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"LAW AND JUSTICE"

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LAW AND JUSTICE IN THE CONTEXT OF THE ZAPATISTA WESTERN

Abstract:

In this paper I analyze the concepts of law and justice, frequently used together, starting with their use in the names of political parties in Poland, Croatia and Serbia, and with Emiliano Zapata's famous words, "*If there is no justice for the people, let there be no peace for the government.*" By "*Zapatista Western*" I refer to different, mostly superficial, appeals to justice. I examine the phenomenon of appeal to justice from two theoretical perspectives: Kelsen's critique of justice as an elusive pursuit of happiness that needs to be excluded from the domain of law, and Althusser's concept, which draws on Kelsen. Although I refrain from a definite conclusion, I favor Althusser's position. Althusser perceives law not as a neutral instrument of justice, but as a key element in an ideological reproduction of a society. Therefore, appeal to justice has to be related to class politics, rooted in and thought out in relation to structural layers and elements of society, and not taken moralistically, as a perception of a current aberration from the civilizational norm. Althusser contributed to the elevation of legal theory from formalism and positivism to a critical approach, so that law is no longer seen as abstract justice, but as an active element in the dynamics of social power relations.

Keywords: *Law, justice, structure, infrastructure, Zapatista Western.*

I will attempt to explore the theme of the call for justice, beginning with the Zapatista (Zapata) Westerns from the late 1960s, and ending with more recent developments. The Zapatista Western, also known as the Zapata Western, refers to a subgenre of Spaghetti Westerns that emerged in Western European cinema during the late 1960s and early 1970s.[1] The main protagonists are typically an ignorant and brutal villager and a decadent European revolutionary who form an alliance initially driven by selfish motives or greed. Over time, their accidental partnership evolves into an uncompromising struggle against injustice. The creators of Zapatista Westerns often promoted Marxist or other radical political ideas. The most renowned work within the genre is Sergio Leone's *A Fistful of Dynamite* (1971), which, paradoxically, was also interpreted as a critique of the genre itself.

The plot is well known: the previously described duo confronts a bloodthirsty dictator who collaborates with a multinational corporation. The representatives of such corporations and imperialist forces on the ground are typically portrayed as psychopaths or ruthless mercenaries. I treat the Zapatista Western as a paradigm of spontaneous philosophy – that is, the emergence of a philosophical idea in an informal, non-academic

1 Zapata Western. 2025 (Internet)

context. Spaghetti Westerns criticism and its related narrative forms focus on subjective and moralistic elements, which also mark their limits. While the issue of informal philosophical thought is significant, a more detailed analysis lies beyond the scope of this text.

I examine the phenomenon of the appeal to justice through the theoretical lens of Kelsen's critique of justice as an elusive pursuit of happiness, as well as Althusser's conception developed under Kelsen's influence. According to both Kelsen and Althusser, the foundation of law lies in private law, in line with the thesis on the significance of social reproduction. The question of justice is therefore addressed from the perspective of private law as the basis of social reproduction, rather than in moralistic terms, as is the case in the Zapatista Western, where a local psychopathic dictator and American imperialism are juxtaposed, while the underlying social structures remain obscured. Kelsen and Althusser do not situate the problem of justice within the sphere of morality, but rather in the codification and functioning of private law. While refraining from offering a definitive judgment, I am more inclined toward Althusser's solution, which builds upon Kelsen's rigorous exclusion of justice from legal theory, yet allows for the inclusion of a non-moralistic concept of justice.

POLITICAL PARTIES, ZAPATISTA WESTERN AND CURRENT NARRATIVES

The term *justice* is frequently used in political discourse. Notably, *Law and Justice* (*Pravo i pravda*) is a sovereignist political party in Croatia, founded on February 3, 2024. Its president is Mislav Kolakušić, with Ivan Vilibor Sinčić and Ivan Lovrinović as vice-presidents. The party positions itself as populist, Eurosceptic, and anti-establishment, and even shares a name and branding similarities with Poland's *Law and Justice* party.[2] Law and Justice (*Polish: Prawo i Sprawiedliwość*, abbreviated as PiS) is a right-wing, national-conservative political party in Poland, officially registered on June 13, 2001.[3] The ideological framework of both parties reflects a shared emphasis on sovereignty and traditional values. The *Freedom and Justice Party* (*Stranka slobode i pravde*) active in Serbia, is a pro-European, social democratic party founded in 2019 through the merger of the *Green Ecological Party* and the *Left of Serbia*.[4] In most variations, justice is positioned alongside law as its corrective. When justice takes precedence, it signals a certain insufficiency within the law and highlights the need to move beyond formal legal frameworks. The pairing of law and justice emphasizes adherence to values that, while encompassed by legal norms, extend beyond them and carry a broader, more binding significance.

It is interesting that the words of the Mexican revolutionary Emiliano Zapata are often invoked by intellectuals and politicians across the political spectrum in Serbia: "If there is no justice for the people, let there be no peace for the government." Emiliano Zapata (1879–1919) mobilized a peasant army from villages and haciendas and, under the banner of land and freedom, joined the Mexican revolutionary Francisco Madero in 1910 during the uprising against the dictator Porfirio Díaz. Zapata formulated his plan for agrarian reform in the *Plan Ayala*, which called for the redistribution of land to the local population. Disappointed by Madero's failure to implement the promised agrarian reforms and by his demands to disband guerrilla units and disarm the peasants, Zapata refused to submit to the new government. He demanded the immediate implementation of agrarian reform and the confiscation of land belonging to the enemies of the revolution. In the territory under his control, he redistributed

2 Pravo i pravda. 2025 (Internet).

3 Prawo i Sprawiedliwość. 2025 (Internet)

4 Party of Freedom and Justice. 2025 (Internet).

land to peasants according to the *Plan Ayala*, renewing the revolution under the slogan of "land and freedom." This was a revolutionary and anti-feudal act that resonated strongly in Mexico and other Latin American countries. However, Zapata remained in opposition, continuing to fight against repression. Lured into a meeting with government troops, he was killed on April 10, 1919, in an ambush in the town of Chinameca.[5]

In 1994, an uprising erupted in the Mexican region of Chiapas, led by the rural population of Indigenous descent (descendants of the Mayan peoples). The insurgents called themselves Zapatistas and saw themselves as continuing Emiliano Zapata's struggle. In our society, however, references to Emiliano Zapata's words are often made without regard to their historical background.

KELSEN'S CRITIQUE OF JUSTICE

Hans Kelsen is renowned for his efforts to separate law from ideology and politics, aiming to establish law as an autonomous system. He sought to minimize the influence of the state in the creation of law and to unify domestic and international law into a single, coherent legal framework. His theory, known as the "Pure Theory of Law," emphasizes a strict distinction between law and other social or political factors.[6] These tendencies in thinking stand in contrast to the prevailing moralistic current of the time, which called for justice and fairness. Kelsen's critique of justice is particularly significant – and productive – in the way it redirects the problem back to the social structure. He excludes moral, psychological, and social elements from the concept of law, as they tend to create confusion, and instead bases his approach on Kant's ideas.[7] More precisely, while Kant excluded legitimacy from morality, Kelsen excluded morality from legitimacy. Regardless of whether his ideas are currently in vogue, Kelsen's insights remain a "true touchstone" for theoretical – and especially legal – thought, whether legal positions are being developed, defended, or critiqued.[8] In his uncompromising critique, Kelsen exposed the entire Western tradition of thinking about justice, questioning the very concept itself and advocating for its exclusion from the domain of legality. He replaced the notion of justice with that of social peace. Yet, the question remains: is social peace truly possible without the realization of justice? Kelsen not only seeks to cleanse jurisprudence of legal politics, but also fundamentally challenges the very idea of justice.[9]

Kant – followed later by Kelsen – pays particular attention to the relationship between morality (what our conscience dictates as "moral self-awareness") and legality (what the law prescribes and permits). For instance, we may be law-abiding citizens who follow the principle of legality out of selfish or even immoral motives: fear of punishment, desire for a good reputation, or pursuit of personal gain. If we perform an objectively good act, but are motivated by self-interest or calculation, we are acting legally – but not morally.[10] Kant deliberately avoids grounding moral action in the pursuit of happiness, as is characteristic of so-called substantive, hedonistic, eudaimonistic, or utilitarian ethical

5 Rolls, A. 2011. *Emiliano Zapata. A biography* . Denver. Oxford: Greenwood.

6 Avramov, S. 1974. Hans Kelsen – life and work. Annals, vol. 22, vol.1-2, 22.

7 Ibid., 22.

8 Basta, D. 1998. Kelsen's Destruction of Justice. In: Hans Kelsen. What is justice? Belgrade: Filip Višnjić, 167.

9 Kelsen, H. 1998. *What is Justice*. Belgrade: Filip Višnjić

10 Pavićević, V. 1979. Kant's ethics of the categorical imperative. In: Immanuel Kant, *Critique of the Practical Reason*, Belgrade: Bigz, 8.

theories – a position that Kelsen, in this respect, closely follows.[11] Kant draws a fundamental distinction between morality and legality. If a person acts in accordance with the moral law, but does so because of some feeling (such as sympathy, fear, personal gain, or emotional inclination), then the action lacks moral value. In such a case, the action may be legally right or outwardly correct, but it is not morally good, because the will was not determined purely by respect for the moral law.[12] This idea deeply influenced Hans Kelsen. Like Kant, Kelsen insists on separating morality from legality. For Kelsen, law must be analyzed in formal, normative, and value-neutral terms, independent of emotional, psychological, or moral content. Both thinkers oppose grounding legal or moral systems in subjective feelings or utilitarian calculations.

Kelsen's approach is quite the opposite. As I mentioned, Kant seeks to free morality from legality, whereas Kelsen aims to free legality from the burden of morality. For the internal structuring of the legal order, the key concepts are gradation and subordination – not justice, happiness, or fairness. Kelsen schematically presents the hierarchy of the legal order of an individual state as follows: assuming the existence of a basic norm, the highest level of positive law is the constitution – understood in the material sense of the term – whose essential function is to determine the content of future laws. Positive constitutions often perform this function by prescribing or excluding certain content.[13]

The level closest to the constitution consists of general norms created in the legislative procedure, the function of which is to determine not only the authorities and procedure but, above all, the content of individual norms. While the focus of the constitution consists in regulating the procedure in which laws are created, the content of which is determined only to a very small extent, and the task of legislation is to equally determine the creation and content of judicial and administrative acts. The law that appears in the form of law is both substantive and formal law.[14]

THE HIERARCHY OF RIGHTS AND THE "BASE" OF PRIVATE LAW

The relationship between higher and lower levels within the legal order – such as between a constitution and a law, or a law and a court ruling – is one of determination or obligation. A norm at a higher level governs the act through which a norm at a lower level is created (or the act of enforcement, when relevant), thereby determining not only the procedure for creating the lower norm but often also the content that the norm must have. However, this determination is never absolute. A higher-level norm cannot fully prescribe every aspect of the act by which it is executed. There must always remain some degree of discretion, whether large or small, so that a higher-level norm, in relation to the creation or enforcement of a lower norm, serves only as a framework to be filled in by that act.[15] Even a command that goes down to details must leave a multitude of determinations to its executor. If authority A orders that authority B should arrest subject C, then authority B must decide at its own discretion when, where, and how to execute that arrest order – decisions that depend on external circumstances that the commanding authority did not foresee or could have foreseen. It follows from this that

11 Ibid., 8.

12 Kant, I. 1979. *The Critique of Practical Reason*. Belgrade: Bigz, 91.

13 Kelsen, Hans. 2007. *A Pure Theory of Law*. Belgrade: Center for Publications of the Faculty of Law, University of Belgrade, 54.

14 Ibid., 55.

15 Ibid., 64.

every legal act, whether it is an act of creating a right or an act of mere execution in which a norm is implemented, is determined by that norm only in one part, and in the other part – undetermined. Indeterminacy can refer both to the conditioning factual conditions and to the conditioned consequence. Vagueness can be intentional, ie. contained in the intention of the authority that assigns a higher norm: "Thus, the prescription of a general norm – in accordance with its essence – always occurs under the assumption that the individual norm that applies in some implementation continues the determination process, which, of course, makes sense of the gradualness of the sequence of legal norms."[16] For example, sanitary law may stipulate that, in the event of an epidemic outbreak, the inhabitants of a city are required – under threat of punishment – to take certain measures to prevent the spread of the disease. The administrative authority is empowered to determine these measures in different ways depending on the nature of the disease. Similarly, criminal law may prescribe, for a particular offense, either a fine or imprisonment, leaving it to the judge to decide which sanction to apply in each specific case and to determine its severity, provided that both an upper and lower limit for the sanction are established by the law itself.[17]

The distinction between public and private law is crucial for the systematic study of modern jurisprudence. Private law governs relationships between coordinated entities that are legally equal, while public law governs relationships between a superior and a subordinate entity – that is, between two parties where one holds greater legal authority than the other. A typical public law relationship is that between the state and its subjects. Private legal relations are often referred to simply as legal relations in the true, narrower sense of the term, in order to contrast them with public law relations, which are characterized as relations of "authority" or "government." The greater legal authority vested in the state and its organs vis-à-vis subjects stems from the legal order's recognition of the sovereign power to bind subjects through unilateral declarations of will – commands.

A classic example of a public law relationship is an administrative command: an individual norm issued by a state authority that legally obliges the addressee to act in accordance with the command. Conversely, a typical private law relationship is a legal transaction, such as a contract – an individual norm created by mutual agreement that legally binds the contracting parties to certain reciprocal conduct. In private law, the parties participate in the creation of the binding norm, which is the essence of contractual lawmaking. The private law contract thus represents a distinctly democratic method of creating rights.[18] Although private law is formed through voluntary legal contracts between equal parties, it is no less an arena of political power than public law, which is created through legislation and administrative acts. Both spheres reflect and exercise power, albeit in different forms – public law through hierarchical authority and unilateral commands, and private law through negotiated agreements and mutual consent.[19]

According to Kelsen, private rights form the foundation not only of government but also, and more importantly, of society itself.

16 Ibid., 64.
17 Ibid., 64.
18 Ibid., 75.
19 Ibid., 76.

ALTHUSSER: PRIVATE LAW AND SOCIAL REPRODUCTION

Louis Althusser was greatly influenced by Hans Kelsen, whose work *The Pure Theory of Law* appeared in a French translation in 1962. Of course, Althusser transforms and rewrites Kelsen's views, he by no means simply adopts them. Kelsen's theses appear in a different context, outside the horizon of his ideas. Kelsen, as Althusser understood him, emphasized the issue of sovereignty, less by limiting it within the formalism of law, but more by re-inscribing it in the contradictory field of the subject of the law (*Rechtssubjekt*). In the cases of the exteriority of the law, what is not in the law becomes the basis of its existence. Truth lies outside itself in the sovereign's decision or the subject's free choice.[20] What is not explicitly written into the law itself often forms its foundation or constitutes its most important element.

Althusser's fundamental thesis is that the relationships between law, the state, and ideology can only be understood and analyzed from the perspective of social reproduction.[21] It is not only about the reproduction of the production process but also about the reproduction of social relations. Law forms the infrastructure of society, which is why Althusser places law before the state. In capitalist formations, private law becomes the norm of law in general, and its characteristics are considered essential to the nature of law itself. Althusser focuses particularly on private law as contained in the Civil Code. Moreover, private law serves as the legal foundation from which other branches of law develop their concepts and harmonize their rules.[22] Law is a system of codified rules that are applied and/or circumvented in everyday practice, yet what is often completely omitted from legal texts is its most important element – the function of production relations. Private law serves as the foundation from which other branches of law derive their rules.[23] Private law systematically sets out the rights that govern commodity exchange, purchase, and sale, ultimately resting on the right of ownership. These rights are derived from general legal principles, including legal personality (which defines individuals as legal persons endowed with certain capacities), legal freedom to use property in one's possession, and equality before the law.[24] More specifically, private law, which governs agreements between individuals, functions as the foundation or infrastructure that enables and shapes the nature of the public law that depends upon it.[25] In our era, law should be understood as an unevenly organized whole dominated by private law, which tends to preserve three fundamental characteristics: systematicity, formalism, and repressiveness.[26]

Although the state apparatus dominates the whole, it does not simply transcend the class struggle. Force is the energy transformed into power, law, legislation, and state norms. Law not only fails to oppose domination but is itself merely one element of domination, a point that Althusser particularly emphasizes. Althusser refers to the well-known proposition of historical materialism, according to which Marx envisions the structure of every society as composed of distinct but interrelated levels or instances: the infrastructure or economic base (the unity of productive forces and production relations) and the superstructure, which itself consists of two parts – the political-legal level (law and state) and the ideological level

20 Montag , W. 2013. The threat of the outside Althusser's reflections on law. In: Althusser and Law. (ed . Laurent de Sutter). London: Routledge , 20.

21 Althusser, L. 2014. *On the Reproduction of Capitalism*. London: Verso, 56.

22 Ibid., 57.

23 Ibid., 56.

24 Ibid., 57.

25 Montag, W. op. cit., 19.

26 Ibid., 20.

(including religious, legal, moral, and political ideologies).[27] The metaphor of society as a building with a lower and upper floor is not entirely reliable and is often misunderstood, but it ultimately points to the dominance of the economic base. What occurs on the lower floor ultimately determines what happens on the upper floor. In the Marxist tradition, this notion of determination is usually expressed in two ways: 1) the superstructure is relatively autonomous from the base; and 2) the superstructure reacts with a form of "feedback" to the base. However, the advantages of this division are not unquestionable. When examining social reproduction, the spatial metaphor falls short of providing a satisfactory explanation. To approach this complex problem, Althusser first poses three fundamental questions: What is law? What is the state? What is ideology? His hypothesis is that the problem must be analyzed from the only viable perspective – that which begins with the distinction between production and reproduction. Accordingly, Marx understood the structure of every society as composed of distinct "levels" or "instances," articulated by the "base" (the unity of productive forces and production relations) and the superstructure, which contains two instances: 1) the political-legal (law and state) and 2) the ideological (religious, moral, legal, and political).[28]

According to that topographical metaphor, the upper floors would float in the air, if they did not rely on their base. Althusser now poses the question from the point of view of reproduction,[29] respecting a crucial assumption: without the reproduction of the conditions of production, a social formation would not survive a single day.[30] In this sense, the superstructure is the base, and it is precisely the layer containing law that is decisive. From this, we can begin to see that: 1) Law exists solely as a function of existing production relations; 2) Law takes the form of law – that is, formal systematicity – only on the condition that the relations of production, on which it is based, are entirely absent from the law itself. This unique condition of law, which exists only as a connection to content from which it is completely abstracted (the relations of production), explains the classic Marxist formula: law "expresses" the relations of production without explicitly mentioning them within its system of rules. On the contrary, it effectively makes these relations disappear.

One of the most important ideas in Althusser's philosophy of law is that production relations constitute the absent content of law. Law, existing solely as a function of class relations, recognizes only individuals – meaning that bourgeois law is fundamentally based on commodity relations.[31] Marx and Engels follow Kant, and to a lesser extent Hegel, in emphasizing three key characteristics of law: systematicity and inclusiveness, formalism, and its repressive nature. Regarding formalism, it does not matter to the law whether it is accepted or rejected; law exists and functions solely in a formal sense. A clear consequence of this formalism is that the law brackets out, or excludes, the various contents to which it applies. However, this exclusion does not make those contents simply disappear "by magic." On the contrary, the formalism of law only makes sense when applied to a specific content that is necessarily absent from the law itself: "These contents are the relations of production and their effects."[32]

We begin to see that, for Althusser, law exists only as a function of existing relations of production. Law functions as law only under the condition that the relations of production

27 Althusser, L. op. cit., 56.

28 Altiser, L. 2009. Ideology and state ideological apparatuses. Loznica: Karpos , 16.

29 Ibid., 19.

30 Ibid., 7.

31 Althusser, L. 2014. op. cit. 60.

32 Ibid., 59.

on which it is based are completely absent from the law itself. What does this mean? The law recognizes that all individuals are equal before it and have the right to own property, yet no legal provision acknowledges the fact that certain subjects – capitalists – control the means of production, while others – the proletariat – own none at all. This element, the relations of production, is absent from the law but simultaneously guaranteed by it.[33] Law is necessarily repressive (following Kant), and regarding the function of violence, Althusser aligns more closely with Kant than with Hegel. Law is repressive because it cannot function without a system of sanctions. In other words, there can be no civil code without a criminal code. This is easy to understand: a legal contract can only exist if it is enforceable. Therefore, law exists based on its enforcement – that is, on the observance or violation of contracts.[34] Law cannot exist without legal personality, let alone without repressive enforcement. Law primarily sanctions economic practices, and under the framework of various codes, it regulates other practices such as the exchange, purchase, and sale of goods. All these practices presuppose and depend on key legal categories like legal personality, legal freedom, legal equality, and legal obligation.

Law can function concretely only if there is an actual repressive apparatus that enforces the sanctions prescribed by the law and imposes them as punishments. In the vast majority of cases, however, law is respected through the combined influence of legal and moral ideology, often without any direct intervention from the repressive state apparatus.[35]

The law formally regulates the interplay of capitalist production relations, as it defines the owners, their property, their 'right to use'. Capitalist relations of production form the concrete object of law to the extent that it is expressly abstracted from them. Also, the law cannot be viewed in isolation, but as an integral part of a system that includes law, specialized repressive apparatus and legal-moral ideology. The specialized repressive state apparatus (to put ut simply, gendarmerie plus police plus courts plus prisons and so on) accordingly appears to us in a function that we need to determine more precisely. Legal-moral ideology intervenes not only in the reproduction of production relations, but also immediately in the functioning of production relations – incessantly, daily, actually every second.[36]Altiser expands his thesis on the importance of the school's ideological apparatus. The school's ideological apparatus plays a dominant role in the reproduction of production relations, but in the domain of practical ideologies, as Althusser now formulates it, legal-moral ideology plays a dominant role.

Finally, let us list the more significant influences. Althusser's legal theory is primarily associated with Marx and Engels, as well as Kant, while Hans Kelsen, Montesquieu, and Hobbes are mentioned less frequently. Althusser's strict and non-moralistic interpretation of law derives from Montesquieu and his embrace of scientific rationality. For Montesquieu, law is no longer an ideal order but an immanent relationship with social phenomena.[37] In this context, the primary subject of research is civil and political law. Various historical topics have been explored, such as inheritance among the Romans and justice in the feudal era, with their complexities and variations forming the focus, while the underlying causes that drive actions often remain unconscious.

For Hobbes, the state achieves true pacification of society – the pacification of violence understood as a war of all against all. According to Althusser, however, the state

33 Ibid., 59.

34 Ibid., 65.

35 Ibid., 166.

36 Ibid., 168.

37 Althusser, L. 2023. Montesquieu. Politics and history. Zagreb: Disput , 24.

perpetuates social violence, but this violence is now understood as one class exerting force over another. Thus, there is a war for the subjugation of one class by another, carried out through the mobilization of production relations. State apparatuses are merely instruments of class struggle, and state policy is ultimately subordinated to the interests of the dominant classes in that struggle.[38] The class struggle never ends, even when theory attempts to deny or ignore it.

CONCLUDING REMARKS: THE SOURCES AND SCOPE OF ALTHUSSER'S VIEW

Louis Althusser viewed law within the broader framework of his theory of ideology and the state. Regarding law and justice, Althusser argues that law functions as part of the ideological state apparatus by shaping citizens' subjectivity through normative patterns of behavior and by reinforcing existing relations of production. Law does not operate merely as a neutral set of rules but serves as a tool for the reproduction of the social order. In short, Althusser sees law and justice not as impartial instruments of fairness, but as key components in the ideological reproduction of society. Within the Critical Legal Studies (CLS) movement, the formalism of law was critically challenged, supporting the claim that legal norms uphold class and other social hierarchies. Critical Legal Studies posits that law is inherently intertwined with social issues, asserting that it contains built-in social biases.[39] Althusser helped shift legal theory from formalism and positivism to a critical, ideological, and discursive approach, where law is no longer seen as abstract justice but as an active agent of social relations. In the 1970s, the positivist and formalist understanding of law dominated, leading students to interpret law as a neutral system of rules without critically examining its social context. References to justice are often abstract if the social context is omitted. Appeals to justice become meaningful only when examined in relation to the legal foundations of property relations, connected to class politics and grounded in the structural elements of society. Today, as in the Zapatista movement in the West, appeals to justice remain dominant, emphasizing possible deviations from contemporary, often ideological, norms.

Althusser encourages us to adopt a more comprehensive approach – seeing justice within the context of law. As I have stated, law exists only as a function of existing relations of production; it performs the function of law only on the condition that the relations of production on which it is based are completely absent from the law itself. The law recognizes that people are equal before it and have the right to own property, yet no legal provision acknowledges the fact that certain subjects rule over the means of production while others do not own any at all.

In this sense, justice understood as a demand for legal equality is only partial and cannot guarantee equal opportunities or equal rights. This fundamental deficiency is then compensated for by laws that prohibit various forms of discrimination based on race, gender, sexual orientation, and other identifying factors. Similarly, the legal system does not ensure equal access to basic rights such as education, healthcare, the right to work, or even legal protection itself. This deficiency is addressed by laws aimed at alleviating social inequality while simultaneously insisting on judicial transparency so that society can maintain confidence in judicial institutions.

38 Althusser, L. 2014. op. cit., 223.

39 Cornell Law School. https://www.law.cornell.edu/wex/critical_legal_theory.

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ПРАВО И ПРАВДА У КОНТЕКСТУ ЗАПАТИСТИЧКОГ ВЕСТЕРНА

Апстракт:

Анализирам јављање фреквентног пара право и правда, почевши од назива политичких партија Пољске, Хрватске и Србије, као и од експлоатисаног наратива Емилијане Запате: „Ако нема правде за народ, нека не буде мира за власт.“ *Запатистичким вестерном* називам различита, углавном површна позивања на правду. Феномен позивања на правду пропуштам кроз два теоријска филтера: Келзенову критику праведности као неухватљиве тежње за срећом коју треба искључити из домена права и Алтисерову концепцију формулисану под Келзеновим утицајем. Уздржавајући се од дефинитивног суда, преферирам Алтисерово решење. Алтисер посматра право не као неутрални инструмент правде, већ као кључни елемент у идеолошкој репродукцији друштва. Дакле, позивање на правду мора бити повезано са класним политикама, утемељено и промишљено на структуралним слојевима и елементима друштва, а не узето моралистички, као сагледавање тренутне аберације од цивилизацијске норме. Алтисер је помогао да се правна теорија помери од формализма и позитивизма ка критичком приступу, где се право више не види као апстрактна правда, већ као активан чинилац друштвених односа моћи .

Кључне речи: *Право, правда, структура, инфраструктура, запатистички вестерн*

LITERATURE

1. Altisser, Louis. 2009. Ideology and state ideological apparatuses. Loznica: Karpos.
2. Althusser, Louis. 2014. On the Reproduction of Capitalism. London: Verso.
3. Althusser, Louis. 2023. Montesquieu. Politics and history. Zagreb: Dispute.
4. Avramov, Smilja. 1974. Hans Kelsen – life and work. Annals 1974. vol. 22, st. 1-2, 21-30
5. Basta, Danilo. 1998. Kelsen's Destruction of Justice. In: Hans Kelsen. What is justice? Belgrade: Filip Višnjić.
6. Kant, Immanuel. 1979. Critique of the Practical Reason. Belgrade: Bigz.
7. Kelsen, Hans. 1998. What is Justice. Belgrade: Filip Višnjić
8. Kelsen, Hans. 2007. A Pure Theory of Law. Belgrade: Center for Publications of the Faculty of Law, University of Belgrade.
9. Montag, Warren. 2013. "The threat of the outside Althusser's reflections on law". In: Althusser and Law. (ed. Laurent de Sutter). London: Routledge.
10. Pavićević, Vuko. 1979. Kant's Ethics of the Categorical Imperative. In: Immanuel Kant,

Critique of the Practical Reason, Belgrade: Belgrade publishing house, 5-23.
11. Rolls, Albert. 2011. Emiliano Zapata. A biography. Denver. Oxford: Greenwood.

12. Cornell Law School. https://www.law.cornell.edu/wex/critical_legal_theory
13. Pravo i pravda. 2025 https://pravoipravda.hr/
14. Prawo i Sprawiedliwość. 2025. https://pis.org.pl/
15. Stranka slobode i pravde. 2025 https://ssp.rs/
16. Zapata Western. 2025. https://sh.wikipedia.org/wiki/Zapata_western

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