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INTRODUCTION

Attempts to establish effective methods for protecting Italy's environment have encountered problems as a result of the country's legal tradition. Italy has traditionally lacked sufficiently developed rules of law regulating activities affecting the environment. Its concepts of private law place severe limitations on the possible methods of dealing with environmental protection. Furthermore, the failure of the public administration to use the mechanisms of public law effectively to protect Italy's environment serves to emphasize the need to establish new means of furthering the public interest in a clean and healthful environment.

There are several problems inherent in the civil law concept of private law that prevent it from being used to protect the environment. First, private law deals with individuals and therefore is concerned only with individual rights, enforceable only by those individuals. Second, an individual can assert a claim based on private law only if that person can establish the existence of a substantive right based on private law. Thus, the ability of an individual to protect the quality of his environment depends on the establishment and development of his right to a certain environmental quality such as the right to a "healthful" environment.

Because of these problems inherent in the civil law concept of private law, a few European countries have amended their constitutions to guarantee the right of individuals or groups to a healthful environment.[1] Of course, this idea of amending the constitution is not unique to civil law countries. At the national level in the United States, laws have been passed which create administrative bodies, such as the Environmental

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1. *See* Deimann, *Zur Problematik eines "Grundrechts auf menschenwürdige Umwelft,"* 1975 DÖV 588) Küiz, *Umwelt und Verfassung,* 90 DVBI. 189 (1975); Steiger, MENSCH UND UMWELT. ZUR FRAGE DER EINFÜHRUNG EINES UMWELTGRUNDRECHTS 17 (1975); Lücke, *Das Grundrecht des einzelnen gegenüber dem Staat auf Umweltschutz,* 1976 DÖV 289; INDIVIDUALRECHT ODER VERPFLICHTUNG DES STAATES? INTERNATIONALES KOLLOQUIUM ÜBER DAS RECHT AUF MENSCHENWÜRDIGE UMWELT (1976); Kloepper, ZUM GRUNDRECHT AUF UMWELTSCHUTZ 14 (1978); Steiger, *Verfassungsrechtlichen Grundlagen,* in GRÜNDZÜGE DES UMWELTRECHTS 21 (Salzwedel ed. 1982); Breuer, *Umweltschutzrecht,* in BESONDERES VERWALTUNGSRECHT 643 (v. Münch ed. 1982).

Protection Agency, which are empowered to pass regulations to protect the environment. On the state level, a parallel approach has been to amend the state constitution with the same goal in mind.[2] Indeed, several states in the United States already have amended their constitutions by adding provisions directly addressing the need to conserve the quality of the environment.[3]

While the widely-varying approaches to environmental protection through constitutional amendments have yielded varied results, they all seem to have one thing in common: these constitutional amendments generally fail to meet the expectations of their initial proponents.[4] Consequently, experience tends to show that this method of seeking to protect the environment by amending an existing constitution has not proven very effective.

This article attempts to show that perhaps the best approach, at least within a civil law system such as Italy's, is to establish an effective legal means for protecting the environment within the existing constitutional structure.

THE RIGHT TO A HEALTHFUL ENVIRONMENT AS A CIVIL LAW RIGHT OF PERSONALITY

As mentioned above, a trend has prevailed recently in some European

2. *See* Cohen, *The Constitution, the Public Trust Doctrine, and the Environment,* 1970 UTAH L. R. 388; Platt, *Toward Constitutional Recognition of the Environment,* 56 A.B.A.J. 1061 (1970); Note, *Toward a Constitutionally Protected Environment,* 56 VA. L. REV 458 (1970); Roberts, *The Right to a Decent Environment; $E = MC^2$: Environment Equals Man Times Courts Redoubling Their Efforts,* 55 CORNELL L. REV. 674 (1970); Roberts, *The Right to a Decent Environment: Progress Along a Constitutional Avenue,* in LAW AND THE ENVIRONMENT 162 (1970); Howard, *State Constitutions and the Environment,* 58 VA. L. REV. 193 (1972); Dellinger, *Of Rights and Remedies: The Constitution as a Sword,* 85 HARV. L. REV. 1532 (1972); Tobin, *Some Observations on the Use of State Constitutions to Protect the Environment,* 3 ENVTL. AFF. 473 (1974); Klipsch, *Aspects of a Constitutional Right to a Habitual Environment: Toward an Environmental Due Process,* 49 IND. L. J. 203 (1974).

3. *See, e.g.,* ILL. CONST. art. XI, § 2. "Rights of individuals. Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, thorugh appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law." A different formulation can be found in the PA. CONST. art. 1, § 27: "The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment." This amendment is self-executing, whereas the amendment enacted in Illinois is not self-executing. However, constitutional provisions which request supplemental legislation present a small advantage. There is no legal obligation to act even if a state constitution demands legislation. On the other hand, states may adopt statutory environmental measures in the absence of constitutional environmental provisions. On the differences among the environmental rights provisions, *see* Comment, *A Constitutional Right to a Livable Environment in Oregon,* 55 OR. L. REV. 239 (1976). Concerning the different words used to describe the desired environment, *see* Tobin, *supra* note 2, at 478j. The frequently chosen adjective "healthful" describes the environment in terms of its direct effect on human life. Other adjectives (clean, decent, free of dirt or noise) describe the environment in terms of its physical characteristics.

4. Tobin, *supra* note 2, at 485; Comment, *An Analysis of Pennsylvania's New Environmental Rights Amendment and the Gettysburg Tower Case,* 78 DICK. L. REV. 331 (1973).

countries to shape a constitutionally guaranteed individual right to a healthful environment. This right is based on certain provisions in the various constitutions which guarantee the "inviolable rights."[5] In particular, Article 2 of the Italian Constitution states: "The Republic recognizes and guarantees the inviolable rights of man, both as an individual and in the social organizations wherein his personality is developed, and it requires the performance of fundamental duties of political, economic, and social solidarity."[6]

Thus, in view of such provisions as Article 2 in Italy's Constitution, the concept of "rights of personality" is very important in the civil law tradition. For this reason, it is first necessary to understand this concept and the background of the development of rights of personality in Italy before one can properly assess its importance to the development of Italian environmental law.

The Concept of Personality Within a Civil Law System

In Article 2 of the Italian Constitution, the so-called individual rights of personality are included among the constitutionally protected "inviolable rights."[7] However, it must be realized that these rights of personality have developed in response to the same changing social conditions that produced a concern with the quality of the environment. Indeed, scholars originally conceived of this category in order to create an open list of personal rights to protect individuals from harmful effects of advances in technology. Among the first rights to be included in the list is the right of privacy which protects one's private affairs against any encroachments which technological developments might make possible. Thus, the purpose of the new category has always been to provide an open list of rights which provide protection against newly-developed social threats. This stands in stark contrast to such traditional categories as the real or "patrimonial" rights ruled by the codes.[8]

The Right to a Healthful Environment as a Constitutional Right

The present interest in protection of the environment bears strong resemblance to earlier interest in other social problems which have since

5. *See, e.g.*, WEST GERMANY CONST. arts. 1 & 2, which guarantee the development of the human personality (Menschenwürde).

6. For a comment on the ITALIAN CONST. art. 2, *see* A. BARBERA, COMMENTARIO DELLA COSTITUZIONE. PRINCIPI FONDAMENTALI 50 (1975).

7. *See* Di Majo Giaquinto, *Profili dei diritti della personalitá*, 16 RIV. TRIM. DIR. E PROC. CIV. 69 (1962); C. M. BIANCA, DIRITTO CIVILE, I, IA NORMA, I SOGGETTI 143 (1978); Bessone, *Diritto soggettivo e droits de la personnalité*, in SAGGI DI DIRITTO CIVILE 163 (1979).

8. *See* S. STRÖMHOLM, RIGHT OF PRIVACY AND RIGHTS OF THE PERSONALITY 27 (1967).

found protection under the umbrella of rights of personality.[9] In fact, it appears as if the right to a healthful environment now exists in Italy as a result of two recent Supreme Court of Cassation decisions which hold that this interest in the quality of the environment is worthy of protection.[10] Thus, while questions still remain as to the extent of this right to a healthful environment, at present it is included within the category of rights of personality.

It must be stressed that this right has not developed out of Article 2 of the Constitution guaranteeing certain inviolable rights. Rather, the Supreme Court of Cassation established the right by expanding and extending other existing provisions in the Italian Constitution, in particular, Article 32 which provides for protection of personal health.[11] Thus the Italian Court of Cassation was able to work within an existing constitutional structure to develop a new personal right which possibly could provide an effective legal basis for protecting the environment in Italy. By using existing constitutional provisions, the Court of Cassation may have accomplished what other countries have been unable to accomplish through constitutional amendments.

RECENT DECISIONS OF THE ITALIAN SUPREME COURT OF CASSATION

As mentioned above, two recent decisions rendered by the Italian Court of Cassation have established the existence of a right to a healthful environment in the absence of any specifically relevant constitutional provision. Nevertheless, the present extent of this right is unclear and the Court has the task of fully developing the concept.

In the more recent of these two cases, the actual threat to the environment resulted from certain public works under the direction of the Italian National Public Administration. In an attempt to prevent anticipated environmental damage resulting from these public works, a group of private citizens sought to suspend them by filing a complaint under Article 1172 of the Italian Civil Code.[12] Review by the Supreme Court of Cassation was based on a request by the trial court for a decision on

9. *See* C. M. BIANCA, *supra* note 7, at 144.

10. Cass., 9 marzo 1979, n. 1463, 29 Giust. Civ. I 764 (1979); Cass., 6 ottobre 1979, n. 5172, 132 Giur. Ital. I 464 (1980). For a comment of the later decision *see* Patti, *Diritto all'ambiente e tutela della persona,* 132 GIUR. ITAL. I 859 (1980).

11. Cass., 6 ottobre 1979, n. 5172, 132 GIUR. ITAL. I 466 (1980).

12. Italian Civil Code art. 1172.

> Denunciation of feared damage. The owner, the holder of other real right of enjoyment, or the possessor, who has reason to fear any building, tree or other thing threatens serious proximate damage to the thing that forms the object of his right or possession, can denounce the fact to the court and obtain, according to the circumstances, provision to obviate the danger.
>
> The court, whenever necessary, orders appropriate guarantees for possible damage.

a jurisdictional question: whether the case originally should have been submitted to an ordinary judge, or to an administrative judge. The Court determined that the proper jurisdiction was with an ordinary judge because it considered the right to a healthful environment as an already existing subjective right of every citizen (a subjective right exists when one has the power to satisfy his own interest directly protected by law). Thus, once such a right was assumed, the jurisdictional question was easily answered. This followed from the fact that, in Italy, the jurisdiction of the ordinary judge over disputes involving subjective rights is well established. However, the administrative judge's jurisdiction is limited to those cases in which an individual's interest is indirectly protected as a result of the protection afforded society's general interest.

Thus, the jurisdictional question directly before the Court of Cassation actually turned on whether or not a substantive right to a healthful environment existed. The existence of such a right had already been established by a decision of the Court issued early the same year.[13]

In that earlier decision, the Court held that the existence of a right to a healthful environment was strictly related "to the availability of identifiable real property, the preservation of which, for the actual and potential benefit of the individual to whom the property belongs, is necessarily connected with the protection of the environmental conditions."[14]

This decision was both praised and criticized. On the one hand, the attempt to mold the legal system to fit an emerging need of society, protection of the environment, was generally praised. On the other hand, the reasoning of the decision itself was criticized because it excluded the protection of this right to a healthful environment from those cases where there is no conceivable enjoyment of real property.[15]

In general, the decision has been criticized on the grounds that the Court failed to realize that the right to demand preservation of the environment cannot always be predicated on an individual's relationship to immovable goods such as real property. By requiring such a relationship, it is necessary to show actual damage, or the threat of damage, to immovables before any claim for protection can be asserted. But this ignores the crucial distinction which must be drawn between the eventual violation of real property rights directly caused by deteriorating environmental conditions, and the more general effects of such deterioration inflicted on all people, regardless of whether or not a property right has been injured.

Connected with this criticism is the fact that the real property right requirement conflicts directly with the constitutional mandate of equality

13. *See* the quoted decision of Cass., 9 marzo 1979, n. 1463, 29 Giust. Civ. I 764 (1979).
14. Cass., 9 marzo 1979, n. 1463, 29 Giust. Civ. I 767 (1979).
15. *See* S. PATTI, LA TUTELA CIVILE DELL'AMBIENTE 150 (1979).

as contained in Article 3 of the Italian Constitution.[16] This conflict results from the necessary discrimination between individuals with a real relationship to such immovable goods as real property, and those without such a relationship. In other words, the right to a healthful environment enables property owners to protect their property whenever threatened and to recover damages actually incurred as a result of the polluting activities. But in contrast, under this reasoning, individuals with no relationship to any threatened or damaged property could only seek protection from environmental pollution under Article 32 of the Constitution and, even then, only when their personal health was itself threatened or damaged. This distinction, standing by itself, directly contradicts the principles of equal treatment under the law as required by Article 3.

Nevertheless, the most recent Court of Cassation decision clears up much ambiguity and presents a solution preferable to that contained in the earlier ruling. In particular, this later decision establishes a direct connection between the individual right to personal health and the right to a healthful environment. As the Court explains: "the right to health, rather than (or in addition to) a mere right to life and to physical integrity, is shaped as a right to a healthful environment."[17] Consequently, the right to a healthful environment is acknowledged as a right belonging to every person. The former custom of providing limited protection according to one's real relationship with immovables, such as real property, no longer prevails. Today, protection from an unhealthy environment applies to all individuals, regardless of whether a real property right is threatened or has been violated.[18]

Nevertheless, several important questions remain. For instance, to what extent should the right to personal health be allowed to restrict the shaping of the right to a healthful environment? Restricting the right to protect the environment to those cases where a violation of the right to personal health is first established is clearly unsatisfactory. Perhaps some attempt to combine this new right with the terms of Article 9 of the Civil Code[19]

16. All citizens are invested with equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinions, and personal or social conditions.

It is the task of the Republic to remove all obstacles of an economic and social nature which, by limiting the freedom and equality of citizens, prevent the full development of human personality, and the participation of all workers in the political, economic and social organization of the country.

17. Cass., 6 ottobre 1979, n. 5172, 132 Giur. Ital. I 467 (1980).

18. S. PATTI, *supra* note 15, at 90.

19. Art. 9 II protects the landscape and the historical and artistic values of the nation. For a comment *see* Recchia, *Considerazioni sulla tutela degli interessi diffusi nella Costituzione*, in *LA TUTELA DEGLI INTERESSI DIFFUSI NEL DIRITTO COMPARATO CON PARTICOLARE RIGUARDO ALLA PROTEZIONE DELL'AMBIENTE E DEI CONSUMATORI 25, 33 (1976); Rodota', Le Azioni Civilistiche*, in LE AZIONI A TUTELA DI INTERESSI COLLETTIVI 81, 98 (1976).

could serve to provide protection, at least in those cases where detrimental activities harm the environment without posing any obvious or immediate threat to personal health.

Thus, in summary, it is clear that the Italian Court of Cassation has taken two important steps toward establishing a viable legal means for protecting the environment in Italy. However, its job is hardly finished. In its future decisions, the Court must further clarify the relationship between the newly-recognized right to a healthful environment and such existing constitutional rights as that of personal health, and protection of the landscape.

PROTECTION OF THE ENVIRONMENT BY MEANS OF PRIVATE LAW

As in most civil law countries, problems of environmental protection normally fall within the realm of public, not private, law. Indeed, it often is asserted that private law can play only a very limited role in protecting the environment and, therefore, the duty to intervene lies solely with the public administrator whose powers are derived from public law.[20]

The reason for the common belief that private law can play only a limited role in environmental protection is that private law traditionally offers legal protection only to interests connected, either directly or exclusively, with a specific person, that person's capabilities, or his legal competence. Recently, however, the traditional role of private law in Italy has been brought into question. Thus, some scholars believe that Italian private law might be capable of protecting interests on the part of society as a whole, through protecting the rights of individuals.[21]

The potential application of private law to the protection of Italy's environment is important because, historically, the public administrator's protection of the environment has been inadequate. Thus, the possibility of using rules of private law to protect the environment, through the assertion of rights by a single individual in the interest of the community as a whole, becomes more inviting. This is especially true because of the public administrator's continued unwillingness, or inability, to use the mechanisms of public law to adequately protect the environment.

Current obstacles to using private law to protect the environment are not to be underestimated. These limitations are inherent in the very structure of the traditional instruments of private law, instruments which have as their primary goal the protection of individual interests, not the concerns of society as a whole. Nevertheless, even today the Italian Civil Code considers certain activities detrimental to the environment as *prima*

20. Ogus & Richardson, *The Role of Private Law in the Protection of Pollution Victims*, 40 RABELSZ 449 (1976); Rodota', *supra* note 19, at 90.

21. S. PATTI, *supra* note 15, at 51.

facie violations of the terms of Article 844 dealing with industrial emissions[22] and Article 2043 and those that follow, dealing in general with civil liability.[23]

REGULATION OF INDUSTRIAL EMISSONS

The history of Article 844 certainly produces doubt as to whether it may play a positive role for environmental protection. In particular, it must be noted that the provision was included in the Italian Civil Code of 1942 in order to mediate the interests of industry with those of the owners of real property. Its success as a tool of mediation was doubted. For instance, some claim that the provision is rarely enforced because it contains a regulation favorable to the owners of the so-called "means of production," i.e., favorable to the polluter.[24] However, others observes that the provision may present an effective means of protection.[25]

Examination of the language of Article 844 reveals that it clearly protects the producer-pollutor by compelling the owner to bear the cost of emission "unless the levels emitted exceed normal tolerability, with regard to the condition of the sites."[26] Because of such wording, the possibility exists that extremely high level pollutant emissions may be permitted on the grounds that these levels are tolerable since they are considered "customary," in accordance with the industrial usage of the area.[27]

The historically favorable treatment of industry is also evident from relevant jurisprudence. In general, judges have traditionally applied the second paragraph of Article 844, which states that the court must reconcile the requirements of production with the rights of common ownership, so as to effectively legitimize every degree of emission. Sometimes small fines in the form of indemnity payments are imposed on the polluting industry. As a result, application of this provision rarely has prevented the destruction of the environment in Italy, Rather, the detrimental consequences of industrial activity generally have come to be considered as inevitable.

Recently, however, some decisions have prevented the damaging en-

22. Italian Civil Code art. 844.
Emission. The owner of land cannot prevent the emission of smoke, heat, fumes, noises, vibrations or similar propagation from the land of a neighbor unless they exceed normal tolerability, with regard to the condition of the sites.
In applying this rule the court shall reconcile the requirements of production with rights of ownership. It can also take account of the priority of a given use.

23. Italian Civil Code art. 2043. "Compensation for unlawful acts. Any malicious or negligent act that causes an unjustified injury to another obliges the person who has committed the act to pay damages."

24. *See* P. TRIMARCHI, ISTITUZIONI DI DIRITTO PRIVATO 550 (1983).

25. Visintini, *Immissioni e tutela dell'ambiente*, 30 RIV. TRIM. DIR. E PROC. CIV. 689 (1976).

26. For an application of the rule *see* Cass., 17 febbraio 1958, n. 516, 8 Giust. Civ. I 416 (1958).

27. *See* Cass., 19 luglio 1963, n. 1977, 6 Riv. Giur. Edil. I 1135 (1963).

vironmental effects of emissions by forbidding certain specified activities, or by requiring the adoption of suitable precautions. Further decisions have applied Article 844 in conjunction with Article 32 of the Constitution by considering the emissions in a particular case as intolerable because they pose a threat to health. In such cases, the possibility of continuing the activity in exchange for an agreement to indemnify injured parties has been precluded.[28]

It appears that a new jurisprudential trend is developing that is conscious of the need to protect Italy's environment. This is not surprising if one considers the reasons for the previous trend, i.e., the need to encourage industrialization. Thus, it is also not so surprising today to find that new needs, in a different socio-economic context, lead the jurisprudence to favor different values.

The protection of the environment which may result from the application of Article 844 alone is, however, protection of an individualistic kind. In fact, this provision does not regulate conflicts between neighbors. Damages suffered by the environment are therefore not considered as immediate damages suffered by society but, rather, as damages to the individual owner of property. As a result, any benefit which the public may derive must, of necessity, be merely indirect. It is also possible that the polluting company will be able to work out a private settlement allowing it to continue the detrimental activity, since the rule is not binding and permits a property owner to negotiate with the company.[29]

THE USE OF CIVIL SANCTIONS

Among the various attempts to use provisions of private law to protect the environment, the common practices of imposing civil liability is particularly relevant. In fact, reference to the rules on civil liability is made in the absence of any specific provision regulating the particular detrimental activity. These rules are clearly limited, however, since they only recognize the damages caused by a detrimental activity and do nothing to prevent its continuation. Environmental protection should be a preventive undertaking, or at least cause the immediate cessation of any polluting activity. In addition, under the present system, any company ordered to pay damages need only insert a new "item" in its production costs without modifying the techniques of the production, and thereby pass on the costs incurred by its civil liability to the very public being afflicted by the pollution. Thus, the present method of imposing civil

28.. *See* App. Milano, 17 dicembre 1971, 102 Foro It. I 1779 (1972); Cass., 9 aprile 1973, n. 999, 97 Foro it. I 843 (1974).

29. For a different opinion which considers Italian Civil Code art. 844 to be a binding rule, *see* D'Angelo, *L'art. 844 codice civile e il diritto alla salute*, in TUTELA DELLA SALUTE E DIRITTO PRIVATO 401 (1978).

liability on pollutors tends to place the costs of the damages on the very parties affected by the polluting activities, and the goal of burdening the responsible party is eluded.

It therefore becomes clear that rules of civil liability play a positive role in efforts to protect the environment only when the amount of damages imposed under them compels the pollutor either to stop the detrimental activity or to adopt less environmentally harmful techniques of production. Normally these results are best achieved by causing the cost of damages to be borne directly by the pollutor, thereby causing an increase in prices which, in turn, endanger its ability to compete in the market. However, this approach can prove successful only if all the so-called "social costs" of polluting the environment (e.g., both water and air pollution, waste disposal, etc.) can somehow be incorporated into the measure of damages. Only in this manner can the "free-rider" problem (polluting industries burdening the general public without having to bear the full cost of their activities) be avoided.[30] Until this "free-rider" problem can be overcome, no incentive will exist for polluting industries to alter their behavior.

Another problem with using civil liability as a means of protecting the environment relates to the inability of an individual to measure his damage and to discover the actual perpetrator of that damage. In other words, the consequences of the differing degree of economic power existing between the perpetrator of the damages, normally a large industrial corporation, and the victim, should not be underestimated. In fact, the outcomes of environmental law suits in Italy are often strictly dependent on the results of difficult and expensive technical verifications. The probabilities of success for an individual attempting to stop a polluting activity, therefore, are greatly reduced by the burdens of proof placed upon him.[31]

A final problem involved with using civil liability stems from the inability to assess all of the injuries produced by polluting activities. This particular problem in Italy has induced attempts to expand the concept of allowable damages so as to assume compensation even when the prejudice suffered cannot be directly or objectively assessed. Other attempts have sought to overcome the traditional distinction between tangible and intangible losses. Thus, scholars today do not refer exclusively to eventual decreases in the real rights of an individual, or to an indi-

30. S. PATTI, *supra* note 15, at 77.

31. *See* M. DESPAX, DE LA POLLUTION DES EAUX ET SES PROBLÈMES JURIDIQUES 106 (1968); P. GIROD, LA RÉPAration du dommage ÉCOLOGIQUE 118 (1974); Comporti, *Responsabilità civile per danni da inquinamenti,* in TECNICHE GIURIDICHE E SVILUPPO DELLA PERSONA 358 (1974).

vidual's lost income, but rather focus on damages which can be given cash values and recognize compensation only in such cases.[32]

Another difficulty is encountered when attempting to measure future damages. In Italy, it becomes necessary to distinguish between eventual damages, i.e., damages from events where the probability of their occurrence can be ascertained, and future damages, i.e., damages which only appear after some time. Eventual damages can be recovered in Italy only on the grounds that a judge, in assessing the proper measure of recovery, may consider those injuries which can be foreseen as actual damage.[33] Future damages can be recovered only if, and to the extent that, there is a certainty, or at least a high degree of probability, that further damages will occur.[34]

USE OF INJUNCTIONS AND OTHER PRIVATE LAW MEANS

To date, the injunction has played a particularly important role in preventing the continuation of certain activities detrimental to the environment in Italy. For instance, in cases involving Article 844 of the Civil Code, where the judge declares a level of emissions as unacceptable, the injunction is often used as a means of halting the activity causing the emissions.

Traditionally, the ability to enforce an injunctive order in Italy has been allowed only in certain cases which are specifically regulated by the codes.[35]However, recent opinions indicate the possibility that the judicial power to enforce injunctions may extend to cover those situations where no express regulations presently exist.[36] In particular, since this enforcement power clearly exists with regard to injunctions issued to protect existing "rights of personality," it becomes entirely possible that it could also extend to allow enforcement of injunctions issued to protect an individual's right to a "healthful environment." If this is possible, then it would allow judges to provide injunctive protection in those cases where merely proving pecuniary compensation is clearly inadequate.

Other possible means of providing injunctive protection for the envi-

32. *See* Scognamiglio, *Il danno morale (Contributo alla teoria del danno extrapatrimoniale)*, 3 RIV. DIR. CIV. I 277 (1957); Bianca, *Dell'inadempimento delle obbligazioni*, in COMMENTARIO DEL CODICE CIVILE A CURA DI SCIALOJA E BRANCA, LIBRO QUARTO, DELLE OBBLIGAZIONI (ART. 1218–1229) 301 (1979); Busnelli, *Diritto alla salute e tutela risarcitoria*, in TUTELA DELLA SALUTE E DIRITTO PRIVATO 515, 537 (1978).

33. Scognamiglio, *Appunti sulla nozione di danno*, 23 RIV. TRIM. DIR. E PROC. CIV. 464, 477 (1969); Bianca, *supra* note 32, at 328.

34. *See* Rescigno, *Premesse civilistiche*, in LA RESPONSABILITÀ DELL'IMPRESA PER I DANNI ALL'AMBIENTE E AI CONSUMATORI 69 (1979); Busnelli, *Perdita di una "chance" e risarcimento del danno*, 93 FORO IT. IV 47 (1965).

35. *See, e.g.*, Italian Civil Code arts. 7, 8 & 9.

36. Trimarchi, *"Illecito (dir. priv.)"* in ENC. DIR., XX, 90, 106 (1970); A. FRIGNANI, L'INJUNCTION NELLA COMMON LAW E L'INIBITORIA NEL DIRITTO ITALIANO 441 (1974).

ronment arise from two provisions of the Italian Civil Code dealing with denunciation of new work projects[37] and denunciation of feared damages.[38] These articles could provide the means for particularly efficient intervention to protect the environment since a judge could use either or both of them in a summary proceeding as the basis for preventing a particular detrimental activity from being carried out.[39] For example, these provisions could readily be applied to prevent construction of a new industrial plant when a real and immediate danger exists that the pollution from such a plant may endanger inhabitants of the surrounding area.

CONCLUSION

The recent statements of the Italian Supreme Court of Cassation concerning the existence of a right of the individual to a healthful environment guaranteed by the constitution represent the positive results of a long debate in Italy which, over the last few years, has interested many different components of Italian society. The recognition of this right as being included among the "rights of personality" creates the possibility for private individuals to attempt to prevent activities threatening or damaging the environment.

However, the unique socio-economic situation accompanying the present environmental dilemma generally renders inadequate the traditional protection of individual rights provided by the private law system since the damages suffered by any isolated individual are, at best, trivial in comparison to the overall impact on the environment.

Whether the recent development of the right to a "healthful environ-

37. Italian Civil Code art. 1171.
Denunciation of new work. The owner, the holder of other real right of enjoyment, or the possessor, who has reason to fear that new work undertaken by others on their own or someone else's land can cause damage to the thing that forms the object of his right or his possession, can denounce the new work to the court, provided that the said work is not terminated and a year has not passed since its initiation.
The court, taking summary cognizance of the facts, can forbid continuation of the work, or permit it, ordering the appropriate security; in the first case for payment of the damage produced by suspension of the work, when the opposition to its continuation proves to be unfounded in the decision on the merits; in the second case for the demolition or abatement of the work and compensation for the damage that may be suffered by the complaining party, should he obtain a favorable decision, notwithstanding the permitted continuation.

38. Italian Civil Code art. 1172.
Denunciation of feared damage. The owner, the holder of other real right of enjoyment, or the possessor, who has reason to fear any building, tree or other thing threatens serious proximate damage to the thing that forms the object of his right or possession, can denounce the fact to the court and obtain, according to the circumstances, provision to obviate the danger.
The court, whenever necessary, orders appropriate guarantees for possible damage.

39. *See* Morbidelli, *Strumenti privatistici contro l'inquinamento delle acque interne (con riferimenti all'esperienza statunitense),* 47 FORO AMM. III 369, 388 (1971).

ment" will prove successful in protecting the environment depends, to a large degree, on the ability of Italians to overcome a system characterized by economic individualism. Mass production constitutes a meaningful expression of a changed society which requires solutions that consider the single individual as a participating member of collective interest groups.[40] Thus, only by inserting the individual into a collective dimension can a true solution to the problems of the environment be found which, at the same time, constructively involves that individual in the collectiveness within which he must operate.

40. On the possibility of adapting the means of private law in favor of groups *see* Rodota', *supra* note 19, at 99.