



Open Library of Humanities



Part of the Ubiquity  
Partner Network



Open Library of Humanities

---

## Literature, Law and Psychoanalysis

**How to Cite:** Kennedy, K 2020 Between Law and Transgression: Literature as a (Non-) Civilizing Strategy in the Early 20<sup>th</sup> Century. *Open Library of Humanities*, 6(1): 17, pp. 1–20. DOI: <https://doi.org/10.16995/olh.478>

**Published:** 03 June 2020

---

### Peer Review:

This article has been peer reviewed through the double-blind process of *Open Library of Humanities*, which is a journal published by the Open Library of Humanities.

### Copyright:

© 2020 The Author(s). This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC-BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited. See <http://creativecommons.org/licenses/by/4.0/>.

### Open Access:

*Open Library of Humanities* is a peer-reviewed open access journal.

### Digital Preservation:

The Open Library of Humanities and all its journals are digitally preserved in the CLOCKSS scholarly archive service.

---

## LITERATURE, LAW AND PSYCHOANALYSIS

# 'Between Law and Transgression: Literature as a (Non-) Civilizing Strategy in the Early 20<sup>th</sup> Century'

Kevin Kennedy

CY Cergy Paris University, FR  
[k.j.kennedy@me.com](mailto:k.j.kennedy@me.com)

---

Juxtaposing several strands of European modernism, this article shows how psychoanalysis lays the ground for a transgressive model of literature, which problematizes the widespread early 20<sup>th</sup>-century conception of literature as either a civilizing force (articulated in the writings of I.A. Richards and F.R. Leavis) or a tool for freedom of expression (advocated by, amongst others, Ezra Pound). Following a brief analysis of Freud's ideas on transgression in *Civilization and Its Discontents*, I discuss the work of French Surrealist Georges Bataille, who in the 1930s and 40s developed one of the most wide-ranging accounts of the transgressive potential of literature. Bataille's ideas serve to complement recent accounts of transgressive modernism (notably Rachel Potter's *Obscene Modernism*), which tend to focus on transgressive literature as a form of liberation from repressive social, moral and legal constraints. Bataille's Freud-inspired theory, by contrast, points towards a more problematic and ambiguous dimension in the relation between transgression and law, always caught between denial and complicity, and unable to be accommodated within the progressive discourse of legal reform and/or educational progress. I conclude that transgressive literature, in Bataille's sense, functions as an inevitable dialectical counterpoint to any positive conception the socio-ideological function of modern literature.

---

## Introduction

*Only literature could reveal the process of breaking the law – without which the law would have no end – independently of the necessity to create order* (Bataille 2006a: 25).

Freudian psychoanalysis postulates a fundamental psychological tendency towards transgressing the laws that society imposes on the individual (Freud 2002). In fact, the very notion of law arises because of the necessity to repress basic aggressive and sexual drives. Although Freud sees this conflict as insurmountable, he contemplates several possible 'escape routes' from civilizational repression, chief among them the aesthetic sublimations of literature. While he ultimately regards literature as 'not strong enough' (Freud 2002: 18) to provide lasting instinctual satisfaction, his anthropological reading triggers a new conception of the relationship between law and literature in the early 20<sup>th</sup> century, calling into question the 19<sup>th</sup> century notion of literature as an arbiter of moral law. From a psychoanalytic perspective, literature arguably no longer serves civilization and society, but rather promises release from social constraints through depictions of illicit, perverse, anarchic, violent practices. Juxtaposing several strands of European modernism, this article shows how psychoanalysis thus lays the ground for a transgressive model of literature, problematizing the widespread early 20<sup>th</sup> century conception of literature (and literary education) as either a civilizing force (articulated in the writings of I.A. Richards and F.R. Leavis) or a tool for freedom of expression (advocated by, amongst others, the poet and publisher Ezra Pound). Following a brief analysis of Freud's ideas on transgression in *Civilization and Its Discontents*, I discuss the work of French Surrealist Georges Bataille, who in the 1930s and 1940s developed one of the most wide-ranging accounts of the transgressive potential of literature. Bataille's ideas serve to complement recent accounts of transgressive modernism (notably Rachel Potter's *Obscene Modernism*, 2013a), which tend to focus on transgressive literature as a form of liberation from repressive social, moral and legal constraints. Bataille's Freud-inspired theory, by contrast, points towards a more problematic and ambiguous dimension in the relation between transgression and law, always caught between

denial and complicity, and unable to be accommodated within the progressive discourse of legal reform and/or educational progress. I conclude that transgressive literature, in Bataille's sense, functions as an inevitable dialectical counterpoint to any positive conception of the socio-ideological function of modern literature, both relying on and undermining the 'Enlightenment project to modernize, normalize, and civilize...the individual and society' (Slaughter 2007: 5).<sup>1</sup>

### **Literature and Civilization in the 19<sup>th</sup> Century and Early 20<sup>th</sup> Century**

The relationship between law and morality sees a shift in understanding in 19<sup>th</sup> century Europe. With the increasing dominance of science, religion very gradually loses its authority as the guardian of moral values that underpin secular law. The industrial revolution and the subsequent commercialization of the public sphere throw traditional moral and political certainties into doubt. The powerful forces of the marketplace, unfettered capitalism and the extreme social inequality that this produces at times seem to threaten the very fabric of society. Hence the prevalent call in the 19<sup>th</sup> century for a new foundation for morality and law to fill the vacuum left by religion. For many influential Victorian intellectuals, literature seemed ideal to fulfil this role, to become a new kind of social glue, or, as Terry Eagleton calls it, 'the moral ideology of the modern age' (1996: 24). Whereas previously, reading fictional texts had been regarded as a pastime for educated gentlemen, literature was now called upon, in the words of George Gordon, English professor at Oxford, 'to delight and instruct us, but also, and above all, to save our souls and heal the State' (qtd. in Eagleton 1996: 20). The thinker who probably best embodies this stance is Matthew Arnold, whose influential work *Culture and Anarchy*, published in 1869,

---

<sup>1</sup> Joseph Slaughter's influential *Human Right's Inc.* compellingly demonstrates how the rhetoric of literature (especially the *Bildungsroman* of the 18<sup>th</sup> and 19<sup>th</sup> centuries) developed in tandem with modern law (particularly the discourse on human rights), forging 'idealistic visions of the proper relations between the individual and society and the normative career of free and full human personality development' (2007: 4). In the following I will attempt to show how the psychoanalytic interpretation of literature allows us to conceive of a different relation between literature and law, based on those psychic traits that any 'normative career of free and full human personality development' needs to disavow.

presents literature (and culture as a whole) as a bulwark against class conflict and political disorder. For Arnold, literature and culture more generally ('sweetness and light' as he calls it (2006: 41)) reflect and promote timeless, universal values, derived from tradition: 'culture, with its disinterested pursuit of perfection, culture, simply trying to see things as they are in order to seize on the best and make it prevail, is surely well fitted to help us judge rightly' (2006: 61).

Although many literary critics of the first half of the 20th century will reject Arnold's universalizing idealism, the idea of literature as a cornerstone of civilization, a beacon of moral and social order, becomes firmly entrenched in British intellectual life, well beyond the conservatism of Victorian society. English literary criticism in the 20th century, as Alexander Hutton has recently suggested, is 'from its outset, animated by notions of the social relevance of literature', advancing 'varying redemptive visions of society deriving from a belief in the cohesive power of literature' (2016: 3–4). While it is true that these socio-political visions varied significantly between the different critics (from radical Marxism in the case of Arnold Kettle to the more conservative outlook of F.R. Leavis, as Hutton notes), modernist literary theory was fundamentally animated by the belief in the civilizing mission of literature: 'All the critics...from Hoggart to Leavis, believed that the study of literature could impart a form of morality which could potentially improve society and teach people how to communicate and live better with one another' (Hutton 2016: 32).

Notwithstanding this seemingly unanimous outlook, it is important to highlight, as Joseph North has recently done, the common fallacy of construing Anglophone literary criticism of the first half of the 20th century as a homogenous enterprise, usually subsumed under the label practical criticism, guided by its supposed ambition to seal the literary text off from its socio-political context (North 2017). North argues that the different critics associated with practical criticism, most notably I.A. Richards, William Empson and F.R. Leavis, are in fact diametrically opposed when it comes to the function of literary criticism, the status of the work of art and the social dimension of literature. Leavis' prime concern, for instance, was the preservation of literary tradition by a cultural elite, who would communicate

its value to society at large: 'Upon this minority depends our power of profiting by the finest human experience of the past; they keep alive the subtlest and most perishable parts of tradition. Upon them depend the implicit standards that order the finer living of an age' (Leavis 1930: 13). Although Leavis was influenced by Richards, especially regarding his 'position on the central role of literary criticism in society' (North 2017: 49), the latter's progressive, left-leaning approach could not have been further removed from Leavis' cultural conservatism. Richards championed a practical, instrumental aesthetic, honing the readers' mental faculties to enable them to directly and progressively intervene in society and politics: 'Poetry, the unique, linguistic instrument by which our minds have ordered their thoughts, emotions, desires...It may well be a matter of some urgency for us, in the interests of our standard of civilisation, to make this highest form of language more accessible' (1929: 320). I.A. Richards thus rejected Leavis' elitism, demanding a more inclusive, democratic role for literature and literary education.

However, despite these fundamental and important differences in outlook between Leavis and Richards – and between all the various literary critics and scholars working in the UK in the early 20th century (Marxists, Leavisites, left-Leavisites, literary historians) – they nonetheless shared the basic assumption that the function of literature was to civilize, educate and instruct, fulfilling a crucial role in the social order (regardless of the precise nature of that order or its value system). In other words, for these critics, literature, while not necessarily a guardian of the law per se, was a key source of values that would serve and guarantee social stability and progress. The academic Bonamy Dobrée, for instance, called on literature 'to carry out that distortion of the mind which is called education with the purpose to creating "civilization"' (1951: 174–5). Richards himself best summarized this stance when he claimed that poetry is 'capable of saving us; it a perfectly possible means of overcoming chaos' (1926: 82–83). While literature was thus rarely explicitly construed as direct influence on legal practice or constitutional matters, it was nonetheless seen as fundamental in shaping and generating the values underlying the key decisions of legislators, judges and civil society as a whole.

## **Civilizational Discontent: Between Transgression and Reform**

While the belief in the civilizing force of art would continue to shape Anglophone literary criticism throughout the 20th century (most notably in the work of Raymond Williams), the early 20th century saw the emergence of a new understanding of the relationship between the law and art, inspired by the growing influence of Freudian psychoanalysis. In Freud's model of society, civilization is not held together by timeless values and great traditions, but by significant renunciations on part of its individual members, who, at bottom, are dominated by the pleasure principle, seeking instant gratification of their most basic needs and urges (Freud 2001a). However, the inevitable deferral and suppression of gratification in the face of external obstacles – the reality principle, in Freud's terminology – does not abolish these primal compulsions. They stubbornly persist below the surface of communal life, constantly threatening to erupt and destabilize its seeming order. Freud thus postulates an insurmountable tension between civilized society and the individual: 'The replacement of the power of the individual by that of the community is the decisive step towards civilization... the legal order, once established, shall not be violated again in favour of an individual' (2002: 32).

The law is designed to curb the innate potential for aggression and sexual promiscuity of its individual members by exercising a kind of communal counter-violence, guaranteeing security and safety: 'The ultimate outcome should be a system of law to which all...have contributed by partly foregoing the satisfaction of their drives' (2002: 32). The implication here is that while the law founds civilization, it is also the prime source of civilizational unease or discontent. Radicalizing this basic Freudian notion, Jacques Lacan argues that the law is therefore not secondary to but coeval with a primal libidinal freedom or desire: 'desire is the reverse of the law' (Lacan 1992: 82–83). That is to say, human desire only emerges through prohibition and is therefore by definition a desire to transgress, which is why the law can never hope to fully abolish it. Primal freedom and legal restriction are not opposites, but two sides of the same coin.

According to Freud, civilizational discontent can manifest itself in two distinct ways: first, as a desire to change particular restrictions imposed by civilization (e.g. through less oppressive laws), which can lead to reform; second, as a fundamental hostility towards civilization itself, which leads to transgression, i.e., a violation of a legal or moral norm without any aspiration for change:

Whatever makes itself felt in a human society as an urge for freedom may amount to a revolt against an existing injustice, thus favouring an advance of civilization and remaining compatible with it. But it may spring from what remains of the original personality...and so become a basis for hostility to civilization. (Freud 2002: 33)

The lasting problem for society is how to accommodate transgressive desires – ‘hostility to civilization’, the ‘original personality’ – within its legal framework, how to satisfy primal instincts without endangering social life itself. In *Civilization and its Discontents*, Freud contemplates several methods and strategies for the individual to cope with civilizational restrictions, such as intoxication, isolation, neurosis, asceticism and religion. After carefully evaluating the merits and drawbacks of each measure, Freud ultimately dismisses all of them. One such strategy, however, is given special consideration throughout his work, the fictional world of art and literature: ‘substitutive satisfactions, such as art affords, are illusions that contrast with reality, but they are not, for this reason, any less effective psychically’ (2002: 13).

For Freud, the sublimations of art are indeed a privileged way out of societal discontent, yet he struggles to describe what makes them unique. He somewhat unconvincingly calls them ‘higher and finer’ (2002: 18) (reminiscent of 19<sup>th</sup> century conceptions of literature), while acknowledging that they are usually only accessible to a certain elite (echoing Leavis’s analysis). Yet, for those who are able to appreciate art and literature, they can indeed become a ‘source of pleasure and consolation’ (2002: 18). Ultimately though ‘the mild narcosis that art induces in us can free us only temporarily from the hardships of life; it is not strong enough to make us forget real misery’ (2002: 18). Freud here backtracks on the more radical implications of

his analysis of literature: the reason why art and literature are effective mechanisms against civilizational discontent is precisely not because they are 'higher and finer', full of Arnoldian 'sweetness and light', but because they are capable of putting us in touch with a dark, repressed, dangerous part of our being, whose unmediated expression would threaten not only our individual, but also our collective existences. As Freud's own analysis of Hoffman's *Sandman* (1816) reveals, there is something troubling and destabilizing in literature, harking back to our most primal needs and feelings, which in everyday life needs to be kept in check (Freud 2001b). While his conclusion remains caught in 19<sup>th</sup> century conceptions of art, Freud's psychological anthropology nonetheless paves the way for a new understanding of the relation between literature and society, with an influence far beyond psychoanalytic theory and practice.

### **Transgression as Freedom of Expression**

In the first half of the 20th century, European literature experiences an unprecedented wave of experimentation, radically breaking with established norms and traditions. Avant-garde movements, such as Surrealism and Dadaism, and the writers associated with literary modernism begin to explore the darker aspects of the human mind, such as sexuality, death, madness and dreams, forging a new 'aesthetics of the obscene' (Pease 2000). The taboo content finds its correlative in the works' formal audacity, frequently causing outrage or bewilderment and leading to prosecution and proscription. Freud's influence is all-pervasive, not least in the law's response to these new literary practices. The American legal scholar Theodor Schroeder, for instance, calls for a fundamental re-thinking of literary censorship in light of the findings of psychoanalysis (see Potter 2013a: 48).

Following Freud's groundbreaking work on human sexuality, the depiction of taboo content could now be seen, not as an anti-social or immoral provocation, but as a new kind of realism, revealing previously hidden truths about human thought and behaviour. This led to, as Rachel Potter observes,

an important shift from confident assertions about the educational benefits of literature, such as had been made by Matthew Arnold, to the increasingly

embattled and provocative sense of modernist writers that the purient morals of a general readership would work to censor and curtail freedom of expression. (Potter 2013a: 89)

Many modernist writers and critics were confronted with the law's unbending severity in the face of morally questionable or obscene literature (the famous cases being Joyce's *Ulysses* (1922) and Lawrence's *Lady Chatterley's Lover* (1928)).<sup>2</sup> This led to increasing demands for legal reform in the name of freedom of expression, notably by Ezra Pound, modernist poet and editor of *The Little Review*, whose serialization of Joyce's *Ulysses* in 1918 had been legally halted following an obscenity trial (see Birmingham 2014). Pound is interesting in this context because he articulates a vision of literature's relation to the law, which corresponds to the first of Freud's two possible reactions to civilizational discontent: reform. For Pound, as Potter shows, 'contemporary literary texts...embodied the moral and enlightenment values that were the bedrock of American freedom and civilization', advancing 'a legalistic vision both of the state – as that which is embodied in its laws – and of the writer's central role in the social contract' (Potter 2013a: 90). For Pound, the law ultimately needed to adapt to and accommodate these new literary works, even if they 'express indecorous thoughts' (Pound 1968: 21), as such works constituted the very foundation of Enlightenment progress. In order for humanity to advance, taboos needed to be broken, especially on the terrain of language, as this was the only way to expand and refine humanity's ability to communicate in all social domains (art, politics, law and science). In Pound's view (representative of many champions of freedom of expression and individual liberty at the time) literary transgression becomes a crucial element in the reformation of the law itself and thus a key component of social progress, in general.

While Potter is certainly right when she claims that the re-configuration of transgression as freedom of expression constituted an 'important shift' in the understanding of the social value of literature, this break with the defenders of the

---

<sup>2</sup> See Potter (2013a and 2013b), Pease (2008) and Birmingham (2014).

educational mission of literature (Arnold, Richards, Leavis, Dobrée) is not as drastic as it might initially appear. Despite the extreme differences in political outlook between someone like Pound (a fascist sympathizer) and the English critics (largely democratic progressives or conservatives), both ultimately put forth a utilitarian understanding of literature, serving social, moral and civilizational progress. This conception of literature would also ultimately come to be accepted by the law, which gradually loosened the strict censorship of “obscene” literature in the US and Britain as the 20th century progressed. In 1933, for example, when *Ulysses* was finally cleared of the charge of obscenity, the attorney for the publisher, Morris Ernst, emphasized the book’s ‘artistic integrity and moral seriousness’ (see Segall 1993: 3–4), i.e., its social utility.

While the overwhelming majority of Anglophone literary criticism from that period focussed on the progressive power of literature, there were also a few dissenting voices. T.S. Eliot, for instance, claimed that it was the purpose of poetry to make ‘communication with the nerves’ (1998: 97), the words becoming ‘a network of tentacular roots reaching down to the deepest terrors and desires’ (1998: 66). The Freudian echoes are unmistakable. Here we have (a vague outline of) a conception of literature no longer concerned with moral guidance or edification, with buttressing individual freedom and/or furthering social progress, but with releasing primal urges and wishes. In other words, a transgressive model of literature that corresponds to Freud’s ‘hostility to civilization itself’, a notion that would remain undertheorized in Anglophone modernism.

### **Bataille and the Aesthetics of Transgression**

This notion became central to Bataille’s theory of transgression, which specifically explores the transgressive model of art only intimated in Freud’s work: ‘Bataille also drew on Freud’s text, but only to draw out from it consequences that the text did not foresee’ (Noys 2005: 128).<sup>3</sup> Following Freud, Bataille explores different ways of eliminating the excess energy produced by the dynamic tension between reality and pleasure. Transposing Freud’s psychological principal to a socio-biological

---

<sup>3</sup> For a general discussion of Bataille’s relation with psychoanalysis and therapy, see Noys (2005).

plane, he contends that 'excess energy can be used for the growth of a system (e.g., an organism)...if the excess cannot be completely absorbed in its growth, it must necessarily be lost without profit; it must be spent, willingly or not, gloriously or catastrophically' (Bataille 1991: 21). In Bataille's later work, literature becomes a principal means in the modern world of ('gloriously') diffusing this excess without ('catastrophically') endangering civilization itself: 'Poetry opens the night to desire's excess' (Bataille 1997: 111). Unlike Freud, however, for whom the arts sublimate primal urges by transforming them into something 'higher and finer', Bataille's aesthetics of transgression foreground the 'base', unruly, anti-social passions that literature and art feed off, providing a potent, albeit fictionalized, experience of transgression against the strictures of law: 'only beauty excuses and renders bearable the need for disorder, for violence and for unseemliness which is the hidden root of love' (Bataille 1989: 143).<sup>4</sup>

In several of his works, published in the 1930s, 1940s and 1950s, Bataille develops a socio-historical genealogy of transgression.<sup>5</sup> For him transgression has, in a sense, always been a key component of every society, an institutionalized system designed to ritually and temporarily violate the very laws society is based on (historical examples include Greek Tragedy, Christian Mass and festivals of all kind; see Bataille 1991). Bataille's favoured example for ritual transgression is probably also its most extreme form: the Aztec sacrifice of human beings. He argues that the Aztecs lived in a society of strict laws and a meticulously elaborated social conduct (murder, as in most societies, was considered a crime). In such a society, sacrifice becomes a "lawful crime", a collective and sanctioned transgression against the strictures of social and political life, that is to say, a conscious wasting of excess energy, against the utilitarian prerogative (Bataille 1991).

The emergence of transgressive art, however, is, according to Bataille, a specifically modern phenomenon, linked to the increasing division of social life in capitalist societies. In pre-modern Europe, political power and the task of controlling social

---

<sup>4</sup> For recent discussions of Bataille's theory of art and literature, see Kennedy (2017 and 2018).

<sup>5</sup> For the seminal account of the philosophical stakes of Bataille's theory of transgression, see Foucault (1963).

life, on the one hand, and the regulation of collective forms of transgression, on the other, both fell firmly within the remit of the Christian Church. With the decline of feudal society and the gradual emergence of the modern nation state, in which social life is primarily regulated by the market and no longer by religious dogmatism, the representation of transgressive acts falls to the newly emerging domain of autonomous art and literature: 'the historical demise of socially sanctioned forms of transgression shifted the arena in which such acts could be carried out to literature' (Richman 1982: 105).

Like Freud, Bataille regards transgression as a response to basic human desires, libidinal intensities that must be discharged. Civilized life is fundamentally based on the negation of these intensities: 'Society...could not survive if these childish instincts were allowed to triumph' (Bataille 2006a: 18). David B. Allison argues that these instincts 'must be negated, and this is precisely the necessity for imposing taboos, for instituting prohibitions...they must no longer be unregulated, uncodified, so as to constitute random violence' (Allison 2009: 91). For Allison, the negation of these intensities becomes labour and is thus instrumental for the functioning and subsistence of society. This regulation of 'random violence', however, is also at the basis of art and literature. Yet in contrast to the world of work and productivity, where desire needs to be negated, pure and simple, the work of art celebrates and facilitates this desire through a process of sublimation and transformation. Work requires that we sever our connection to our immediate appetites and desires through the exercise of will and reason. Art and literature, on the other hand, can re-connect us with to those primal drives and feelings, yet within tightly controlled circumstances and conditions, regulated and codified, where these intensities are discharged but basically transformed. As Bataille puts it in *Literature and Evil*: 'If human life did not contain this violent instinct, we could dispense with the arts' (2006a: 70).

Bataille constructs his theory of literary transgression on Freud's model of childhood interdiction,<sup>6</sup> which always has a twofold effect: it facilitates social

---

<sup>6</sup> For Freud the first manifestation of law occurs during the Oedipus complex, when the infant is confronted with the taboo on incest. Freud follows the dominant anthropological literature of his time in claiming that 'taboo-observances constituted the first systems of "law"' (2002: 36).

adaptation while simultaneously creating the desire for the absence of social/ethical constraint. As this desire only comes into being through the rules and obligations that suppress it in the first place, it is, by definition, a transgressive desire. The same logic applies to the work of literature. Although literature's transgressive nature only functions in relation to the social status quo (without which the notion of transgression would be redundant), the fact that it is exempt from turning this transgression into something socially or politically necessary or useful enables literature to engage in this process in a much more unconstrained and therefore liberated fashion; it does not have to justify and subordinate its 'temporary transgressions' (Bataille 2006a: 22), its moments of intensity, to some overarching moral framework or to some pre-defined goal. This is why, for Bataille, 'only literature could reveal the process of breaking the law – without which the law would have no end – *independently of the necessity to create order*' (2006a: 25).

Transgressive behaviour is often regarded either as an irrational aberration, the product of a deranged mind, or it is assimilated to the utilitarian prerogative by endowing it with a social or moral purpose. For Bataille, however, transgressive art, as a discharger of repressed instincts, should not have to be made accountable in terms of social responsibility or utility: 'Literature cannot assume the task of regulating collective necessity' (2006a: 25).<sup>7</sup> Bataille's theoretical model is pertinent, I believe, because it allows us to clearly perceive and account for the political ineffectiveness of transgression, Freud's 'basic hostility towards civilization', without having to deny the latter's importance. Transgressive desires and impulses are the product of the negation of primal instincts and our inevitable adaptation to civilized life. These desires, according to Bataille, can therefore never be completely eradicated or repressed and should therefore be acted out or liberated, yet only under tightly controlled circumstances, that is to say, in acts of *aesthetic* transgression.

---

<sup>7</sup> Julia Kristeva's influential work builds on Bataille's theory of the transgressive nature of modern literature, specifically in relation to modernist fiction, such as Joyce's *Ulysses*. Her approach focuses on the transgressive possibilities of fictional language itself, which she refers to as the 'semiotic', subverting the laws of traditional sign systems and conventional discursive practices (Kristeva, 1980).

## Conclusion: Transgression as Negativity

Transgressive literature was an important topos of modernist art and theory, and, as Rachel Potter has compellingly demonstrated, led to a re-conceptualisation of the law (especially regarding censorship) and of art, profoundly shaping both in the further course of the 20<sup>th</sup> century (see Potter 2013a). Potter, who also notes Freud's and Bataille's centrality in the emergence of transgressive art – as well as the former's profound influence on the latter – is right when she claims that for Bataille, literary transgressions 'were central to an understanding of the unconscious drives that constitute the human subject' (Potter 2013a: 8). Yet, she fails to mention that Bataille's 'desire to open up writing to the destabilized subject' (Potter 2013a: 8) was not, as in the case of many other modernist writers, a celebration of 'individual freedom', waiting to be harnessed for progressive political causes.<sup>8</sup> Bataille, like Freud before him, was profoundly sceptical of the political potential of an eroticism finally unleashed from the shackles of Victorian prudery.

Today the law's handling of obscene, outrageous art certainly has become much more lenient and tolerant in contrast to the 19th century or early 20th century. But this development is very much part of what Freud describes as 'a revolt against an existing injustice favouring a further advance of civilization and remaining compatible with it' (2002: 33). From this angle, transgressive literature becomes a standard-bearer of liberation and freedom against oppressive laws, a point forcefully made by, amongst others, Ezra Pound. This demand for reform can always be accommodated within the legal system. Yet, the idea of art as transgression, as 'hostility against civilization itself', is a lot more problematic. It points towards the perverse dimension of law itself, which, as Slavoj Žižek suggests, makes impossible demands on its subjects, constantly enjoining and prohibiting them to engage in transgressive behaviour: 'when we obey the Law, we do so as part of a desperate strategy to fight against our desire to transgress it, so the more rigorously we obey the Law, the more...we feel the pressure of the desire to indulge in sin' (2000: 142).

---

<sup>8</sup> 'Bataille's desire to open up writing to the destabilized subject was one that was shared by a number of writers in the 1920s and 1930s, including Henry Miller and Anais Nin, who extended the connections between individual freedom and sexual licentiousness' (Potter 2013a: 8).

The psychoanalytic interpretation of literature in the first half of the 20<sup>th</sup> century allows us to clearly distinguish between the passion of revolt – the desire to break rules for desire's sake – and the reformatory aspirations of politics (of course, these two aspects often go hand in hand and only rarely appear in their pure form). It furthermore illustrates the law's inability to acknowledge transgression, even though the two are inextricably linked: the law either needs to appropriate transgression's anti-social force by endowing it with ethical significance or it needs to silence it through censorship and punishment. However, as indicated by Bataille, transgressive art is fundamentally useless, unjustifiable, irresponsible, which means that even in a perfect society – completely equal and free – it would still have to violate the laws that structure it, giving expression to those aspects of the personality that every civilization needs to repress. As Rita Felski suggests: 'The literature of shock becomes truly disquieting not when it is shown to further social progress, but when it utterly fails to do so, when it slips through our frameworks of legitimation and resists our most heartfelt values' (2008: 110).

Yet, the paradox of Bataille's own position is that transgressive art does have a social function, and a deeply conservative one at that, close to Arnold's and Leavis's notion of art as preserver of order and moral integrity. By channelling "perverse" and violent desires in an imaginary, sublimated fashion, it prevents them from spilling over into the realm of politics, potentially creating real chaos. This is also why it's a mistake (maybe unavoidable) to attempt to attribute moral or political meaning to transgression. If one looks at the history of aesthetic transgression in the 20<sup>th</sup> century (the avant-garde, the Beat generation, punk etc.), it is usually construed as a form of political liberation. Yet, as Freud and Bataille demonstrate, there is nothing inherently progressive in transgression. Although it seems to be a vital element of social life, a safety-valve for civilizational pressure, it can easily be used for sinister ends (in fascist spectacles or the Alt-right's shock tactics, for instance). The question then remains: how can we give transgression its due without reducing it to social utility (construed as a form of liberation from oppressive legal systems), on the one hand, or letting its undeniable power be co-opted by dubious political ends, on the other? Bataille's theory of transgression suggests art as a possible solution, which,

in his view, becomes the domain in the modern world, in which it is possible to say and do everything, to transgress accepted norms and standards without offering alternatives or remedies: 'art reaches the extreme limit of the possible' (1993: 420), but as art only. This is a direct challenge to the avant-garde's conception of literature as something that can potentially or eventually be put into practice, as a superior realm that becomes the blueprint for the creation of a new order.

To be sure, this specific conception of transgressive literature never replaced the dominant notion of literature as a liberating and/or civilizing force, remaining on the margins of literary theory and philosophical aesthetics for most of the 20th century.<sup>9</sup> It rather functioned (and continues to function) dialectically, like a negative pole to any positive conception of the social value of the literary. In this sense, it is part of what Fredric Jameson has described as a 'fourth historical moment', 'a shadowy and prophetic realm, a realm of language and death, which lives in the interstices of our own modernity as its negation and denial' (2012: 62). Jameson contends that modernity is in part characterized by the positivism of the sciences, whose careful distinctions, circumscriptions and definitions produce their own flipside, their own negation, their own excess. One of these negations, according to Jameson, is psychoanalysis and its key theoretical proposition of the unconscious, which functions (despite Freud's own scientific aspirations) like a negative counterpoint to empiricism of the life sciences. Transgressive literature, in Bataille's sense, also constitutes such a response to the various affirmations and aspirations of the modern world, revealing 'the underside of humanism' (Jameson 2012: 63), resisting appropriation by public morality, legal progressivism and all narratives of emancipation and liberty.<sup>10</sup> Bataille calls this 'an unemployed negativity', beyond

---

<sup>9</sup> Influential contemporary conceptions of the social value of literature and art include Rancière's "distribution of the sensible" and Latour's "actor-network theory" (see Rancière 2006; Latour 2005).

<sup>10</sup> At several points in his work Bataille acknowledges the similarity between his notion of negativity and Freud's conception of the unconscious. Both represent an idea of the totally other, of the beyond of conscious life. The point of divergence must be located in their respective ideas on the possibility of accessing this "other", of turning it into an object of knowledge. While Freud attempts to make a science of the unconscious (psychoanalysis) Bataille insists on the fundamental unassimilability of this "negativity". For a discussion of the relation between impossibility, poetry and sacrifice in Bataille's work, see Arnould (1996).

the limits of utility and knowledge, opening up an experience of 'non-knowledge' (Bataille 1997: 296, 82). In Jameson's words, 'the marking of the limit exacerbates the will to transgress it and to pass over into what is forbidden. It is that zone of non-knowledge which we have characterized above as something like a fourth historical moment' (2012: 72).

Jameson's 'fourth historical moment' sheds some light on why transgressive literature emerged in that particular historical period, the late 19th century and early 20th century. Like all the different conceptions of literature discussed in this article, it constitutes a response to a wider socio-cultural development, specifically the growing dominance of scientific methods and practices. Critics like Richards, Empson and Leavis (and later on the New Critics in America) responded to this development by attempting to make literary studies more objective through their method of "close reading", 'away from subjectivist impressionism in aesthetic matters and toward exactitude, meticulousness, and something approaching "scientific" precision' (North 2017: 24). Conversely Pound, and other champions of free expression, saw in transgressive art something approaching 'the scientist's freedom and privilege, with at least the chance of at least the scientist's verity' (Pound 1967: 73), i.e., a new form of empirical exploration, grounded in fact and truth. Both conceptions (the educational and the liberatory) must, as I would suggest, therefore be seen as progressive rather than transgressive. Bataille's model, by contrast, attempts to safeguard the negative force of literary transgression, beyond the utilitarian demands of science and law, focussing on 'what goes beyond the useful...what a consciousness enlightened by the advancement of learning relegated to a dubious and condemnable semidarkness, which psychoanalysis named the unconscious' (Bataille 1993: 226).

## Competing Interests

The author has no competing interests to declare.

## References

- Allison, D. B.** (2009). 'Transgression and the Community of the Sacred'. *The Obsessions of Georges Bataille: Community and Communication*, eds. Mitchell, A. J. and Kemp Winfree, J. Albany: SUNY. pp. 83–98.

- Arnold, M.** (2006). *Culture and Anarchy*. Oxford: Oxford University Press.
- Arnould, E.** (1996). 'The Impossible Sacrifice of Poetry: Bataille and the Nancian Critique of Sacrifice'. *Diacritics*, 26(2): 86–96. DOI: <https://doi.org/10.1353/dia.1996.0010>
- Bataille, G.** (1989). *My Mother, Madame Edwarda and The Dead Man*. London: M. Boyars.
- Bataille, G.** (1991). *The Accursed Share, Vol. 1: Consumption*. New York: Zone Books.
- Bataille, G.** (1993). *The Accursed Share, Vols. 2 and 3: The History of Eroticism and Sovereignty*. New York: Zone Books.
- Bataille, G.** (1997). *The Bataille Reader*. Oxford: Blackwell Publishers.
- Bataille, G.** (2006a). *Literature and Evil*. London: M. Boyars.
- Bataille, G.** (2006b). *The Absence of Myth: Writings on Surrealism*. London: Verso Books.
- Birmingham, K.** (2014). *The Most Dangerous Book: The Battle for James Joyce's Ulysses*. London: Penguin.
- Dobr e, B.** (1951). 'What is Literature For'. *English Studies Today*, eds. Wrenn, C. L. and Bullough, G. Oxford: Oxford University Press.
- Eagleton, T.** (1996). *Literary Theory: An Introduction*. Oxford: Blackwell Publishing.
- Eliot, T. S.** (1998). *The Sacred Wood and Major Early Essay*. Mineola, NY: Dover Publications.
- Felski, R.** (2008). *Uses of Literature*. New York: Wiley-Blackwell. DOI: <https://doi.org/10.1002/9781444302790>
- Foucault, M.** (1963). 'Preface to Transgression'. *Language, Counter-Memory, Practice: Selected Essays and Interviews* (1996), ed. Bouchard, D. Ithaca: Cornell University Press. pp. 29–52.
- Freud, S.** (2001a). 'Formulations on the Two Principles of Mental Functioning'. *The Standard Edition of the Complete Psychological Works of Sigmund Freud Volume XII (1911–1913)*. London: Vintage.
- Freud, S.** (2001b). 'The Uncanny'. *The Standard Edition of the Complete Psychological Works of Sigmund Freud, Volume XVII (1917–1919)*. London: Vintage.
- Freud, S.** (2002). *Civilization and Its Discontents*. London: Penguin.

- Hutton, A.** (2016). 'An English School for the Welfare State: Literature, Politics, and the University, 1932–1965'. *English*, 65(248): 3–34. DOI: <https://doi.org/10.1093/english/efw011>
- Jameson, F.** (2012). *A Singular Modernity: Essays on the Ontology of the Present*. London: Verso.
- Kennedy, K.** (2017). 'Useless Practices in Sacred Spaces: Bataille's Elegance and the Aesthetics of Sovereignty'. *Georges Bataille and Contemporary Thought*, ed. Stronge, W. London: Bloomsbury. pp. 129–154.
- Kennedy, K.** (2018). 'Heterology as Aesthetics: Art and the Affirmation of Impossibility'. In *Theory, Culture & Society*, 35(4–5): 115–134. DOI: <https://doi.org/10.1177/0263276416644506>
- Kristeva, J.** (1980). *Desire in Language: A Semiotic Approach to Literature and Art*. New York: Columbia University Press.
- Lacan, J.** (1992). *The Seminar. Book VII. The Ethics of Psychoanalysis, 1959–60*. London: Routledge.
- Latour, B.** (2005). *Reassembling the Social: An Introduction to Actor-Network Theory*. Oxford: Oxford University Press.
- Leavis, F. R.** (1930). 'Mass Civilization and Minority Culture'. *Cultural Theory and Popular Culture: A Reader* (2006), ed. Storey, J. Harlow: Pearson Education Limited.
- North, J.** (2017). *Literary Criticism: a concise political history*. Cambridge, Mass.: Harvard University Press. DOI: <https://doi.org/10.4159/9780674978522>
- Noys, B.** (2005). 'Shattering the subject: Georges Bataille and the limits of therapy'. *European Journal of Psychotherapy, Counselling and Health*, 7(3): 125–136. DOI: <https://doi.org/10.1080/13642530500219665>
- Pease, A.** (2008). *Modernism, Mass Culture, and the Aesthetics of Obscenity*. Cambridge: Cambridge University Press.
- Potter, R.** (2013a). *Obscene Modernism: Literary Censorship and Experiment, 1900–1940*. Oxford: Oxford University Press. DOI: <https://doi.org/10.1093/acprof:oso/9780199680986.001.0001>

- Potter, R.** (2013b) Bradshaw, D. (eds.). *Prudes on the Prowl: Fiction and Obscenity in England, 1850 to the Present Day*. Oxford: Oxford University Press.
- Pound, E.** (1968). 'How to Read'. *Literary Essays of Ezra Pound*, ed. Eliot, T. S. London: Faber and Faber. pp. 15–40.
- Pound, E.** and **Joyce, J.** (1967). *Pound/Joyce: The Letters of Ezra Pound to James Joyce, With Pound's Critical Essays and Articles About Joyce*, ed. Read, F. London: Faber and Faber.
- Rancière, J.** (2006). *The Politics of Aesthetics: The Distribution of the Sensible*. Trans. Gabriel Rockhill. London: Continuum.
- Richards, I. A.** (1926). *Science and Poetry*. London: Kegan Paul, Trench, Trübner & Co.
- Richards, I. A.** (1929). *Practical Criticism*. London: Routledge.
- Richman, M.** (1982). *Reading Georges Bataille*. Baltimore: The Johns Hopkins University Press.
- Segall, J.** (1993). *Joyce in America: Cultural Politics and the Trials of Ulysses*. Los Angeles: University of California Press.
- Slaughter, J. R.** (2007). *Human Rights Inc. The World Novel, Narrative Form, and International Law*. New York: Fordham University Press. DOI: <https://doi.org/10.5422/fordham/9780823228171.001.0001>
- Žižek, S.** (2000). *The Fragile Absolute or Why is the Christian legacy worth fighting for?* London: Verso Books.

**How to cite this article:** Kennedy, K 2020 'Between Law and Transgression: Literature as a (Non-) Civilizing Strategy in the Early 20<sup>th</sup> Century'. *Open Library of Humanities*, 6(1): 17, pp.1–20. DOI: <https://doi.org/10.16995/olh.478>

**Published:** 03 June 2020

**Copyright:** © 2020 The Author(s). This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC-BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited. See <http://creativecommons.org/licenses/by/4.0/>.



*Open Library of Humanities* is a peer-reviewed open access journal published by Open Library of Humanities.

**OPEN ACCESS**