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Mental Health Homicide and Society: Understanding Health Care Governance

D. P. Horton. Oxford: Hart Publishing (2019) 239pp. £70.00hb, £34.99pb ISBN 9781509912131

There are an average of 76 homicides by people connected with the mental health services each year in England, and it is mandatory that an independent inquiry be conducted into each one. The author discusses these investigation processes and their implications for society, and for health care governance. His approach is to analyse the health governance space manifested in these inquiries in light of Niklas Luhmann's Systems Theory (see, for example, Luhmann, 1995 and Luhmann, 2008). Extensive accounts of Luhmann's theories are provided, so that the reader is guided through the discussion without having to have read Luhmann's works in advance. The author also draws on a series of interviews conducted with 14 independent investigators and Julian Hendy, the trustee of the charity Hundred Families, which provides information and advice for families of victims.

According to Luhmann's systems theory, the various social systems, such as law and medicine, construct reality from within and not without. They communicate in their own terms but cannot really communicate with each other. The communications of one social system 'perturb' or 'irritate' others. Independent inquiries use the codes of the social systems (e.g. for law, the *legal / illegal* code), but each system's code is effectively a circular tautology applied to itself. When an inquiry report is produced, it is a chaotic series of observations produced within different social systems of communication. Luhmann believed that society is too complex for anyone to exercise mastery over. Applying Luhmann's theory to the independent inquiries, the author's conclusion is that the goal of universal learning from these inquiries is unrealisable. While Luhmann's theory is non-normative, the author does suggest that policy makers could read this book and it would prompt a new look at where the limits of policy-making lie. He says that systems theory 'may help produce practical options' (p.223).

The quotations from the independent investigators interviewed by the author contain valuable insights. One of them says that there is 'a lot of cut and paste' in writing reports (p.55) and another that 'the biggest driver was money, not learning'

(p.56). There has been a 'dumbing down of investigations' (p.108) and 'everything now is media-fuelled' (p.119). The NHS is like a large whale but, when you get closer to it, 'it is a large shoal of fish instead' (p.179). In 90% of cases, panels find that the homicide was not predictable or preventable but the family and the public 'want someone to blame' (p.201).

The author also interviewed Julian Hendy, as mentioned above. Hendy said that the use of Root Cause Analysis by investigators is regarded by families of victims as 'a load of nonsense', with a veneer of pseudo-scientific analysis, but very subjective (p.103). He commented that families find it to be 'a joke' that a report finds a whole list of problems but still finds that the incident was not preventable or predictable (p.200).

There are detailed discussions of concepts such as Time, Accountability and Risk, and how they apply to independent inquiries into mental health homicides. The author discusses how time is elusive and consists of many variables. The temporal rhythms of law and medicine are different (p.130). As investigations take a number of years, this is very stressful for staff and families. Progress is hampered by delays. By the time a report is issued, the NHS service in question has often changed so much that the recommendations may have very little relevance. According to Luhmann, nothing in the past or future is open to experience. Accountability overlaps with time: it is a meaningful construction of the past, in the present, that creates future possibilities for social communications (p.167). It may be upwards, downwards, horizontal or hierarchical (p.51).

Luhmann argued that risk is a form of communication in society and is related to time because it is associated with the future. Traditionally, science was used to calculate risk but, increasingly, doubts are expressed about science's ability to do this. There is a certain circularity in decision-making: the inquiry panel scrutinises the risk assessment (made in the past) but this scrutiny involves risks in itself, such as risk of hindsight bias and risk of reaching very similar conclusions in each case (pp.187-188). Society has become wedded to the idea of achieving almost total safety and minimal risk. The ideal of a risk-free society is a utopian one. Law is put under increasing strain by society's growing preoccupation with risk and safety (p.89). Luhmann would argue

that safety is unachievable because it has a blind spot – it is impossible to prove that one decision was safer than another without taking both decisions simultaneously (p.192).

The author explains that protest has emerged as a significant form of communication in society. Luhmann believed that protest movements are unsuccessful because they 'irritate' – first and foremost - other social systems rather than the primary focus of the movement. He thought it was naïve to assume that the achievements of protest represent a success; success merely demonstrates that protest has assumed a political form (pp.205-206). The author explains how the Zito Trust and Hundred Families, which are 'protest' movements in systems theory terms, have played important roles in developments regarding independent investigations. Their campaigns have an informational value but they also culminate in more divergence and disagreement (p.213).

This is a fascinating book, providing rich insights into mental health homicide investigations. The author has undertaken a challenging task in applying Luhmann's systems theory to this field. The empirical work, in the form of the interviews, provides extra depth and a very high level of originality. There is only brief discussion of the legal background to these inquiries, as it is not central to the purpose of the book. But it does seem odd to discuss the right to life under article 2 of the ECHR without referring at all to the CRPD, which is so central to all mental health law in recent years. The book could have benefitted from reflection on the implications of the CRPD's paradigm shift and its implications for this area. There is an argument to be made for providing a more detailed summary of the book for those considering reading it. It is essentially a Systems Theory analysis of this topic, but this is not mentioned in the title, subtitle or preface. Some readers will be surprised by the predominance of Luhmann's systems theory throughout the book. It is, of course, perfectly normal for a book to take a strong theoretical stance, but, given Luhmann's rather bleak views on humanity, the book is tough going at times. There are notes of optimism inserted, such as the suggestion that systems theory may help to produce practical options, but the practical options are not concretely laid out. Ultimately, the book is a valuable contribution to this field and highly recommended to anyone interested in the area. It may also

stimulate similar use of systems theory as a method of analysis by researchers in other legal areas.

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