts attention to the divisions within the PLP. Splits on free votes do not tend to attract the extensive media attention given to rebellions against the whip. As Appendix Two shows, the votes on the Mental Capacity Bill also produced splits amongst the other parties. In some cases, these splits were in percentage terms more severe than those amongst the PLP, but because these were on free votes, they have not attracted attention. Instead, all the attention has been on the PLP and its internal divisions. Moreover, applying the whip in this way – on issues which people feel very strongly about – can create resentment within parliamentary parties (especially unfortunate when those alienated are those, as in this case, who are normally loyal to the Government). When the whip is required in order to win the vote, this may be seen as unfortunately necessary. But in a situation where the Government would have almost certainly got its way regardless, it might have been better politics to have granted a free vote.

[†] See, for example, P. Jones, ‘Members of Parliament and Issues of Conscience’, in P. Jones (ed), *Party, Parliament and Personality*, London, Routledge 1995.

Appendix 1: Labour rebels

	IDS amend't	Winterton amend't	Lib Dem new clause	IDS amend't II	Iddon amend't	Grieve amend't	Third Reading
Battle, John	X	X		X	X	X	X
Benton, Joe	X	X					X
Campbell, Ronnie	X	X		X	X		
Clarke, Tom	X	X					
Colman, Tony	X	X					X
Cox, Tom	X	X					X
Crausby, David	X	X		X	X		X
Cummings, John	X	X					
Cunningham, Jim	X	X					
Curtis-Thomas, C.	X	X					
Davies, Denzil	X	X		X	X		X
Dawson, Hilton	X						
Dobbin, Jim	X	X	X	X	X		X
Drew, David					X		X
Field, Frank	X	X		X			X
Fisher, Mark	X	X		X		X	
Hoey, Kate	X	X		X			
Hood, Jimmy	X						
Hoyle, Lindsay	X	X		X	X		X
Iddon, Dr Brian	X	X	X	X	X		X
Jones, Helen		X					
Jones, Lynne			X				
Kilfoyle, Peter	X	X					X
King, Andy	X	X			X		
Lewis, Terry							X
Lyons, John	X	X					
MacDonald, Calum	X	X					
Mackinlay, Andrew	X	X	X	X	X	X	X
Mudie, George	X	X			X		X
O'Hara, Edward	X	X					
Pollard, Kerry	X	X	X	X	X	X	X
Pope, Greg		X					
Roy, Frank	X	X		X	X		X
Singh, Marsha	X	X					
Smith, Geraldine	X	X		X	X		X
Taylor, David	X	X	X				*
Tynan, Bill	X						
Wareing, Robert	X	X					
Wray, Jimmy	X	X					

Note: X marks a vote against the Government; * indicates a deliberate abstention by voting in both lobbies.

Appendix 2: Conservative and Lib Dem divisions

While the PLP was whipped, the Conservatives and the Liberal Democrats were permitted a free vote, and divided as follows:

	<i>Con</i>		<i>LD</i>	
	<i>For</i>	<i>Against</i>	<i>For</i>	<i>Against</i>
IDS amendment	120	1	40	6
Winterton amendment	116	2	40	6
Lib Dem new clause	44	20	50	0
IDS amendment II	109	2	42	5
Iddon amendment	90	15	0	34
Grieve amendment	100	0	36	7
Third Reading	11	88	36	3

Note: all figures include tellers.

On the whole the Conservatives voted in favour of every amendment and then against Third Reading, whilst the Lib Dems voted for every amendment except the Iddon amendment (which they all voted against) but for Third Reading. But there were divisions. Indeed, all of the votes produced some division within either the Conservatives or the Lib Dems. The largest split amongst the Conservatives occurred over the Liberal Democrat new clause, with 31% of Conservative MPs to have voted voting in one lobby, 69% in the other. The largest split amongst Lib Dem MPs – over the Grieve amendment – saw 16% in one lobby, 84% in the other. Although not strictly comparable (because of the presence and absence of the whip in the different cases) both these divisions were greater in percentage terms than the Labour rebellion over Iain Duncan Smith's amendment, which was backed by 10% of Labour MPs, and opposed by 90%.