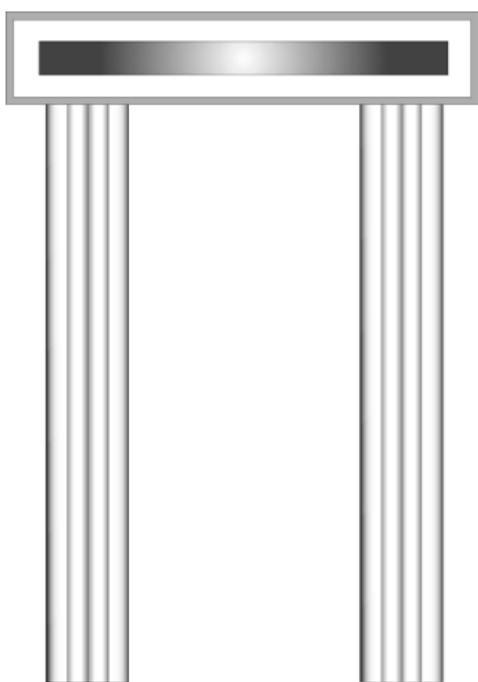


POLITEIA

A FORUM FOR
SOCIAL AND ECONOMIC THINKING

Oliver Letwin

**The Easy Case
Undermining Respect
for the Law**



Address Series

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A Forum for Social and Economic Thinking

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FOREWORD

In my Politeia address *The Easy Case*, I argued that we have created a bureaucratic system that for entirely rational, if self-serving reasons, is programmed to operate in a manner that defies fairness and justice. My argument was that the authorities, whether national government, local government or other agencies of the state – weighed down by burdens of targets and regulations – pick on the easy cases. What is the easy case? It is the person or organisation unable or unwilling to resist, evade or ignore the demands of the system.

In order to demonstrate my argument, I set out a number of easy cases, which included a North London estate where police officers were rarely to be seen, but where traffic wardens issued a parking ticket to security guards hired by tenants to patrol the area. I highlighted the case of the legally registered, fully insured motorist falling foul of the speed camera, whilst joy-riders travel free of charge and free of speeding restrictions.

Easy cases continue to come to light. On 20th October 2003, an ambulance driver was to be prosecuted in Grantham Magistrates Court. His alleged offence: speeding whilst transporting a liver for a life-saving transplant operation.

I gave the address which follows in the hope that the 'Easy Case syndrome' would spark a national debate on the growing tendency of the authorities to target essentially honest citizens while avoiding harder cases involving serious wrong-doing.

If we do not have this debate, if we do not redress the balance so that the law-abiding feel they are being treated sensibly, then there is every chance that the burden of petty rules and regulations will turn into disobedience.

If the authorities continue to target ordinary, decent and law-abiding citizens because it is 'easy', while failing to deal with real hard cases of crime and disorder, then there will come a point at which those who respect the law respect it no longer. At that point our society will face serious danger.

OLIVER LETWIN

November 2003

THE retreat today of civilisation in Britain's most vulnerable neighbourhoods can be illustrated by the story of the Clarence Way Estate in Camden and the efforts made by local residents to reclaim their community from local drug-dealers. Though policing of the estate is clearly inadequate, funds have been found for private security patrols. These have succeeded in moving on the junkies that use the estate's stairwells, balconies and doorsteps to jack up – in full view of the tenants and their children. But there is only so much the security guards can do. For instance, they are not allowed to tow away the illegally abandoned cars that the junkies and the dealers use as a cover for their operations. No, that is a job for the organs of the state, although when I visited Clarence Way they had yet to do it. However, the law enforcement authorities are not entirely absent from the estate. That much was made clear to the security guards when they returned from a patrol to find a parking ticket on their van. Residents were outraged and asked if free parking could be made available – as it is for, say, police officers and councillors. But the council said no.

In February – when I told the story of Clarence Way – there was another example of officialdom at its worst, this time in the Suffolk village of Trimley St Mary – home to Mary Martin, a grandmother of ten. Ms Martin was in fact born in the United States but has lived in Britain for 54 of her 56 years. Nevertheless, when she applied for British citizenship, following the death of her mother two years ago, she was turned down by the Home Office, which did not accept her claim of long-term residence. She was then given a few days to leave the country or be deported. Fortunately, the story was brought to national attention by her local MP, John Gummer, forcing the Home Office to back down. But as Mr

Gummer said at the time: 'She should never have been put in this position. In all my time as an MP, I have never seen a case as appallingly bad'.

Unfortunately, appalling decisions are made all the time. Moreover, the Government is continually extending the scope for such decisions. For instance, the new Regulations for the Registration and Monitoring of Independent Schools threaten a regulatory framework so onerous that many schools could be forced to close down. Not, of course, the likes of Eton or Harrow that have the resources to cope. But small neighbourhood schools such as those serving vulnerable children from Britain's minority communities. It would seem that the Department of Education has learned nothing from the Department of Health's ruinous attack on our old people's homes.

But my purpose here is not to recount isolated examples of bureaucracy gone mad. For one thing these examples are not isolated. They are part of a systemic problem that I believe is eating away at our respect for authority. Also, while bureaucracy is certainly involved, I don't believe that it has gone mad. Rather we have created a bureaucratic system that for entirely rational, if self-serving, reasons is programmed to operate in a manner that defies fairness and justice.

Nor do I simply want here to discuss the accumulating burden of regulation and red tape, though undoubtedly that burden is increasing. Rather, what I want to look at is how and where that burden falls. Because it appears to me that the blows of bureaucracy rain down in a systematic pattern of unfairness and injustice.

That pattern can be seen in all of the examples I have given. As regards the Regulations which threaten small independent schools, the stated rationale for the new provisions is to protect the safety of pupils in new schools – though, of course, the Government has given no evidence that safety is compromised under the existing rules. Nevertheless even the smallest community schools will be subject to an intensive inspection regime covering such matters as sound insulation, acoustics, lighting, heating and ventilation. The compliance costs will shut down existing schools and ensure that new ones are never started. The irony is that such Regulations only ensure that procedures are followed; they do not guarantee outcomes. For instance, only this year, the Audit Commission warned that schools built under the Private Finance Initiative are significantly worse in terms of space, heating and lighting than new publicly funded schools. But of course it is easier to pick on neighbourhood schools than to sort out the top-level mismanagement of the PFI programme.

And, no doubt, the Home Office found it easier to pick on Mary Martin, an unsuspecting Suffolk grandmother, than to deport the failed asylum seekers that disappear into the nether world of black market employment and unregistered accommodation. In the same way, for security reasons, they make it harder for British citizens to get a passport at short notice, while allowing thousands of people who entered this country without a passport to stay without security clearance of any kind.

And even in a matter as mundane as parking restrictions, it is easier to slap a ticket on a security patrol van than it is to tow away a stolen car dumped in the middle of a housing estate. The former is achieved in minutes, the latter in months. Three very different cases, but there is a link. In each case, those whom the authorities target have three things

in common. First, they are not very powerful – we are talking about ordinary individuals and families, or small businesses and community groups. Second, they are easy to get at – through their property, their livelihoods, their reputations. These are sitting ducks as far as the authorities are concerned. Third, they law-abiding and honest, if not positively public-spirited; their every instinct is to obey the rules or, if they slip up, to take their punishment meekly. In each of our three examples, the authorities have picked on the easy case – by which I mean the person or organisation unable or unwilling to resist, evade or ignore the demands of the system.

But just as there are easy cases, there are also hard cases – as we can see in each of our three examples. There are the powerful political, bureaucratic and corporate interests responsible for the poor performance of so many PFI projects. There is the illegal immigrant who disappears off the official radar. And there is the drug-abusing petty criminal who could not care less what happens to the car he just dumped, which he probably stole anyway. So we have three kinds of hard case – the powerful, the invisible and the uncivilised. All of these make life difficult for those in authority, which is why the easy cases, who are neither powerful nor invisible nor uncivilised, present a more attractive target. The ‘easy case syndrome’ is an everyday fact of life. Examples are not isolated. They litter the system. Recently, millions of us received a self-assessment form from the Inland Revenue. This gives us the privilege of collaborating in the taxation of our income. Meanwhile the cash-in-hand brigade enjoys the public services our taxes have paid for, without contributing anything themselves. Even if your builder declares his income down to the last penny, you may still fall foul of our planning system, which regulates the placing of each and every garden shed,

while whole townscapes are defaced by tower blocks. And if you should find an intruder breaking into your garden shed, do not let him tread on a garden fork as it may be you and not the criminal who gets sued. I have seen much the same attitude displayed by the ticket inspectors of more than one train operator, who while happy to fine the commuter who misplaced his or her ticket, are unlikely to challenge the carriage full of louts who did not have tickets to lose in the first place. All too often, when some of life's free-loaders see the inside of a courtroom, they will leave it laughing. By contrast, for those who respect the law, the courtroom is a near infallible means of enforcement, the mere threat of which ensures that fines for overdue parking tickets, misplaced train tickets, overdue tax returns and misplaced garden sheds are paid without protest. The same threat ensures that responsible fathers who disclose both paternity and income provide easy work for the Child Support Agency, while dead-beat fathers are allowed to disappear.

There is a strong European dimension to all of this. One only has to compare the British farmer, clobbered for making a small mistake in his IACS form, with the EU commissioners, who cannot even account for £3 billion in their annual budget.

It is hard to think of a single significant area of regulation where the authorities do not systematically target the easy case to the relative or absolute benefit of the hard case. And the problem is getting worse. It pervades our regulatory culture. As the volume of regulation and legislation grows, so does the distortion of the system towards the clobbering of the easy case and the escape of the difficult case. We have arrived at a position where the 'easy case syndrome' is not even always an unintended by-product of regulation; increasingly the pursuit of

the easy case is becoming a positive intention of government. For instance, picking on the easy case is a great way of raising revenue. One need think only of the spread of speed cameras and the introduction of congestion charges. The motorist, that is the legally registered fully insured motorist driving his own vehicle, is the ultimate easy case. The registration plate of the legally registered driver is a perfect identifier and the car itself a hostage subject to clamping, crushing or confiscation so as to extract a ransom from its owner. Meanwhile the joy-riders travel free of charge, free of speed restrictions and free of parking tickets. In a slight adaptation of the proverb, they have learned that to travel joyfully is better than to arrive in court.

The easy case also provides the state with an easy way of being seen to do something.

How much easier it is to subject schools and charities to the bureaucratic disaster area that is the Criminal Records Bureau than to track down the real paedophile. Decent teachers, youth workers and volunteers dutifully submit themselves to the police check procedure in their tens of thousands, giving every impression that the authorities are on the case, when of course it will take more than a form-filling exercise to stop the determined paedophile.

Then there is the issue of animal welfare – again a proper concern, but again the subject of meretricious government initiatives that exploit the easy case. The laws protecting the welfare of British farm animals are the toughest in the world. Yet our livestock sector is sinking beneath a flood of foreign imports produced in conditions of often sickening cruelty. By ignoring the hard case, the Government

actually increases the UK market for inhumanely produced food.

The tendency of bureaucrats to deal with the easy case instead of the hard case has been exacerbated by New Labour's penchant for targets and indicators. It is easier to meet a target for hospital waiting lists by prioritising patients with easily treated minor ailments than those with life-threatening diseases, even though this is a policy for shortening queues by filling mortuaries. It is easier to meet targets for crime clear-up rates by concentrating on traffic offences than on the lawlessness of gangs that terrorise council estates.

Allied to today's targets culture is the blame culture, fuelled by a toxic concoction of European rights legislation and American-style litigation. The result is a predatory legal system always on the look-out for an easy case – meaning any individual or organisation without the resources to fight their way through the courts, but with enough money to settle out of court. No one need have an accident these days, when they could be the victims of criminal negligence. Taxpayers, employers and volunteers pay the price in legal bills and insurance premiums – they are the easy cases.

I have advanced five causes for the worsening of the 'easy case syndrome': regulation, easy money, the Government's addiction to cheap gestures, the targets culture and the blame culture. But there is a sixth reason, which is that the hard cases are getting harder. I have identified three kinds of hard case – the powerful, the invisible and the uncivilised. In an increasingly globalised economy it is easier for the powerful to escape the constraints of national law; in an increasingly anonymous society, it is easier for those without a stake in the mainstream to drop out and disappear; and in an increasingly chaotic

culture it is easier for those who just don't care, to flout the norms of civilised behaviour. As a result, the hard cases become harder for the state to deal with and the easy cases look much more tempting as objects of attention.

It is inevitable that in any system of enforcement some cases will be easier than others. It is particularly important that the system holds the line against the easy cases. We are all guilty of occasionally infringing the rules and if we all got away with it, there would be chaos. I don't know if you remember the traffic wardens' strike back in the 1970s, but it wasn't long before some streets were clogged with double, and even triple, parking. The system is out of balance. And so the question is this: what is the effect of this excessive concentration on the easy cases? The weight of authority is pressing down on them, and that weight increases with every new law and every new tax. If this continues there will come a point at which those who naturally respect the law will respect it no longer. And at that point our society will be in serious trouble. Certainly we should not expect a loss of respect by the law-abiding to be offset by the gratitude of the lawless – who return nothing but contempt to so weak a system.

There are solutions, solutions that are embedded in Conservative philosophy and policy. Our policy is to reduce radically the weight of authority on the law-abiding majority. But that is not enough. We also need new measures to make life harder for the hard cases.

That is why the next Conservative Government will increase police numbers by 40,000. What is more we will put them back on the beat, reclaiming the

streets from the drug dealers, pimps and muggers who blight the lives of decent people. We will do for Britain what Rudi Giuliani did for New York – the proof that neighbourhood policing works. And it works precisely because it focuses the whole system on the hard cases – wherever, whenever and as soon as they arise.

We will apply the same principle to the other side of our law and order policy, which is to get young people off the conveyor-belt to crime. We will deal with the hard case. We will rescue young people caught in the hard drug vortex by forcing them into intensive treatment. We will provide long-term rehabilitative sentencing for persistent young offenders to reform characters and change lives, and make a profound impact on recidivism. We will draw inspiration from examples of success at home and abroad that prove that even the hard cases can be turned around.

It is said that no good deed goes unpunished. And in a society where the easy case takes the punishment, that is not far from the truth. It is certainly true that we cannot rebuild the neighbourly society through unfairness and injustice. That is why I am determined that in every aspect of Home Office policy – from drugs to asylum – we will focus the system on the hard case.

That means setting clear boundaries for what is acceptable and what is not. It is only through such boundaries that the hard cases can be identified and isolated. This is not a prescription for bone-headed rigidity, like that suffered by Mary Martin at the hands of the Home Office. Any system of boundaries should operate flexibly, but flexibility should be matched by a series of triggers for interventions of authority that increase in strength in proportion to the seriousness of the offence.

Oliver Letwin

This is our model for all systems of enforcement: boundaries which, when breached, prompt a proportionate response, instead of a system that stretches trip-wires across the straight and narrow road, while those who walk a crooked path carry on regardless.

Things have come to a sorry pass when it is necessary for the Shadow Home Secretary to preach the virtues of proportionate response. But that is the point we have reached. We need, with some speed and resolution, to rebalance the system of the state so that its weight bears down more heavily on the lawless than on the just.

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