

# Cato Official: Stop Demonizing DOJ Prosecutors!

January 12, 2011 by [S.M. Oliva](#)

[Jim Harper](#), the director of information policy studies at the Cato Institute, says that it's wrong to cast "aspersions on the entire security bureaucracy" when it comes to "privacy" (and I suppose other issues), and that it's downright wrong for anyone to suggest there's a moral aspect to government decision-making:

I believe the motivations of the vast majority of DoJ officials are good. They feel a real sense of honor from doing their self-chosen task of protecting the country from various threats. On average, they'll likely weigh security and safety more heavily than the average privacy advocate or civil libertarian. Because they don't think about privacy as much, they may not understand as well what privacy is and how to protect it consistent with pursuing justice. These are all good faith reasons why DoJ officials may undervalue and, in their work, undercut privacy. It is not necessary to believe they a dastardly enemy sits on Constitution Avenue mocking the document that street is named after.

The theory of the evil DoJ official says more about the theoretician than the DoJ. Experience in Washington has shown me that incompetence is almost always the better explanation than malice. (That's not very nice, talking about "incompetence," but there are some DoJ officials who lack competence in the privacy area.) Some people apparently need a dramatic story line to motivate themselves.

I'm sure it feels good to cast oneself as a white hat facing down a team of secretive, nefarious, government-sponsored black hats. But this mind-set gives away strategic leverage in the fight for privacy. The story is no longer how to protect privacy; it's who is bad and who is good.

I strongly disagree with this. Anyone who has read anything that I've written on this website over the past seven years knows I am the first guy to cast aspersions on the evil intentions of DOJ and other government officials. And I do so proudly without any reservations. The fact this displeases folks like Mr. Harper doesn't give me the slightest pause. He values his relationships with government officials over doing right by the innocent people injured by government aggression. That's his call, and I won't waste an ounce of energy trying to convince him otherwise.

Here is my only reply to the argument cited above: Incompetence and evil are not mutually exclusive. A person can demonstrate both simultaneously. More to the point, I think when you invoke "incompetence" as a blanket defense against government aggression, what you are really saying is government officers are never morally culpable

for the consequences of their actions. Furthermore, painting anyone who points out the moral failings of government officers as some sort of out-of-touch lunatic only provides aid and comfort to those who commit aggression.

Mr. Harper also paints with a broad brush when he asserts that there are “good faith” excuses for DOJ officials to violate privacy in the name of “justice.” What justice would that be? I have hundreds of antitrust case files where DOJ officials violated all sorts of rights — and constitutional limits — to pursue persons accused of “price fixing,” a non-crime. Even [Cato](#) has called for the repeal of all antitrust laws. If you conclude that antitrust statutes are unjust and unconstitutional on their face, then *no* DOJ action taken to enforce such statutes can be in “good faith.” They are acts of aggression.

Now if you retort, “They’re just enforcing the laws as they exist today,” then we’re back to my basic disagreement with Mr. Harper. Unless the DOJ is drafting lawyers and forcing them to prosecute at gunpoint, then every single individual is morally culpable for his or her own actions. I judge an individual on his or her actions, and I don’t employ a sliding scale to give some people the benefit of the doubt because they have a DOJ title. That would be the worst sort of moral relativism.

Indeed, Mr. Harper concludes his own post with a call to abandon ethical and moral analysis in favor of utilitarian lobbying: “those who...insist on good-vs.-evil framing in order to cast themselves as heroic—they are closing the ears of DoJ officials they might reach and giving away opportunities to actually improve protections for privacy in the country.” In other words, negotiate with people who have demonstrated a history of violent aggression and little capacity to grasp the moral consequences of their actions. You’ll forgive me if I don’t ask to see any brochures for that brand of crazy.