

Beauty and the Beast: Art and Law in the Hall of Mirrors

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A connection between art and law is the focus of this article. This connection is based on their autopoietic, self-referential nature as described by Niklas Luhmann in his legal sociology and his treatise on art. Expectedly, the two systems have different behavioural patterns. While art takes a narcissistic pleasure in its self-referentiality and augments the paradox by reproducing itself and its structures as a conscious hyperreality, law is still tied up in its missionary role as an instrument for social justice and regards any insinuation to self-referentiality as an affront. While some basic but ultimately prosaic questions such as ‘what is art?’ and ‘what is law?’ will inevitably be posed, they will happily be left unanswered, not only for sanity’s sake, but also for a specific methodological reason: the questions will be projected onto themselves in an attempt to locate the respective roles of the two systems – those of art and law. The result is an observation on whether there is indeed a need for an ‘external’, hallopoietic standpoint from which to exert critique and instigate social change, or whether the so-perceived ‘offensiveness’ of self-referentiality is a vehicle for unspectacular yet effective social amelioration.

‘... “seeing yourself seeing” and “seeing yourself sensing”.
What begins as perception returns to affect the structures of society.’
Roxana Marcoci, *Commentary on Olafur Eliasson’s Installation
at the MOMA, NY, Projects 73, September 2000–May 2002.*

I

The attempt to establish a connection between art and law is both deceptively easy and temptingly difficult. The two disciplines exhibit a considerable

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degree of complexity and fragmentation, and common *topoi*, in the sense of conceptual commonalities, can effortlessly be identified. The difficulty, however, lies in assessing the utility of such operation. However significant the fusing effect of epistemic fragmentation may be, the fact remains that the boundaries between art and law cannot be easily disputed. Aesthetics do not feature in law,¹ just as normativity and social teleology do not mingle smoothly with art. But perhaps the advantage of such connection can be clarified through the schematism of the story of Beauty and the Beast. In the fairy tale, Beauty revolts against her father's and the village's expectations. Her dreams of a different life and her endless hours before the mirror find an unorthodox outlet in a life as prisoner of the Beast. During her stay in the castle, however, Beauty manages to calm and change the Beast. So, when she is required to leave the castle in order to attend to her ill father, the Beast becomes progressively more debilitated, which makes it an easy prey for the mob. When, after several adventures, Beauty returns to the castle just in time, her love manages to transform the moribund Beast to a beautiful prince. From the subtlety of folkloric symbolism, I would like to extract an admittedly crude analogy between, on the one hand, Beauty and art, and on the other, the Beast and the law. The analogy becomes slightly more adventurous with the inclusion of multiple descriptions of both art and law that confound their self-descriptions to the point of making them both contradictory and amenable to modifications. Thus, in what follows, theories of art and law are presented side by side with what, autopoietically, one would call 'self-descriptions' of the systems. The point of such an exercise is to mirror how self-descriptions cannot be considered in isolation from other descriptions, if one wants to attempt links between the entities that one describes.²

By accepting the fusion between descriptions and self-descriptions, the present description (only too aware of its descriptive status) acquiesces to a permeating fragmentation, observable both in Beauty and the Beast. The Beast appears here both as it sees itself, and as conceived by the various actors of the fairy tale (the mob, Beauty, Beauty's father). In their turn, these descriptions appear both while the Beast was enclosed in its positivist castle, and after it was transformed into a prince-in-love. In this vein, a comparison will be attempted between, on the one hand, the way law is described (including its autopoietic self-description), and on the other, the way law may be described after a parallelism with art. In order to do this, descriptions of art will first be submitted to the same analysis. The purpose of this is to show that beauty in the hands of art has become a triumph of self-referential subjectivity, impermeable in its mechanics except if it is through its very mechanics. Through the comparison between art and law, I intend a confrontation of their differentiated buoyancies, with an aim to prove that, while the Beast is still taking itself a little too seriously, Beauty has managed

to outgrow her father's expectations and become a signifier of a non-teleological transformability.

The basis for the comparison, however, is not unproblematic. One wonders, for example, whether the proposed operation would be beneficial only to the Beast, leaving Beauty scathed by the limitations of juristic imagination – or lack of it. Or indeed, whether the axiomatic perception of teleology as a constituent part of the Beast's destiny (to become prince / to set the guarantees for equity and justice in the social system) renders problematic the very foundations of the operation. For these reasons, I suggest taking art as the starting point of the operation, with law the final witness of the plausibility of the outcome. It will be the Beast who will look at Beauty and learn from her, and not the other way round. Beauty's stare will remain blissfully fixed on her reflection in the mirror. This arbitrary directionality, except for the substantial questions of whether art could benefit from a comparison with law, is also dictated by epistemological factors: whereas the main premise of this article that refers to law, namely that law is self-referential, has already been passionately argued both for and against in the past,³ art's self-referentiality, though equally well argued and counter-argued,⁴ has only relatively recently been exposed (at least for the anglophone public) in such a format that could accommodate a parallel consideration of the legal self-referentiality. Indeed, the present article will draw heavily on Niklas Luhmann's book, entitled *Art as a Social System*, and its autopoietic *topoi*, which open up avenues of adventurous parallelisms between the two autopoietic systems, those of beastly law and beautiful art.⁵

II

The present article is informed by four propositions:

1. Art is self-referential . . .
2. . . . and that's all right.
3. Law is self-referential . . .
4. . . . and that should also be all right!

The first two propositions will be examined in this and subsequent sections. The third will be assumed for the reasons explained above.⁶ The fourth proposition will operate as the final scene of the fairy tale, where law will have the opportunity to look into the mirror as held by art and 'reflect'.

The starting point of the analysis is *art*, and more specifically *its process as rooted in perception*. By 'process' I mean both the process of *making* and the process of *perceiving* art. The encapsulation of both sides of the social

phenomenon of art in a single linguistic movement, that of process, is not an arbitrary reduction, but one based on a distillation to their common faculty: *perception*. 'Perception' here should be understood along the lines of Husserlian phenomenology, according to which perception is the 'impressional consciousness of the present'.⁷ Husserl's definition of perception is influenced by the projective theory of perception, a theory popular in the second half of the nineteenth century, which postulates that the impressions or sensations deriving from the perception of an external object are nothing but subjective modifications projected 'outside'.⁸ This projective function endows the sensation with the illusory appearance of independent existence. Thus, the object of perception is the phenomenal object, ontologically dependent on consciousness as a projection of the latter.

As 'impressional consciousness of the present', perception refers to the spatial and the temporal parameters of the present, but does not include the possibility of imagined parameters. Husserl calls this variance of perception *phantasy*,⁹ or a self-induced simulation of perception. This imagined perception is the act of replacement of the given spatio-temporal context with other, constituted spatial and temporal horizons.¹⁰ Based on Husserl, Luhmann elaborates on imagined perception and describes it as the process which erases the information concerning the spatio-temporal location of the given and subsequently replaces it with imaginary parameters.¹¹ This act of phantasy or intuition is the emplacement of a given phenomenal object on another, 'private' plane of projection, which involves the absorption of the given (in the manner of a 'muse' of inspiration) and its immediate negation (in the manner of replacement of the contextual horizons).

Both perception and imagined perception are the essential faculties of consciousness, the autopoietic tools of psychic systems.¹² Awareness of perception and imagined perception generates, in a reflexive way, the perpetuation of human consciousness. Perception, however, is limited to individual spheres of awareness, that is, to psychic systems. Social systems, on the other hand, do not make use of perceptions but of *communications*. According to Luhmann, communication is the vehicle of meaning, the process through which social systems exist and evolve.¹³ In the legal case, the legal system – a prime example of a social system in the Luhmannian cosmology – employs as its main faculty legal communications, which rely largely on the communicative abilities of linguistic expression.¹⁴ Communication can be understood along the lines of information as employed in general systems theory; however, while in general systems theory information flows freely between system and environment, autopoietic information is an internal construction of the system.¹⁵ For this reason, communication cannot be understood as the transfer of information from one system to the other. It is only because communication is the common faculty of social

systems that one system can ‘translate’ another system’s communication into its own communicative parlance. This closure is a feature of the autopoietic nature of the system.¹⁶ For an autopoietic system, any other system is simply part of its environment, thus not ‘visible’ by the system. Indeed, for an autopoietic system there is no input or output with its environment.¹⁷ The system comes into being through a differentiation from the environment (a binarism): whatever is not environment, is a system, and vice versa. The system is differentiated from its environment through a binary code. To keep to the case of the legal system, the binary code of relevance to the legal system is lawful/unlawful. This does not mean, however, that what is unlawful is out of the system: on the contrary, *as soon as the question of whether something is lawful or unlawful arises, then this something will perforce belong to the legal system.*¹⁸ In this sense, the binary code is categorical as to the differentiation between system and environment but ondoyant and flexible as to the balance between its constituent elements (lawful/unlawful).

While the code guarantees the closure of the system, it also facilitates its *evolution*. Systemic evolution is based on the paradoxical co-existence of closure and openness. Eternally replicating Edgar Morin’s famous adage ‘the open rests on the closed’,¹⁹ autopoiesis likes to think of closed systems as open. A system is closed as to its operations but open cognitively to other systems. Its closure is manifested reflexively through recursive distinctions and the application of distinctions onto distinctions, much along the lines of a DNA helix. Its openness, which only contributes to the system’s reflexivity, is a necessary precondition for the system’s evolution, without which the system would not be able to learn. Systemic openness is materialised via *observation*, which is the only avenue of ‘contact’ the system has with other systems.²⁰ Observation is common to both social and psychic systems and, as such, it can be understood as externalised abstraction of both communication and perception. Observation is always the operation of a distinction, because every time one observes something, one leaves outside the scope of observation something else.²¹ However, between the observer and the observed, there can be some form of contact. Perhaps the most prominent manifestation of such ‘contact’ is what Luhmann after Maturana and Varela calls *structural coupling*. In the introduction to *Autopoiesis and Cognition*, Beer analyses briefly how structural coupling comes about: ‘[system] and environment operate as independent systems that, by triggering in each other a structural change, select in each other a structural change’.²² Structural couplings are the source of *environmental perturbations*, which are selected by the system, rendered meaningful for the specific system, and allowed to instigate adaptation.²³ Of course, nothing can happen in the system that the system cannot accommodate through its binary code. In a sense, structural

change is akin to systemic fate: what is to be done will be done and nothing else could have been done considering the specific parameters, although the probabilities – what Luhmann after Husserl calls *horizon* – are infinite and always present.

Another aspect of an autopoietic system is its lack of *initio*, a direct consequence of which is the fact that a system thus deprived of directionality – the beginning can also be the end – is also non-teleological. There is no inherent purpose in the system: being is becoming. An autopoietic system is to ‘recreate’ and ‘recreates’ to be, and the product of this recreation is itself. The paradox of autopoiesis is best imagined in the form of a DNA helix, where processes are projected on processes, and twist after twist the evolution of the system takes place, without any previous *awareness* of knowledge on behalf of the system of its mode of development.

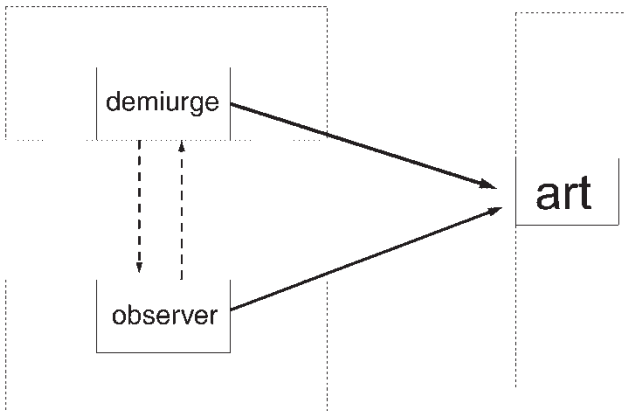
After this shamelessly superficial and unfairly epigrammatic presentation of a voluminous and alluringly complex theory, one may begin to see how self-complications appear here. For if perception is the autopoietic process of psychic systems, and communication that of social systems, then, according to autopoiesis, the two categories of systems cannot ‘communicate’, for the simple reason that they are different systems operating with different binary codes. What is more, communication as such constitutes an autopoietic system in its own right: ‘[c]ommunication recursively recalls and anticipates further communications, and solely within the network of self-created communications can it produce communications as the operative elements of its own system’.²⁴ Thus, if communication is a closed, autopoietic system, it can neither receive nor produce perceptions – only communications. In short, one is left with two self-contained, isolated, closed spheres of incommunicability, those of perception and communication. The latter is not surprising in the realm of autopoietic indulgence: autopoiesis isolates the system from its environment, which includes other systems, and leaves it revolving around itself in a vacuum of illegibility. This illegibility of perception is what immures the communication system in its narcissism, thereby reinforcing the schism between psychic and social systems. The initial proposition that the process of art is rooted in perception proclaims nothing more than the self-referentiality of the system. Art, being a ‘private’ system operating on the planes of psychic systems, uses perceptions ‘in order’ to be and to become. The use of perception as opposed to communication fences art off from the communicability of social systems and renders it a soliloquising bastion of the incommunicable. But does this really mean that art does not communicate meaning? Can this really amount to an isolation of the psychic systems when it comes to art, with no possibility of confluence among, say, the public in an exhibition, the readers of the same book, or even the sculptor and the appreciating Sunday morning family who wanders in the park where the

sculpture has been erected? In the following section I deal with the avenues of communication the art system uses in all its incommunicable idiosyncrasy.

III

The initial axiom that the process of art is rooted in perception should now be seen in the light of the autopoietic supposition that perception cannot be communicated. The direct result of this is that both making and receiving art are cemented in the same incommunicable impasses of perception. However, before the communicability of the incommunicable is dealt with, it is worth examining the ambidirectional faculty of perception, both from the demiurge,²⁵ and the viewer/reader/listener's points of view. My intention is to present a scheme in which the two observers (the demiurge and the public) organise their 'connection' with the art piece. Figure 1 may be of some assistance here. When the demiurge creates an art piece, she diligently perceives it: the back-and-forth movement from the canvas to the sketches, the reading of the text she has just written, the sliding of her fingers on the alcove she has just carved out of a slab, all these acts attest to the awareness of perception of art, or else to the normative resonance of the act of observation in its psychic variance of both perception and imagined perception. Likewise, when the public approaches an art piece, it approaches it through perception in the projective sense and potentially 'identifies' with it by way of imagined perception. Therefore, the solid arrows are to be read as a representation of perception and the dotted ones as a representation of imagined perception.²⁶ The dotted-lined boxes around the demiurge, the

FIGURE 1



observer, and the art piece represent a schematic positioning of the systemic environment of each unit. In this manner, perception takes place either once or repeatedly but never identically: the spatio-temporal positioning of the art piece in relation to the demiurge/observer is always different, so repetition occurs every time as another ‘once’.

Two circuits of perception are established in this figure: the first between the art and the demiurge, the second between the art and the observer. The two circuits cannot communicate with each other except indirectly by means of the communality of their autopoietic method through reciprocal observation.²⁷ Indeed, both demiurge and observer are second-order observers in the Luhmannian sense: a second-order observer is one who observes, not *what* others (first-order observers) do, but *how* they do what they do. Aware of the parallel existence of numerous probabilities (‘[a] movement of the hand, a sentence spoken – every such act is extremely improbable when considered as a selection among all other possibilities’²⁸), a second-order observer is interested in the process of selection as performed by first-order observers. In order to understand this, she constantly poses the question ‘why?’ This interrogative is denuded of any hint of teleology; it does not presuppose a *telos* behind the selection. Instead, it addresses the structural predetermination of the system to select this over that,²⁹ to isolate the probability of one from the universe of all – which would also include the non-universe.

Accordingly, every observation is an act of distinction. By choosing A over B to Z, the observer is performing a distinction between a system (the selection) and its environment (the ‘rejected’). Momentarily, the non-selected side of the distinction becomes inert. It returns to the scene of selections only after the previous distinction has been fixed and a ‘need’ for another distinction has arisen, that will enable the system to postpone the paradox of its autopoietic existence (‘I am what I am not.’)³⁰ The development of a system occurs through recursive distinctions, and the application of distinctions onto distinctions. Take the example of a meteorological system, where at any given moment only one phenomenon occurs out of a chaotic array of probabilities, and this phenomenon holds well until the next given moment where a new ‘need’ (as determined by systemic evolution) for a new selection occurs. At that point, the horizon of probabilities reappears and offers its tempting serendipities for selection and a new selection is erected on the basis of the previous selection. In the same way, an autopoietic system exists and evolves (is and becomes) through continuous selections that reinforce its identity and enable it to undulate its boundaries to include more or less of the probabilities offered by its environment. This evolution takes place through the operation of observation – either observing others or observing oneself.

To illustrate the above I propose to employ Lucian Freud's 'Interior with Hand Mirror (Self-Portrait)', 1967 (Figure 2). The self-portrait offers an avenue of explanation and, hopefully, development of the autopoietic way of communication of art. When the viewer looks at the painting, she sees a mirror. The immediate reaction is to expect to see her reflection on the surface of the mirror. Instead, she sees the painter, who also perceives himself (his representation) on the mirror. The painter, by including the representation of a mirror in his painting, plays with the habitual expectations of the viewer. A mirror is expected to reflect what is on the other side. It is

FIGURE 2
LUCIAN FREUD'S 'INTERIOR WITH HAND MIRROR (SELF-PORTRAIT)', 1967



indifferent that the mirror is not ‘real’: the effect of the representation is sufficiently foundational to create the relevant expectations.

Clearly, the painting communicates something to the viewer. The question is how it manages to communicate, when the only contact between the systems is a process of reciprocal observation doomed never to converge because of the difference between perception and communication. To rephrase the question, how is it that art, created by and for perception or imaginary perception, can be the bearer of communication? I suggest three ways in which communication is materialised within the frame of the particular painting. The first replicates the well-known discourse on mirrors³¹ as represented in visual arts. The artist here prepares for the viewer a representation of awareness of a paradox: the mirror functions as a surface on which reflection hits and turns back to itself. I reflect on the fact that I reflect, I perceive my perception. This reflexivity of perception, however communicative, remains *endosystemic* because of the internal perception (a perception of second order, in the sense of *how* rather than *what*) of the act of perceiving. Thus, communication does not transfer meaning but ‘induces’ an *awareness* of meaning within the psychic system.

In endosystemic communication, the object of perception is of no relevance: it suffices that I am made to perceive my perception through the expectation flowing out of the representation of the mirror. However, the inclusion of a mirror inevitably poses the erotesis ‘who is the perceiver?’, thereby introducing the second way the painting communicates. The admittedly hackneyed circularity of the division between inside/outside is rephrased by the foundational reversal of the in/out with the introduction of this/other side of the mirror. The game of expectations (‘you expect to see yourself but instead you see me’ and ‘I expect to see you see yourself but instead I see me in expectation’)³² does away with the traditional arrow of directionality and replaces it with a circular shape that flows between the artist and the public without any *initio*.³³

The proposed third bridge of communication established in the painting is once again of internal operation. In *Signéponge/Signsponge*, Derrida employs the relatively familiar concept of *mise en abyme* (‘emplacement into the abyss’), or the infinite repetition, for example, of the book cover that has an image of the book cover on it.³⁴ Derrida expands this to include what Richard Rand explains in his introduction to his translation of Derrida’s book as

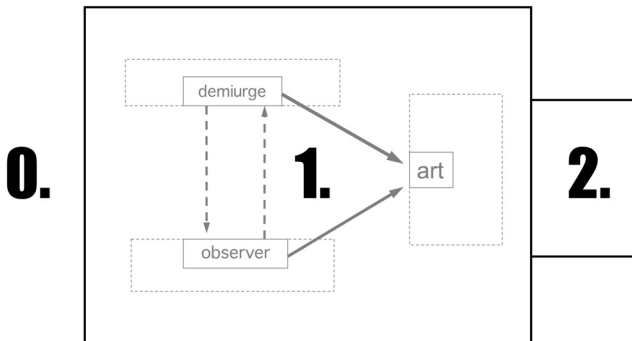
the way in which the operations of reading and writing are represented in the text, and in advance, as it were, of any other possible reading. In ways that the reader can never bypass, the role itself of the reader is perpetually spelled out beforehand; and if the reader ever hopes to come forth with a new reading, he or she must, as an essential

preliminary, read off the reading lesson already at work in the work in hand.³⁵

The representation of the expectation of a reflection in the painting lays down a path for the viewer to consider. The inclusion of the need for a selection on whether to take this path or not is so absorbing that it establishes a second level of representation or a second level of potential second-order observation. Namely, if the first level is the painting, the second level is the representation within the frame of the mirror, the other side of the painting (that of the demiurge), or the same side of the mirror (that of the viewer). Schematically, Figure 1 gives way to Figure 3: the observer no longer stands in the antechamber 0 looking at chamber 1, as the case would have been without the inclusion of a surface where second-order observation could be reflected back, but she has already proceeded to chamber 1, looking at 2. The observer is no longer outside the painting but incorporated in the painting. The demiurge, by enticing the observer into chamber 1, places her before the ultimate binarism of the *mise en abyme*: the observer is obliged to consider the path already indicated by the demiurge, and face the dilemma whether to accept the play of expectations or ignore it. The point of evolution for the system has arrived: regardless of the answer, the observer is already in the system because she is asking herself the question ‘who do I see/who do I expect to see?’ For *as soon as the question arises, the operation will performe belong to the system*.

By inserting the binarism *obligato*, the demiurge demands the viewer to perform an act of observation. As mentioned earlier, observation is the operation of a distinction, and a distinction is precisely what the mirror invites. The operation, however, does not need to be completed: the yes/no

FIGURE 3



bifurcation the viewer faces when perceiving the mirror is the *abyrne* of the unanswered question. Regardless of the outcome, the system will evolve, for the simple reason that the binarism has been projected onto itself. In this way, a second level of binarism has been created, taking the act of perception up one level. The new dualism is another turn in the helix of art's autopoiesis, another twist in the story of Beauty, which explains how the painting manages to reproduce itself autopoietically.

The advancement of art's bifurcations ensures that art can operate as a social system, remaining at the same time within the realm of the 'traditionally incommunicable'. Even, however, within the security that the certainty of eventual communicability proffers, art is still expected to strive, this time to avoid the 'traditionally communicable'. An indicative example of art's need for non-habitual means of communication would be the exclusion of utterance from artistic communication.³⁶ Its communicative abilities defy logocentricity and use a different means of putting meaning across, which is not verbal but 'internal', endosystemic, and based solely on perception.

Artistic communication distinguishes itself both from communication that relies exclusively on language and from indirect communications that are either analogous to language or unable to secure the autopoiesis of communication ... Artistic communication, by contrast, employs perceptions that it prepares exclusively for its own use.³⁷

Lack of language, however, does not mean incommunicability. It is precisely this linguistic absence that lends art its ability to communicate, albeit not 'traditionally': 'In avoiding and circumventing language, art nonetheless establishes a structural coupling between the systems of consciousness and communication'.³⁸ Art's communicability manages to surpass the traditional limitations between communication and perception, and links the social system (art) with the psychic system (demiurge/human observer) in a subaquatic manner, which, however, remains happily immured into each system's boundaries.

The use of language has interesting similarities with the use of the mirror in its limited appeal for art: although the depiction or inclusion of a mirror may be effective in its playfulness, it is also well rehearsed and, in effect, banal. The use of mirror in art, just like language, is old, and although it may help art evolve, it has its limitations.³⁹ Indeed, art requires the new, the surprising, the beauty of the twist – autopoietic or otherwise. '[T]he work of art is created for the sake of astonishment',⁴⁰ and this is exactly what Lucian Freud's self-portrait cunningly provides: the painter positions the viewer before the binarism of the mirror and expects her to observe it; he guides the viewer's expectations, he offers her chambers and antechambers, he creates a

space populated by horror vacui, where the echo of the *abyme* thunderously reverberates. And right there he abandons the viewer: when faced by the outcome of the selection of the observer, instead of being interested in following the destiny of his playful guidance, Lucian Freud provides the final twist: he shuts his eyes before it, he defies the outcome of the selection just as he defies the act of observation. Indeed, the mirror in the painting reflects the demiurge with his eyes shut. The only thing that counts is the question, the positioning, in order to operate the distinction. After this, the system will evolve. After this, it is easy. The difficulty lies in creating the conditions for the need for selection, in organising an open closure where the values of the binary code will circulate freely between themselves, interchangeably and atonally. After this, the demiurge can rest, because she can be sure that, once before the *abyme*, the viewer will not be able to avert his glance but will have to perform the act of observation. To quote from Derrida's *Signéponge/Signsponge* again,

whence this feeling of vital engagement and of flippancy, as of someone who knows at once how to be here and how to be disengaged, who knows that he is disengaged. Whence this immitable intonation, serious and light at the same time, of a 'take it or leave it', all and nothing, everything said and done.⁴¹

With the creation of this space of guided and misguided perceptions, the demiurge constructs a tongue-in-cheek funfair of bemused directionalities, where the open and the closed co-exist. The demiurge appears as a benign pornographer of perceptions who uses and abuses them by constructing and reversing them at the same time. The demiurge can keep his eyes shut before the *abyme*, because, if I can appropriate the expression, his remain *Wide Shut* throughout.⁴² He constructs the space of closure (the mirror – the space of the need for selection – the point of self-awareness) by including volumes of openness (the shut eyes – the outcome of the viewer's selection – the viewer's liberation from divine directionality).⁴³

The play with perceptions is arguably the main process of art's autopoietic becoming:

Art communicates by using perceptions contrary to their primary purpose ... Art seeks a different kind of relationship between perception and communication – one that is irritating and defies normality – *and just this is communicated*.⁴⁴

Historically, art has always evolved by defying the expectations laid on her, and the most effective way of achieving this has been by thrusting and

retrieving perceptions interchangeably and unexpectedly. Ever since Plato, the desire for art demanded of art a homology between the inside and the outside – the essence of mimesis. Art, however, could not tolerate this homology. It would be an infallible recipe for stagnation. Hence art’s peripatetic evolution from the literal to the figural, to the abstract, and now to the confines of hyperreality.⁴⁵ Ironic subversions, irreverent crossovers of reality and guiltless self-ridicule are both what and how art contributes to our understanding of the world. To recall Paul Ziff, ‘look at a Mondrian, then look at the world as though it were a Mondrian’. Art’s defiance of expectations demolishes normality in the sense of continuum, familiarity and linearity, and replaces it with a restless surprise, the surprise projected onto the surprise.

Art uses expectations only to erect its becoming on their capsizing. The demiurge directs the public’s expectations as much as he is directed by what he expects them to expect. The paradoxical circularity is obvious:

The artist must observe his emerging work in anticipation of its observation by others. There is no way of knowing how others (which others?) will receive the work through their consciousness. But he will incorporate into the work ways of directing the expectations of others, and he will make an effort to surprise them.⁴⁶

This shot in the dark the artist performs when trying to direct the expectations of the audience through his artwork is indicative of the system’s heightened isolation. The use of imagined perception – in view of lack of opportunity for perception – presupposes the creation of a hall of mirrors where everything has to be constructed: the art, the other, the expectation the demiurge has of his work and of the public, and the expectations the public has of the demiurge’s work. The mirrors reflect all these intersecting perceptions as produced by and within the diffused observation of the demiurge. The game is internal and stands no chance of escaping the walls of the room. Indeed, the game does not address the external observer but the observer as constructed by the imagined perception of the demiurge, who, in his turn, is also an observer. The stereometric mirroring of expectations ensures the lack of directionality of the constructed expectations, since everything ends up at its source (the demiurge) only to be reversed (the surprise). The teleology of the art system is reduced to a flickering cluster of expectations angularly batting on the reflecting surfaces of self-constituted mirrors.

The idea that art lacks teleology is not novel. When Luhmann offers his usual mechanism of second-order observation as an explanatory basis for art’s lack of teleology, he builds on an already well-established theoretical debate.⁴⁷ A second-order observer, according to Luhmann, ‘is not interested in the materiality, the motives, expectations, or utterances of these [first-

order] observers, but strictly and exclusively in their use of distinction'.⁴⁸ The pronounced emphasis on *how* rather than *what* the others observe is what renders art anti-intentional and procedural, in the sense that it reinstates art's autopoietic tools of being and becoming as the only possible avenues of communication. In autopoiesis, any final purpose is consumed in the absolute point of present time. A system's purpose is only its autopoiesis. Anything beyond that can only be brought forth by second-order observation. For the system, there are only processes for the sake of processes, which miraculously but inconceivably build up the whole system. Autopoietic proceduralisation echoes Monroe Beardsley's theory of anti-intentionalism. The author comes up with the hypothetical example of a sculpture whose sculptor says it symbolises Human Destiny:

It is a large, twisted, cruller-shaped object of polished teak, mounted at an oblique angle to the floor. We look at it, and see in it no such symbolic meaning, even after we have the hint. Should we say that we have simply missed the symbolism, but that it must be there, since what a statue symbolizes is precisely what its maker makes it symbolize?⁴⁹

He continues by condemning the latter attitude as 'the wildest absurdity: anyone can make anything symbolize anything just by saying it does, for another sculptor could copy the same object and label it *Spirit of Palm Beach, 1938*'. And, if I may add, anyone can make anything symbolise anything just by reading about it in the catalogue, or listening to one's friends talking about it. Putting signifier and signified together has always been the academy's favourite pastime, an exercise in abstract crossword-solving of the intellectually mighty and daring. The freedom of interpretation of the observer, however, is only analogous to the demiurge's freedom in her capacity as an observer. Going back to Figure 1, whatever the perceptual meaning of the arrow going from the demiurge to the artwork may be, the arrow bridging the distance between the observer and the artwork has the right to be different. As Barthes writes, '[t]he Text is plural: this does not mean just that it has several meanings, but rather that it achieves plurality of meaning, an irreducible plurality.'⁵⁰ For the observer, the demiurge might as well have been dead. By accepting and often encouraging the rupture of the link between the demiurge and recipient, art multiplies her systemic surprises: expectations are not only betrayed when trying to guess what your audience may want to hear, or what the author may have wanted to express, but also when trying to understand how other people understand the same art piece.

Does this mean that one should opt for one's own personal interpretation? Well, yes and no. According to Susan Sontag's famous essay 'Against Interpretation', 'interpretation amounts to the philistine refusal to leave the

work of art alone'.⁵¹ Her argument is supported by a reference to a superficial but oft-quoted psychoanalytical interpretation of a scene from Ingmar Bergman's film *The Silence*, where a tank rumbles down an empty night street, as a depiction of the phallus. Sontag bluntly dismisses this interpretation: '[t]hose who reach for a Freudian interpretation of the tank are only expressing their lack of response to what is there on the screen' – admittedly, one of the most significant scenes in the film, both dramatically and technically. Appreciation of an artwork should be a reading of plurality rather than a quest for oneness. Interestingly, plurality does not come at odds with the operation of a distinction. It is through the basal distinction between content and form that art evolves and plurality is achieved. To quote Susan Sontag once again, '[w]hat is needed is more attention to form in art. If excessive stress on *content* provokes the arrogance of interpretation, more extended and more thorough descriptions of form would silence'.⁵²

If the beauty of Beauty lies in its form rather than its content, how are we to distinguish between them? According to Luhmann, the distinction between form and content – or *medium*, as Luhmann calls the 'content' to resonate the generic distinction he proposes elsewhere in the context of general social systems⁵³ – is a strictly internal distinction of the art system, which only serves the autopoiesis of the system. The concept of medium refers to elements such as words, musical tones and so on,⁵⁴ whereas form is – what else? – the operation of a distinction between the system and the environment, or, quoting Spencer Brown, between marked and unmarked space. To return to Lucian Freud's painting, medium would be the canvas, the paint, the depiction of the mirror, even the composition of the painting, whereas form would be what distinguishes the above from anything that anyone sees in one's bathroom every morning. The distinction of a form can only be witnessed on the basis of the materiality of the medium, and only as a result of a coupling between form and medium: '[t]he forms that emerge from the tight coupling of a medium's possibilities distinguish themselves (their inside) from the remaining possibilities contained in the medium (their outside)'.⁵⁵ By instituting part of the medium as the 'inside' and part of it as 'outside', Luhmann repeats the usual binarism of system/environment, whereby 'inside' is the actual coupling between medium and form, and 'outside' any potential coupling. Thus, form selects the medium to be baptised by the system as art, over everything else that lies in the environment of the art system. In this sense, medium can be understood as the environment of the art system, which, when coupled with form, constitutes the system itself. Indeed, it is the form that makes the medium what it is for art: 'the medium can be observed only as forms, never as such'.⁵⁶ The medium seems to be the amorphous contingent mass that comes forth for the observer only within the incisive distinction of a form.

Thus, a form, being a distinction, refers to the selection between two halves, the marked and the unmarked space. A form that selects a medium and ‘elevates’ it to artistic expression, does so on the basis of selection. It is remarkable, therefore, that elsewhere Luhmann has described form as having another side too: form, according to Luhmann, is also the before-the-distinction co-existence of the sides of a binarism.⁵⁷ In other words, form includes both marked and unmarked space in one inoperable, pre-Edenic unity – ‘inoperable’ because the system cannot operate with unities, only with distinctions. But forms are permeable and the boundaries between the values are contingently porous. The system can pass from one side to the other simply by selecting. In Luhmann’s words,

[t]o pass from the one (indicated) side to the other, we need to perform an operation . . . We must cross the boundary separating the two sides and constituting the form. To this extent the respective other side exists both simultaneously and non-simultaneously. It is simultaneous as a constitutive element of the form. It is non-simultaneous to the extent that in the operative utilization of the form (we refer to it as ‘observation’) it cannot be used simultaneously.⁵⁸

Thus, an operable form is a form that has materialised a selection – *any* selection. Since selections can only take place through observation, the operable utilisation of the form is precisely the process of systemic observation. The apparent contradiction between form as unity and form as distinction is justified by Luhmann on the basis of the peculiarity of the art system. Form *with regard to* medium is the operation of selection. Form *as such* is the difference that marks any unity, the contingency of selection, the actuality of the selected *and* the potentiality of the non-selected. Luhmann quotes Kandinsky on this:

[f]orm in the narrow sense, is nothing more than the boundary against another form. This is its external indication. But since everything external contains something absolutely external (which manifests itself more or less strongly), *each form also has an inner content. Form is the externalization of this inner content.*⁵⁹

Form in art combines the internal possibility of coupling with the medium, and the external contingency of (another) form: ‘the distinction between medium and form is itself a form, a form with two sides, one of which – the side of the form – contains itself’.⁶⁰ As a result, the value ‘non-art’ in the determining binarism ‘art/non-art’ of the art system includes not only what is not considered art aesthetically, but also what is not considered art by the art

system itself. To compare it to the lawful/unlawful schematism, while both non-art and unlawful belong to their respective systems, non-art includes also the environment of the art system ('anything can be art these days!'). The unlawful, as opposed to 'non-art', does not constitute a gate for the environment of the system to enter the system. What cannot qualify as relevant to the question 'is it lawful or unlawful?', simply remains outside the system until the system decides to select it (as it may be the case with global or cybernetic considerations in law). In art, on the other hand, 'non-art' is both within the system and outside, as the non-depletable potentiality. It is more plausible to ask whether a urinal is art or non-art, than whether it is lawful or unlawful.

The peculiarity of the art system and its inclusive environmental quality encourages me to advance the Luhmannian definition of form and combine it with the notion of expectations in order to suggest yet another solution to art's paradoxical combination of contented self-reference and communicability. I have already mentioned that the expectations of the demiurge and the receiving public may or may not coincide. Even in the case of coincidence, however, there can be no *überarbiter* who can assess, confirm and communicate this to the systems.⁶¹ The building of expectations between systems is a nebulous affair. Luhmann uses the following metaphor:

[t]wo black boxes by whatever accident, come to have dealings with one another. Each determines its own behaviour by complex self-referential operations within its own boundaries . . . Therefore, however many efforts they exert and however much time they spend (they themselves are always faster!), the black boxes remain opaque to one another.⁶²

Assumption of expectations (that is, expectations of expectations) is the mechanism available to systems to counteract the threat of incommunicability: '[t]hrough their mere assuming they create certainty about reality, because this assuming leads to assuming the alter-ego's assuming'.⁶³ Still, illusions of communication persist. It is precisely these illusions that I would like to endow with the definitional characteristics of a form. I suggest that form in art externalises its internal side by intentionally linking it to the outside. When the demiurge constructs a work of art, she fixes a space, which she populates with the anticipation of the observer's expectations. This process can only be internal, and any planning, intention or purpose on behalf of the demiurge remains exactly this: of the demiurge. In so doing, the demiurge projects a whole form ('my expectations and your expectations') outside, into the environment of the system, into the medium. Through a coupling between the form and the medium, the 'other' side of the form – that

of unity – materialises, only to be potentially transgressed by the observer and his expectations.⁶⁴ Interestingly, the more internal boundaries there are in this intentionality (internal boundaries being themselves forms), the easier it is for the conflation of expectations to be assumed. A configuration of the above can be found in the work of the octogenarian pioneer of American choreography, Merce Cunningham. Cunningham is known for his belief that the arts of music, settings design and choreography are simply forms that happen to co-exist in the same space at a specific moment. The combination of forms (the operation of distinctions) of all possible kinds, for example, choice of music, of movement, of positioning, of focus on the set, and so on, produces an abstract whole, where contingent (however ‘directed’ they may be) confluences of the three forms momentarily allow the public to peer through slots of moving emotionality and personal identification, either with the public’s own evoked memory of forms, or along the lines of the imagined perception of the demiurge. The whole process is contingent: these confluences oscillate from the emotionality of the abstract to the sentimentality of the private, and may *en route* pass through the directed (by the demiurge) identification. What is more, the observer is never confined by the expectations of the expectations of the demiurge, but delights in the possibility of surprise, amply provided by art and intentionally defined as the crossing of the boundaries of forms. However rare, such moments of ‘identification’ (on behalf of the audience), or ‘success’ (on behalf of the demiurge), reveal the intentional behaviour of form in the sense of unity of expectations. However dramatic such a conflation may be, the point remains that it can only be seen from one point of view at a time (the demiurge’s, the public’s, or the second-order observer’s) and never in its total manifestation.

In other words, through the contingent or ‘planned’ convergence of forms as performed by the demiurge, emotional responses arise that confirm the possibility of the illusion of correspondence between the two streams of expectations – those of the demiurge and those of the public. In this way, *form embodies the intentional illusion of communication*: the echo of an emotional response – private or otherwise conventionally collective, such as clapping – is heard within the orchestration of forms in question. Form, in the sense of intentional unity, blooms trapped in a game of inexchangeable expectations – inexchangeable because even if not contingent but ‘directed’ by the demiurge, the convergence of forms as performed by the demiurge and following the perceived expectations that the demiurge believes the public has, will never be certain to reach and conflate with the stream of expectations of the individual observer, precisely because of the isolation between perception and communication. Thus, form is not just the operation of a distinction, nor just the unity of any distinction, but the contemporaneous convergence of meteoric distinctions, an atonal ensemble of vertiginous

transversings and cancellations, which tears the horizon of probabilities into numerous reconstituted stitches, and belies the omnipresence of boundaries, not by ignoring them or inertising them, but in effect and because of the temporal compression, by corrupting them and by rendering them porous and permeable. Under these conditions of illusionary universality, of impressional unity as opposed to binarisms, of productive corruption as opposed to productive distinction, the concept of form remains perforce undefined, for it encompasses the universe while stopping short before *its* limits – whether these are the limits of the form or the universe.

IV

It is time to perform a reversal. In this section the legal Beast turns to Beauty, looks at her and perhaps learns from her. The comparison, however, can only take place within autopoiesis, for both epistemological and pragmatic reasons: by choosing to use autopoietic tools of criticism and comparison, the subsequent analysis stands a chance of being understood by the systems. An immanent analysis which builds upon and follows the only mode of contact between systems – that of observation – can facilitate law to discover the structural correspondences between itself and art – but not vice versa! The thrust of this article is to suggest alternative ways of interpreting law (in autopoietic idiom, new observational avenues for law to be able to evolve and develop lateral self-observation mannerisms), rather than to encourage Beauty to ‘understand’ systemically the positivist qualities of law. Should Beauty be asked to observe anything else apart from her reflection in the mirror, and especially the Beast, a pragmatic *faux pas* would be committed: what would be the point of such an operation? It would be as ludicrous a suggestion as to encourage somebody to read Luhmann’s treatise on love in order for them to learn how to fall in love!⁶⁵

However autonomous and closed systems may be, their manifestations are inevitably mitigated by the selectional disposition of the observer, be this a psychic or a social system. On the level of the second-order observation, when the observer attempts to compare two systems, she should be looking at the way the systems describe themselves. Autopoiesis purports to do exactly this. Thus, by looking at how Luhmann describes these systems, one comes as close to systemic self-description as possible. These (self-)descriptions will be presented here in conjunction with other descriptions, since, as it has been explained, it makes little sense to attempt to separate the two.⁶⁶ As far as the Luhmannian descriptions are concerned, it becomes obvious very quickly that there is a remarkable disparity of ‘austerity’, considering that a system is a system: perhaps unsurprisingly, the description of the art system is yielding, flexible, with less emphasis on the boundaries and more on the

acts of crossing the boundaries, both in the sense of link between communication and perception, and in the manner of transgressionality of form. Law, on the other hand, is typically described as unyielding, internally cumbersome and resistant to change.⁶⁷ Whereas such description reveals a desire for objectivity in that it marks itself as self-description, it remains unambitious and unadventurous, since it plays along the existing descriptions of the supposed legal self-description.⁶⁸ Thus, in view of the indissociability between description and self-description, I attempt here a criticism of both autopoeitic and other descriptions of the legal system, through a comparison to the art system. An adventurous opportunity is therefore presented for the legal system to look through its own procedural mechanisms, observe the similarly analysed yet substantially more flexible system of art, and consider the possibility of structurally coupling with it.

Before I proceed to the comparison of the two systems, let me recapitulate the qualities that, according to the analysis so far, describe the art system. First, the art system is autopoeitic, because it produces its elements and its processes, and happily narcissistic within its self-contemplation: and why should it not, since art's negation embraces the world?⁶⁹ Further, art is non-teleological. Its only trace of teleology would be endosystemic. To quote from Oscar Wilde's famous conversation piece, *The Decay of Lying*, 'Art never expresses anything but itself. It has an independent life, just as Thought has, and develops purely on its own lines'.⁷⁰ Art is unaddressable in its lack of directionality. Expectations are always and necessarily blind, whether they come from the demiurge or the public. Still, non-directionality does not impede art from evolving, albeit through closed circuits of observation and perception. Further, although art does have a binary code – a guarantee for the existence of the system – its values are inclusive and ambiguous. 'Connotations, rather than denotations, mediate [art]'s meaning'.⁷¹ It is the uncertainty of perception and imagined perception that demotes expectations to a bridge of inexchangeability and astonishment. What is more, art is resistant to interpretation, without however shedding its inherent plurality. Finally, art is incommunicable; it does not employ the usual communication mechanism to transfer meaning, yet it fills the gap between consciousness and communication by circumventing language and by upsetting expectations through surprise.

Law has also been described as autopoeitic. However, whereas Beauty seems to be content in her autopoeitic description and to evolve effortlessly through her own manifestations ('art for art' as it were), the Beast of law seems to be *trying* to evolve, and any allusion made by autopoiesis to the futility of the task is considered an affront. Law, for the critics of autopoiesis, finds itself in a perpetual *stage of*, trapped within its functional directionality, purposiveness and communicability. As a result of this, law is not described

as sufficiently *relaxed*, and is not allowed to learn how to float nonchalantly in the future that can never begin.⁷² On the other hand, law is not at ease within its self-referentiality, and its autopoietic self-description is criticised and varyingly misinterpreted on such grounds as lack of human agent, systemic closure and isolation from other systems, universality of systemic values, uniqueness of source of legal norms (which is the system itself), ostracism of alterity, and so on.⁷³ Hence, in the remaining part of the article, and in the light of structural observation between the legal and the art system, I attempt a reversal of some traditional misdescriptions of law's qualities. This reversal is not confined to the ones habitually appearing as a criticism of autopoiesis (descriptions), but also the ones within autopoiesis (self-descriptions).

To begin with, whereas art is not purposive, the legal system is habitually described as such. As Christodoulidis writes,

[t]he law provides a constancy peculiar to it alone. This is due to the function law has in society of stabilising expectations, of controlling normativity, of guaranteeing that its expectations will not be discredited if disappointed, that Alter is bound by the legal norm and will bear the consequences if she defies it.⁷⁴

The achievement of social justice – law's perceived purpose – is an open invitation to value judgements on the defining qualities of justice. 'Just' or 'equitable' demand thresholds. Ethical descriptions of the legal system grant the system an entrapping teleology. The division between ethics and law is accepted in autopoiesis as a result of structural closure of the system, and for that matter it is considered neither good nor bad.⁷⁵ What may be unfortunate, however, is the fact that law, in view of its incapacity to comprehend genuine moral considerations, is at risk of adopting and perpetuating a mendacious morality, anti-subjective and universally aspiring, which, in essence is produced for the sole purpose of justifying political corruption. The Baudrillardian proclamation that Watergate generated a scandal in order to re-establish a moral principle at risk, namely the existing political status as represented by capital, is directly relevant here. Watergate, according to Baudrillard, was nothing more than 'an effect of the imaginary concealing that reality no more exists outside than inside the limits of the artificial perimeter'.⁷⁶ By succumbing to the urge of the pseudo-morality propagated by the media, the legal system, like the political system, theorises an exogenous aim, which alleviates the claustrophobia of autopoiesis and offers the illusion of free circulation between systems. The division between moral and legal considerations should not be read as an anathema to the critical attempts to introduce moral considerations into

the legal system.⁷⁷ If law becomes flexible enough to accommodate a morality peculiar to the legal system, without at the same time becoming an omniana of pseudo-morality, all is well. Until then though, there is a need to understand that much of what seems to approximate law in the guise of ethical considerations is disruptive to the legal system and supportive of some political reality which can feel its foundations shaking. Since law cannot generate its own moral reality – since it cannot be moral – it may as well be amoral, for every other approximation of morality will be allopoietically produced, never properly integrated, an omnipresent obstacle to the system's full, self-relying evolution, and a digression towards a kind of well-covered immorality.⁷⁸

The misconceptions of the legal system, however, are not limited to its purposiveness. Another important issue is that of the addressability of law, which seems incomprehensible when compared to the unaddressability of the art system. According to Luhmann, the legal system operates with a complex net of expectations, both cognitive and normative.⁷⁹ The former include and innately deal with disappointment (the system learns), whereas the latter are fixed and any discrepancy will be held against the person who betrays them. In the legal system, expectations are selected and checked for consistency through a reliance on the factuality of each expectation. Luhmann calls this 'double selectivity',⁸⁰ namely the build up of a selection out of the horizon of probabilities, reciprocally agreed between the sender and the receiver, where the receiver's selection relies on the factuality of the selection of the sender. The use the art system makes of expectations is different: there is hardly any opportunity for a reliable double selectivity. Indeed, the inherent uncertainty of double selectivity is not only accepted, but also elevated to a constitutive quality of the art system in the form of *surprise*. Uncertainty of double selectivity, in the manner of the two black boxes, does not mean that the art system is not functioning properly, hence the need for a change: quite the opposite! It is *because* surprises are integrated in the system that the system operates healthily and its evolution is agreeably circular yet singular, in the sense of evolutionary twists. Law, on the other hand, relies excessively on the inclusion of non-fulfilment into expectations, thereby downgrading surprises to disappointment. Law feels that it must exclude singularity in the form of surprises because singularity cannot be law – or, at least, law the way it is habitually described:

The singularity of a command which is irreplaceable each time – its rarity – prevents it from becoming law. Or rather, if you prefer, it is a law that is immediately transgressed (let us say more precisely, *freed up*) . . . The transgression that enfranchizes and frees up will be the law of repetition in abyss.⁸¹

The reason for which singularity is prevented from becoming law is because of law's marginalisation of surprises. Acceptance of surprise by law presupposes the realisation that even infinitely repeated actions are essentially a series of singularities thrown into the abyss, or the repetition *ad infinitum* but every time as 'once'. Only through the acknowledgment of singularity can law transgress itself and be freed of (mis)descriptions. However, exclusion of surprises is the way the system has for the minimisation of uncertainty. Consideration of singularity entails questioning of suitability of existing norms for the particular case. The potential the legal system has to accommodate singularity is further limited by the system's addressability. The fact that the system addresses and maintains, first, the state as the positivist source of legislation, and second, a white, European or North American, middle-class, heterosexual male as the addressee of the legislation is because of the misdescription of the system by the addressees of the system themselves, who also happen to be involved in the supposed *initio* of the system. In other words, the apparent second-order observers are simultaneously senders and receivers of a gyrating illusion: that they are representative of a level of objectivity fit for the legal system, where in fact they may just be confusing their first and second-order stati.

Another difference between art and law can be found in their dealings with their binary codes. As said, the question of definition of art includes the non-art – the negation of the art system – in itself. As Luhmann mentions, 'the art system has definitely arrived at a new level of self-description, a level characterized by the introduction of self-negation into the system',⁸² which occurs by means of the Luhmannian definition of form as the distinction yet unity. But self-negation is only possible 'when the system . . . disposes over a memory and projects a future – if only in the empty formula of "I have no idea how to go on"'.⁸³ While art is allowed to project its uncertainty by virtue of surprises that may arise from the incorporation of the environment in the art system, law describes itself with far greater solemnity. The obvious difference is that 'non-art' is not equivalent to 'unlawful', but encompasses everything else that may not belong to the system as such (its environment). Law's method of safeguarding its space is the strictness of its code. The question whether a notion is lawful or unlawful arises only with regard to the already existing self-description of the system – the memory of the system – which complies with a narrow idea of both provenance and ambit of legal authority.⁸⁴ While cognitively open, the legal system disposes a much stricter mechanism for the thematisation of its cognitive domain.⁸⁵ The selectivity of the legal system, while potentially exercisable on the whole horizon of the system, in practice it is limited to a relatively concrete and cumbersome space, which graphically can be imagined as the space immediately surrounding the legal system. On such a space, the legal code is projected.

Thus, surprises are minimised because the memory of the system takes priority over the cognitive experimentation that a potential inclusion of the 'uncharted' environment may entail.⁸⁶ Law's operations are smoother when noise has been previously masticated into potential order. The remaining environment, although potentially selectable by the system, is generally excluded from the system; consequently, valuable cognitive opportunities are marginalised.⁸⁷ Such division of the legal environment has led, on the one hand, Luhmann to dismiss interdisciplinarity as irrelevant,⁸⁸ and on the other, critics of autopoiesis to reject autopoiesis as self-indulgent and conservative.⁸⁹ The principal outcome, however, of an 'unbiased' self-description is that there is nothing particularly commendable or repugnant in being self-referential. It is quite simply an autopoietic assertion that can be 'opened', modified or enhanced according to the description to which the system submits itself.

Another way of putting the above is from the point of view of art's reproductive qualities. Here, reproduction should be understood as an internal version of Baudrillardian *simulation*, namely the selection of the incubated systemic environment by the system itself, as the system's only avenue of materialising its systemic 'reality'. Simulation is more than just representation. In Baudrillard's words, representation presupposes the existence of the real: '[r]epresentation stems from the principle of the equivalence of the sign and of the real (even if this equivalence is utopian, it is a fundamental axiom)'.⁹⁰ Representation in art is the first-order reproduction of the real (in autopoietic terms, art's acknowledgement of its selectable environment by means of its possibility for tautology between itself and the environment). Representation is materialised by the actualisation of the potentiality of selecting the environment (art potentially encompasses the horizon). Simulation, on the other hand, is a second-order operation of the art system that does not begin from the real (the environment), but the sign itself (the system). According to Baudrillard, simulation 'stems from the radical negation of the sign as value, from the sign as the reversion and death sentence of every reference'.⁹¹ Simulation reproduces, not the environment of the system (the medium), but the understanding the art system has for its medium (the environment) through its potential total inclusion. From there, it elevates the medium to what the art system consists of: the coupling of the medium with the form. To say that the painting represents the landscape is a simplified version of the succession of representation by simulation: art selects from its environment (representation), and reproduces it as art (simulation).⁹² In representation, only the medium has a role. Representation is not yet art. For art to come about, the medium needs to be reproduced by the system as of the system. This can only come with the deployment of form. This is simulation. From the demiurge's point of view, this can be formulated

as follows: the demiurge represents her perceptions (the medium), while the art piece simulates the representation of perceptions by coupling them with form.

When simulation is projected outside – indeed when art actualises its communicability by becoming the matter of perception by observers other than the demiurge – the third manifestation of form (the illusion of communication) comes into play. The combination of selections with the demiurgical intention to communicate, and the possibility of boundary crossings on behalf of the receivers, constructs the echo of second-order observation within the art system. This is arguably the glory of art: its self-reflection includes itself. The art piece contains the other side of the mirror: that of the receiver of art. Art cannot evolve outside communication, yet it does not operate with communications. It, therefore, needs to simulate, not only its representation of the medium, but also the perceptions of the receivers of art. The system itself encompasses the way it is perceived by its viewer/reader/listener, which couples with the way art constructs itself. Pictorially, the art piece is the membrane between the two simulations: the represented medium on behalf of the demiurge on one side, and the perceived representation of the simulation on behalf of the audience on the other (which, in its turn, is also a simulation). Through the projection of simulation, art constructs an autochthonous second-order observer – its own idol, its own self-description, thus itself, yet different – who is vested with the ability to perceive the perpetual mirroring of her figure on oppositely positioned mirrors. This is the operation of the third manifestation of form, as the illusion of communication between the two sides. These two sides constitute the art system the way it appears today: a playful chase of expectations, where both sides mirror the same thing at the same time – themselves.

The communicative paradox of the art system challenges the system into inventing ways of communication outside the traditional systemic communications. Unsurprisingly, such inventiveness cannot be found in the legal system. The communicative ability of law through the operation of communication renders any other avenue superfluous. Simulation in law is limited to legal interpretation: when the judge interprets the law, she simulates an internalised representation. This is directly internalised by other systems as normative expectations through the readily available ‘connecting’ avenue of structural coupling. For law, as opposed to art, structural coupling enables the relevant communications to be systemically internalised and therefore understood by individual systems. The intentionality of the art system – in other words, the attempt of the system to include the receiver within itself in the form described above – is not an issue in law. According to Luhmann, any intentionality in the process of legal interpretation – what Luhmann calls ‘external reference’,⁹³ which refers to the effects a court

decision may have on the legal environment – should be minimised in favour of *internal* reference, which concentrates on the effects on future legal decisions. In this way, law retains its closure and its ability to deliver certainty: meddling with other systemic codes and attempting to thematise the environment may entail risks for law's internal consistency. While art's peculiar mitosis offers to the system its sense of irony and self-ridicule, which opens up art's systemic limits and accommodates uncertainty and plurality in the concept of form as the illusion of communication, law understands form only in the sense of a permeable distinction between lawful and unlawful, which means that law continues to describe itself relying on the certainty with which the production of normative expectations armours the system. By not attempting to link intentionally with its receivers (that is, by prioritising internal over external reference), the legal system misses the cognitive opportunity of the introduction of its environment (in the form of the simulated second-order observer as the recipient) into the system itself.⁹⁴ For, however illusionary the illusion of artistic communication may be, it is less mendacious than the undisclosed illusion of legal communication: while the former admits to itself the intentional simulation of its environment within the system because of the impossibility of communication, the latter dismisses such link with its environment because it self-deceivingly relies on what it considers effective communication.

In this sense, the process of communication *per se* contributes to the exclusion of the simulated introduction of the environment into the system. While art is not language-bound (in the sense that, with the exception of literature, verbalisation as a communicative avenue is not employed, arguably out of inconvenience rather than choice), law's reliance on utterance excludes the unuttering or unspeakable Other – both in their role as utterer and as the predicate of utterance. While the legal focus on language is understandable in view of the legal reliance on communication, it is not understandable why Luhmann should insist on founding communication on linguistic modes of expression. As mentioned earlier, generic communication (the kind on which the legal system relies) is distinct from artistic communication because of their differentiated emphases on language.⁹⁵ Admittedly, Luhmann allows utterance to occur outside language, through other forms of social communication such as staring, dressing, signs, gestures and so on – what he calls 'indirect' communication.⁹⁶ However, all these forms presuppose language in the role of the other side of the binarism: indirect communication is meaningful only as language replacement. Otherwise, it cannot operate autopoietically; it is effectively excommunicated. When King expurgates Luhmann from structuralism by mentioning that communication for Luhmann is not produced by language, he only manages to save him from the strict Saussurian structuralism, not from the

necessity of verbalisable processes, namely events that can be expressed through language even though it is occasionally chosen that they will not be expressed thus.⁹⁷ The glorification of verbal communication as the only route available to law, not only deprives law of other, as yet undescribed various shoots of cognitive openness, but also excludes the Other who cannot or does not desire to participate in the self-imposed linguistic closure of the system. Goodrich refers to a case involving the Haida Indians in the Queen Charlotte Islands, who chose to support their claims to their native land through full ceremonial dresses and masks, no lawyers, but armoured with tellurian mythologies that, for them, demonstrated beyond any doubt their ancestral claim to the land. Expectedly, the court decided that their claims were not legally relevant: it refused to accept a mythology, expressed in unutterable symbols, that seemed to clash with its own, logocentric system. Goodrich suggests that the court refused to compare mythologies because that would raise questions of what it is that the court represents.⁹⁸ This would involve a self-description of the system, which would be able to accommodate not only non-verbalised claims, but also surprises, unaddressed expectations, circular perceptions and simulated observations. This can only amount to uncertainty, which the law as we know it – or as it knows itself – cannot accommodate.

V

Can Beauty become more beautiful? Impossible! Beauty encloses the beautiful, not as an absolute but as inwardly projected representation. Beauty evolves, changes, beams or keeps quiet, but remains always beautiful because it is she who baptises the beautiful and makes it meaningful. Has the Beast become more beautiful? Possibly: Beauty, in her Ophelian dance, sheds shards of mirrors on which the ones around her are invited to reflect. When following Beauty, the Beast decides to abandon his castle and soon gets hurt. Still, he manages to survive and is finally transformed into the happy prince, gallantly ready to provide for the happy end. Is he more beautiful? Well, he is closer to Beauty. The whole tale is a story of observation, approximation and finally convergence between the two heroes. However, the Beast will never become Beauty just as Beauty will never become the Beast – even in his bright new armour of the prince-in-love. The Beast can only become the prince, but in order to assume this new cloak, he has to meet Beauty. The teleology is immanent: the child knows that the Beast will eventually become a prince. The evolution of the Beast is within the Beast's limits (one must not forget that he has been an enchanted prince all along), but would not have materialised without Beauty. It is through Beauty's eyes that he sees himself the way he becomes and sheds the misdescriptions of the peasants. He no longer wants to be the feared authority, safe in his Kafkaian tower, acting as

the beast against whom everyone is united in solidarity with everyone else, content in their community of aggression. By following Beauty, the Beast betrays both the expectations others have of him and the ones he has of himself.

So, can law become more beautiful? The answer should come effortlessly and be a sonorous ‘no!’ Law is not art, and if beauty is a monopoly of art then this is exactly where it will stay. Law can only become more of itself, in a cadenza of structural predetermination devoid of any teleology or origin, betraying any misdescription – either by itself or by others – and by focusing on itself, its representation of its self-description, and its pliability in its newly acquired cloak of unaddressability. And law can rest assured that after this transformation it will still be able to construct expectations, regulate causalities, reproduce societal formations, and in effect change and advance our understanding of the world, just as art does, despite the fact that she has never had a castle and the only thing she knows how to do well is to look at herself in the mirror.

NOTES

The author is indebted to the participants in the Law and Cultural Studies II workshop, September 2000, Oñati, Spain, for their constructive comments during the workshop but also – and perhaps mainly – during the inspiring dinners and walks around town.

1. Luminous exceptions being planning law and some recent excursions into the interface by critical legal studies; see C. Douzinas and L. Nead (eds.), *Law and the Image: The Authority of Art and the Aesthetics of Law* (Chicago: University of Chicago Press, 1999).
2. This is an epistemological attempt to reconcile the Luhmannian illusion of the ability to speak for and through a system, with the ability of a second-order observer to draw links in the form of attributions (note 3), and also N. Luhmann, *Risk: A Sociological Theory*, trans. R. Barrett (New York: Aldine de Gruyter, 1993), 25–6.
3. N. Luhmann, *A Sociological Theory of Law*, trans. E. King and M. Albrow (Boston: Routledge & Kegan Paul, 1985); for a clear summary of Luhmann’s legal theory, see M. King and A. Schütz, ‘The Ambitious Modesty of Niklas Luhmann’, *Journal of Law and Society* 21/3 (1994), 261–87; for an expansion of Luhmann’s ideas, see G. Teubner’s work, more specifically, *Law as an Autopoietic System*, trans. A. Bankowska and R. Adler (Oxford: Blackwell, 1993). As a specimen of antilogos to autopoiesis, see J.F. Lyotard, *The Postmodern Condition: a Report on Knowledge*, trans. G. Bennington and B. Massumi (Manchester: Manchester University Press, 1984); R. Munch, ‘Autopoiesis by Definition’, *Cardozo Law Review* 13/5 (1992), 1463–71, and generally *Cardozo Law Review* 13/5 (1992); also A. Norrie (ed.), *Closure or Critique: New Directions in Legal Theory* (Edinburgh: Edinburgh University Press, 1993); A. Jacobson, ‘Autopoietic Law: The New Science of Niklas Luhmann’, *Michigan Law Review* 87 (1989), 1647–89; Z. Bankowski, ‘How does it Feel to be Alone? The Person in the Sight of Autopoiesis’, in D. Nelken (ed.), *Law as Communication* (Aldershot: Dartmouth, 1996); A. Beck, ‘Is Law an Autopoietic System?’, *Oxford Journal of Legal Studies* 14 (1994), 400–18; R. Cotterrell, *Law’s Community: Legal Theory in Sociological Perspective* (Oxford: Clarendon Press, 1995); counter arguments can be found in Luhmann (note 2); R. Weisberg, ‘Autopoiesis and Positivism’, *Cardozo Law Review* 13/5 (1992), 1721–9; M. King, ‘The Truth about Autopoiesis’, *Journal of Law and Society* 20/2 (1993), 218–36; M. King, ‘The Construction and Demolition of the Luhmann Heresy’, *Law and Critique* 12/1 (2001), 1–32; J. Paterson,

- 'Who is Zenon Bankowski Talking To? The Person in the Sight of Autopoiesis', in D. Nelken (ed.), *Law as Communication* (Aldershot: Dartmouth, 1996); W.T. Murphy, 'Modern Times: Niklas Luhmann on Law, Politics and Social Theory', *Modern Law Review* 47/2 (1984), 603–21; W.T. Murphy, 'Some Issues in the Relationship between Law and Autopoiesis', *Law and Critique* 5/2 (1994), 241–64.
4. See for example P. Alperon (ed.), *The Philosophy of the Visual Arts* (Oxford: Oxford University Press, 1992), esp. ch.1; also the classic E.H. Gombrich, *Art and Illusion*, Bollingen Series XXXV (New York: Pantheon Books 1960); for an attempt at a new theory of detachment, see V. Aldrich, *Philosophy of Art* (Englewood Cliffs, NJ: Prentice-Hall, 1963); for the postmodern dimension on the debate, see L. Appignanesi (ed.), *Postmodernism: ICA Documents* (London: Free Association Books, 1989), esp. M. Newman, 'Revising Modernism, Representing Postmodernism', 95–155.
 5. N. Luhmann, *Art as a Social System*, trans. E. Knodt (Stanford, CA: Stanford University Press, 2000).
 6. See note 3 for texts that deal with law's self-referentiality.
 7. E. Husserl, *Phantasie, Bildwusstsein, Erinnerung, 1898–1925*, edited by E. Marbach (HuA XXIII, 1980), as quoted in J.H. Mohanty, 'The Development of Husserl's Thought', in B. Smith and D. Woodruff Smith (eds.), *The Cambridge Companion to Husserl* (Cambridge: Cambridge University Press, 1995).
 8. H. Philipse, 'Transcendental Idealism', in Smith and Woodruff Smith (note 7). The projective theory of perception seems to have influenced Husserl's approach to consciousness in general; this becomes more obvious when one thinks of the Husserlian elaboration of the Kantian intentionality of consciousness, especially in E. Husserl, *Ideas Pertaining to a Pure Phenomenology and to a Phenomenological Philosophy*, I, trans. F. Kersten (The Hague: Martinus Nijhoff, 1983).
 9. Husserl (note 7).
 10. The term 'context' can be explained autopoietically as the systemic *cognitive domain*, or the immediate environment of the system from which the system draws irritations that contribute to its cognitive evolution, H. Maturana and F. Varela, *Autopoiesis and Cognition: the Realization of the Living* (Dordrecht, Holland: Reidel Publishing, 1972); the term 'horizon' can be understood as the total horizon of systemic probabilities, which coincides with the Husserlian horizon, N. Luhmann, *Social Systems*, trans. J. Bednarz Jr. (Stanford, CA: Stanford University Press, 1995). See also Luhmann (note 5), esp. ch.3 on time and space; and Luhmann, *Social Systems*, ch.8.
 11. Luhmann (note 5), 7, calls this form of perception 'intuition'. See also p.116 on the 'private' nature of intuition and the cut of the continuum of communication.
 12. Luhmann borrows the terminology and the foundations of his autopoietic theory from biology. According to Maturana and Varela (note 10), a system is autopoietic when its components produce themselves through their organisation as a network of processes of production. Essentially, in autopoietic systems, the reflexive qualities are not simply confined to the norms of operation but also to the constituent elements and their organisation.
 13. Luhmann (note 10), chs.3 and 4. 'Meaning' for Luhmann is the operation of a distinction that renders a notion relevant to a system. Meaning is system-specific: the normative rules with which a system reaches its decisions on the allocation of the positive and negative values are purely internal creations without any corresponding similarities in the system's environment (ibid.). The system's capacity to generate its norms that dictate its operations is the main result of its operational closure.
 14. N. Luhmann, 'Law as a Social System', *Northwestern University Law Review* 83 (1989), 136–50; N. Luhmann, 'The Unity of the Legal System', in G. Teubner (ed.), *Autopoietic Law: A New Approach to Law and Society* (Berlin: de Gruyter, 1988).
 15. Note 13; see also Teubner (note 3).
 16. Maturana and Varela (note 10); Luhmann, 'The Unity of the Legal System' (note 14).
 17. Luhmann is diligent enough to refer to the basics of his autopoietic theory in nearly every recent book he has written, regardless of the area the book deals with. To keep in line with the theme of this essay, therefore, one can easily understand the basics of the theory by referring to Luhmann (note 5), esp. chs.2 and 5.

18. This will become particularly relevant in the analysis of the mechanics of art communication, See section III of the present article, where art is also presented autopoietically as a closed system.
19. E. Morin, *La Méthode II: La Connaissance de la Connaissance* (Paris: Seuil, 1986), 203.
20. A simplification: a system can only observe itself through self-observation and perceive the existence of other systems through its expectations of them. Teubner (note 3).
21. N. Luhmann, *Ecological Communication*, trans. J. Bednarz, Jr. (Cambridge: Polity Press, 1989).
22. Maturana and Varela (note 10), xix. Structural coupling has been considered the demise of autopoiesis, largely interpreted as a reaction to the mounting pressure coming from criticisms on the incomprehensibility of closure. See Munch (note 3). The fact remains, however, that structural coupling is not a manoeuvre determined by need but a notion originating in the biological version of autopoiesis.
23. It must be clarified, however, that no external influences can have an effect on the system. It is the system that produces, consumes and invites the production of such environmental irritations. See also Teubner (note 14).
24. Luhmann (note 5), 9.
25. The choice of the word 'demiurge' over similar ones, like 'creator', 'artist' and so on, has been determined by the etymology of the word, which implies a 'secondary' creator, or indeed, a second-order creator who observes her product from a distance.
26. Needless to say, the distinction is not watertight; the personal acquaintance with the demiurge, for example, may facilitate a normal projected perception rather than imagined perception.
27. One is tempted to read these 'circuits' of observation as the concurrent operation of observation within a triangular formation of systems, or indeed a stereometric formation of structural coupling.
28. Luhmann (note 5), 62.
29. Maturana and Varela (note 10).
30. On autopoietic paradox, see G. Teubner, 'Economics of Gift – Positivity of Justice: The Mutual Paranoia of Jacques Derrida and Niklas Luhmann', *Theory, Culture & Society* 18/1 (2001), 29–47; P. Goodrich, 'Anti-Teubner: Autopoiesis, Paradox, and the Theory of Law', *Social Epistemology* 13/2 (1999), 197–214; N. Luhmann, *Das Recht der Gesellschaft* (Frankfurt am Main: Suhrkamp, 1993).
31. See, for example, A. Benjamin, *Art, Mimesis and the Avant-Garde: Aspects of a Philosophy of Difference* (London: Routledge, 1991), for a Heideggerian analysis of mirrors in paintings, including the self-portrait analysed here.
32. For Luhmann (note 3) and (note 30), expectations reduce the complexity of social interaction in the form of expectations of expectations that ego has from alter. The expectations of expectations – as a formula to be repeated rather than a literal twofold reciprocation – is what Luhmann calls 'double contingency', or else the Parsons-influenced description of the diffused uncertainty of social action and reaction. The connection yet isolation between expectations is the main link between Luhmannian autopoiesis and Husserlian intentionality.
33. Strictly speaking, this second way of communication is also endosystemic because, even if the content of the particular painting – or indeed, the content of the mirror – features in the process, in reality the communication remains restricted to the boundaries of the system of perception because of the recursive effect of self-awareness it produces.
34. The legitimacy of using Derrida's ideas to support an autopoietic description may seem dubious; however, there are sufficient similarities between the two methods of analysis, whose exposition eschews the limitations of this essay, to justify such fusion, at least as far as artistic communication is concerned. See, however, Teubner (note 30); also P. Fitzpatrick, 'Abiding the World: Globalism and the Lex Mercatoria', in J. Pribañ and D. Nelken (eds.), *Law's New Boundaries: The Consequences of Legal Autopoiesis* (Aldershot: Dartmouth Ashgate, 2001).
35. J. Derrida, *Signéponge/Signsponge*, trans. R. Rand (New York: Columbia University Press, 1984), ix.

36. There is no doubt that utterance can be the main or supplementary means of art expression – poems, libretti, freely circulating phrases on canvases and so on – but this is a different thing altogether: art as content may be logocentric, but art as form can only evolve within its form, which is the unutterable structure of the system. On the distinction between form and medium, see below, note 54.
37. Luhmann (note 5), 52.
38. *Ibid.*, 20.
39. M.H. Abrams, *The Mirror and the Lamp: Romantic Theory and the Critical Tradition* (Oxford: Oxford University Press, 1953).
40. Luhmann (note 5), 40.
41. Derrida (note 35), 50.
42. This formulation is reminiscent of M. Jay, ‘Must Justice Be Blind? The Challenge of Images to the Law’, in C. Douzinas and L. Nead (eds.), *Law and the Image: The Authority of Art and the Aesthetics of Law* (Chicago: University of Chicago Press, 1999), with its pictorial idea of a two-faced Justice, one of which will be with wide-open eyes, and the other blindfold.
43. It goes without saying that this game of expectations is ambidirectional: the demiurge is equally, if not more, involved in this exchange as the viewer, because the former has to take into consideration the awareness of the imagined perception that he has of the various viewers.
44. Luhmann (note 5), 22–3, original emphasis.
45. See U. Eco, *Faith in Fakes: Travels in Hyperreality*, trans. W. Weaver (London: Vintage, 1998), particularly the first chapter, which is obviously based on J. Baudrillard, *Simulacra and Simulation*, trans. S. Glaser (Michigan: University of Michigan Press, 2000).
46. Luhmann (note 5), 40.
47. See, for example, A. Cothey, *The Nature of Art* (London: Routledge, 1990), for an overview of intentionalism in art.
48. Luhmann (note 5), 67.
49. M. Beardsley, *Aesthetics: Problems in the Philosophy of Criticism* (New York: Harcourt Brace and World, 1958), 24–5.
50. R. Barthes, ‘From Work to Text’, in J. Harari (ed.), *Textual Strategies: Perspectives in Post-Structuralist Criticism* (Ithaca, NY: Cornell University Press, 1979).
51. S. Sontag, *Against Interpretation and Other Essays* (New York: Farrar, Strauss and Giroux, 1961).
52. *Ibid.*, 17, emphasis added.
53. Luhmann (note 13).
54. Luhmann (note 5), 104.
55. *Ibid.*, 104.
56. *Ibid.*, 106. This is obviously related to the inability of medium to convey meaning. For an explanation of meaning and its role in artistic communication, see Luhmann (note 5), 107ff.
57. Luhmann (note 2) and (note 5).
58. Luhmann (note 2), 36.
59. W. Kandinsky, *Concerning the Spiritual in Art and Painting in Particular* (New York: George Wittenborn, 1947), in Luhmann (note 5), 27.
60. Luhmann (note 5), 104.
61. Even a second-order observer lacks the theological viewpoint that such an operation requires. For, although one is always encouraged to bring forth causalities (or attributions, as Luhmann (note 2) calls the connections between systems found by second-order observation), even God lacks the ability to communicate such findings to the systems.
62. Luhmann (note 13), 109. This is what Luhmann calls ‘double contingency’.
63. *Ibid.*, 110.
64. ‘Whenever an object is intended to be a work of art, the indication does not refer merely to itself. It also refers to the crossing of the boundary that divides the form into two halves and instructs the observer to search for and fix what has not yet been decided’, Luhmann (note 5), 118.

65. N. Luhmann, *Love as Passion: The Codification of Intimacy*, trans. J. Gaines and D. Jones (Stanford, CA: Stanford University Press, 1986), a deliciously dispassionate book about the mechanics of historical love as it appears in literature.
66. Any description that stands a chance of being admitted by the system has to be presented as self-description. Thus, self-description can be analysed as the totality of descriptions, including and presupposing the self-description. This is why an approximation of a description of self-description can only happen on a second-order level – hence Luhmann’s preferred way of speaking in the third person singular.
67. Particularly Luhmann (note 3).
68. Note that there is no obstacle in descriptions digressing from existing (self-)descriptions, thereby introducing paradoxes within the system but not within each separate description. The fact that autopoiesis accords with the dominant description of the legal system is hardly surprising in view of the fact that Luhmann (in, for example, note 30) has often repeated that he is not interested in changing the world, only in observing it.
69. I. Heywood, *Social Theories of Art: A Critique* (Basingstoke: Macmillan, 1997), for an overview of theories on the utilitarianism of art.
70. O. Wilde, *Intentions* (New York: Nottingham Society, 1909), 40–57.
71. Luhmann (note 5), 25.
72. N. Luhmann, ‘The Future Cannot Begin: Temporal Structures in Modern Society’, in *The Differentiation of Society*, trans. S. Holmes and C. Larmore (New York: Columbia University Press, 1982).
73. Note 3, where these criticisms, both the traditionally positivist and the postmodern, can be found.
74. E. Christodoulidis, *Law and Reflexive Politics* (Dordrecht: Kluwer Academic, 1998), 107. Note that, although autopoiesis does not provide for purposiveness, functional differentiation as described by Luhmann (note 13) allows a second-order observer to deduce that the purpose of the legal system is to be the legal system within society.
75. Luhmann (note 3), 171ff.
76. Baudrillard (note 45), 14.
77. For example, C. Douzinas and R. Warrington, *Justice Miscarried: Ethics, Aesthetics and the Law* (London: Harvester Wheatsheaf, 1994); and C. Douzinas, P. Goodrich and Y. Hachamovitch (eds.), *Politics, Postmodernity and Critical Legal Studies: The Legality of the Contingent* (London: Routledge, 1994).
78. Luhmann (note 3), 171ff., attributes ethics to psychic systems and normativity to social systems.
79. Luhmann (note 5), esp. section 2.1, 31–40.
80. *Ibid.*, 31.
81. Derrida (note 35), 50.
82. Luhmann (note 5), 293.
83. *Ibid.*, 292.
84. For criticisms from an autopoietic point of view on Luhmann’s description of law as state law, see K.H. Ladeur, *Social Risks, Welfare Rights and the Paradigm of Proceduralisation*, 95/2 EUI Working Paper (Firenze: European University Institute, 1995); and *The Theory of Autopoiesis as an Approach to a Better Understanding of Postmodern Law: From the Hierarchy of Norms to the Heterarchy of Changing Patterns of Legal Inter-Relationships*, 99/3 EUI Working Paper (Firenze: European University Institute, 1999).
85. Note 10.
86. Elsewhere, ‘Mapping Utopias: A Voyage to Placelessness’, *Law and Critique* 12/2 (2001), 135–57, I have argued for the placation of environmental space as a means of reducing uncertainty for the system.
87. Luhmann (note 30), has pointed out that courts are ‘central’ (in an unhierarchical way) in the allocation of systemic selectivity, making thereby easier the accommodation of untested forms of legality or illegality. However, this has come under criticism by Ladeur (note 84), since Luhmann still moves within the ‘iffishness’ of the code, thereby accentuating an essentially conservative element of autopoiesis, which relies on mnemonic tests for the consistency of the selected and rarely dares question the process of selection.

88. Luhmann does not accept interdisciplinarity. The only concession he habitually makes is to transdisciplinarity, N. Luhmann, *Observations on Modernity* (Stanford, CA: Stanford University Press, 1998).
89. This is another standard ground of dismissal of autopoiesis on behalf of critical legal theory (note 3).
90. Baudrillard (note 43), 6.
91. *Ibid.*
92. The representational quality of art here does not refer to the usual representability of some art forms (that is, representational art proper, in the sense of a copy of the sense-world). Instead, here, representational should be understood as the reproduction of art's autopoietic environment.
93. N.Luhmann, 'Legal Argumentation: An Analysis of its Form', trans. I. Fraser, edited by W.T. Murphy and G. Teubner, *Modern Law Review* 58/3 (1995), 285–98, 294.
94. The prioritisation of internal over external reference has been disputed by Ladeur (note 84) in favour of a more plural and fragmented understanding of law.
95. Note 37.
96. Luhmann (note 13) and (note 5). See also W.T. Murphy, 'Modern Times: Niklas Luhmann on Law, Politics and Social Theory', *Modern Law Review* 47/2 (1984), 603–21.
97. M. King, 'The Truth about Autopoiesis', *Journal of Law and Society* 20/2 (1993), 218–36.
98. P. Goodrich, *Languages of Law: From Logics of Memory to Nomadic Masks* (London: Weidenfeld and Nicolson, 1990), 179ff.