

***Mental Health Homicide and Society, Understanding Health Care Governance*, DAVID P HORTON, Oxford, Hart, 2019, 256pp, hardback, £70.00, ISBN 9781509912148**

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As a form of grand theory, autopoiesis purports to provide the best representation of reality available,¹ but it is not for everyone, and it tends to be viewed with some scepticism by those steeped in other theoretical traditions.² However, autopoiesis may find greater acceptance when treated more modestly; that is, as an analytical lens for reappraising areas of study anew. Used in this way, it is instructive as a vehicle for turning how a given area is viewed on its head. This is because autopoiesis so radically departs from the ordinary, its proponents might say misconceived (see pp. 12-13), ways of thinking about sociological questions that reconceptualization of the issue under observation is often an unavoidable by-product. Given this, David Horton's application of Niklas Luhmann's theory of autopoietic systems to the context of investigations into homicides committed by those who have been in contact with mental health services, is an intriguing proposition. Horton draws on a combination of 14 interviews with patient homicide investigators and one with a leading family representative (p. 35), their written reports, policy documentation and the academic literature. His text focuses on the socio-administrative processes and wider system responses which emanate from patient homicide. In particular, Horton contends that autopoiesis 'enables a deep questioning' of the goals of the investigations established to examine patient homicides (p. 70), and argues for a radical rethinking of what should be expected of them.

Any text concerned with the investigatory processes surrounding homicides committed by persons who have had contact with mental health services, is necessarily dealing with a traumatic area of mental health care. Such homicides not only harm others (the victim, their family, society) but often leave the patient traumatised too. However, more generally, people subject to the Mental Health Act 1983 are more likely to harm themselves and be vulnerable to harm and exploitation by others, than they are to harm and exploit others themselves. A side-effect of the focus of the book on patient homicide investigations is that it necessarily only gives a limited impression of the nature of the risks posed towards, and by, those subject to the strictures of the 1983 Act (see, for example, p. 11, p. 15). As Horton observes in his closing remarks, however, patient homicide only occurs 'occasionally' (p. 215).

The first pages of the text introduce the reader to the theory of autopoietic social systems proposed by Luhmann (further discussion can be found in Chapter 3).³ For the uninitiated, these few opening pages will be thought-provoking. As Horton elaborates, Luhmann presents a radical vision of the world, which may seem 'alien and eccentric' (p. 61), 'counterintuitive and controversial' (p. 82), 'new, strange or even absurd' (p. 215) at first sight. Luhmann views the world as consisting of three types of system: biological, psychic, and social. Whereas

¹ For an accessible introduction to the Luhmannian version of autopoiesis, see M King, *Systems, Not People, Make Society Happen* (epublisher: Holcombe Publishing, 2009). For an alternative account, see G. Teuber, *Law as an Autopoietic System* (Oxford: Blackwell, 1993).

² See, for example, Z Bankowski, 'How does it feel to be on your own? The person in sight of autopoiesis' in D Nelken (ed.), *Law as Communication* (Aldershot: Dartmouth Publishing, 1996); S Diamond, 'Autopoiesis in America' (1991) 13 *Cardozo Law Review* 1763; M Neves, 'From the autopoiesis to the allopoiesis of law' (2001) 28 *Journal of Law and Society* 242; MBW Sinclair, 'Autopoiesis: Who needs it?' (1992) 16 *Legal Studies Forum* 81.

³ 'Introduction'

biological and psychic systems are essentially autonomous and private, with the material they generate – cells and thoughts respectively (p. 3) – said to have no impact upon the existence of society, social systems are different. Social systems are differentiated from one another by their function (pp. 1-2). They produce specific meanings in the form of communications that are solely concerned with their function (law, politics, the economy etc.). While these meanings are ‘socially available’ and anyone can access them (p. 4), the communication systems producing them ‘are unable to directly “speak” to each other, but they are recognisable by everyone and serve an essential social function’ (p. 5). Thus, law speaks and understands only the language of law, politics only that of politics, and so on. This means that legal communication is not political, and political communication is not law. Yet, individuals can know the law and engage with it via the courts, and they can participate in politics via party membership and at the ballot box. Controversially, within the framework outlined above, individuals *per se* have no social existence. The meaning they represent in society is not a product of their thoughts (psychic systems) or their cells (biological systems), but of social communication ‘*about*’ them (p. 5, emphasis in original) by functionally differentiated social systems. In this way, individuals are ‘systematically fragmented ... individuals enter society but never as whole persons’ (p. 83).

Many of the critiques of autopoiesis are well-worn, and this is not the place to go over them again in detail.⁴ However, it is worth pausing on the anti-humanistic aspect of autopoiesis and, relatedly, how the theory separates biological, psychic and social systems, because they bear more directly on the wider subject-matter of Horton’s text – mental health. While these ideas are foundational principles of autopoiesis, they sit uneasily with the observed interaction between biology, psychology and social context – the bio-psycho-social model of mental health. An autopoietic theorist might say this is just how the “health” and “psychiatric” systems (which are separate systems, p. 105) think of mental health, and the fact that other systems think differently is socially significant. Perhaps, autopoietically speaking, that is accurate, but in terms of the observed relationship between biology, psychology, and social context, describing these as being disconnected is problematic (see the examples given and the discussions of biological, psychic and social system separation at pp. 27-28, p. 32, p. 65, pp. 78-79, p. 117, p. 121). I do not think this detracts from the convincing observations made in the book regarding the patient homicide investigatory governance space, nor the wider relevance of such observations to administrative justice or oversight processes in general, since these concern *social* systems. Instead, the observation relates more to a concern about autopoiesis itself. Detailed consideration of the bio-psycho-social model of mental health (and other models) can fairly be said to lie beyond the scope of Horton’s project - his principal focus is on social systems of communication - but perhaps this question does merit further consideration elsewhere.

The remainder of Chapter 1 is directed towards establishing some groundwork.⁵ In particular, it maps out the underlying legal framework requiring and regulating patient homicide investigation and sketches how the evidence for the study was gathered. Horton situates the healthcare system, as the site in which mental health care and patient homicide investigation occurs, in the context of the regulatory state. This serves to demonstrate the complexity of the task before the patient homicide investigator, since their investigation will engage not just with a single health care provider, but multiple other service providers and state agencies (pp. 18-20). Added to this regulatory complexity are questions of morality and legitimacy, and

⁴ See n 2 above.

⁵ ‘Homicide and Health Care: Context and Complexity’

disagreement amongst the relevant actors, including the investigators, over how moral requirements are to be met and legitimacy obtained (pp. 23-24). This complexity is made all the more turbulent by the consumption of the report by society. The receipt of the report by the news media, the courts, health care organisations and so on, will add further diversity to the meaning of the report as each system processes it according to its own function; for example, the media system produces news (p. 25). After further discussion of autopoiesis and an initial indication of how the theory aligns with the subject of his study, Horton turns to map out some key themes and concepts for the book which are unpacked in the following chapters: the purported non-normativity of autopoiesis, the lack of a privileged vantage point for the autopoietic observer, and the concepts of time, risk and accountability (pp. 34-37).

Chapter 2 is an introduction to patient homicide inquiries themselves.⁶ It begins with a consideration of the development of policy in this area (pp. 40-49), and is followed by an explanation of ‘commonly expected’ (p. 49) purposes of such inquiries, including providing accountability, and how the varied nature of accountability manifests in the context of patient homicide inquiries (pp. 50-54). Horton prepares the reader for an autopoietic divergence from all these understandings of accountability, concluding ‘that the accountability concept, traditionally conceived and more recently developed, provides only a partial understanding [in the context of patient homicides]’ (p. 55, see also p. 82). The chapter closes with a fascinating discussion of the inquiry industry itself – the practical process of obtaining the contract to conduct the inquiry, the economic constraints it operates within and so on (pp. 55-59). This discussion – essentially of money: cost – provides a sharp contrast with the preceding discussion of goals such as accountability and learning lessons (see Investigator 2 quote on p. 56, for example). For Horton, this encapsulates the type of disconnections between different systems of understanding which patient homicide investigation governance must contend with (see pp. 55-58).

Chapter 3 addresses Luhmann’s theory of social systems in detail.⁷ The key component of autopoietic theory – communications, not people – and their relevance to society, interaction, and organisations are explored (pp. 63-69). However, it is important to appreciate that ‘communication’ is really a misnomer since communication implies an *exchange* of signals, which, according to autopoiesis, is not what happens. The systems ascribing meaning to each utterance are closed to one another (pp. 70-72). Thus, something only has legal meaning to law; to another system its meaning is constructed within *that* system (pp. 69-70, 75-76). Without such difference, there would be no meaning (pp. 72-73). This also tells us that autopoietic systems cannot communicate between themselves in any direct sense, their binary codes (e.g. law: legal/illegal) necessitate entirely different understandings of reality (see Chapter 4). Nonetheless, given that systems are the environment for one another (collectively they form “society”), any system needs to have some sense of how it views the world in order to operate in a way that does not produce implausible communicative events. Luhmann says this occurs via structural coupling, what a sceptic might call connecting without being connected, but which autopoiesis frames as the ‘[production] of communications separately around certain concepts or ideas’ by different systems (p. 80). It explains, Horton says, how a patient homicide investigation convened in an autopoietically constructed society is able to operate without collapsing into a disorderly morass (p. 81).

⁶ ‘The Investigatory Domain’.

⁷ ‘Social Systems’.

If this account is accurate, it presents a quandary for patient homicide investigations which must necessarily traverse multiple systems of meaning (p. 70, see also p. 84). For example, most investigators are clinically rather than legally trained (p. 92), and so, as medical professionals, they experience difficulties when encountering the legal system. This challenge is examined in Chapter 4, which opens with a brief illustration of how autopoiesis can reconceptualise the patient homicide governance space (pp. 84-86).⁸ From there, in that chapter Horton engages in a detailed consideration of how patient homicide investigations are “seen” by different functional sub-systems, the version of reality which each produces, and how different organisations (for example, NHS Trusts, pp. 96-98) seek to construct those realities according to their particular priorities (legal pp. 86-93, political pp. 93-98, scientific pp. 98-104, medical pp. 105-107, economic pp. 107-110, moral pp. 110-115, mass media pp. 115-121). Regardless of whether you are convinced by the idea of autopoiesis as a good description of reality in general, the division of the contexts faced by patient homicide investigators here is highly instructive. It demonstrates the radically divergent priorities of different contributors to the investigation, how this necessarily sets up contrary currents within the process, and so why *the* truth is not obtainable via the investigative process but only representations of it as constructed by the investigator(s) and other contributors and consumers of the investigation.

In this way, Horton shows how the prioritisation of only one aspect of this picture (for example, the cost of the investigation), and the limits this imposes on the capacity of the investigation, is apt to ‘create misunderstandings, ignorance or objection’ (p. 124). Similarly, his analysis demonstrates that an overreliance on any one perspective, for example, the law (p. 89), to provide reassurance and answers is ill-advised. While legally mandated mechanisms are good at doing some things, law has “‘blind spot[s]” (p. 89; see also pp. 90-93, 104). Furthermore, Horton’s commendable analysis in this chapter articulates a convincing explanation of the reasons why investigations into patient homicide are complex processes which tend to fail to satisfy all interested parties (pp. 122-126). This, Horton suggests, shows ‘that the conventional normative commitments of policy makers [to learn lessons, to allocate responsibility, and to ascribe accountability] ... [require] re-evaluation’ (p. 122, see also p. 125).

Chapter 5 concerns the concepts of accountability and time.⁹ The combination of social complexity, the passage of time, and the different constructions of time within social systems, imposes further challenges on the current framework of patient homicide investigation; people forget things, staff leave, documents are lost, institutions change, concepts evolve (pp. 129-130, pp. 159-161, pp. 164-165). These features of society, which occur as a result of time, are understood in a particular way within autopoiesis. Each social system forms its own account of time through the decisions and distinctions made through its operations (see, for example, pp. 156-158, p. 165). These ‘fabric[s] of time’ (p. 153) form ‘horizons of reference’, a sense of past and future conceptualised in the present to construct a reality for that system *now* (p. 154). Each system constructs its own time and, because ‘communication never ceases’ (p. 161), these accounts are never static, nor synchronised across systems. In the same way, a patient homicide investigation establishes its own ‘specific channel of time’ (p. 155). Events within this timeline are given meaning by investigators, they are constructed after the fact as having ‘specific consequences’ (p. 156). However, rather than thinking of investigatory conclusions as providing *the* definitive chronology of events and their causal significance, Horton suggests that it may be better, for accountability purposes, to think of these narratives ‘as a [socially] meaningful construction of the past in the present, that creates future possibilities of social

⁸ ‘The Patient Homicide Governance Space’.

⁹ ‘Accountability and Time’.

communications' (p. 167). Thus, the chronology of events, and comments about them, considered meaningful by the investigators provide a new set of social communications for function systems to digest as their operations run on (pp. 167-168). Accountability and its consequences are, therefore, constructed in a functionally differentiated way.

The final chapter concerns risk.¹⁰ As with time, accountability, and other concepts discussed earlier in the text, in autopoiesis risk is not objectively definable. While for all systems risk is 'generally ... about the possibility of future loss', the meaning of risk is constructed within systems according to their own lights (p. 172, see also pp. 173-174). Thus, the meaning of risk cannot be finally resolved because society 'lacks a superintendent' (p. 177). There is no observer in a privileged position, there is no way of accessing the future to concretise the risk until it happens (p. 177). There is no way of tracking any given cause to any given effect conclusively (pp. 183-184). Moreover, for autopoiesis, since social systems are forever working to reinternalize their environment (that is, the activities of other systems) to better understand how to deal with an ever-changing social reality, more decisions and more risk are generated through the very processes designed to manage them (p. 182, p. 187). In this context, causality is revealed as a parochial concern (p. 185), and the idea of an opportunity cost somewhat trite – since the costs and effects of making an alternative decision are unknowable (pp. 192-193). Yet, in substantive terms, the run of untraceable causes and contingent decisions is significant. All decisions taken – all risks created – likewise create dangers for those to whom they apply (pp. 194-196), dangers not necessarily borne by the decision-maker (p. 197). This is apt to create 'irreducible conflict' between the decision-maker and the subject of the decision (p. 201). Horton suggests that this leads to protests which gain social relevance where the public opinion they encapsulate is recognised by, for example, the political system (pp. 208-210). Nonetheless, in the same way that the efficacy of the investigative process is inhibited by functional differentiation (the variety of systems involved), so too is the capacity of protest to achieve specific goals (pp. 211-212).

Horton's analysis astutely captures the difficulties of reconciling constructions of the past with lessons for the future (see p. 130, p. 161), the impossibility of making effective interventions to secure change which avoids future risks (pp. 181-182), and why detailed investigations may incline 'towards conservatism' when making recommendations (pp. 189-190). Indeed, if the autopoietic conceptions of reality, truth, time, accountability and risk are reflected on, ensuring "accountability", as it is commonly conceived, and the learning of lessons becomes deeply problematic (p. 172, pp. 214-215). As Horton says, a socially differentiated society is 'chaotic and contingent ... There is little harmony in the rate and speed at which social systems communicate' (p. 159). Thus, to try to construct a narrative of accountability and learning, individually and institutionally, is difficult (p. 142, p. 164). The situation is complicated by the addition of a multitude of interests, which are, for Horton, characterised by their systemic orientations, wrangling the meaning of, for example, "accountability" (pp. 134-137, pp. 141-142, p. 147, p. 159), in a dynamic environment. Further complexity is added by the concept of risk, and particularly the idea that the way in which any risk observed by investigators crystallises, as the future becomes the present, could have been otherwise had different decisions been taken (pp. 174-181). By this point, it should go without saying that how those decisions should have been made, what others may consider the "right" decision, or how they could have been made differently, depends, in autopoiesis, on your systemically constructed point of view (pp. 179-180). An autopoietic analysis of the patient homicide investigatory

¹⁰ 'Risk and Protest'.

governance space is compelling – though also quite brutal, even nihilistic – in mapping out the folly of traditional approaches to thinking about what inquiries can accomplish.

Even though you might struggle to view the world as being autopoietic, Horton's text demonstrates the evident value of autopoietic analysis when deployed in aid of better understanding a specific issue which engages a host of competing perspectives. The insights provided by Horton in this book are certainly relevant in the context of understanding how we can rethink the establishment of patient homicide inquiries, their conduct, and the interpretation of their reports. They are also relevant, as he suggests, to 'other spaces of healthcare governance' (p. 217, see also pp. 218-219). I would also add that the model applied in Horton's text has obvious relevance to all forms of administrative and judicial investigations; for example, ombuds' investigations, public inquiries on any subject, indeed all areas of administrative justice since they are concerned with polycentric disputes. The text also has the advantage of being firmly grounded in a concrete context, where other texts on autopoiesis can be presented at such a high level of generality and abstraction that their value to socio-legal study is not always immediately clear. As such, Horton's book provides a valuable anchor in the form of patient homicide investigations which will be a great aid to those coming to autopoiesis for the first time. In short, this text is deserving of careful consideration by those observing the operation of the healthcare system, by anyone engaged in the examination of administrative justice broadly construed, and those interested to learn about the uses of autopoiesis in a socio-legal context.