FAITH AND KNOWLEDGE IN LAW

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Abstract

Traditionally, the quest for certainty has been regarded as a problem of knowledge. In order to cope with uncertainties, modern society has established various mechanisms that help to generate and proliferate knowledge. Recently this kind of solution has been called into question. Sociological analyses inform us that more knowledge will not automatically reduce uncertainties. Rather, it increases them. The more we know, the more we know what we don't know. Accordingly, what we need is a new social technique that deals with uncertainty without attempting to overcome it by way of more or better knowledge. From a lawyer's perspective, one can demonstrate that such techniques of "uncertainty absorption" are already at work in the law. Hence the next step in the quest for legal certainty is the endeavour to elaborate on these mechanisms. Legal knowledge management has to be complemented by rules and procedures which are supposed to manage adamant ignorance. Yet even in this broadened perspective one traditional way of absorbing uncertainty has not found much attention. The classic form of coping with uncertainty is not only authority. Rather, substituting the longing for certainty with faith and trust, the most effective candidate has been religion. The question is whether our modern secularised law has effectively discarded this kind of conception or if, by contrast, modern legal systems still need a modified functional equivalent to the theological legacy. This is what I claim: We have to supplement the idea of law's autopoiesis with a parallel concept of legal autopistis.

Keywords

Uncertainty. Faith. Autopoiesis. Autopistis. Trans-Immanence.

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I.

I am going to tell a story about faith and knowledge and how these two basic settings which human beings use in order to adjust their position in the world, thus creating supposedly solid fundaments for further action, are connected to the law. "Faith and Knowledge" is, of course, the (English translation of the) title of one of Hegel's early writings, an essay published in his "Kritisches Journal der Philosophie" in 1802[2]. In this essay, Hegel scrutinises the philosophical work of Kant, Jacobi and Fichte. On Hegel's account, all three of them have in common that they tried to establish a distinction between reason or knowledge on the one side and faith on the other, thus releasing philosophy from its previous role as *ancilla theologiae*. While this release seems to be a classical victory of enlightenment thinking overcoming darker medieval ages, Hegel names the price that had to be paid for this manoeuvre. Thus conceived, philosophical thinking is no longer designed to grasp absolute truth. A deliberately finite mode of thinking will only come to understand finite objects of cognition. For Hegel, in abandoning the theological dimension philosophy has lost its most precious ambition. He confronts us with the costs of what one might call secularisation of thinking.

Almost two centuries later, Jacques Derrida put his reflections on religion under the same Hegelian title "Faith and Knowledge"[3].

[2] HEGEL 1965.
[3] DERRIDA 2002.

Raising the question of how we can still talk about religion, or even about "the" religion in a problematic singular, Derrida nevertheless presents religion as a phenomenon whose binding forces cannot simply be understood as an anachronistic rest that modern society will gradually overcome. While religion is said to be all about assurance, nothing is sure in religion, let alone the concept itself. Therefore, the seemingly clear-cut distinction between faith and knowledge crumbles. We cannot tell for sure what it is.

In what follows, I will scrutinise this topic of faith and knowledge with regard to the legal field in general and the discussion on legal certainty in particular, asking whether we will have to reconstruct the debate in a different manner once we take into account that certainty is not only a scientific but also a theological issue. In a first step, I analyse previous and ongoing endeavours to cope with uncertainty. Constructing a genealogy of concepts and identifying a three-stages-model, I then go on asking if the solutions elaborated so far are indeed satisfying or if they ought to be supplemented by a new aspect that one might call legal autopistis. Thereby the development described so far is confronted with something like the return of the repressed.

However, this return may not be misunderstood as the final episode of a historical development. Closer analysis will show that this concept of return does not imply the end of a specific evolution. Rather, the return happens already and always on each of the stages. In so doing, it seems to subvert any idea of linear developments. Yet this would be another misunderstanding, both of the phenomenon in question and as far as my intentions regarding this phenomenon are

concerned. The concept is not meant to discredit the genealogical narrative; although this narrative is, of course, in itself a simplifying way of story-telling and hence a kind of coping with uncertainty. I do not intend to withdraw confidence in this kind of stories. Quite the opposite: I will not only, as mentioned at the outset, tell my own story. What I am asking is why we can and, what is more, why we have to believe in our own stories. What kind of faith do we have to invest in them order to make these stories creditable to ourselves, and thus make them work as a reliable frame of reference? In a word, in the following I will question the religious dimension of legal certainty.

II.

So here comes my story. Historically speaking – or: once upon a time, if you like –, the quest for certainty began as the result of philosophy departing from theology. Certainty became a philosophical issue once the idea of the world being a well-established *kosmos*, an *ordo* in which every thing is put in its proper place by a benign creator, was no longer taken for granted. One of the basic motifs in modern rationalism, prominently introduced by René Descartes and, in the field of political philosophy, Thomas Hobbes, was a strong distrust in traditional scholastic manoeuvres[4]. In their view, rationalisation meant that the validity of arguments should no longer be considered

[4] See HOBBES 1985, Fourth Part, Chapter 46: Of Darknesse from Vain Philosophy, and Fabulous Traditions.

with respect to authority – and that is to say, with regard to the belief in ancient books – but with regard to the phenomena in question, as they appeared in the light of the "raison naturelle toute pure".[5] Thus, rational philosophy established itself in a double movement. On the one hand, it constructed a problem which, from the scholastic perspective, had not existed. For a philosophy still deeply rooted in religious belief certainty was hardly a problem. A reference like "credo quia absurdum est" could end all discussions. On the other hand, rationalism presented a solution to this self-generated problem. The quest for certainty was introduced as the quest for more and better knowledge. Beyond the doctrinal convictions of scholasticism, for rationalists uncertainty appeared as a cognitive deficit that only knowledge could – but indeed also: would – cure. On this account, all we need is a solid basis for our cognitive procedures, something we know for sure in a way that can never be doubted. We need, in René Descartes' famous words, a foundation "quod certum est et inconcussum"[6], absolutely certain and unshakeable. Once this solid fundament is established, everything else will follow. We will be able to erect the complex building of the diverse sciences whose gradual development will eventually enable us to find scientific solutions for any possible problem. In doing so, mankind should finally fulfil an imperative expressed at the very beginning of the bible. It should

[5] See DESCARTES 1902, 77: "Et si j'écris en français, qui est la langue de mon pays, plutôt qu'en latin, qui est celle de mes précepteurs, c'est à cause que j'espère que ceux qui ne se servent que de leur raison naturelle toute pure, jugeront mieux de mes opinions, que ceux qui ne croient qu'aux livres anciens."
[6] DESCARTES 1904, 25.

become, to quote once again Descartes, the "maistres & possesseurs de la Nature"[7].

This implicit biblical reference points to a specific characteristic of Descartes' philosophy. A closer look reveals that in his thinking theological concepts still played a decisive role. In contrast to his own initial ambitions, in Descartes cognition is not conceived of within the limits of reason alone. To enable the leap which is needed to connect the unshakeable fundament in the sense of *ego cogito cogitatum* with the statement that the world is indeed what we think it is, that is to say, to take the *cogitata* as representatives of reality, the – necessarily – benign creator comes back into play.[8]

In this perspective, Kant seemingly succeeded where Descartes fell back into traditional concepts. In the opening question of his philosophy, Kant follows the Cartesian example. Asking and explaining how synthetic judgements a priori are possible at all, Kant defends the certainty of human cognition against the empiricist claim that all knowledge is based on probability solely. What is more, whereas Descartes' quest for certainty excluded the field of moral philosophy, leaving us only with some piece of pragmatic advice on a "moral par provision", Kant extends the philosophical quest for certainty on moral issues. In both areas, theoretical as well as practical

[7] DESCARTES 1902, 62.

[8] See as the final result of his meditations DESCARTES 1904, 90: "Ex eo enim, quod Deus non sit fallax, sequitur omnino in talibus me non falli" (i.e. "Because it follows from the fact that God is not a deceiver that I am not mistaken in such cases").

philosophy, his solution is equally rigorous. While Descartes still relied on theological concepts, Kant cuts all remaining relations between theology and philosophy. The famous statement that his limiting philosophy's field of knowledge should only make room for faith[9] is just the positive expression for the fact that on Kant's account theological questions are no longer a topic for philosophical thinking. In order to secure the objective truth of human cognition, theology is discarded. Within the limits of reason alone, its most fundamental issues can only be described in a negative way. It is precisely this point where Hegel's critique steps in.

Yet taking a closer look at Kant's work, we find in both his theoretical and his practical philosophy a certain kind of faith, too. Reason is presented as the realm of postulates and hypotheses which we have to presuppose although we can never prove their existence. Pure reason implies a dimension of as-if that has to be taken for granted and thereby guarantees knowledge. Thus, the seemingly clear-cut boundaries between faith and knowledge become blurred.

I will come back to the theological question later on. For now, I would like to draw attention to a different turn in the evolution of certainty as a philosophical concept. At first glance, Descartes' optimism that due to rational thinking mankind will finally become the true master of the earth did not last very long. It did not even require an earthquake to shatter this belief. Yet what proved remarkably resilient

[9] KANT 1911.

was the underlying idea of science being a linear development. Conceived of in this manner, science appeared as a process which step by step would increase the human knowledge of the world. And with this continuous increase of knowledge all disquieting uncertainties that still existed would gradually disappear. Based on reliable scientific insights, social decision-making would no longer appear as a matter of irrational contingency but as a completely reasonable process. Descartes' faith in scientific progress lived on.

III.

It was not until the end of the nineteenth century, maybe not even before the twentieth century, that this concept, the general trust in knowledge and its capacity to solve all of mankind's most persistent problems, began to erode.

On the one hand, it became evident that the rapid growth of knowledge did not reduce the cognitive difficulties. By contrast, every new insight, every new finding with regard to an old problem, immediately raised new questions – questions indeed, which before these new findings no scientist could have imagined, let alone fully developed. On the other hand, and maybe more importantly, the leading idea that scientific knowledge evolves in a steady and linear movement was put into question. Responsible for this process was the modern theory of science. It demonstrated that scientific progress takes place as breaking up existing lines of argument rather than continuing to walk on well-trodden paths of already established

perspectives. According to these new theoretical explanations, scientific understanding does not evolve in small steps, but in leaps. The most relevant progress in science happened because of paradigm-shifting inventions, that is to say, because some scientists had the courage to challenge and change the general questions and perspectives in a certain field of research, thereby turning all previous assumptions upside-down und invalidating its until then most well-known and distinguished findings[10].

Against the background of such analyses it becomes clear that what at first glance appeared as a chance to overcome the constant threat of our social existence being merely a matter of contingency, at second glance reveals a disturbing insight: modern society is contingent not although but because it is based on knowledge. If knowledge itself depended on perspectives and paradigms, it could not serve as a remedy against the need to decide questions on an uncertain basis and without knowing for sure which consequences might follow from these decisions.

What is more, the modern theory of science explained why no observation is truly "objective" but always depends on the observer and his position. Stating that in every observation there remains a blind spot that can never be observed, this theoretical approach confirmed, once again, that more knowledge does not reduce uncertainty. At most, it relocates it from one place to another. In this

[10] FLECK 1980; KUHN 1970.

perspective, science is no longer the cure that helps to remedy uncertainty. On the contrary, science itself is the basic source for an everlasting and indeed even growing uncertainty. Thus, once again science and knowledge could no longer be conceived of as a bulwark against uncertainty and risk. This perspective enables us to see why the common denomination of modern society as knowledge society as well as risk society does not describe opposed phenomena. Rather, the denominations speak about two sides of one and the same medal[11].

IV.

With regard to specific legal techniques that will help us to cope with uncertainty, the first perspective on uncertainty being a lack of knowledge calls for a deliberately legal strategy of knowledge production and knowledge proliferation. The law, it was said, had to be turned into a "learning law", that is to say, a law that deliberately enlarged its own cognitive capacities in order to understand and thus eventually be able to cope with the ongoing innovations in its modern environment[12].

By contrast, the second perspective on the relationship between uncertainty and knowledge reveals that this strategy will never fulfil its promises. Yet while it questions the cure it does not doubt the

[11] LUHMANN 2005.
[12] LADEUR 1995.

fundamental diagnosis that uncertainty is a problem which we must overcome in one way or the other. The difference is merely that the solution can no longer be seen in a specifically legal knowledge management. Since knowledge cannot guarantee certainty but certainty is still what we are looking for in order to construct a robust social order, what we need is a functional equivalent to the previous trust in knowledge production. That is to say, we need social mechanisms that, though not being knowledge-based, serve the same purpose of providing a solid basis for decision-making.

This specific social technique was first described in sociological analyses of organisations. In this context it came to be known under the name of uncertainty absorption[13]. Yet a closer look at the legal field reveals that the law offers particularly rich examples for this kind of coping with uncertainty, too (Augsberg 2014, p. 237 et sqq.). In the legal field, the basic manoeuvre in absorbing uncertainty is, first, to identify an existing cognitive deficit, and then, second, to go on and fill this deficit – yet not by cognitive but by normative means. The most evident and explicit way is to create reliable facts by way of legal fictions. Thus, the law itself prescribes how to understand the reality on which the law is to be applied. However, legal fictions are just the tip of the iceberg. There are numerous other examples. As its origin in the sociology of organisations implies, a prominent way of absorbing

[13] MARCH & SIMON 1958, 165; LUHMANN 2000b, 183 et sqq.

uncertainty is authority,[14] and that is to say, viewed from the organisational perspective, hierarchy. A strict hierarchical order, a chain of command, enables an organisation to rely on decisions without questioning if its rational basis is sufficient. Some decisions simply have to be accepted as binding not because one can show that they are based on sufficiently good reasons but because someone up in the hierarchy says so. Authority can be defined as the power to decide without the need to give reasons for the decision[15]. Competence becomes a formal, not a material criterion; it reflects a status, not an ability or expertise. Thus, from a certain point of view authority may appear as a pure form of irrational exercise of power. Yet if we understand the function of rationality as finding a way to enable and stabilise the complex process of social decision-making, what appeared as irrational turns out to be merely a different form of rationality.

Another characteristic way of uncertainty absorption within the legal system is something that I would call a certain mode of temporalisation, meaning law's classical way of dealing with time. In this perspective, both the common law and the civil law tradition use the same technique. In law, new decisions not only can but regularly have to be based on previous decisions, be it in the form of precedents or of legal statutes. Deciding on a new case, a sitting judge or any other

[14] See LUHMANN 2000a, 103, stating that „Die klassische Form der Ungewissheitsabsorption trägt den Namen Autorität" (i.e. "the classic form of uncertainty absorption goes by the name of authority").
[15] BAECKER 1999, 72.

person applying the law neither can nor must ask all fundamental questions anew. Rather, she has to accept certain assumptions established by previous rulings or legislation.

What all these techniques have in common is that they consider uncertainty as something which impedes and obstructs decision-making. While we cannot guarantee certainty in the sense of unshakeable knowledge, we still have to find ways to get rid of uncertainty's obstructive effects. Against this background, the well-known methodology of balancing can function as an example of uncertainty absorption, too. In its cognitive turn, the concept of weighing competing principles states that uncertainty can appear on both sides of the balance. What is more, the size of uncertainty, that is to say, the likelihood that a specific damage to the legally protected interest will occur, co-constitutes the respective weight of the principles. Obviously, the leading assumption of this technique is that though we may not be able to eliminate uncertainty by substituting it with knowledge, we can estimate its size and then balance one against the other. Thus, once again uncertainty is taken as the basic problem which legal methodology should help us solve.

V.

As opposed to these perspectives, a next third step in the evolution of uncertainty management regards uncertainty no longer as an obstacle for the process of creating a social order. Rather, it acknowledges uncertainty as the necessary precondition for decision-making. One

can only decide questions which leave room for different options. Typically, this leeway is the result of uncertainty. By contrast, if a given case includes no uncertainty at all, there is nothing left to decide. Under such circumstances, what previously has been named decision is to be replaced by an act of cognition. Instead of choosing between different options one simply has to find the one correct answer to the cognitive problem of what needs to be done in order to achieve a certain goal. As opposed to this cognitive procedure, decision-making presents itself as a paradoxical process: "Only those questions that are in principle undecidable, we can decide"[16].

So far, the third perspective on uncertainty only describes criteria that distinguish decision and cognition. Since these criteria apply just as well from the other perspectives, the third step seems to add hardly anything new. However, its decisive move is not that and how the difference is introduced. What really counts is how this third perspective assesses the two opposed strategies. It acknowledges a certain priority of decision-making over cognitive solutions, claiming that it is not at all desirable to substitute decision-making by cognition in all areas. By contrast, some social spheres will only function as long as there is still enough uncertainty to enable decision-making[17].

Two telling examples for this kind of perspective are the economy and democracy. Once the economy is no longer a matter of uncertainty

[16] VON FOERSTER 1992, 14.
[17] AUGSBERG 2009b.

and all of its questions can be answered in a satisfying scientific way, the economic market will cease to exist. It is based on ignorance on the side of all participants who can speculate but never know for sure that their assumption about certain performances will come true.[18] By the same token, democracy implies that political decisions are not a matter of truth and hence can never be decided according to a scale of true or false. Otherwise democratic legitimation would have to be abandoned and replaced by scientific expertise. In this view, the invention of democracy means to abolish all classical forms of certainty, replacing supposedly pre-given social order and harmony with permanent conflict[19].

A third example for this perspective is the law[20]. After the end of legal positivism as developed at the end of the nineteenth century, applying the law can no longer be regarded as a process of pure logic. Ruling on a case does not simply mean using a deductive method that will automatically lead from general concepts to singular decisions. On the contrary, to apply the law means to move from certain preconditions to a new status in a way that cannot be reconstructed as logical inference. It manifests itself as a kind of leap. Every legal decision

[18] See ESPOSITO 2007, 100 et sqq.; on "uncertainty as ressource" also ESPOSITO 2011, 11 et sqq.
[19] LEFORT 1988.
[20] AUGSBERG 2014, 241 et sqq.

includes, according to Carl Schmitt, an aspect of *creatio ex nihilo*.[21] In law, and that is to say, in the interplay between legislation and jurisdiction, or statutory law and case law, there is always something that cannot be foreseen. Once again, this lack of predetermination that can be regarded as the constitutive uncertainty of law is not a deficit but a necessity. If the law was only a matter of logical inference, it would lose its dynamic character and its capacity to cope with newly emerging phenomena. It would no longer be able to react on recent developments within our modern world.

In this perspective, managing uncertainty can no longer mean finding ways how we can avoid or circumvent it. Taking its positive aspects into account, we also have to look for mechanisms that preserve, maybe even enlarge and multiply uncertainty[22]. In the legal field, maybe the most prominent mechanism of coping with uncertainty by copying it is liability law. Creating a new financial risk that supplements the factual risk, liability does not simply oppose uncertainty. In a double move it reproduces and distributes uncertainty among different parties. In this sense, liability law is not all about consumer protection. Turning the possible damage to a social good into a calculable – in some cases explicitly limited – monetary issue, it also constitutes an incentive to venture risky endeavours, be it in the field of science or the economy. As regards the temporal

[21] See SCHMITT 1996, 36 et sqq, in particular 37 et sq.: "Die Entscheidung ist, normativ betrachtet, aus einem Nichts geboren." (i.e.: "Viewed from a normative standpoint, the decision is born out of nothing.").
[22] AUGSBERG 2014, 259 et sqq.

dimension of law, a future-oriented perspective should replace the former primacy of the past. What now counts in the process of decision-making is openness towards new possibilities.

VI.

From a phenomenological point of view, this account of law being based on uncertainty seems to be quite correct. Yet a second glance reveals that this account deals with a somehow tamed and domesticated version of uncertainty, an uncertainty whose inevitable uncanniness is hidden behind the positive effects it produces. Its narrative takes the form of a fairy tale whose happy ending is taken for granted. In acknowledging uncertainty, the third and seemingly last step still tries to escape from uncertainty's most disturbing character. It does not dare to view uncertainty as a haunting ghost whose appearance and actions can never be predicted.

Thus, from a normative perspective the account begs some questions. How can we rely on this kind of decisions if their outcome is unclear? How can we be sure that what follows from such decisions can still be called law? If there is a necessary leap between legal preconditions and the outcome of a decision, how can we be sure that the result is still to be regarded a part of the legal system and not of, for instance, of politics or economy? What is more: Can we accept a decisive role for legal uncertainty and yet still claim that law's pivotal function in society is to stabilise normative expectations? How can the law

stabilise anything at all if its own structures and operations are necessarily unstable?

Obviously, legal methodology functions as a way to deal with this situation. Yet it cannot suppress the previous insight that every legal decision must include uncertainty. Otherwise it cannot be regarded as decision in the full sense of the word and thereby as a part of law conceived of as a dynamic system. Legal methodology can only conceal this situation, feigning that there is only one right answer to a given problem. Thereby it does not solve the basic problem: How can we ensure that the uncertainty we have to deal with will still be a legal uncertainty?

In previous papers I have tried to elaborate on this problem by conceiving of law as text[23]. In this sense, every new decision does not follow automatically from previous decisions. Yet in order to be a part of the legal system, it must be somehow interwoven with these previous and, more importantly, with possible subsequent decisions. Textuality as primary characteristic of law thus means that we can no longer rely on rationality in a vertical sense, that is to say, in the sense of searching for a solid foundation for legal decision-making. If we still want to talk about rationalising the law, it must be a horizontal, relational mode of rationality weaving decisions into a texture that, because of its necessary uncertain character, is always already – and not only under specific circumstances, as in Hart's respective concept

[23] AUGSBERG 2009a; 2010.

– open. Hence legal stability is a relative and dynamic concept. Because of its textual character, the law not only can but it also has to be read and re-read over and over again. Law is not just legible, but also le*x*ible (Augsberg 2024). The "x" marks the spot of its (un-)readability.

What I would like to add today to this general concept (or: narrative) of textual legal reasoning is that the idea of coping with uncertainty in the form of law being an open texture presupposes something that I would call, for the lack of a better word and as a return of the repressed, by the name of an originally theological concept. Without external reference, without *fundamentum inconcussum* on which it can base its structures and operations, the law has no other option than to rely on itself. Only the law can tell what may be called law. It is this decisive self-reference that Niklas Luhmann, adopting a concept originally developed by Humberto Maturana, called the autopoiesis of the legal system (Luhmann 1994, p. 60 et sqq.; Luhmann 1993, p. 30). However, maybe autopoiesis is too much focused on a seemingly "material" aspect of recreating the system and its elements, that is to say, the multiple acts of legal communication. By contrast, what we need is another concept that emphasises the "spiritual" aspect of law, its sense of coherence that cannot be proved but must be taken for granted if the law is supposed to work and thus to fulfil its social function. (In parentheses I should add that by opposing these two aspects I intend in no way to revitalise the classic Pauline distinction of letter and spirit. Rather, as in previous analyses I want to emphasise that indeed the concept of textual legal reasoning subverts this distinction (Ladeur & Augsberg 2010-11; Augsberg 2017). The concept

of "texture" refers to both aspects. Yet that does not mean that these aspects will come unstitched in a diffuse hybrid or even vanish completely.)

Interestingly, in his rejection of the idea of law being a purely logical process, Eugen Ehrlich mentioned this aspect, stating that a "jurisprudence in which we do not believe is impossible."[24] While Ehrlich refers to this aspect only in a negative way, claiming that once the belief in legal logic has been shattered no judge can any longer rely on its false premises and promises, his co-founder of the so-called free-law-movement, Hermann Kantorowicz, in his posthumously published "The Definition of Law", goes one step further, giving the idea a deliberately positive turn. Stating that the law "presupposes a *basic and absolute rule* on which the validity of all the other rules depends and which therefore can no more be questioned, lest every rule should break down," Kantorowicz claims that such a rule "must needs be accepted dogmatically as an act of faith." On this account, the Weberian idea of social differentiation is subverted by another perspective that focuses on an irreducible entanglement between society's different spheres. "It is here that the inescapable religious implications of every social system become dimly visible"[25].

[24] EHRLICH 1918, 301: "EINE JURISPRUDENZ, AN DIE WIR NICHT GLAUBEN, IST UNMÖGLICH."
[25] KANTOROWICZ 1958, 24 et sq.

Accordingly, a dynamic network of interwoven operations called "horizontal law" needs some sort of functional equivalent for the vertical construction that found its guarantee in a fundament called reason. The law not only has to practice its own autopoiesis and thereby provide for its own cognitive groundworks. It also has to believe in its positive outcome. Following this line of argument, I would like to suggest supplementing the concept of autopoiesis with an idea of something that, borrowing from theology, one might call *autopistis*. In its original theological context, *autopistis* (or *autopistia*) means the self-authentication of scripture (van 't Spijker 2009, p. 134). It refers to a kind of interpretation that does not point to any external authority which legitimises its reading. By the same token, a self-referential law conceived of as text must not refer to any extra-legal guarantee enabling its continuous process of self-interpretations. Yet it also cannot take its own capacity as a given. On this account, the law has to be doctrinal, and it must believe in its own doctrines. While it abandons its faith in knowledge it must not abandon its knowledge of faith as an important source enabling social decision-making. Accordingly, as Hegel's and Derrida's stories suggested, faith and knowledge are far more intertwined and interwoven than the traditional "scientific" understanding would like to have it.

However, in contrast to theology, and in contrast also to Hegel's endeavour, a postmodern, deliberately finite mode of thinking cannot even take this faith itself for granted. Thus, since what cannot be taken for granted can only be believed in, against all odds, *autopistis* presents itself as belief in faith. The self within this process of self-authentication is not a pre-given starting point that is merely

resassuring itself. One might note in this context that *pistis* is not an original theological concept. It only became one by virtue of St. Paul's use of the notion. By contrast, in its original Greek context, *pistis* is an expression that was used rather in legal than theological operations. *Pistis*, on this account, meant something like *bona fides*. Thus, *pistis* demonstrates not only that the boundaries between law and faith are constantly trespassed. It shows that the trespassing takes place from both sides of the distinction.

Consequently, I suggest that we conceive of *pistis* as the name for a complex manoeuvre which within this process of self-assurance also has to accept that there is always already something other (or even: something Other) than the self. Autopistis may not be seen as a complement of autopoiesis. It ought to be conceived of as its supplement in the "technical" Derridean sense of the word. That is to say, the concept not only functions as an additional feature of legal autopoiesis. It also subverts the idea of the system's closure. In so doing it subverts itself, or maybe, to be more precise: it subverts its self. It is for this reason that the "it" that seems to precede the subversive activity may only be understood in an uncanny, Freudian sense of the word. Pointing beyond the self, *pistis* undermines *autos*, while *autos* insists that *pistis* may not simply be understood as a given relationship with transcendence.

It is tempting to draw a parallel between this strange oscillating movement which neither assumes nor denies transcendence but constructs it as an immanent necessity, and the Jewish legal tradition describing the Torah as derived from heaven but no longer located in

heaven[26]. In this perspective, law's need for autopistis, its urge towards trans-immanence, is just another expression for a reflexive movement that, unlike this text, will never come to an end.

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[26] HANDELMAN 1982, 40 et sqq.

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