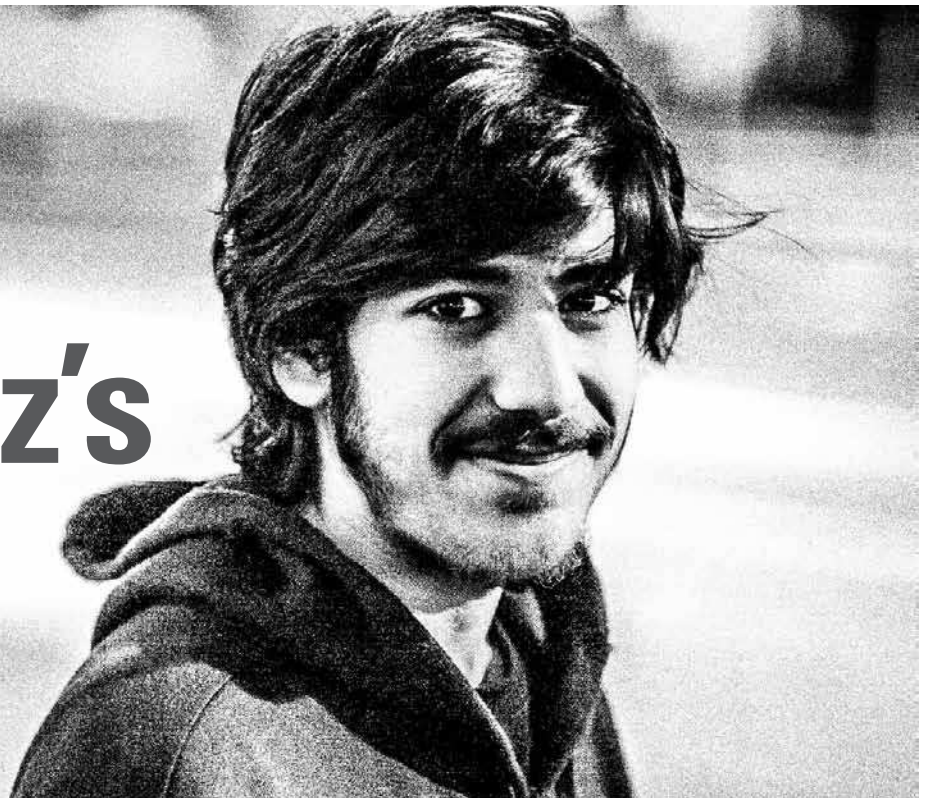


Aaron Swartz's Legacy



BY REBECCA GOULD

The example of a young outsider—in his life, not his death—should make us question our own complacencies.

“**T**here is no justice in following unjust laws,” wrote the computer programmer and Internet activist Aaron Swartz, who took his own life at the age of twenty-six on January 11, 2013. “It’s time to come into the light and, in the grand tradition of civil disobedience, declare our opposition to this private theft of public culture.” Swartz was twenty-one years old when he wrote these words in his 2008 “Guerrilla Open Access Manifesto.” Two aspects of Swartz’s manifesto are particularly prescient. First, there is his emphasis on the need to make *all* scholarship available to anyone with Internet access. Second, there is his insistence that scholarship belongs to the entire world. Swartz realized that “books are the cornerstone of our planet’s cultural legacy”; our survival as a species depends on our making this vast archive accessible to all. He created technologies and databases, such as the Open Library, to make such access possible.

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Swartz believed that things belonging to the life of the mind are not reducible to monetary exchange. Scholarship, for example, is subject to the market, but when it is controlled entirely by the profit motive, it is not scholarship at all. Swartz wrote in his manifesto that, just as it was wrong to force “academics to pay money to read the work of their colleagues,” so too was it unethical to make scientific articles available to students and faculty “at elite universities in the First World, but not to children in the Global South.”

Swartz boldly declared that “we need to take information, wherever it is stored, make our copies and share them with the world. We need to take stuff that’s out of copyright and add it to the archive. We need to buy secret databases and put them on the Web. We need to download scientific journals and upload them to file-sharing networks. We need to fight for Guerilla Open Access.” This is exactly what Swartz proceeded to do, downloading feverishly and generously, posting government documents that were legally in the public domain but were concealed from public view. Although he wrote the “Guerilla Open Access Manifesto” long before the JSTOR fiasco that led to his indictment, the vision Swartz set forth was cited by the US government in the thirteen felony charges it brought against him.

Among Swartz’s many remarkable qualities, the most remarkable was that he defended freedom of inquiry more powerfully and influentially than any scholar in recent memory, although he was not himself an academic. A college dropout, Swartz continued to defend academic values. When *Lingua Franca*, a magazine about academic life, closed down in 2001, Swartz created a program to make the magazine’s archives accessible to the public. He was fifteen. Swartz’s excitement about books by authors ranging from the anthropologist Bronislaw Malinowski to the contemporary critic Michael Bérubé made him a born intellectual. Tim Berners-Lee, the renowned inventor of the World Wide Web, remarked, “I don’t know if there’s anybody . . . who has read as many books as Aaron read. . . . He had to read in order to feed [his] thought process.” This comment was about Swartz, aged fourteen.

Soon after leaving Stanford University, Swartz wrote on his blog, “Most of the intellectuals I can think of aren’t academics or at least have left the academy.” Although he began this blog entry by keeping the academy at a distance, Swartz ended by aligning himself closely with the pursuit of disinterested scholarly inquiry. “At the beginning I declined to justify my being an intellectual on any grounds other than pure personal enjoyment,” he wrote. “Here, at the end, I can’t think of any better justification.” As an intellectual, without

the backing of any university, Swartz paid a higher price for democratizing academic knowledge than did his university-affiliated counterparts.

SWARTZ’S CASE

Swartz’s fateful action was to download millions of articles—many of them already in the public domain—from JSTOR, a digital library, onto a computer at the Massachusetts Institute of Technology while he was a fellow at Harvard University’s Edmond J. Safra Center for Ethics in 2010 and 2011. Swartz returned the files after he was caught, but it is generally assumed that he planned to distribute some of the downloaded articles online. Although JSTOR declined to pursue the case, the Office of the District Attorney in Massachusetts announced in a press release that it had indicted Swartz on four felony counts (a number that later rose to thirteen after he rejected the terms of a proposed plea bargain), which collectively carried a maximum sentence of thirty-five years.

Carmen Ortiz, the Obama-appointed district attorney who supervised Swartz’s case, denied in the wake of Swartz’s suicide that she had intended to seek the maximum sentence. However, she did not have scruples about threatening the accused with thirty-five years in prison. Ortiz’s statement that “stealing is stealing, whether you use a computer command or a crowbar and whether you take documents, data, or dollars” would instill fear in any information activist.

Swartz’s case tells a disturbing story about the fate of intellectual freedom in an information age. In prosecuting Swartz, our government made no distinction between crimes committed for profit and those carried out as a public service. Meanwhile, the Department of Justice made no allowances for civil disobedience as an act meriting specific kinds of responses. Even if Swartz failed to achieve his stated goal of making knowledge free, forever, to everyone, the American tradition of civil disobedience with which Swartz identified argues persuasively for the ethical distinctiveness of crimes committed as acts of dissidence against unjust laws. Hannah Arendt recognized this difference when she wrote in her 1970 book *On Violence*, “Under certain circumstances, acting without argument or speech and without counting the consequences—is the only way to set the scales of justice right again.” Where are our Arendts, our Thoreaus, our Martin Luther Kings, our Aaron Swartzes, now?

Suicides are impossible to decipher. We know from his own words that, like many other creative individuals, Swartz had contemplated death. We also know that he was relentlessly hounded by the Department of Justice until the day preceding his death.

Swartz chose poorly in directing his efforts at JSTOR's archive, since JSTOR is one of the most socially progressive scholarship aggregators. In his 2008 manifesto, he singled out Elsevier, a different aggregator, for its exorbitantly expensive books and journals and its efforts to stifle the free circulation of knowledge. Few would dispute that distributing JSTOR's entire archive online could have been harmful to the open-access cause, but there is no evidence that Swartz intended to distribute everything he downloaded. Swartz's own defense of copyright law in his lectures and his provision that the "Guerilla Open Access" agenda applied only to material out of copyright suggests that, even in the most extreme scenario, he would have restricted his information-liberation campaign to material in the public domain.

In the aftermath of Swartz's death, these nuances appear trivial. Regardless of their profit margins and the distinctions worth making with respect to their

A VOICE FOR INTERNET FREEDOM

Like many others who have commented on the Swartz case in the wake of his suicide, I was transformed by this Internet freedom activist, albeit from a distance. When the news of his case broke in 2011, I was struck by his act of downloading millions of articles from JSTOR and reflected on how his efforts might someday help to make scholarship equally available across the world. Living at the time in Palestine, I was haunted by the fact that none of the scholars I met could gain access to JSTOR's rich archive of material on their own literary heritage.

The prestigious Indian scholarly journal *Annals of the Bhandarkar Oriental Research Institute* will soon be available on JSTOR, but if you want to take advantage of this digital archive, you will need an affiliation with a JSTOR-subscribing institution, something you will be hard-pressed to find in South Asia. So a journal published in India is, in general, accessible only in the United States. To its credit, JSTOR has reduced-

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benefit to the public good, JSTOR, Elsevier, and nearly all the other scholarly databases are inaccessible to *most* people in *most* of the world. This situation perpetuates global inequalities in scholarship and in many other spheres. In an age when electronic copies can be made for free—when the cost of distributing an article to one person is roughly the same as distributing it to a million people—such a state of affairs is scandalous.

Publishing scholarship—reviewing, editing, copyediting, publicizing—is not and never will be free. Whether the publication appears in electronic or in print form, these costs are roughly what they were before the digital revolution. But the terms of production have changed. While we cannot produce for free, we can copy for free. Computers, Swartz noted shortly before his death, are "just big copying machines. That's what they do. They copy things from one machine to the other." Logically and ethically, he argued, the age of digital reproduction has to be an age of digital access. While ensuring proper mechanisms for compensating publishers, editors, and authors, our scholarly norms need to reflect the technological sea change in the interest of global open access.

fee schedules for developing nations. And Edinburgh University Press has programs enabling free access to its journals from African-based IP addresses. These are both progressive moves, to be encouraged as much as possible, but such deals vary according to individual databases and are not an industry norm. We need a new scholarly norm, not piecemeal efforts or corporate public relations, to ensure that open access becomes a democratic project.

When Swartz's case broke, many commentators were convinced that the charges against him would be thrown out of court. JSTOR issued a public statement saying that it was not going to press charges. I was relieved. The case then receded to one of the darker recesses of my mental hard drive; Swartz's name did not resurface in my memory during the mobilization over the now widely reviled Stop Online Piracy Act (SOPA) campaign. The SOPA campaign entered my computer screen—and hence my life—on January 18, 2012, when Wikipedia blacked out for the entire day. When I read the message on Wikipedia urging opposition to SOPA, I promptly wrote my member of Congress to complain about the bill. In part because

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millions of other Americans acted as I did on that day, SOPA was prevented from becoming law. I was impressed by the tight organization of the Stop SOPA campaign, but, having other things on my mind, that mobilization too moved to an obscure archive in the recesses of my memory.

It says something about Swartz's humility that it was possible for me to sign on to the battle against SOPA without ever knowing that the person who organized my protests was also awaiting trial for downloading too many articles from JSTOR. Most of the news media at the time were ignorant of this connection, and few of the Americans who took action against SOPA knew that Swartz was the initiator of the first petition to defeat SOPA and the founder of Demand Progress, which was instrumental in stopping the bill.

Swartz was not interested in bolstering his name. During the memorial for him held in the Great Hall at Cooper Union in New York City on January 19, 2013, David Isenberg, founder of the organization Freedom to Connect, revealed that, when he invited Swartz to deliver the keynote address to the group's May 2012 conference in Washington, DC, it had been with the expectation that his guest would speak about his own trial. Not wishing to burden the activist community with the story of his persecution, Swartz chose instead to speak about how the open-access movement stopped SOPA.

A NONACADEMIC AND AN ACADEMIC CAUSE

What does Swartz's fight have to do with the academy? In the first instance, it matters because the persecution Swartz suffered was in no small measure an infringement on his right to freedom of expression. The "Guerilla Open Access Manifesto" was cited in his indictment. In the second instance, it matters because, unlike other activists, Swartz was determined to use dissent to advance scholarly inquiry. Some academics, though distressingly few, have spoken out in the wake of Swartz's death. "Just as technologists salute his spirit of innovation, academics should look to him as a beacon, helping to show the way toward a day when knowledge can be free for everyone to use," wrote one visitor to Swartz's memorial website. On

the same site, scholars who lack access to scholarly databases have written about how their own research has been impeded by the pay walls publishers set up to reap a profit from academic labor they receive without offering compensation. "If I had a dollar for every academic journal article that I couldn't access due to online fees paid to the publisher," wrote one, "I would probably have about 5k in my savings right now." Another scholar connected Swartz's case to the need for open access and expressed his frustration at the "lassitude of academia as a whole toward publication, intellectual property and digitization."

Who would have thought that downloading academic articles could potentially result in thirty-five years in prison and thirteen felony convictions? Who could have anticipated the bankruptcy, terror, and intimidation Swartz faced during the last two years of his brief life? Until recently, I had thought that, of the two wars the US government is waging against its citizenry, only the war on terror could claim innocent lives. Swartz's death revealed, tragically, how wrong I was. Even scholars who disagree with Swartz cannot afford to ignore his persecution. It is an attack on all our freedoms.

Swartz broke the law because he believed that scholarly knowledge was a common good. This nonacademic gave his life for an academic cause. Academics who complain of public indifference to their work yet do not agitate for universal open access ought to reflect on this contradiction. Why should our work be funded through grants and public institutions if we fail to make it available to the public? Swartz's serial downloading and his suicide speak to the very foundations on which our institutions of higher education are built. They speak to the divisions between the academy and the general public that our colleges and universities all too commonly reinforce.

Swartz did not understand *academic* in the positive sense I use here. In his blog entry "What It Means to Be an Intellectual," written at the precocious age of twenty, Swartz contrasted "academic" and "intellectual." He defined the intellectual drive as "the tendency to not simply accept things as they are but to want to think about them, to understand them. To not

be content to simply feel sad but to ask what sadness means. To not just get a bus pass but to think about the economic reasons getting a bus pass makes sense.” It is our responsibility as scholars to ask the questions Swartz asked about democratic access and social justice. Swartz was so possessed by the desire to know, to share his knowledge, and to make that knowledge transform our reality that it drove him to acts that the US judicial system is neither morally nor logically equipped to understand.

MIT’s decision to hand over Swartz’s case to the FBI without a warrant or subpoena is the most obvious recent example of academia’s failure to protect civil disobedience and suggests how the scholarly community has subordinated free inquiry to the directives of the state. But the failure of the academic community reaches well beyond MIT. Our complicity is entailed in—and dangerously reinforces—the very distinction Swartz lamented between the intellectual and the academic in American higher education.

At the memorial service held for Swartz at Cooper Union, Edward Tufte, a statistician and professor emeritus of Yale University who was a mentor to Swartz, revealed a significant detail about academic involvement in Swartz’s case. Tufte recounted how Swartz asked him to write on his behalf to William Bowen, the former president of the Mellon Foundation and of Princeton University whom JSTOR had chosen to deal with the Swartz case, in the hopes that JSTOR would decline to press charges. Bowen was a personal acquaintance of Tufte, and it seems his letter on behalf of Swartz was instrumental in persuading JSTOR to withdraw its case. While the story of MIT’s involvement remains to be told, Tufte’s information shows just how haphazard was Swartz’s dark journey through the US criminal justice system, and how contingent on factors pertaining more to luck than to justice. If Swartz had had more influential connections at MIT, who could similarly have persuaded MIT’s administration to decline to facilitate the prosecution, might he be alive today?

TWO PERSPECTIVES

Swartz chose to die; he was not purely a victim. His suicide is not an argument in favor of or against his case. That he chose the path of martyrdom does not nullify the political injustice of a misfortune that could have been avoided by more humanity, more progressive legislation, and a more conscientious academy. Swartz’s death must be mourned to prevent his fight for open access from dying along with him.

In one of the last interviews Swartz ever gave, just half a year before he died, he was urged by

J. Cameron Brueckner, the producer of the documentary *War for the Web*, to speak about his personal experience in the fight for Internet freedom. The question was clearly intended to provoke Swartz to speak about the charges that had been brought against him, which had been made public only a month earlier. Characteristically, Swartz chose to deflect attention from himself, focusing instead on the tensions generated by the technologies he had helped to create in his youth. “There’s these two polarizing perspectives,” Swartz said. The first holds that “everything is great: the Internet has created all this freedom and liberty and everything’s fantastic.” The second insists that “everything is terrible. The Internet has created all these tools for cracking down and spying and controlling what we say.” Expressing what must have been one of the most radical paradoxes he faced in his life, Swartz insisted that “both are true. The Internet has done both.”

Affirming our capacity to shape the conditions of our existence, Swartz rejected the idea that it is possible to pin down this new technology as an ultimate source of good or evil: “Which one will win out in the long run is up to us. It doesn’t make sense to say . . . one is doing better than the other. . . . They are both true, and it’s up to us which ones we emphasize and which ones we take advantage of because they’re both there and they’re both always going to be there.” Will the forces urging control, pay walls, and limited access prevail over open access in the end? “The answer,” Swartz said, “is that it’s up to you. You get to decide what will happen. This isn’t just something playing out on stage somewhere where big giants fight each other and you get to sit and munch popcorn. This is a fight you can join in. . . . It’s up to all of us to stop them.” In other words, Internet freedom requires participatory democracy, which in Swartz’s view is unrealizable so long as publicly funded scholarship is locked up behind pay walls and accessible only to the few.

Swartz surely would have wanted us to focus not on his death but on the issues he cared about, on the Internet as a tool of democracy. He revealed how open access can help to achieve social justice and how technology can be a force for good when wielded by those who counter the cliché that “might makes right” with the belief that “right makes might.” These words of Abraham Lincoln resonated as powerfully in the Great Hall of Cooper Union at Swartz’s memorial service as they did when Lincoln uttered them in the same room in 1860, in a speech denouncing slavery that marked the beginning of his presidential campaign. ■