International Journal for Multidisciplinary Research (IJFMR)
E-ISSN: 2582-2160 ● Website: www.ijfmr.com ● Email: editor@ijfmr.com

Legal and Media Dynamics: Liberalism and Autopoiesis Viewpoints

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Abstract

This research investigates the complex interaction between the media and the judicial system, therefore transcending traditional worries about media effects to reveal an institutional basis for conflicts between the two systems. The media's self-assigned role as protectors of the common good, critically monitoring public life, gives them a wide mandate to uncover wrongs and weaknesses in the legal system. Legal systems, especially press freedom, safeguard this dynamic, seen as a sign of a healthy democracy. The classic liberal theory establishing this link, however, is being questioned. Critics range from worries about possible media bias towards entrenched social forces to doubts about the relevance of the watchdog model in a large-scale democracy. Drawing on the philosophy of autopoiesis, this article questions the dogma that the media can provide a more accurate picture of the legal system. Autopoiesis emphasises the different standards used by the legal system and the media to authenticate and shape reality by suggesting that social institutions are self-generated and mostly impenetrable to one another. The study of autopoiesis concerns the media's capacity to affect a closed and self-referential legal system, hence challenging the possibility of media-driven changes that might oppose the rule of law. Although the liberal watchdog model and autopoietic theory both support autonomy and conflict between media and legal institutions, the latter argues that media discourse directly contradicts truth assertions verified by the legal system. This paper aims to challenge traditional views and promote a more complex understanding of the complex interactions between law and media.

Keywords: Legal System, Media Autonomy, Liberalism, Autopoiesis Theory, Judicial-Media Relations

INTRODUCTION

This research aims to untangle the intricate tensions that go beyond traditional worries about media effects in the dynamic interaction between the media and the judicial system. Critically observing public life and holding a wide mandate to reveal wrongs and shortcomings in the legal system, the media's self-appointed role as protectors of the common good creates institutional grounds for these tensions. From a particular viewpoint, this relationship is not just an issue but rather a good indication of a dynamic democracy. Such dynamics draw calculated yet notable legal protection, especially in the shape of press freedom, a foundation in maintaining the function of the media.

But the usually liberal philosophy that supports this link comes under several different kinds of attack. Controversies have been sparked by suspicions of media bias favouring major social forces and questions about the validity of the watchdog model in a large democracy. Critics claim that, motivated

by money, a desire for power, and a tendency to serve the lowest common denominator, the media fails to meet their democratic goals. This article questions the traditional view that, in theory, the media should be able to offer a more accurate picture of the legal system.

Deeper into the investigation, the emphasis changes to the notion of autopoiesis, a perspective from which social structures are seen as self-generated and mostly impenetrable to one another. Autopoiesis draws focus to the different standards used by the media and the legal system in validating and building reality. This theoretical paradigm invites a critical analysis of the media's capacity to affect a closed and self-referential judicial system. Furthermore, it questions the viability of media-driven changes that can conflict with the basic values of the rule of law, such as supporting a harsher sentencing system.

Although the liberal watchdog model and autopoietic theory both recognise some degree of autonomy and antagonism between media and judicial institutions, the latter offers a different point of view. Autopoietic theory contends that media discourse is not only coincidental but rather fundamentally and systematically different from truth assertions supported by the legal system. This claim challenges accepted stories and inspires investigation of new points of view on the complex interaction between the media and law.

The complexities of this relationship go beyond simple study of media effects to include institutional roots. Positioning themselves as guardians of the common good, the media negotiate a path where their critical examination of public life is both a mirror and a driver of a good democracy. While legal systems, especially those governing press freedom, offer the required protections for the media's function, the liberal foundations of this interaction come under fire on several fronts.

From allegations of bias and entertainment-driven reporting to questions about the effectiveness of the watchdog model in a large democracy, the criticisms lead this investigation into unknown terrain. A basic difficulty arises in contrast to the conventional wisdom that, by design, the media should provide a more accurate picture of the legal system. The investigation then goes into the theory of autopoiesis, presenting a viewpoint whereby social systems, including the legal and media spheres, are seen as self-generated and mutually impenetrable.

This theoretical perspective highlights the disparity in standards used by the media and the judicial system to validate and shape reality. It begs important questions regarding the media's power to shape a self-referential legal system and the resulting effect on the rule of law. The paper's goal is to promote a better knowledge of the complex interaction between law and the media by questioning the dominant narratives; it seeks to go beyond the traditional liberal viewpoint to take into account the systematic inequalities emphasised by autopoietic theory.

The Principles of Liberal Media Doctrine

Idea of the Esteemed 'Fourth Estate'

The twin pillars of liberal democracy are considered to be a strong range of legal institutions—especially an independent judiciary equipped and eager to defend the constitution—alongside a free press (Mickiewicz 2000; Becker 2004). Some have said that without necessary constitutional and judicial protections, press freedom cannot be preserved, hence prioritising them above good market conditions supporting the free movement of ideas (Curran 2002). The modern liberal story claims emphatically that democracy depends on press freedom, including freedom of expression in electronic media (Curran 2002). The US Supreme Court, under the First Amendment supervising freedom of expression, famously compares media pluralism to a "uninhibited marketplace of ideas" resulting from free

competition among media, stressing the need of least state involvement (Red Lion Broadcasting Co v FCC 395 US 367 (1969) p 389). By contrast, certain European nations like France and Sweden have a history of government involvement via press subsidies meant to encourage intellectual variety under difficult market circumstances (McQuail 1992: 43). Often in conjunction with commercial radio and television, Europe also uses a robust public service model, setting standards on broadcast media (Varney 2004). Prominently featured in human rights declarations is freedom of expression; the European Court of Human Rights, enforcing the European Convention on Human Rights (ECHR), underlines the particular part media institutions play in fostering the free flow of ideas in democracy, therefore justifying greater protection for journalists (The Observer and Guardian v UK (1992) 14 EHRR 153; Steel and Morris v UK (2005) 41 EHRR 22). Legal doctrine and political philosophy support the idea that media occupy a particular place in the constitutional framework of the liberal state. The phrase "Fourth Estate" refers to the media's unique role in overseeing the three arms of government, hence functioning as the "unofficial fourth branch of government" (Gordon et al. 1999: 33). By warning people to possible power abuses by elected officials, journalists—often called presiding over the court of public opinion—help citizens exercise their right to democratic scrutiny. The Fourth Estate thesis presumes an active citizen assessing information obtained, thereby influencing major decisions at the vote box by means of the media's flow of ideas for rational decision-making (Lichtenberg 1990: 110).

Although it is a beautiful legal illusion, the idea of the Fourth Estate often ignores the pragmatic reality of democracy in action. Still, it creates legal and ethical standards for journalists to meet their educational function with more understanding of the seriousness of their assigned duty. Evaluating whether journalists properly use their freedom of expression requires following values including truth, objectivity, neutrality, good faith, and rigorous source verification. The idea is that any abuse of the media's power over public opinion might have serious effects, maybe changing the direction of the whole political system. Although the media's ability to have such strong impacts is contested, what is still important is that members of other government branches, media professionals, and politicians base their actions on the knowledge that media companies can influence public views of the more general political process.

One significant consequence of the Fourth Estate idea is the natural degree of suspicion that taints the interaction between the media and any kind of official authority, be it legislative, executive, or judicial. Aiming to be watchdogs of power, journalists are supposed to treat information from government sources or other interested entities with caution given their responsibilities. The journalist's natural inclination is one of scepticism and distance. Professional journalists therefore see themselves, as Pauly (1999: 137) describes, as unrepentant sceptics who always analyse and criticise the speech and actions of others. This natural doubt could occasionally result in an over tendency for conflict, hence harming the standing of politicians as well as journalists. Drawing parallels with court cases, McNair (2000: 94) observes the growth of the "gladiatorial" political interview, ranging from adversarial and irreverently sceptical to overtly dismissive, and suggests that both the legal system and journalism get legitimacy from their capacity to determine the truth.

Renowned BBC reporter Jeremy Paxman, known for his forceful interviewing technique, has underlined that the broadcaster's attitude towards politicians should reflect the same degree of respect a dog has for a lamp-post (quoted in Franklin 1994: 3). Likewise, the tabloid press shows a confrontational attitude, especially clear in its reporting on criminal justice policies. According to Franklin (1994: 15), tensions between politicians and reporters are not only probable but very normal for their interaction. These

structural tensions arise in part from the various goals politicians and journalists pursue in their relationships: politicians want to influence public opinion in favour of the righteousness of their cause, while journalists are motivated by a quest of objectivity. The question of whether objectivity is a viable standard for assessing media reporting will be discussed more later in this chapter; for now, let it be known that the many interpretative lenses used by journalists frequently conflict with the political establishment.

Legal Institutions and Journalism: A Symbiotic Relationship

Emphasising the vital part of journalists in supervising courts and the judiciary, this research underlines the complex link between the media and the legal system. Journalists have to carefully examine every aspect of officialdom and keep a critical distance from institutions vulnerable to possible power abuse if they are to properly preserve the Fourth Estate ideal. The media must therefore be somewhat sceptical and naturally suspicious if they are to carry out their watchdog role on the administration of justice. Still, it's obvious that judges have significantly more insulation from public scrutiny than do elected politicians. Unlike the metaphorical "lamp-post" mentioned by Jeremy Paxman, judges are sometimes regarded as deserving more respect and devotion. Article 10(2) of the European Convention on Human Rights clearly states the need of "maintaining the authority and impartiality of the judiciary" as a possible restriction on freedom of expression considered "necessary in a democratic society."

Examining the appropriateness of fines imposed on journalists who have been very critical of specific judges has been a duty of the European Court of Human Rights many times. The Court underlined the media's watchdog function in Prager and Oberschlick v Austria, which concerned an article with grave charges against judges in the Viennese criminal courts. 'The system of justice,' it said, is a legitimate topic for journalistic investigation and critique. The Court underlined that the press is a way for legislators and public opinion to evaluate whether judges are meeting their major duties in line with the basic goal of their function. (Prager and Oberschlick v Austria (1996) 21 EHRR 1 para 34)

The Court, however, noted a notable difference between politicians and judges, claiming that judges deserve protection from 'baseless accusations that are fundamentally false' since they cannot openly react to criticism unlike politicians (para 34). De Haes and Gijsels v Belgium (1998) 25 EHRR 1, which concerned very critical magazine pieces aimed at senior judges in the Antwerp Court of Appeal, underlined this viewpoint. Given the nature of the institution, the argument for providing particular protection to the court from unjustified media criticism has declined substantially throughout the 1990s. Many courts nowadays see the media's power to build public confidence and so participate more actively in media debates. Greater participation can help to answer unjustified criticism and lessen demands on the legal system.

Still, the media and judicial institutions' tense relationship endures, made worse by the legal system's role as the final judge of free speech. Once enjoying fair media freedom under Yeltsin, some events in Russia have declined dramatically under Putin, creating a 'neo-authoritarian media system' characterised by self-censorship, capricious legal limits, and executive power concentration (Becker 2004; Mickiewicz 2000). Though the Russian press has successfully liberalised economically, it is still difficult to reach the required level of free expression for a fully operating liberal democracy. Liberal ideology holds that an independent court is required to ensure media freedom by means of the rule of law. ECHR case law, on the other hand, shows that the rule of law may also offer a reasonable justification for limiting media freedom to safeguard judicial independence. The strength of legal institutions determines the degree of media freedom as well as its limitations. While weak institutions might leave the media exposed to too

much state involvement, strong institutions could foster media freedom within bounds set by the courts. Former Lord Chief Justice of England and Wales Lord Woolf clearly shows how the media and the court system interact:

“A free and independent media exists next to a free and independent court, which shapes parliamentary democracy. Moreover, it's possible that a free media depends on the existence of a free court; on the other hand, a free court depends on a free and independent media. Although this might be the case, the court must remain autonomous from the media and the media must remain autonomous from the court.”

Lord Woolf's address aims to bring together judges and reporters. But it shows a relationship full of basic conflicts and, in certain cases, great competition. Although mutually interdependent, the conceptual tension between the independence of the media and the court remains difficult to attain in reality.

Lacking a direct political mandate, judges and reporters must rely on public confidence by showing qualities like objectivity, independence, and fairness. Both fields do the sensitive work of approximating the truth by negotiating contradictory narratives and data. The charge of prejudice is a major blemish on their professionalism; deliberate bias is considered a major breach of journalistic deontology.

Emphasising reporting without prejudice, Gordon et al. (1999: 83) say Rawls' veil of ignorance offers some hope for attaining objectivity. Critics, on the other hand, say that studies on media bias could oversimplify the idea in an independent and verifiable reality. Though there, the charge of ideological prejudice might not entirely account for the different readings of reality and media coverage disparities.

According to Schudson (2002: 261), news judgement, which involves cultural knowledge, is too complicated to be called just "ideology." Tensions between media and legal institutions are viewed as natural in the general architecture of liberal democracy. In the framework of mass democracy, the watchdog model, which ascribes significant democratic responsibilities to the media, is called into doubt.

Modern media companies have difficult expectations; economic pressures might quietly affect editorial material more than the quest of political freedom. News selection is unavoidable and affects the evaluation of objectivity, accuracy, and truth in reporting. The 24-hour news culture, centred on engaging stories, differs with the watchdog model and the media's purpose to provide above all entertaining narratives.

Emphasising narrative as a key component of journalism, Pauly (1999: 147) observes that journalists tell stories. Law and media have a strained relationship since the media usually cherry-picks amusing elements of legal stories while ignoring technical or procedural information. Media selection methods favouring stock characters and predictable patterns entice journalists to straightforward yet compelling stories.

The simple law-and-order narrative provides an attractive simplicity with obvious differences between heroes and villains in the setting of modern politics with its complexity of spin and source control (Sparks 1992). Journalists are drawn to such stories not only for ideological reasons but also for media selection procedures that favour interesting and recognisable tale components (Gamson and Modigliani 1989).

Examining the Interaction Between Law and Media: Investigating Truth and Autopoiesis

Examining Truth and Autopoiesis in the Dynamics of Law and Media

Law and media have a natural conflict in their interaction, especially with respect to the media's

watchdog function. But one should recognise that the media might not always give this role top priority as the liberal story implies. This part explores a different point of view meant to clarify why law and the media see reality through different filters, hence complicating their interaction.

Although truth is still a guiding principle influencing the behaviour of both media and legal actors, different interpretations and standards cause conflicts. The media's news-making standards define what it considers trustworthy and accurate; this may not match the legal notion of accuracy, which could cause different storylines. As said before, many people are worried about how the media presents legal matters as unrealistic and inaccurate. But one must ask why media discourse could naturally show distortion.

Expecting journalists or scriptwriters to follow the same criteria as solicitors misjudges the unique character of their profession. Though it's not incompatible with the watchdog idea for media outlets to be educational, the media doesn't seek to operate as a law school for the general public. Modern complicated law often resists simple representation, hence testing even the most skilled journalists or editors. Philosophical doubts about the feasibility of knowing truth add even more difficulty to the situation.

Treating all truth claims as equally believable or relative does not solve the issue of media distortion; it may support a postmodern relativism. Although the issue of who has final power over legal truth is still in debate, it is clear that legally confirmed truth has more power than other kinds of truth. Media discourse shaped by this hierarchical system of knowledge projects and is limited by the power of legislation.

Given the variations in standards used to evaluate truth assertions, it is doubtful if total elimination of inconsistencies with legally valid truth is possible. Is it possible to accurately convert law into media discourse or are the differences between media and law too great? The idea of autopoiesis, widely established and used by Niklas Luhmann to both law and media, offers an unusual viewpoint on this topic. Although autopoiesis has advanced considerably in the sociology of law, its influence on media studies is still somewhat modest. (Luhmann 1985; 2000; Couldry 2007). Comprehending Autopoiesis: Responding to Critiques and Investigating its Media Distortion Relevance

Known for its intricacy and sometimes contentious nature, especially because to Luhmann's thick works, autopoiesis provides a fresh viewpoint on social systems. One of its basic ideas is that society consists on specialised subsystems of communication, such as law, which talk about one another instead of actually engaging, hence producing closed and self-referential systems. Some people have therefore read autopoiesis as supporting an extreme kind of legal positivism.

Critics of autopoiesis usually connect it to a comeback of functionalism, a point of view Couldry considers concerning in media studies. Still, King and Thornhill emphasise important differences and contest this link. Unlike functionalism, autopoiesis doesn't see systems as intentionally created for society's benefit, nor does it stress harmonious social totality. Rather, it recognises the possibility of crisis and disturbance in subsystems. Autopoiesis is not bothered with the societal advantages resulting from subsystem activity; it only emphasises communication.

Another contentious issue is human interaction; some say it dehumanises society. Luhmann suggested that human actors are distinct systems living as communications inside the social subsystems' surroundings. People are considered as objects of social communication instead of actual participants. Though it may offer new perspectives on the intricate interaction between people and social systems, this questions conventional wisdom on human agency inside social analysis.

Regarding media reception, autopoiesis seems to ignore cognitive processing and translation by humans, which are considered outside the purview of the social system. This point of view, therefore, acknowledges the complex interaction between people and the systems they interact with via their communications. Media discourse, especially in connection to politics or legislation, creates realities that might not affect all people uniformly. Autopoiesis reflects the interaction between law and media, hence recognising the possibility of misinterpretation between systems caused by accident in interpretations.

Luhmann sees law and the mass media as essential social subsystems. Every one runs on different codes and functions. For example, Law processes events from its surroundings using the 'lawful/unlawful' and 'legal/illegal' binary distinction, aiming to stabilise normative expectations over time. In an otherwise unpredictable communication environment, this approach guarantees predictability and certainty.

Autopoiesis challenges conventional ideas of society operating by providing a framework to grasp the complex interactions between social subsystems and highlights the difficulties of media distortion. Luhmann 1985; 2000; Couldry 2004; King and Thornhill 2003a; Cotterrell 1993; Mingers 2002). Ziegert explains: a) Although they cannot shape the future, norms "immunise" against its unpredictability; b) the functional impact of norms is not the projection of an ideal future but rather the projection of a "managed" replacement for an uncertain future. Ziegert explains that a) although norms cannot create the future, they 'immunise' against its unpredictability; b) the functional impact of norms is not the projection of an ideal future but rather the projection of a 'managed' replacement for an uncertain future. Norms bound time, not human beings. Norms bound time, not individuals. Legal norms' power lies in their unchanging character in the face of ongoing violation: speeding does not invalidate the standard it breaches since only law itself may change its own norms, therefore guaranteeing stability over time. Experience from the past has no bearing. Though we might directly know how much particular regulations are broken, it would be naive to believe such activity is thus legal. Law itself is generally uninterested about how its rules function on the outside:

From a cynical perspective, law could be seen as constructing a make-believe world that simplifies psychological, political, economic and other 'realities' to let it disregard all knowledge which questions the legitimacy of its communications. The media, too, are clearly in the business of (re)producing their own reality using their own "information/ non-information" code. Luhmann (2000: 17) defines mass media's system as the 'positive value'; 'non-information' is the 'reflexive' value presenting the opposite background against which the media can set themselves apart as a self-reproducing system. Put another way, old and new are closely related, or information with present news value and information that is no longer news as it has already been published (and is therefore 'non-information'). Still needed is "old" knowledge framing the new in terms of what is familiar and came before; this is rather paradoxical for autopoiesis as what is already known no longer has information value. Luhmann (2000: 20) describes the whole media system as one driven by the dynamics of information and noninformation: "The system is constantly feeding its own output, that is, knowledge of certain facts, back into the system on the negative side of the code, as noninformation; and in doing so it forces itself constantly to provide new information." The media, in other words, is always "de-actualising information" (Luhmann 2000: 20), most obviously in the never-ending self-renewing cycle that is news but also in entertainment categories as Luhmann (2000: 63) makes clear, driven by a similar search for surprise and suspense resulting from what he calls "self-induced uncertainty." Clearly, all social systems rely on information processing. This process is crucial for the mass media; their communication goal is the 'constant generation and

processing of annoyance - and neither in acquiring knowledge nor in socialising or educating people in accordance to standards' (Luhmann 2000: 98). Mass media's principal job is to provide other social subsystems a present tense they can consider 'given' for their own operations, therefore adapting themselves by anticipating future events. By means of constant information renewal and obsolescence, the media generates a "memory" for society, hence providing other systems with a reservoir of knowledge they could use for their own ends (Luhmann 2000: 65). Mass media, like the legal system, is wrapped up in its own reality, which Luhmann (2000: 4) defines as "what appears to them, or through them to others, to be reality," oblivious to anything outside its own environment. Luhmann explicitly rejects the idea of media distortion:

The issue is not: how do the mass media misrepresent reality? For that would presuppose an ontological, available, objectively accessible reality that can be known without resort to artifice; it would fundamentally presuppose the ancient cosmos of essences. Indeed, scientists may believe they understand reality better than the way the media, dedicated as these are to 'popularisation', depicts it. But that can only imply contrasting one's own building to another. The topic that most intrigues my argument in this chapter is: how do the mass media and the make-believe systems of law interact? Autopoietic theory, as I have said before, excludes any direct interaction between social subsystems. Rather, it uses the concept of "structural coupling" to explain partial meaning overlaps between subsystems resulting from events acting as irritants for each relevant system. King and Thornhill (2003a: 33) provide a useful definition of structural coupling: 'structural coupling. Structural coupling, according to King and Thornhill (2003a: 33), is a process whereby two systems interactively change one another. Serious fraud, for example, reflects a possible structural coupling between the economic and legal system as well as being a trigger to the media system because it has information value. relates to the co-evolution of various systems (of whatever kind) whereby each includes the other in its environment, interpreting the outputs of the other in its own terms on a continuous basis. For instance, serious fraud might be a trigger to the media system since it has information value, but it also suggests a possible structural coupling between the economic and legal systems. Should the legal system take up the issue and prosecute it, more media coverage is probably next, hence creating further structural coupling between the law and the media. Luhmann believes that the media and politics have the closest structural coupling, which causes significant conflict between them; but, by calling law's connection with the media "only relatively marginally affected" (Luhmann 2000: 68), he appears to somewhat discount this. Still, autopoiesis has been rather helpful for Nobles and Schiff (2000; 2004) in their studies on media reportage of miscarriages of justice and the crisis feeling the media appear to surround the legal system under high-profile wrongful convictions. Based on content studies of newspaper reporting, their approach centres on the concept of "stable misreading," wherein the media system continuously converts legal truth into its own peculiar reality. Any idea that the media could faithfully recreate law in all its integrity goes against the fundamental principles of autopoiesis since it would imply that the media could no longer exist as a fully distinct subsystem. For the media to replicate law's messages would mean they would have to forsake encoding reality on the basis of their own 'information/non-information' concept, hence endangering their existence as an autopoietic system (Nobles and Schiff 2004: 226). Consequently, the media's communications on law (and any other subject) reflect a striking degree of simplicity and superficiality judged inevitable for a system always renewing itself to maintain its information generation. Covering problems with the same detail as law and science would imply some media inertia, which would cause them to ignore their information calling. In the context of

miscarriages of justice, the media's misinterpretation of law takes on a particular shape for Nobles and Schiff. The media usually consider a defendant's conviction as more or less conclusive proof of guilt; to the legal system, such a result only suggests "a finding of guilt following a fair trial" (Nobles and Schiff 2000: 96; my emphasis). Media coverage is prone to ignore the need of impartiality since it is assumed to have very little news value. Should the media consider it worthwhile to cover the fairness of court processes as a matter of course, it would imply that injustice is viewed as the normal and not worth noting situation, which would then reflect negatively on the legal system. The legal system, in other words, gains from other systems habitually misreading its functions. Nobles and Schiff say that for the media it is convenient not to probe too far into a case's background: to doubt whether a conviction is safe would place great strain on reporters who would have to compile their own "evidence" and carry out their own investigations to support their narrative. Though it is more common in run-of-the-mill reporting providing next day's headlines, this is obviously the realm of investigative journalism. Nobles and Schiff think that when someone is acquitted, a similar tendency can be seen: acquittal is viewed as a proclamation of innocence rather than a failure to convict by existing standards of proof. Thus, both an acquittal and a conviction create consistent misreadings of the law, which guarantees some stability in the interaction between law and other social subsystems as the names imply. A unique issue develops, though, when a conviction is overturned on appeal: here too a misinterpretation happens in that this occurrence is presented as a finding of innocence rather than being regarded as an indicator that the defendant did not have a fair trial. As has happened, for example, in recent years in England when the convictions of Sally Clarke and other women convicted of killing their babies were quashed on appeal, this may cause the media to talk of "a crisis in public confidence" flowing from the exposure of apparently serious flaws in the legal system. When this happens, the stability of the structural coupling between law and media could seem to be in danger. Nobles and Schiff, on the other hand, believe that the effect of such a crisis on the legal system is rather little given that such a crisis is totally of the media's own making—it is a media event in other words—and that interest is likely to wane after a time as the media go in search of new information and shift their focus elsewhere. Public investigations and evaluations might follow, but the final outcome is improbable to be a dramatic change of the criminal justice system. The theory holds that the news media cannot keep its crisis narrative since they are too dependent on the information advantages that accompany the 'normal' reporting of acquittals and convictions to preserve their critique of the legal system. Any recurring crises in public trust will most likely result in a return to a more stable set of interrelations with the legal system. This does not imply that the legal system cannot evolve; rather, it indicates that it alters only on its own terms via its normal method of handling events in its surroundings. The media's view of what qualifies as a major issue or flaw does not always match the legal system's own definition of a mistake (Nobles and Schiff 2000: 167). Put another way, media reports do not directly enter the judicial system to cause a certain result. The legal system is likely to react to its observations of its deficiencies by further differentiating its own operations as occurred in 1997 when the Criminal Cases Review Commission (with jurisdiction over England, Wales and Northern Ireland) was established in response to a series of miscarriages of justice. Nobles and Schiff (2000: 170), nonetheless, underline that "the reform generated is, as a sceptic would expect, not root-and-branch reform, but changes meant to comfort the media of the legal system's capacity to handle its errors".

Media dangers to law's autonomy: dedifferentiation

Law is particularly unresponsive to outside influences because of its normative closure. Although this

enables it to perform its stabilising role, it should not be regarded as a functional characteristic in the non-autopoietic sense: law may be quite much out of sync with other systems, including the human system, even if it manages to preserve its own closure. Nobles and Schiff's study implies that even media awareness of significant issues can only have a restricted influence on the real operation of the legal system. Such a closing is both a strength and a weakness of autopoietic law. It also implies that one should not overstate the degree to which the media can disturb and even subvert the legal system. Sustained times of critical reporting simply annoy law, which is probably going to fade, and do not cause the sort of disturbance many practitioners and policy makers dread it may do. The issue is whether this implies that autopoiesis under no conditions foresees the prospect that the media could cause great burden on the judicial system. There surely seems to be an extreme case of "dedifferentiation" that would significantly undermine the autonomy of the legal system. King and Thornhill put it this way: The only danger to the efficacy of law is dedifferentiation: the collapse of law's boundaries so that its legal communications lose their uniqueness and become tainted by the legal system's use of other methods of assigning meaning—maybe economic, political, scientific, medical/therapeutic or religious. Law stops being a system when it no longer generates its own messages but instead duplicates those of other systems, according to King and Thornhill (2003a: 40). We would be facing an example of dedifferentiation, for instance, if cases were thrown out of court after a time because they had lost their information value or if someone were found guilty by a court of law only on the basis of a media narrative. Clearly, though, only very unusual situations might lead to a total dedifferentiation. Such extreme consequences are improbable from an occasional or solitary disturbance. The collapse of law's borders calls for a kind of radical upheaval consuming the whole social structure, for example, a revolution resulting in a theocracy putting priests or clerics in control of the administration of justice. The idea of dedifferentiation makes it seem improbable that media pressure by itself is enough to endanger the autonomy of law. Among the most potent subsystems are law, politics and science. Autopoietic law tends to dominate smaller systems since it is the more authoritative subsystem able to define reality for the rest of society. Weaker systems, on the other hand, are not automatically resigned to this specific allocation of meaning-making power. King emphasises that the less common systems can always assert their own self-reconstructions and even rebuild effective meaning systems following their own processes and reality interpretations. The challenge for these weaker systems, then, is to persuade society, the world of social communications, to embrace their versions of reality in preference to those of the more common systems. Mapping the battleground between law and the media using this specific point of view is quite beneficial. Although it would be challenging to claim that the media are a particularly weak subsystem, it would definitely seem that, regarding their relationship with law, they are the weaker partner, as Nobles and Schiff's study indicates. Much of the unease regarding the media's handling and reporting of legal matters exposes worries about the manner in which this relationship is evolving. Might we be seeing a change in the power balance whereby the media's misreadings of law are rising in importance and becoming more effective in presenting themselves as usually accepted and authoritative pronouncements of legal meaning? Will this finally lead to a situation of dedifferentiation as Sherwin (2000) asserts, or are the lines between law and media 'vanishing'?

In typical autopoietic fashion, one could contend that law's own communications regarding the danger media culture poses tend to take on a life of their own, therefore acting as a catalyst for a further differentiation of its operations so as to protect law against pressure from media and public opinion. Given the autopoietic structure, it seems reasonable for the judicial system to seek internal remedies to

the ongoing and occasionally severe pressure that defines critical media coverage. Law's existence as an autopoietic system appears more or less certain so long as it can turn to its own particular processing technique in handling such demands. The notion that crises around law are media caused softens the theory that the media have a substantially disruptive influence on law: the autopoietic legal system is viewed as robust enough to rise to the challenge and manage media pressure. Of course, it is law's (relative) closure that shields it from being too readily disturbed by events in its surroundings; autopoietic legal systems can, of course, retreat from certain areas and cede these to other systems (King and Piper 1995: 35).

Conclusion

Autopoiesis provides a story that is quite different from the liberal narrative which easily agrees that legal actors should submit to a good amount of media scrutiny and criticism. The relationship between law and the media is seen as problematic solely to the degree that the latter criticise legal institutions with erroneous, ill-informed, unnecessary and overtly harmful comments that undermine people's confidence in the legal system. Many onlookers believe that such a careless use of media freedom occurs much too frequently and leads to false and poor media representations. Underlying such worries is the belief that except for the media's failings, the people would be far more familiar with the inner workings of the judicial system and less likely to be unhappy with the administration of justice. Nobles and Schiff's (2000: 99) fairly unexpected finding that "the media's misreading of legal operations exhibits a tremendous commitment and deference to law and legal processes" gives a clear indicator of how autopoiesis questions some of the accepted knowledge in this field. Autopoiesis emphasises that the media's distortions result from their need to remain a separate system driving them to generate their own reality according to criteria directly opposed to those with which the legal system generates its own communications. The media's inherent superficiality, which to liberal doctrine hinders them from effectively carrying out their watchdog function, is viewed – rather perversely perhaps – as something that helps to protect law's unassailability since crises in public confidence are only transient media creations unable to cause significant changes in the legal system. Certainly, such observations are extremely broadly worded, providing just a general overview of the law/media nexus which no doubt needs refining if we wish to be able to differentiate between various media forms and methods in which different facets of the legal system are represented by several media. Autopoiesis is most effective as a theory that views society's connective tissue as meaning and communication. People in their role as individual conscience systems typically stay outside the autopoietic view, as I have said. At first look, the reality that people are outside social subsystems is not as strange. Though these are institutions that permeate every aspect of their life, it is not unreasonable for individuals to feel alienated from both law and the mass media. Just as they create other facets of their own reality, systems like law and the media "imagine" individuals as clients, litigants, viewers, audience ratings, and consumers. But such fantasies may not always match how individuals build or experience their own world. Heated media discussions and even profound legitimacy crises, products of an intense coupling of events, may not register exactly since such communications occur in an autopoietic, self-reproducing and closed-off environment.