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# Book Review: Hildur F. Antonsdottir, *Decentring Criminal Law, Understandings of justice by Victim-Survivors of Sexual Violence and their Implications for Different Justice Strategies*, 2020

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The criminal justice system's failure to meet the justice interests of people subjected to sexual violence has received considerable critical attention within feminist legal and socio-legal scholarship. Correspondingly, there has been a growing ambition to challenge the conventional justice system's paradigm and explore non-traditional justice mechanisms and practices to meet victim-survivors' interests. Likewise, in recent years, an increasing body of research has engaged with victim-survivors to understand their perspectives and ideas about justice better. It is in this context that Hildur Fjóra Antonsdóttir's<sup>1</sup> doctoral thesis in Sociology of Law *Decentring Criminal Law: Understandings of justice by Victim-Survivors of Sexual Violence and their Implications for Different Justice Strategies* ask the questions; how can we advance the justice agenda for people who have been subjected to

sexual violence? What can justice look like? In doing so, Antonsdóttir contributes, in an excellent fashion, to perspectives that challenge the concept of justice beyond a one-dimensional focus on the conventional criminal justice system. From a socio-legal perspective, an essential question that arises when reading this study is how a socio-legal understanding of justice, when confronting the conventional claims of the law, can contribute to a more holistic and fair illustration of the victim-survivors situation and provide a possible way forward.

Under those circumstances, this study aims to gain a deeper understanding of how victim-survivor of sexual violence perceive, experience, and understand justice; and to explore whether and how this knowledge can be used to expand and develop strategies that are capable of meeting the justice interests of victim-survivors within and outside of the criminal justice system (p. 20). To achieve this, Antonsdóttir situates the thesis within feminist socio-legal studies, while drawing on victimology, feminist criminology, and feminist political philosophy. In this study, the author exposes the pervasive devaluation of things coded as "feminine" by

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1. It is necessary to clarify that Antonsdóttir conducted her Ph.D. at the Sociology of Law department at Lund University, the same department where I am currently enrolled as a PhD-candidate. Besides that, Antonsdóttir and I have not worked on any joint projects.

illustrating the denial of equal protection under the law for victim-survivors of sexual violence in Iceland and, to some extent, the other Nordic countries. Consequently, one of the thesis's main objectives is to give the reader a glimpse of an alternative and emancipatory political reality in which people subjected to sexual violence are recognized and enjoy parity of participation in social life. In this sense, this study examines justice from below by adopting a broad agenda of criminal law's decentering as an imaginary space of justice.

The thesis is divided into an introductory chapter and four separate but inter-related papers. In the introductory chapter, Antonsdóttir presents a literature review of different justice mechanisms and practices related to sexual violence, including the criminal justice system, tort law, institutional complaint mechanisms based on administrative law, restorative justice, and transformative justice. Further, the overarching theoretical framework of Nancy Fraser's democratic theory of social justice is discussed, as well as the methodology. In the methodology section, Antonsdóttir accounts for the two empirical studies that the thesis relies on; namely, Carol Bacchi's (2009) Foucault inspired post-structural 'What's the Problem Represented to be' (WPR) approach to critical policy analysis, and an interview study with 35 (3 men and 32 women) victim-survivors of sexual violence in Iceland. The interview study constitutes the empirical material in paper two, three, and four, while the critical policy analysis forms the empirical material in paper one.

The following part of the review will draw attention to each of the four papers in this study. However, I should add that the aim here is not to place Antonsdóttir's central argumentation under the microscope; instead, I will account for the complex and well-researched notions of her work. After describing the four papers, I shall attempt to briefly reflect on some of the issues raised in this study in order to highlight the importance of such knowledge.

The point of departure in paper one, "*Empowered or protected? The 'problem' of complainants' rights in Danish and Norwegian preparatory works on criminal procedure*" is a critical policy analysis (Bacchi 2009) of argumentation for and against strengthening victims' status and rights in Danish and Norwegian legal policy documents. In this paper, Antonsdóttir shows how victims' legal rights and status are subject to different interpretations of legal principles such as the equality of arms principle and the objectivity principle. Moreover, she demonstrates how the solution to victims' negative experiences is framed differently based on assumptions about victim-survivors' needs and interests. That is, arguments not in favor of strengthening victims' rights are based on the assumption that victims' real interests are protected from the "hostile" criminal justice system. In contrast, arguments in favor are based on the notion that strengthening victims' rights will empower and decrease negative experiences. As a result, Antonsdóttir argues that these different assumptions about victims' justice interests and the contrasting interpretation of legal principles leave the question of victims' rights open to social justice principles.

The second paper, "*A witness in my own case*" – victim-survivors views on the criminal justice process in Iceland", examines whether the legal status of victim-survivors, as a witness with limited rights, is a "just" arrangement. Drawing on the critique of feminist legal scholars, Antonsdóttir applies Fraser's (1997; 2003; 2009) social justice principles and evaluative standards to the question of victims' legal standing and rights in Icelandic criminal justice procedure and the broader context of Nordic criminal procedure. In doing so, she argues that as victims have interests in their criminal justice procedures process and outcome, they should also have legal standing in their criminal case. When victims are witnesses to the crime committed against them, this is, according to Antonsdóttir, a case of misframing. The author proceeds

to apply the principle of “participatory parity” (Fraser 1997; 2003) to evaluate, whether victims are being denied participatory parity by the institutionalization of majority cultural norms within the legal system; and whether strengthening victims’ status and rights in itself denies participatory parity to suspects and accused. Here, Antonsdóttir suggests that not allowing for parity of participatory rights between the survivor and the accused constitutes a case of misrecognition, a status injury, since it denies survivors the requisite standing as a result of institutionalized hierarchies of value within a gendered legal culture. The paper’s main conclusion is that not recognizing victim-survivors’ legal and social justice interests puts them in a position of inequality in relation to the state and to the defendant, which becomes even more prominent given the gendered character of sexual violence. These findings provide much needed empirical support to a somewhat under-researched subject, but it also provides the too often misrepresented female complainant a voice of their own.

In paper three, *“Injustice disrupted: experiences of just space by victim-survivors of sexual violence”*, the primary questions concern: What is the role of space in the way victim-survivors of sexual violence can experience justice outside of the criminal justice system? Can an understanding of space help us develop justice responses to sexual violence? In this paper, Antonsdóttir shows how informal justice practices and administrative justice procedures can help victim-survivors experience a sense of justice by (re)claiming their space, or as the author likes to call it “just spaces”. Through the interviews, this becomes clear as many participants’ agency and freedom of movement and their social, educational, and economic relations and opportunities were restricted when offenders remained in or re-entered their socio-geographical space. These findings are conceptualized on Kelly’s (1987; 1988; 2012) continuum of sexual violence, and by drawing on McGlynn and

Westmarland’s (2019) concept of kaleidoscopic justice, which incorporates justice themes that are of importance to victim-survivors of sexual violence: consequences, recognition, dignity, voice, prevention, and connectedness. The author shows that the creation of “just spaces” relies on the active recognition, solidarity, and support of “those who count” (i.e., family members, friends, colleagues) in a given context and who ensure that these spaces are sustainable enough. Finally, Antonsdóttir also suggests, by reconceptualizing Kelly’s (1987; 1988; 2012) concept of the continuum in a context on injustice, that the creation of just spaces can be understood as a disruption in this “continuum of injustice”, whereby victim-survivors can exercise and experience a sense of belonging and freedom. The author concludes that community accountability processes and administrative justice procedures are examples of social and institutional platforms through which intervention in the continuum of injustice becomes possible, although it is by no means guaranteed.

The final and fourth paper, *“Compensation as a means to justice? Sexual violence survivors’ views on the tort law option in Iceland”*, examines the justice potential of stand-alone civil tort lawsuits in cases of sexual violence. Here, social justice conditions in the form of parity of participation (Fraser 1997) are much more apparent, seeing that the plaintiff is considered a full legal subject. Antonsdóttir, however, points out that this legal option entails problems of access to justice as there is a risk that the harm of sexual violence is privatized. Accordingly, the importance of sexual violence as a form of gender injustice coupled with offender immunity that has detrimental consequences in terms of the health, well-being, and socio-economic status of victim-survivors’ is highlighted. To remedy these problems, Antonsdóttir suggests that a public/private hybrid option that ensures plaintiffs and defendants in cases of sexual violence access to legal aid paid by the state and that guarantees

the amounts awarded would be a step in the right direction.

In summarizing the thesis's main conclusions, Antonsdóttir uses Fraser's notion of normal/abnormal justice. According to Fraser, 'normal' discussions around justice are based on underlying presuppositions about what an intelligible justice claim looks like (Fraser 2009). On the other hand, abnormal justice is where discussions about justice proliferate, and debate is not characterized by shared understanding. Such discussions, Fraser suggests, have a 'freewheeling character' and lack the 'structured shape' of other justice discussions (ibid). In line with this understanding of justice, Antonsdóttir argues that "we are seeing the use of plural formal and non-formal procedures which use different standards of proof, yield different outcomes, and are shaped by different discourses." (p. 80). Furthermore, the author suggests that notions of 'abnormal justice' can be used to capture a situation where disputants no longer share the same presuppositions of what justice claims should look like, where to seek redress, and who can decide the outcome. With this in mind, it is my interpretation that this thesis not only illuminates and explain the current state of affairs concerning the calls for justice in cases of sexual violence but also has the potential to contribute to the pluralistic and freewheeling debate in a way that potentially could lead to formal and informal procedures that undermines criminal justice.

If I were to have any reservations about Antonsdóttir's general approach in this thesis, it would be related to her expression of brevity concerning how to make these alternative claims of justice available in a broader sense. For instance, how do we examine these alternatives

closer? How could they inform criminal law to achieve broader opportunities for victim-survivors to reclaim their everyday lives? Although the author touch upon these discussions, the study would stand out more if they were to be displayed in more depth. For instance, justice outside the criminal law can be recognized as a profound "sense of justice." However, "complete justice" requires a combination of these "outside law" mechanisms and criminal law that acknowledge justice from a broader perspective. Indeed, Antonsdóttir is aware of this, and neither does she propose that criminal law should not have a role in cases of sexual violence, yet elaboration of these issues would be an exciting read. Moreover, in the third paper, the author exclusively discusses "just spaces" in terms of offline physical environments. It would also be alluring to take part in the victim-survivors reasoning about intrusions in online environments and if online intrusions extends to the offline world.

To return to the thesis's hope and ambition, Antonsdóttir succeeds admirably in contributing and developing these freewheeling discussions to reduce impunity for sexual violence and heralds a new era of revolutionary justice. This thesis also demonstrates how socio-legal research can conceptualize the law as an integral part of societal processes when highlighting the important interaction between legal and social forces. Thus, this thesis is an excellent example of how socio-legal questioning of the boundaries of the law contributes to an understanding beyond the capacity of strict legal research. Having that said, there is little doubt about Antonsdóttir's contribution to socio-legal feminist research.