

**AUTONOMIA DEL DONATORE E PREVENZIONE DEL
DANNO NELLA DONAZIONE DI ORGANI DA VIVENTE.
UN CONTRIBUTO AL PROBLEMA DEL PATERNALISMO NEL
DIRITTO MEDICO E DELLA SANITÀ.**

Ulrich Schroth*

Abstract. The present essay deals with the issue of balancing the principle of individual freedom with the one of preventing the damage within the medical care relations with special reference to the hypothesis of organ donation from living donors. The author criticizes the paternalistic approach intrinsic to the Hippocratic tradition and offers a justification for the practice of organ donation from living people on the basis of the centrality of self-determination principle and of the act of consent. The author identifies the criterium of legitimacy regulation of the practice in question by taking into great account the complex significance of the donor's decision. The decision, in the author's words, is not only based on the self-interest of the donor but it also involves the donor's entire range of values and relations.

The analysis proceeds with a description of the currently in force German legislation concerning the organ donation from living people and it develops an anti-paternalistic approach referring to the principle of subsidiarity on living donors, the prohibition of living donation to unknown persons, the normative standards of risk within the context of organ donation, and the procedural evaluation of the autonomous will of the donor.

* Ludwig Maximilian Universität, München. Italian translation: Francesco Romeo, Università di Napoli 'Federico II'.