

March 15, 2013
By Ruth Lopez

Why justice for Aaron Swartz is critical for democracy

At the time of his suicide in January, Aaron Swartz, the 26 year-old coder and activist was facing a criminal trial on 13 felony charges for mass downloading academic articles from the subscription database JSTOR through the Massachusetts Institute of Technology computer network. If his arrest and subsequent charges didn't seem like a big deal at the time, Swartz's death has shown us otherwise. Why is justice for Aaron Swartz critical for our democracy? There are three primary issues at the heart of this discussion—the Open Access Movement, copyright law and the Computer Fraud and Abuse Act. What are the goals of Open Access and what are the limits? Does the Computer Fraud and Abuse Act (CFAA) need to be reformed? Should copyright law be updated?

If convicted, Swartz faced a prison sentence of up to 35 years and a fine of \$1 million. Even people who disagreed with his actions found his prosecution overly aggressive. JSTOR settled any civil claims with Aaron Swartz in June 2011. For his part, Aaron returned the data he had in his possession—over 4 million documents stored on a hard drive—to JSTOR. But federal prosecutors, led by U.S. Attorney Carmen Ortiz in Massachusetts and U.S. Attorney Stephen Heymann, continued to pursue an indictment on charges of wire and computer fraud. They also threw in felony breaking and entering charges even though, as it has been pointed out by numerous sources, MIT is an open campus and the utility closet, where Swartz connected his laptop to the university's computer system, was unlocked. Why did the Department of Justice continue its prosecution of Aaron Swartz even after JSTOR withdrew its complaint? And why didn't MIT speak up and insist that the DOJ back off?

United States Attorney Carmen M. Ortiz, in a now infamously simplistic statement, said: “Stealing is stealing whether you use a computer command or a crowbar, and whether you take documents, data or dollars. It is equally harmful to the victim whether you sell what you have stolen or give it away.”¹

But was it stealing and was JSTOR harmed? Supporters of Swartz have likened his actions to taking too many books out of the library. Swartz may have violated JSTOR's terms of agreement, but the CFAA's definition of what constitutes “unauthorized” access is so vague that prosecutors could push for a prison sentence of three decades plus. As one expert witness put it, “I know a criminal

¹ United States Attorney's Office District of Massachusetts. Press Release. “Alleged Hacker Charged with Stealing Over Four Million Documents from MIT Network”. 19 July 2011.
<<http://www.justice.gov/usao/ma/news/2011/July/SwartzAaronPR.html>>.

hack when I see it, and Aaron's downloading of journal articles from an unlocked closet is not an offense worth 35 years in jail."²

Federal prosecutors claim that it was never their intention to imprison Swartz for the maximum; he was offered various plea bargains that would have given him, in some cases, less than a year. Those offers came with the condition that Swartz plead guilty to all the charges and suffer the consequences of being a felon for the rest of his life. In the process of learning about Aaron Swartz's beliefs and goals, via dozens of articles, profiles and blog posts written about him after his death, and looking at videos of his presentations and speeches, it has become clear why this option was untenable.

When he was arrested in 2011, Swartz was a fellow at the Edmond J. Safra Center for Ethics at Harvard University. His bio, published on the center's website, included a short description of his project. He would "...conduct experimental and ethnographic studies of the political system to prepare a monograph on the mechanisms of political corruption."

Aaron Swartz wanted to make the world a better place. He was a passionate defender of open access to information. His accomplishments are truly dazzling. When he was 13, he won the Ars Digita Prize created for young people by the eponymous Massachusetts-based web development company. Its purpose was to encourage youth to create "useful, educational, and collaborative" non-commercial Web sites. The award included a trip to MIT, the institution that would figure prominently in his undoing.

By the time Swartz was 14, he had written the specification for RSS 1.0 (Rich Site Summary but is also known as Really Simple Syndication), an online publishing format that is used on almost every computer. One of Aaron Swartz's gifts was the ability make something complex—like computer code—useable by all. Swartz dropped out of high school and eventually attended Stanford University, albeit briefly. Swartz was a participant on the digital culture scene since childhood, when his parents would chaperone their prodigy son to computer conferences. He was present, as a 14 year-old, at the oral arguments for *Eldred v. Ashcroft*, the failed Supreme Court case that challenged the constitutionality of the copyright extension act. Swartz co-founded the online news platform Reddit.com in Silicon Valley when he was 19. When the site sold to Condé Nast in 2006, it made him a millionaire and he left the West Coast for good. Swartz was also one of the architects of Creative Commons and OpenLibrary.org—nonprofits that support, in part, sharing of information.

While Swartz was under indictment, he managed to take a leadership role in stopping the Stop Online Piracy Act (SOPA) and Protect IP ACT(PIPA)—the

² Stamos, Alex. "The Truth about Aaron Swartz's 'Crime'" 12 Jan 2013. Unhandled Exception: Building Better Internets. <<http://unhandled.com/2013/01/12/the-truth-about-aaron-swartzs-crime/>>.

2011 bills so named by the U.S. House of Representatives. Had the bills been approved, courts would have been allowed to restrict access to websites believed to be involved in the illegal sharing of intellectual property. But sponsors of the bills began to drop their support after huge protests in the form of online petitions and millions of calls followed by a widespread Internet blackout .

In his keynote address, “How we Stopped SOPA,” given at the Freedom to Connect conference held in May 2012 in Washington, D.C., Aaron Swartz outlined the events leading to the watershed protest and victory. But he warned that work to keep the Internet free was far from over.

“There's a battle going on right now, a battle to define everything that happens on the Internet in terms of traditional things that the law understands,” he said. “Is sharing a video on BitTorrent like shoplifting from a movie store? Or is it like loaning a videotape to a friend? Is reloading a webpage over and over again like a peaceful virtual sit-in or a violent smashing of shop windows? Is the freedom to connect like freedom of speech or like the freedom to murder?”

Swartz explained how the bill would have meant the loss of our ability to communicate with each other over the Internet, and in effect it would delete the freedoms guaranteed in our Constitution. What happened to the idea that technology was suppose to bring us freedom? Swartz described a situation where he was introduced to a senator, a SOPA proponent, who was otherwise known for being in favor of civil liberties. Swartz asked him why he supported Internet censorship.

“And, you know, that typical politician smile he had suddenly faded from his face, and his eyes started burning this fiery red. And he started shouting at me, said, “Those people on the Internet, they think they can get away with anything! They think they can just put anything up there, and there's nothing we can do to stop them! They put up everything! They put up our nuclear missiles, and they just laugh at us! Well, we're going to show them! There's got to be laws on the Internet! It's got to be under control!”

These comments underline the level of fear that the power structure has towards things they don't understand, and it seems it was also the underlying motivation for his harsh prosecution.

“It was this irrational fear that things were out of control. Here was this man, a United States senator, and those people on the Internet, they were just mocking him. They had to be brought under control. Things had to be under control. And I think that was the attitude of Congress. And just as seeing that fire in that senator's eyes scared me, I think those hearings

scared a lot of people. They saw this wasn't the attitude of a thoughtful government trying to resolve trade-offs in order to best represent its citizens. This was more like the attitude of a tyrant.”

“And it will happen again. Sure, it will have yet another name, and maybe a different excuse, and probably do its damage in a different way. But make no mistake: The enemies of the freedom to connect have not disappeared. The fire in those politicians' eyes hasn't been put out. There are a lot of people, a lot of powerful people, who want to clamp down on the Internet. And to be honest, there aren't a whole lot who have a vested interest in protecting it from all of that. Even some of the biggest companies, some of the biggest Internet companies, to put it frankly, would benefit from a world in which their little competitors could get censored. We can't let that happen.”³

Swartz started the Internet organization Demand Progress during the SOPA fight initially as an online petition site, but with the idea that it would focus on grassroots lobbying and government reform. It signaled his move from computer geekhood to, more broadly, social justice activism.

The range of Swartz's activity is impressive, not just for his age, but for its reach. One of his last collaborations was with the photographer Taryn Simon. Their work was engineered by Rhizome, a New York City non-profit that supports contemporary artists who are experimenting with technology. Simon's work included “The Innocents”—portraits of men convicted for crimes they did not commit. During a conference at the New Museum of Contemporary Art in New York in April 2012, Swartz and Simon presented their project “Image Atlas.” It was described, in part, as investigating “cultural differences and similarities by indexing top image results for given search terms across local engines throughout the world”

One month before this event, the state of Massachusetts dropped its charges against Swartz, but the federal indictment remained.

The legal scholar Lawrence Lessig became a mentor and friend to Swartz during the *Eldred vs. Ashcroft* hearings, when Lessig, then a professor at Stanford Law School, was lead counsel for the plaintiff. In brief, *Eldred vs. Ashcroft* was the Supreme Court case that challenged the constitutionality of the Sonny Bono Copyright Extension Act. Lessig also helped start Creative Commons, a nonprofit founded in 2001 that offers free legal tools for creatives, scholars, anyone really, including copyright licenses that are more nuanced than the traditional copyright, yet simple to use. Swartz helped to design the code layer for those licenses on the Creative Commons website when he was just a teenager.

³ Swartz, Aaron. “How We Stopped SOPA,” transcript of speech. 15 Jan. 2013. *Internet Society, New York Chapter*. <http://isoc-ny.org/misc/aaron_swartz.txt>.



Lawrence Lessig and Aaron Swartz (2002) / Rich Gibson / CC BY

Aaron Swartz hanged himself with his belt in his Brooklyn apartment on Friday, January 11, 2013. His death was widely reported almost immediately. The DOJ responded by dropping the case, but so many questions remain.

On the day after his death, his family and his partner Taren Stinebrickner-Kauffman issued a statement that said, in part:

“Aaron’s death is not simply a personal tragedy. It is the product of a criminal justice system rife with intimidation and prosecutorial overreach. Decisions made by officials in the Massachusetts U.S. Attorney’s office and at MIT contributed to his death. The US Attorney’s office pursued an exceptionally harsh array of charges, carrying potentially over 30 years in prison, to punish an alleged crime that had no victims.”⁴

In the months following Swartz’s death, there were numerous memorials across the country. Speakers included Tim Berners-Lee, the inventor of the Internet and Peter Eckersley, the director of the Electronic Frontier Foundation. Lessig, who is now the director of the Edmond J. Safra Center for Ethics at Harvard, has been one of the main public commentators on behalf of Aaron Swartz. In the week following Swartz’s death, Lessig was interviewed by journalist Amy Goodman on her news show *Democracy Now!* He said: “In a world where the architects of the

⁴ “Official statement from family and partner of Aaron Swartz.” 12 Jan 2013. <www.rememberaaronsw.com>.

financial crisis dine regularly at the White House, it's ridiculous to think Aaron Swartz was a felon."⁵

The connection to WikiLeaks and Private Bradley Manning is inescapable. Briefly, WikiLeaks is a non-profit website that specializes in publishing secret information that comes from news leaks, whistle blowers and anonymous sources. The Internet activist Julian Assange founded the website in 2006. In October 2010, WikiLeaks published 400,000 classified U.S. documents that included, for instance, statistics on the number of Iraqi civilian deaths. The Department of Justice began its investigation into WikiLeaks soon after the publication of the leaked diplomatic cables were published. Manning was arrested in May 2010, accused of passing classified material to WikiLeaks. His trial is expected to begin in June 2013.

In the week after Swartz killed himself in January, WikiLeaks released a series of tweets suggesting that Swartz had been a possible source. Why would an organization devoted to its anonymity of sources reveal a name? If we are to connect the dots, what is the conclusion? Was Aaron Swartz's harsh prosecution politically motivated?

Swartz filed a Freedom of Information Act request on Bradley Manning in December 2010. He wanted to know, mostly, how Manning was being treated in prison. Swartz made 17 FOIA requests between 2010 and 2012—most of them in connection to himself. There was a good reason for pursuing this information. In 2008, Swartz had worked with Carl Malamud, the California-based public domain advocate and founder of public.resource.org, a nonprofit dedicated to open government. The focus of their project was to make federal court documents found on the Public Access to Court Electronic Records system (PACER) easier to search by consolidating them on the public.resource.org website. Their activities caught the attention of the FBI, even though their work was not illegal. There were not violating copyright, as the material was in the public domain, and there were no terms of service to violate. Swartz was writing a script to help people more easily access information that they had a right to access. The FBI investigated Swartz, including surveillance, in February and March of 2009, before concluding that they had no case.

Sen John Cornyn, R-Texas, in a letter to Attorney General Eric Holder on January 18, 2013, referenced this fact when he wrote:

“Like many Americans, I was saddened to learn last week of the death of Aaron Swartz. Mr. Swartz was, among other things, a brilliant technologist and a committed activist for the causes in

⁵ “An Incredible Soul”: Larry Lessig Remembers Aaron Swartz After Cyber-Activist's Suicide Before Trial; Parents Blame Prosecutor. 14 Jan 2013. <<http://www.democracynow.org/shows/2013/1/14>>.

which he believed — including, notably, the freedom of information. His death, at the young age of twenty-six, was tragic. Mr. Swartz’s case raises important questions about prosecutorial conduct ... was the prosecution of Mr. Swartz in any way retaliation for his exercise of his rights as a citizen under the Freedom of Information Act? ... was it the intention of the U.S. Attorney and/or her subordinates to “make an example” of Mr. Swartz? Please explain.”⁶

From the actions of the FBI to actions to those of the federal prosecutors, it appears that the power structure has little understanding of the Internet. This mix of ignorance combined with a vague and outdated law has created a toxic brew. *Rolling Stone* political writer Matt Taibbi sums up the situation that Swartz was facing in an article that points out a common thread running between Swartz’s case and other, less high profile cases:

“We’ve seen the battle lines forming for years now. It’s increasingly clear that governments, major corporations, banks, universities and other such bodies view the defense of their secrets as a desperate matter of institutional survival, so much so that the state has gone to extraordinary lengths to punish and/or threaten to punish anyone who so much as tiptoes across the informational line.”⁷

THE MANIFESTO

Aaron Swartz was a proponent of free access to information for all. In his widely released *Guerilla Open Access Manifesto*, published in 2008, he wrote:

“Information is power. But like all power, there are those who want to keep it for themselves. The world’s entire scientific and cultural heritage, published over centuries in books and journals, is increasingly being digitized and locked up by a handful of private corporations. ... sharing isn’t immoral — it’s a moral imperative.

⁶ Cornyn, John. Letter to Attorney General Eric Holder. “Cornyn Questions Holder Over Death of Reddit Co-Founder Aaron Swartz.” 17 Jan. 2013. <www.cornyn.senate.gov/public/index.cfm?p=InNews&ContentRecord_id=b026c108-ff4c-4ff9-a771-7307c72e14c5&ContentType_id=b94acc28-404a-4fc6-b143-a9e15bf92da4&f6c645c7-9e4a-4947-8464-a94cacb4ca65&Group_id=bf378025-1557-49c1-8f08-c5df1c4313a4>.

⁷ Taibbi, Matt. “Wikileaks Was Just a Preview: We’re heading for an even Bigger Showdown Over Secrets.” Taibblog. *RollingStone*. 22 Mar 2013. <<http://www.rollingstone.com/politics/blogs/taibblog/wikileaks-was-just-a-preview-were-headed-for-an-even-bigger-showdown-over-secrets-20130322#ixzz2Or59IPUx>>.

Only those blinded by greed would refuse to let a friend make a copy...

There is no justice in following unjust laws. 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.”⁸

The DOJ was leaning heavily on this manifesto in building its case against Swartz.

At a 2010 conference titled “The Social Responsibility of Computer Science” at the University of Illinois in Champaign-Urbana, Swartz encouraged the audience to help liberate documents at their respective institutions:

“...with a little bit of shell script magic, you can get those journal articles. You can download copies of them, and once you have a copy, theoretically you could make it available to everyone. And if you don't know how to make it available to everyone without getting caught, you can go to GuerillaOpenAccess.com and find my mailing address.

...I mean, you know, this isn't the biggest problem in the world, but like I think we should understand, this is a serious problem. In the same way that people did civil disobedience, broke the rules for the civil rights movement, there are people who now chain themselves to nuclear power plants to prevent the earth from imploding. Like, it's actually a serious problem that the vast majority of the planet doesn't have access to our accumulated scientific knowledge. And I think it might be a worth a little bit of shell scripting and breaking a couple rules to solve that problem.”⁹

At a memorial service at the Internet Archive in San Francisco on January 24, Swartz's partner Taren Stinebrickner-Kauffman, mentioned that Peter Singer was Swartz's favorite philosopher. In Swartz's presentation at Champaign-Urbana, he also mentioned Singer by bringing up the following parable which I will paraphrase: Would we pass a child who was drowning in a shallow pond because we didn't want to get our shoes wet or be late to work? Of course not. Swartz maintained that we do something very similar to that every day by not taking small actions to help others that would essentially cost us no more than a little bit of our time and resources. By understanding Swartz's motivations to do good, we can understand how he would easily break a few rules for the greater good.

Swartz was concerned with doing good and he was also willing to take action. The myriad of things he created in his short life speaks to his willingness and

⁸ Swartz, Aaron. Guerilla Open Access Manifesto. July 2008. <archive.org/details/GuerillaOpenAccessManifesto>.

⁹ Swartz, Aaron. “The Social Responsibility of Computer Science.” 2010. <http://www.youtube.com/embed/a8phAC9sDkE?rel=0&wmode=transparent>

ability to get things done. To understand what informed his view, here is a passage on civil disobedience from Singer's book *Practical Ethics*:

“If we draw together our conclusions on the use of illegal means to achieve laudable ends, we shall find that: (1) there are reasons why we should normally accept the verdict of an established peaceful method of settling disputes; (2) these reasons are particularly strong when the decision-procedure is democratic and the verdict represents a genuine majority view; but (3) there are still situations in which breaking the law is a legitimate means of obtaining an ethical end.”¹⁰

In downloading JSTOR, it appears that Swartz found a way to efficiently obtain an ethical end.

Lessig said that Swartz never spoke to him about his plan. Lessig knew that they differed only in how to go about making change. “In my view, organizing to force change was fine, but I was not so clear on what he was calling civil disobedience. I was not so clear because the facts here are special.”¹¹

Peter Suber, a research professor at Earlham College in Richmond, Indiana and the director of the Harvard Open Access Project had publicly criticized Swartz in 2008 after Swartz released his manifesto. Still, they met for coffee afterwards for friendly debate. After the arrest, Suber said he didn't want to make a statement because he had nothing new to say. “I could not join those who praised his action, and I didn't want to pile on by repeating a criticism I'd already made public. I was sad that this whip-smart, forward-thinking guy took that turn and faced prison. I'm sad now for a much larger reason,” he said in an online memorial.¹² He then added, in an edited addition: “While I can't support Aaron's unlawful actions at MIT, I deplore the prosecutor's overreach.”

DEPRESSION

Swartz suffered from depression. Add to that the stress of being under indictment; Swartz was facing a long prison sentence and financial ruin. He was, in effect, being bullied. His parents, who were well-off, were about to take a second mortgage out on their house to continue to pay for legal fees.

Swartz was candid about his depression, and friends did not shy away from talking about this at many of his memorial services. In his blog, he wrote:

¹⁰ Singer, Peter. *Practical Ethics*. Cambridge: Cambridge University Press, 1979, p. 192.

¹¹ Lessig, Lawrence. Lecture. “Aaron's Laws: Law and Justice in the Digital Age.” 19 Feb 2013. Harvard Law School.
<www.law.harvard.edu/news/2013/02/lessig-chair-lecture-aarons-laws.html>.

¹² Suber, Peter. “Aaron Swartz, 1986-2013.” 14 Jan 2013.
<https://plus.google.com/109377556796183035206/posts/SfSPrspa6bD>

“Surely there have been times when you’ve been sad. Perhaps a loved one has abandoned you or a plan has gone horribly awry. Your face falls. Perhaps you cry. You feel worthless. You wonder whether it’s worth going on. Everything you think about seems bleak — the things you’ve done, the things you hope to do, the people around you. You want to lie in bed and keep the lights off. Depressed mood is like that, only it doesn’t come for any reason and it doesn’t go for any either. Go outside and get some fresh air or cuddle with a loved one and you don’t feel any better, only more upset at being unable to feel the joy that everyone else seems to feel. Everything gets colored by the sadness.”¹³

It follows that Swartz, being an intelligent person who was committed to social good, would turn some of his curiosity and care upon himself. He examined the issue of depression; quoting the work of critic George Scialabba, who wrote an essay on acute depression in the literary magazine *Agni*. Scialabba described it as feeling like torture... “the pain is not localized; it runs along every nerve, an unconsuming fire. Even though one knows better, one cannot believe that it will ever end, or that anyone else has ever felt anything like it.”¹⁴

Swartz had often said, usually in response to praise, that he had not done anything worthwhile. Yet, as many have pointed out, he had accomplished more in his 26 years than most of us will do in a lifetime. Perhaps profiles are what mainstream magazines do best, and one in particular—*New York* magazine—tried to unpack this contradictory blend of brilliance and fragility, but it also questioned how he had been raised.

“Swartz had skipped out on the lessons taught by the American high school—the lessons in cynical acquiescence, conformity, and obedience to the powers that be. He was right to think these lessons injure people’s innate sense of curiosity and morality and inure them to mediocrity. He was right to credit his “arrogance” for the excellence of the life he lived. But if nothing else, these lessons prepare people for a world that can often be met in no other way; a world whose irrational power must sometimes simply be endured. This was a lesson that he contrived never to learn, which was part of what made him so extraordinary. It was Swartz’s misfortune, and ours, that he learned it too late, from too unyielding a teacher. It cannot serve society’s purpose to make a felon and an inmate out of so gifted and well-meaning a person as Aaron Swartz, and thus he was a victim of a grave injustice. But it bears remembering that the greater

¹³ Swartz, Aaron. “Sick.” Raw Thought. November 27, 2007.

<http://www.aaronsw.com/weblog/verysick>

¹⁴ Scialabba, George. “Message from Room 101.” April 2003.

<http://www.bu.edu/agni/essays/print/2003/57-scialabba.html>

injustice was done to Aaron Swartz by the man who killed him.”¹⁵

One person to take issue with the author’s premise, was Quinn Norton, Swartz’s friend and ex-girlfriend. In her blog, she responded that the author had tried to say something about Swartz, but ended up unwittingly saying something about America... “He said that we are social Darwinists now. That our values are that if you are weak in body or spirit, that if you are poor, or even just unlucky, you deserve to die. What Yang shows in his account of Aaron is that we are a lesser place and a lesser civilization than we’d hoped for.”¹⁶

Norton was right to take issue with that aspect of the article. Conform or Die? What bleak choices. Norton had been close to Swartz and could see how the legal battle was taking its toll. When Swartz was arrested, he called Norton and asked her to get word to his lawyer. And subsequently, she received a grand jury subpoena. Norton wrote: “Once your life is inside a federal investigation, there is no space outside of it. The only private thing is your thoughts, and even they don’t feel safe anymore. Every word you speak or write can be used, manipulated, or played like a card against your future and the future of those you love. There are no neutral parties, no sources of unimpeachable wisdom and trust.”¹⁷ And she wasn’t even the target of the investigation.

Outside of Swartz’s very large circle of allies, there have been detractors, to be sure. Mostly, there is sympathy and overwhelming agreement the DOJ actions were too harsh. In the weeks following Swartz’s death, hundreds of scholars were posting their research for free online in his honor using the hashtag #PDFTribute,.

One of the characterizations I find particular wrong is the one that reduces Swartz to that of a “disturbed young man.” I don’t think he was in the least bit disturbed, and that doesn’t mean that I believe he wasn’t depressed. I think he was just brilliant and impulsive and pulling off this download as a form of cyber civil disobedience came very easy to him. He was a naïve idealist who believed in the ability of the system to do the right thing. He wasn’t wrong about many things, but sadly he was wrong about that. I think that was what broke him.

INVESTIGATIONS

¹⁵ Yang, Wesley. “The Life and Afterlife of Aaron Swartz.” 8 Feb 2013. *New York*.

¹⁶ Norton, Quinn. “Why I disagree with Wesley Yang’s conclusion.” 12 Feb 2013. www.QuinnNorton.Com.

¹⁷ Norton, Quinn. “Life Inside the Aaron Swartz Investigation.” 3 Mar 2013. *The Atlantic*. <http://finance.yahoo.com/news/life-inside-aaron-swartz-investigation-005452894.html>

The federal prosecution of Aaron Swartz has been widely criticized and not just by Swartz's friends and family. California Republican representative Darrell Issa, attended the memorial service in Washington, D.C., where he said of Swartz: "He and I probably would have found ourselves at odds with lots of decisions, but never with the question of whether information was in fact a human right."¹⁸ As the chairman of the House Oversight Committee, Issa led an investigation into Swartz's prosecution.

At that hearing on March 6, Attorney General Eric Holder, answered Republican Senator John Cornyn's questions by supporting the decisions of U.S. Attorney Carmen Ortiz. The way she handled the case, he said, was "a good use of prosecutorial discretion." His comments, particularly as an official in President Obama's administration, floored Swartz's supporters. Stinebrickner-Kauffman responded by saying that Holder and the DOJ were misleading the Senate and the public. This wasn't just a case of bullying, there was misconduct that included seizing evidence without a warrant and then withholding exculpatory evidence from Swartz's lawyers, Stinebrickner-Kauffman said.

"Heymann and Ortiz were actively pursuing a penalty of 7 years if the case went to trial ... If you believe you're innocent, you should not be coerced into accepting a plea bargain that marks you as a felon for life just because prosecutors want to boast about taking a scalp. The discrepancy between the plea deal and the amount of prison time prosecutors said they would pursue at trial violates the DOJ's own guidelines in this regard. Holder is trying to engage in revisionist history at the same time he claims that the strict sentences pursued by prosecutors were a 'good use of prosecutorial discretion' ... The Department of Justice is not interested in admitting their errors, even when an out of control US Attorney's office has cost this country one of our best and brightest. The DOJ is only interested in covering their asses."¹⁹

Those are some pretty harsh accusations and I have yet to read anything by Holder that addresses those points.

MIT is conducting its own investigation into its role in this tragic affair but hasn't released its findings. The MIT ethos includes running an unrestricted network and

¹⁸ Wrigley, Will. "Darrell Issa Praises Aaron Swartz, Internet Freedom At Memorial." 7 Feb 2013. *The Huffington Post*.

<http://www.huffingtonpost.com/2013/02/07/darrell-issa-internet-freedom_n_2633197.html>

¹⁹ Stinebrickner-Kauffman, Taren. 8 Mar 2013. TechDirt.

<www.techdirt.com/articles/20130308/01330322250/aaron-swartzs-partner-accuses-doj-lying-seizing-evidence-without-warrant-withholding-exculpatory-evidence.shtml>.

it has been a proponent of open access and a training ground for hackers. Rafael Reif, the president of MIT, believes the report must be redacted in order to protect faculty and staff who, he said, have been receiving threats. The person in charge of the MIT investigation is professor Hal Abelson, a supporter of open access. In an open letter to the MIT community, he said, in part:

“This matter is urgently serious for MIT. The world respects us not only for our scholarship and our science, but because we are an institution whose actions are and always have been guided by the highest ideals and the most thoughtful judgment. Our commitment to those ideals is now coming into question. At last Saturday’s memorial, Aaron’s partner Taren Stinebrickner-Kauffman described his mental state: “He faced indifference from MIT, an institution that could have protected him with a single public statement and refused to do so, in defiance of all of its own most cherished principles.” I don’t know — we don’t know — if that’s accurate or fair. But it demands our response. I hope this review can provide some insight into what MIT did or didn’t do, and why.²⁰

Software designer and free software advocate Richard Stallman is also at MIT where he is a visiting scientist. His statement hit at another aspect of this case. “Copyright is unjustly restrictive. People need more freedom in their use of published works. It’s clear that Aaron Swartz was working for that goal in his actions regarding JSTOR and PACER. I’m not for totally ending copyright, but the way it is now implemented does not foster more innovation, it furthers the profits of publishers.”²¹

While Swartz was at Harvard beginning his research on political corruption, he contacted Dean Baker, the co-director of the Center for Economic Policy Research in Washington, D.C. Baker had written a book titled “The Conservative Nanny State: How the Wealthy Use the Government to Stay Rich and Get Richer,” and Swartz offered to help put it online. In an article after Swartz’s death, Baker wrote:

“It would be an appropriate tribute to Aaron if his death prompted a re-examination of copyright and patent laws. These laws are clearly acting as an impediment to innovation and progress. If

²⁰ The Tech. Opinion: January 22, 2013: To the MIT community January 23, 2013
January 22, 2013: To the MIT community
<http://tech.mit.edu/V132/N63/abelson.html?comments#comments>

²¹ Aaron Swartz: Scientific Legacy “Locked up by a Handful of For-Profit Corporations.” 17 Jan 2013. <<http://www.accuracy.org/release/aaron-swartz>

economists had the allegiance to efficiency that they claim, and not just serving the rich and powerful, the profession would be devoting its energies to finding more modern mechanisms for promoting creative work and innovation.

“Unfortunately most economists are comfortable with the status quo, regardless of how corrupt it might be. Let’s hope that Aaron’s tragic death can be an inspiration to revamping intellectual property and making a better world.”²²

The DOJ’s determination to focus so much time and resources to prosecuting Swartz is in striking contrast to their attitude to look the other way when it comes to financial fraud by the Wall Street banks. “People should recognize that this is not just a rhetorical point. It is clear that the Justice Department opted to not pursue the sort of investigations that could have landed many high-level people at places like Goldman Sachs and Citigroup behind bars,” Baker wrote in another article.²³

It’s a sick sort of irony that Aaron Swartz was never able to complete his fellowship research on political corruption because of political corruption.

CONCLUSION

At a memorial held at the Internet Archive in San Francisco, Swartz’s partner Taren Stinebrinkner-Kaufmann’s poignant refrain was this: “Aaron’s Death Should Radicalize Us.” She went on to say that Aaron had died because of injustice. “Why did Aaron die? In part because we live in a system where the constitutional rights we have all come to believe don’t really apply in the real world.”²⁴ And after hearing all the facts of his ordeal, I agree with her and I have been radicalized.

Stinebrinkner-Kaufmann outlined the five things that Aaron Swartz’s family wanted: That the prosecutors—Ortiz and Heymann—be held accountable; that MIT come forward; that academic research be made available online; that the CFAA to be amended; and the final request is one that needs its own paper—that the criminal justice system be reformed.

²² Baker, Dean. “Aaron Swartz: A Tragic Early Death.” 12 January 2013. www.cepr.net/index.php/blogs/beat-the-press/aaron-swartz-a-tragic-early-death

²³ Baker, Dean. “Aaron Swartz, Financial Fraud, and the Justice Department.” 21 January 2013. *Truthout | News Analysis*. <<http://truth-out.org/news/item/14033-aaron-swartz-financial-fraud-and-the-justice-department>>.

²⁴ “Aaron Swartz Memorial at the Internet Archive.” 24 Jan. 2013. <http://archive.org/details/AaronSwartzMemorialAtTheInternetArchive?start=659>

There is action on the reform of the Computer Fraud and Abuse Act (which was introduced in the Orwellian year of 1984). California congresswoman Zoe Lofgren is leading this effort with the help of the Electronic Frontier Foundation, a San Francisco non-profit devoted to defending digital rights. Lofgren released the first draft of Aaron's Law to Reddit—the news webservice that Swartz co-founded—for input and revisions.

Among the fixes that Aaron's Law proposes is one that protects users who work their way around technical barriers aimed at identification, tracking or preventing interoperability with other programs. As the law stands now, it treats users as criminals and does not distinguish between a malicious act and, for instance, an innovative use of protecting one's privacy. Another important change is that there should be no prison time for violating the terms of service. In other words, the penalty needs to fit the crime. The Electronic Frontier Foundation has published a very thorough examination of the Aaron's Law on its website.

In explaining the need for the CFAA to be overhauled, Lofgren wrote: “The government was able to bring such disproportionate charges against Aaron because of the broad scope of the Computer Fraud and Abuse Act (CFAA) and the wire fraud statute. It looks like the government used the vague wording of those laws to claim that violating an online service's user agreement or terms of service is a violation of the CFAA and the wire fraud statute.”

Peter Suber has also offered a primer on how to contribute to Open Access. “Honor Aaron Swartz by making your own work OA. Do it lawfully. Here's how. <<http://bit.ly/how-oa>>”

When Lawrence Lessig was appointed as Roy L. Furman Professor of Law and Leadership at Harvard University in February, he delivered a lecture titled “Aaron's Law: Law and Justice in the Digital Age.” Lessig recalled the prosecutor Carmen Ortiz's comment that stealing “is stealing whether you use a computer command or a crowbar.” That's not true, Lessig said. “Crowbars always cause harm. Computer code does not.”²⁵

It was again, an opportunity to understand that whatever harm Swartz caused, it was very ambiguous. JSTOR settled so quickly with Swartz because they had not suffered any financial harm. Unfortunately for our democracy, we have a Department of Justice that does not understand that simple distinction. Nor do we have federal agents who understand technology or hackers or what it means to have material that is in the public domain but that is completely inaccessible. That

²⁵ Lessig, Lawrence. Lecture. “Aaron's Law.” 19 Feb 2013. Harvard Law School. <<http://www.ethics.harvard.edu/news-and-events/lectures-and-events/detail/261>>.

is why justice for Aaron Swartz is critical for our democracy; the DOJ must accept responsibility or else we face a future with more injustice. At present, there is a disconnect in the Obama Administration between its stated desire for transparency and access and its prosecution of hactivists that is troubling.

In mid-March, the American Library Association posthumously awarded Aaron Swartz with the 2013 James Madison Award—given in honor of individuals or groups who have championed public access to government information. If anyone understands the importance of freedom of information, it would be librarians.

Aaron Swartz's case was perhaps the most known; and perhaps only widely discussed because of its tragic end. There are other cases pending—like the one against journalist Matthew Keys—who also faces stiff penalties for his victim-less crime. What kind of democracy will we have if our bright, young citizens are so misunderstood and persecuted. By acknowledging that it acted improperly in its prosecution of Aaron Swartz, the DOJ can help to restore our faith in democracy.

Bibliography

- “Aaron Swartz Memorial at the Internet Archive.” January 24, 2013.
<http://archive.org/details/AaronSwartzMemorialAtTheInternetArchive?start=659>
- “Aaron Swartz: Scientific Legacy ‘Locked up by a Handful of For-Profit Corporations’.” January 17, 2013. *Institute for Public Accuracy*.
<http://www.accuracy.org/release/aaron-swartz>.
- Allworth, James. “Aaron Swartz’s “Crime” and the Business of Breaking the Law.” January 14, 2013. *Harvard Business Review. HBR Blog Network*.
http://blogs.hbr.org/cs/2013/01/aaron_swartzs_crime_and_the_bu.html
- “An Incredible Soul”: Larry Lessig Remembers Aaron Swartz After Cyber-Activist’s Suicide Before Trial; Parents Blame Prosecutor. 14 Jan. 2013.
<http://www.democracynow.org/shows/2013/1/14>.
- Baker, Dean. “Aaron Swartz: A Tragic Early Death.” January 12, 2013.
www.cepr.net/index.php/blogs/beat-the-press/aaron-swartz-a-tragic-early-death
- Baker, Dean. “Aaron Swartz, Financial Fraud, and the Justice Department.” 21 January 2013. *Truthout | News Analysis*. <http://truthout.org/news/item/14033-aaron-swartz-financial-fraud-and-the-justice-department>.
- Boeri, David. “Prosecution’s Case Against Swartz Draws Scrutiny. January 15, 2013. *90.9wbur*. <http://www.wbur.org/2013/01/15/swartz-attorney-ortiz>
- Cohn, Cindy and Marcia Hoffman. “Rebooting Computer Law Part 2: Protect Tinkerers, Security Researchers, Innovators, and Privacy Seekers. February 4, 2013. *Electronic Frontier Foundation: Defending Your Rights in the Digital World*. <https://www.eff.org/deeplinks/2013/02/rebooting->

- computer-crime-law-part-2-protect-tinkerers-security-researchers.
- Cohn, Cindy and Hanni Fakhoury and Marcia Hoffman. "Rebooting Computer Law Part 3: The Punishment Should Fit the Crime." February 8, 2013. *Electronic Frontier Foundation: Defending Your Rights in the Digital World*. <https://www.eff.org/deeplinks/2013/02/rebooting-computer-crime-part-3-punishment-should-fit-crime>.
- Doctorow, Cory. "RIP, Aaron Swartz." January 12, 2013. <http://boingboing.net/2013/01/12/rip-aaron-swartz.html>
- Hoffman, Marcia and Rainey Reitman. "Rebooting Computer Law Part 1: No Prison Time for Violating Terms of Service." February 4, 2013. *Electronic Frontier Foundation: Defending Your Rights in the Digital World*. <https://www.eff.org/deeplinks/2013/01/rebooting-computer-crime-law-part-1-no-prison-time-for-violating-terms-of-service>.
- "Farewell to Aaron Swartz, an Extraordinary Hacker and Activist." January 12, 2013. Electronic Frontier Foundation. <https://www.eff.org>.
- Holpuch, Amanda. "Eric Holder defends Aaron Swartz hacking prosecution." The Guardian, March 2, 2013.
- "Justice for Aaron Swartz." Campaign. Accessed March 14, 2013. http://act.demandprogress.org/cms/thanks/cosponsor_aarons_law_idl?action_id=8421492&akid=.2332341.PkzLhc&ar=1&rd=1&taf=1
- Kolowich, Steve. "U.S. Call for Advice on Publicly Funded Research Reignites Open Access Debate." Last modified February 9, 2012. <http://www.insidehighered.com>.
- Lessig, Lawrence. Lecture: "Aaron's Laws: Law and Justice in the Digital Age." February 19, 2013. Harvard Law School. www.law.harvard.edu/news/2013/02/lessig-chair-lecture-aarons-laws.html.
- Ludlow, Peter. "Aaron Swartz was Right." February 25, 2013. *The Chronicle of Higher Education*. <http://chronicle.com/article/Aaron-Swartz-Was-Right/137425/>.
- MacFarquhar, Larissa. "Requiem for a Dream." March 11, 2013. *The New Yorker*. 48.
- Norton, Quinn. "Why I disagree with Wesley Yang's conclusion." February 12, 2013. <www.QuinnNorton.Com>.
- Norton, Quinn. "Life Inside the Aaron Swartz Investigation." March 3, 2013. *The Atlantic*. <http://www.theatlantic.com/technology/archive/2013/03/life-inside-the-aaron-swartz-investigation/273654/>.
- "Official statement from family and partner of Aaron Swartz." Last modified January 12, 2013. www.rememberaaronsw.com.
- Peterson, Andrea. "How Corporations Score Big Profits By Limiting Access to Publicly Funded Academic Research." Last modified March 3, 2013. *ThinkProgress Economy*. <http://thinkprogress.org/economy/2013/03/03/1633451/reed-elsevier-lobbying-academic-publishing/?mobile=nc>.
- Scialabba, George. "Message from Room 101." April 2003. <http://www.bu.edu/agni/essays/print/2003/57-scialabba.html>

- Scola, Nancy. "Washington's I.T. Guy." July/August 2010. *The American Prospect*, 21- 24.
- Singer, Peter. *Practical Ethics*. (Cambridge: Cambridge University Press, 1979), 192.
- Singer, Peter and Agata Sagan. "The Death of Aaron Swartz." *New York Review of Books*. January 18, 2013.
<http://www.nybooks.com/blogs/nyrblog/2013/jan/18/death-aaron-swartz/>
- Stamos, Alex. "The Truth about Aaron Swartz's 'Crime'," last modified January 12, 2013. *Unhandled Exception: Building Better Internets*.
<http://unhandled.com/2013/01/12/the-truth-about-aaron-swartzs-crime/>.
- Stinebrickner-Kauffman, Taren. March 8, 2013. *TechDirt*.
www.techdirt.com/articles/20130308/01330322250/aaron-swartzs-partner-accuses-doj-lying-seizing-evidence-without-warrant-withholding-exculpatory-evidence.shtml>.
- Suber, Peter. "Aaron Swartz, 1986-2013." 14 Jan. 2013.
<https://plus.google.com/109377556796183035206/posts/SfSPrspa6bD>.
- Swartz, Aaron. "How We Stopped SOPA," transcript of speech. Last modified January 15, 2013. *Internet Society, New York Chapter*. http://isoc-ny.org/misc/aaron_swartz.txt.
- Swartz, Aaron. Guerilla Open Access Manifesto. Jul 2008.
archive.org/details/GuerillaOpenAccessManifesto.
- Swartz, Aaron. Talk: "The Social Responsibility of Computer Science." October 16, 2010. *Reflections/Projections Computing Conference, University of Illinois at Urbana-Champaign*.
<http://www.youtube.com/embed/a8phAC9sDkE?rel=0&wmode=transparent>.
- Swartz, Aaron. *Raw Thought*. <http://www.aaronsw.com/>
- Taibbi, Matt. "Wikileaks Was Just a Preview: We're heading for an even Bigger Showdown Over Secrets." Taibblog. *RollingStone*. March 22, 2013.
<http://www.rollingstone.com/politics/blogs/taibblog/wikileaks-was-just-a-preview-were-headed-for-an-even-bigger-showdown-over-secrets-20130322#ixzz2Or59IPUx>>.
- "To the MIT community." January 22, 2013. The Tech.
<http://tech.mit.edu/V132/N63/abelson.html?comments#comments>
- U.S. Attorney's Office, District of Massachusetts. "Press Release: Alleged Hacker Charged with Stealing Over Four Million Documents from MIT Network," last modified July 19, 2011,
<http://www.justice.gov/usao/ma/news/2011/July/SwartzAaronPR.html>.
- Wrigley, Will. "Darrell Issa Praises Aaron Swartz, Internet Freedom At Memorial." February 7, 2013. *The Huffington Post*.
http://www.huffingtonpost.com/2013/02/07/darrell-issa-internet-freedom_n_2633197.html.
- Yang, Wesley. "The Life and Afterlife of Aaron Swartz." February 8, 2013. *New York*.

