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Creativity and Lawmaking: Ontological Aspect

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In this article the author explores the specifics of creativity and lawmaking as it's variant, basing on the works of different philosophers, and turns to ontological issues. The purpose is to study creativity / lawmaking in the ontological aspect. Ontological aspect of the research involves identification of the essential nature of the studied object (creativity / lawmaking), its ontological foundations, disclosure of the specifics of phenomena of creativity and lawmaking.
Creativity and *lawmaking are considered to be connected with the ontological Foundation of the existence. The ontological reality of creativity / lawmaking is proved by its subordination to the objective laws, by involvement* in development process. The *ontological aspect of investigation, connected with detecting essential nature of subject matter (creativity / lawmaking), is examined from a position of interdisciplinarity in correlation with categories of other areas of knowledge.*
The author concludes that regularities of the process of law-making, as a vital way of organization of social life and people being, are in connection with the objective laws of existence, and the results of law-making relate to objective reality. In law-making the logical ability of reason is projected on created legal reality for the purpose of regulation of people being by legal regulations. This is the ontological nature of lawmaking, it's essential difference from other types of creativity.
The field of application of results is philosophy, and in particular branches – ontology, philosophy of creativity.

Keywords: ontology, creativity, lawmaking, ontological aspects of creativity / lawmaking, nature of creativity, subjects of creativity, subjects of lawmaking, man as a subject of creativity / lawmaking, lawmaking as a process of creating new in law, lawmaking and development.

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The ontological aspect of the study of creativity (lawmaking as a kind of creativity) is connected with the identifying of the essential nature of the studied object (creativity / lawmaking), it's ontological foundations, disclosure of the specifics of phenomena of creativity and lawmaking. The main concepts of the ontology are categories of being and nothingness, which cover the nature, society, human. The being (to wide extent) – is a very general notion of the existence, entity in general.

Philosophers Plato, Aristotle, B. Spinoza, I. Kant, G. V. F. Hegel and others, exploring

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the creativity, because of the importance of ontological questions for classical philosophy, turn to ontological issues of creativity.

Non-classical philosophy approaches to solving the problems of creativity from the position of interparadigmality, interdisciplinarity, considering creativity in correlation with categories of other areas of knowledge. This approach is found in the writings of A. Bergson, J.-P. Sartre, M. Heidegger, G.-G. Gadamer, V. S. Soloviev, N. A. Berdyaev and other philosophers, who explores the ontological foundations of creativity.

According to many researchers, creative process is similar to the processes of improvement, which occur in the objective reality, that allows to speak about the ontological nature of creativity.

In ancient philosophy the creativity is treated as a process, which resulted in creating a new. Thus, the Greek philosopher Plato regarded creativity as a person's ability to create new, unique. In the dialog "Symposium" philosopher writes: "Creativity – is a broad concept. Anything that causes a transition from nothingness into being – is creativity, and, consequently, the creations of any art and craft can be called creativity, and all of their authors – creators"[1]. Plato treats creativity not only as a birth process of new, but also of beautiful works, thereby he includes an aesthetic criterion in the definition of creativity.

Understanding of creativity as a process of continuous birth of the new is typical of A. Bergson. In the work "Creative Evolution" (1907) the philosopher writes, that the new appears everywhere: in the nature – this are the processes of birth, growth, maturation, in the minds – the appearance of new images and experiences. Thus, for example, in the inanimate nature the essence of creativity is in renewal and modification, in the transition from chaos to order, for living organisms – in the form of their adaptation to a changing environment. According to the philosopher, the ontological nature of the creativity consists in the similarity between the process of human's creation of various new works and the process of renewal occurring, for example, in nature.

The vector of a creative process, considered as a birth process of the new, is directed from nothingness to being: creativity is not simply multiply the diversity of forms of existence, but also generates a fundamentally new things, gives a qualitative extension of the current being. "The new" is the arising and becoming being.

The problem of justifying the ontological nature of creativity, it's connection with existential, ontological foundations, continues to excite contemporary philosophers. The solution of this problem through the category of "creativity" offers L. N. Stolovich. In the work "Creativity" (2001) he defines creativity as the highest form of universally understood "creativity", which is immanently inherent for all the levels of the hierarchy of being and which promotes the self-preservation and reproduction of existent things by qualitative transformations of their structures[2].

According to V. I. Plotnikov, creativity is a special form of vital activity, different from all other forms by need and ability to generate culture, continuously modify its elements and functions. V. I. Plotnikov emphasizes such aspects of metamorphosis, as structural change in the initial state of the kinds of matter, integration of a mutating in a certain substrate, the appearance of asymmetry in the process of interaction, random variation and the emergence of new forms of movement[3].

If creativity – is a process, connected with the creation of a new, naturally, there arises a the question, what is the "new". The term "new" has many meanings: first created, introduced instead of the old one, obscure[4]. The new is previously

understood as something what never existed at all.

The new – is an essential property of creativity, but the new is not a simple continuation of the old, the previous. This approach is characteristic of O. Spengler. In the work "The Decline of the West" the philosopher writes that "in relations between the live culture and the world of the dead forms of culture" there can't be only "influence", "duration" and "continuing impact". The creativity, says philosopher, is an infusion of new, but the new is not a consequence of old reasons. "Uncreated "affects", and the creating "takes upon itself"", because human is allowed to see only the form, but not what in the soul of the other person created it, considers O. Spengler. Philosopher justifies this approach on the example of the ancient world's lawmaking. The antique right was created by citizens to regulate relations between them, however, certain elements of Roman law, for example, the law-making authority of judges, still exist in modern legal systems, but they are filled with different meaning. The Roman praetor, who came to power for a period of one year, established the lump sum right, which wasn't continued in the future. If the ancient right – is the right of instant, the right of today, English law – is the right of future, when the creation of legal norms suggests its application in practice "for ages"[5].

V. N. Nikolko believes, that an essential feature of the emergence of a new (images, knowledges, etc.) is "irreducibility to the previously existing content of the world around us... new has content that is new, that is not identical to what has already been"[6]. Among basic forms of innovative processes V. N. Nikolko considers nonstationarity (the renovation in inanimate nature on the basis of physical strength), evolutionary (the renovation in nature on the basis of the vital forces) and creativity (in the sphere of spiritual and material production based on psychic powers). Creativity is the highest form of the matter's renovation: basic "forms of novation processes form a pyramid which has nonstationarity in the base, evolutionary – in the middle, and creativity on the top"[7]. Nonstationarity and evolutionary, as non-creative forms of the world's renovation, – is the base, the premise, the condition of creativity[8].

As it was previously noted in the article "Novelty as a universal criterion of creativity", creativity is characterized by the uniqueness, uniqueness of the result, movement beyond the traditions, the process of reproduction[9]. Describing the creativity as the process of creating new, reveals such ontological aspects of creativity as qualitative transformation of the old, creation of what has not previously existed, which is present at all the levels of the hierarchy of being[10].

Creativity, as a form of change, renewal, is, on the one hand, continuation of evolutionary and nonstationarity, and, on the other hand, has its own foundation – consciousness. In ontological terms creativity is the synthesis of natural development potentials of being and human's creative activity with the presence of unconscious and conscious, casual and indispensable.

Changes in all spheres of society, new situations require unconventional solutions, what actualizes the problem of the subject of creativity. In different concepts of creativity the subject is regarded as: God (Plato, Hegel, N. Berdyaev and others), Nature (Epicurus, B. Spinoza, A. Bergson and others), Human (K. Helvetius, K. Marx, J.-P. Sartre and others).

Many modern scholars believe that creative ability is "ontologically" significant human's quality (for example, V. N. Nikolko "Creativity as an innovation process (philosophical and ontological analysis)"). Creative ability, as a generic essence of the subject, varies according to the degree of development. Thus, I. Ya. Loyfman

distinguishes three levels of development of creative abilities of the subject:

1) productive-reproductive: creative ability in which something existing only recurs, copies itself, and the new is created only exceptionally, accidentally; creative ability as a reproduction out of the elements and rules, various objectifications, when the new appears by accident;

2) generative: creative ability, which is characterized by a freer use of a limited number of elements and rules, variation, formation of maybe not an absolutely new product, but an original new variation (emergence of a new is possible); creative ability in varying degrees is inherent to each person and is expressed in the creation of new variants on the base of given elements and rules;

3) constructive and innovative: the emergence of a new is natural: a radically new is created or elements and rules in the already known are renewed; at this level scientific discoveries are made, new ideas are put forward and etc[11].

The desire for a new is caused by the fact that the subject is not satisfied with the outer world and looks for ways of its transformation. Human activity as a subject of creativity is socially determined, it is characterized by emotional-volitional moments, selectivity, needs. For a man as the subject of creativity in activity motivation is necessary: both external, which is not connected with the character of activity, and internal (pithy), when the content of the activity acquires the interest. A. N. Luk in the work "Thinking and creativity" notes that creativity requires both sensual motivation (high self-esteem, recognition of others, encouragement, ambition, envy, greed, curiosity, etc.), and high emotionality[12]. At the same time, fear, excessive criticality inhibit the creative activity. A characteristic feature of the creator is a strong and stable motivation, the need for creativity. Furthermore, in Yerkes-Dodson's law quantitative dependence between the force of desire and the results of activity is fixed: the stronger the desire, the better the result[13]. The limit point – is the peak of the result (if the motivation overstep the limit point, the results become worse).

The regularities of the process of law-making are in communication with the objective laws of existence and the results of lawmaking as a kind of creativity relate to objective reality. Lawmaking is a vital way of organizing of social life, people's being, otherwise peace, order, provided by the law, dissociate. This is the ontological nature of lawmaking, it's essential difference from other types of creativity.

In the law-making the logical power of the mind is projected onto the created legal reality to streamline people's being by legal norms. As a proof cab be adduced a statements Greek philosopher Aristotle. Aristotle, in his treatise "Policy. Athens round table" writes that, "the political system, established by Solon, and the laws, which he published, were new; ... athenians ... swore to observe them"[14]. According to Aristotle Solon "established these laws for a hundred years and gave the structure to the state", by which "gave honor to the people, which they need", "didn't cut his rights, did not give extra ones but", "with his mighty shield covering those and others", "and didn't let anyone to win the other unjustly"[15]. All the Athenian right was founded on the legislation of Solon, and Solon is rightly considered to be the founder of the Athenian state.

M. N. Marchenko believes that the law-making process – is an aimed at the achieving the goals of social development activity of the subjects of the law-making; this activity consists in the identification of needs for legal regulation of social relations, creation of (in accordance with identified needs) new laws, which takes the place of (abolishes) the current ones[16]. The rule of law – is a general rule, that reflects the social experience

of society and the state, special, individual and distinct. Rules of law serve as scientific, objectively valid prescription, model of public relations, which reflect the interests of society in improving, peace and order. Improvement of the norms of law, of the content of the rules, strengthening, streamlining of the legal reality, of the human's being – is the ontological aspect of lawmaking.

Legislating, in our opinion, is a synthesis of the natural potency of the development of being and the purposeful activity of a subject. Lawmaking activity is important for human, and the emergence of the new in law acquires social existence, when it becomes an element of the spiritual life of society. The part of legal conscience. Development of the legal reality is determined by material and spiritual needs and socio-cultural values of the people. Man, being the subject of the law-making, participates in the development of the society and the development of himself, becomes an active subject, acquires a real freedom. In lawmaking random and regular correlate, freedom and necessity, which is a manifestation of the ontological nature of the creativity. At the same time, law-making is subject to objective laws of existence, it is their manifestation, included in a single process of development.

In the scientific literature there is a point of view that the subject of law-making is the whole society, and the law-making process has a collective nature. For example, L. S. Yavich, L. I. Spiridonov note that the state is not the creator of the law but only contributes to the implementation of legal norms. According to them, the force, that creates the right, is the practice of many individuals. Many different factors affect on legislating (cultural, political, economic, etc.), that is why it can be argued that all of society participates in the creation of the right[17].

In the lawmaking not only the attitude to legal reality depends on the subject, his worldview, his legal attitude, but also that on which aspect of the legal reality the attention of creator is focused. Durbina A. B. thinks that the legal attitude of the subject of law-making, reflecting his view on any socio-legal problem, is influenced by many factors – from the environment (economic, political, cultural etc.), the life of the subject, the personal characteristics of the subject, his value preferences, to the influence the media, etc[18].

As an illustration of this state we will review the laws of Hammurabi, king of Babylonia, whose name is connected with the prosperity of the state. Hammurabi's laws – is a set of laws of Babylonia (about 1760 BC.), monument of the ancient Eastern slave law. The attention of the king Hammurabi at the creation of legal norms came from his social status, it was aimed at strengthening of the power of the slave-owners over the slaves, and the slave system in the whole. Hammurabi's laws reflect the higher level of social differentiation in Babylonia, they were designed to protect the property of the ruling class. The subjects of the right according to the low were avilum (a free member of commune), imushkenum (a free man on the royal service, "prostrating oneself"). Slaves and children were treated only as the objects of law.

The manifestation of the ontological aspect of creativity is the objectivity of thought, which is ensuring the development of the idealized object of creativity in the thinking of the creator from its design to implementation in reality. In the process of law creation it is permitted (in whole or in part) the contradiction between the objectives, the needs of people and the legal norms that have the force of law, which is also a manifestation of the ontological essence of lawmaking. In the lawmaking the object passes to qualitatively new condition through the resolution of the conflict, in other words the object develops.

It is important to draw attention to conditions, which allows to improve the legal norms. M. I. Abdullaev, S. A. Komarov emphasize the following essential conditions: reflection of the regularities of development of the state in legal norms; correspondence between the rules of law and the requirements of justice and morality; observance of the laws of the existing system of rights; account of the general principles of regulation and management of the processes in society[19].

The ontological nature of the creativity consists in the subordinate to the objective laws and the involvement in the development process. The link between the categories of "development" and "creativity" is indicated by such researchers as M. Bloch, J. A. Ponomarev, A. T. Shumilin, K. S. Pigrov and others. Creativity and its variety lawmaking are forms of development, creation, the implementation of a commitment to excellence. Moreover, K. S. Pigrov, a modern researcher of creativity problems, believes that creativity is not any development, but only one, which "involves personal beginning", and which is carried out in accordance with the objectives of the subject[20].

Creativity and lawmaking in the ontological aspect appear as a universal human ability to transformation, changing and improving of existence and his own development, in other words, in the creative process human builds himself, creates his own personality.

Legislating as a kind of creativity – is the most important aspect the activity of the state, which purpose is the formation of new legal norms, modification, cancellation or supplementation of existing ones. The reformation of the various sides of the modern people's life involves the creation and improvement of the system of legal norms, that regulate various relations in society, what is the reason for increased research interest to the problems of creativity in general and law-making in particular, to identifying the ontological foundations.

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Творчество и правотворчество: онтологический аспект

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В статье автор, опираясь на труды многих философов, исследует специфику творчества и его разновидности правотворчества, выходя на онтологическую проблематику. Цель – исследование творчества/правотворчества в онтологическом аспекте. Онтологический аспект исследования предполагает выявление сущностной природы изучаемого объекта (творчества/правотворчества), его онтологических оснований, раскрытие специфики феноменов творчества и правотворчества.

Творчество и правотворчество характеризуются с точки зрения причастности к онтологическим основаниям бытия. Онтологичность творчества/правотворчества обосновывается через подчиненность объективным законам, включенность в процесс развития. Онтологический аспект исследования, связанный с выявлением сущностной природы изучаемого объекта (творчества/правотворчества), исследуется с позиции межпарадигмальности, междисциплинарности, во взаимосвязи с категориями других областей знания.

Автор приходит к выводу, что закономерности процесса правотворчества как жизненно важного способа организации жизни социума, бытия людей находятся в связи с объективными законами бытия, а результаты правотворчества относятся к объективной реальности. В правотворчестве логическая способность разума проецируется на создаваемую правовую реальность с целью упорядочения бытия людей правовыми нормами. В этом онтологичность правотворчества, его существенное отличие от других видов творчества.

Область применения результатов – философия, раздел – онтология; философия творчества.

Ключевые слова: онтология, творчество, правотворчество, онтологические аспекты творчества/правотворчества, природа творчества, субъекты творчества, субъекты правотворчества, человек как субъект творчества/правотворчества, правотворчество как процесс создания нового в праве, творчество и развитие.

Исследование проведено при финансовой поддержке молодых ученых УрФУ в рамках реализации программы развития УрФУ.