

PATERNALISMO, DIRITTO PENALE E PRINCIPI COSTITUZIONALI: PROFILI DI TEORIA GENERALE

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Abstract. In the contemporary philosophy of law, the debate on paternalism and liberalism involves the criminal law in a particular way. The main question is the legitimacy of rules which forbid harm either to self, or to another person with their free consent. This essay addresses the discussion to the level of the constitutional principles of the legal system and tries to build on them a coherent complex of rules for the legislation, with specific attention to the drugs legislation. In the Italian Constitution, both the principle of equality regardless of different opinions as well as personal or social conditions, and the principles of laicality and pluralism are strong arguments for liberalism and anti-paternalism. Moreover, the Constitution clearly provides liberty and autonomy as fundamental rights and declares the right to health - but not the duty to be healthy - and the prohibition of non-consensual medical treatments. On the other hand, the Constitution also includes a principle of solidarity, that is, citizens and legislator have to help weak persons in realizing liberty in an effective way as well as to protect them from abuses.

Key-words. Paternalism, liberalism, criminal law, drug.

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