

## Chapter 14

# The Concept of the “Other”: Migration, Human Rights, and Formalized Identity Building Processes in Europe

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### **ABSTRACT**

*Analyzing the concept of freedom of movement both in accordance with the norms of the European Convention of Human Rights (ECHR) and in the case law of the Court of Strasbourg, it has emerged that there are some malfunctions in the regulation and control of the migratory phenomena in the European context that are structural and inevitable. These malfunctions have some repercussions on the processes of identity building. In fact, inasmuch as we identify ourselves with the liberal-democratic regimes which form our communities, the characteristic institutions and norms of such regimes represent a fundamental reference for the processes of identity building of both the community and the individuals forming it. In this regard, human rights contribute to creating these normative frameworks inasmuch as they can influence the rules and the principles of a specific legal system. Indeed, in an ongoing context of multilevel constitutionalism, the ever-growing influence that international institutions and treaties (declarations, covenants, conventions, protocols, and so on) have on member states permits human rights to enter the processes of identity building in European countries. The processes contributing to the self-comprehension of a political community need the formal structures of identity building, such as citizenship and freedom of movement, especially in the face of the global migratory phenomena, to operate correctly. From that point of view, malfunctions in the formal structures cannot but actually do have effects on the same processes of identity building. The way that the mobility theme is regulated by the ECHR can become a privileged point of observation for the study and analysis of identity building, and of its impasses, contradictions, aporias.*

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## **The Concept of the “Other”**

*This chapter intends to show how the absence of the right of immigration can create some malfunctions in the human rights law and how this is connected with our concept of identity. The failure of our migration control system and the impossibility of empowering human rights in the field of mobility reveals an enormous conceptual short-circuit in the structure of liberal countries in Europe, involving the relationship between the Self and the “Other.”*

## **INTRODUCTION**

In multicultural societies, the migratory phenomenon has deeply changed our way of living. This fact leads us to interrogate ourselves about how deep these changes are. From this perspective, the migratory phenomenon leaves some unsolved questions on the ground. Is there a connection between our way of representing ourselves and the formal structures (i.e. the liberal-democratic regimes) that we have built to strengthen our communities? What effect has the migratory phenomenon had on our human rights system and what are the repercussions of the internal contradictions of this normative system on our way of representing ourselves? Those are the questions that this chapter intends to deal with.

A premise: What are human rights? Human rights are those rights and only those that are recognised by (the norms of) international treaties such as the Universal Declaration of H.R. (UDHR), the International Covenants of 1966, the European Convention of Human Rights (ECHR) and so on. Even though they also have a moral dimension (Pariotti, 2008; Viola & Zaccaria, 2001), I am considering only their legal one as the starting point of a philosophical reflection. Thus, in this essay I am interested in human rights as legal rights.

In this regard, the constitutional rights of liberal-democratic countries can be viewed as an expression of human rights. Indeed, inasmuch as liberal-democratic states sign international treaties (declarations, covenants, conventions, protocols, and so on) obliging them to protect human rights, the human rights law enters into those states' constitutions and pervade those societies.

This chapter intends to analyse how norms like human rights can influence our way of representing ourselves and how a normative contradiction may be a philosophical one.

## **FORMAL AND INFORMAL PROCESSES OF IDENTITY BUILDING**

Identity (Ruggiu, L. & Mora, 2007; Porcelli, 2008; Ricoeur, 1999) is a relational concept (Cassinari, 2007). Indeed identity is the outcome of a relationship between the image of a present I and a past I. It is also a temporally oriented concept (Cassinari, 2007). This means that it indicates a forming process contributing to the self-comprehension of the Self. It is a building process where at the end of which one recognizes that he/she is what he/she is. This level of self-comprehension leads to the informal dimension of the identity building process.

In highly complex societies such as ours, the question of identity is all the more problematic because the same individual identifies himself simultaneously with a plurality of relationships and classes. As Michael Walzer pointed out, in a type of society, which is the outcome of a plurality of tribes, the I is at the same time a plurality of bonds, a plurality of houses, a plurality of different I's: I am—Walzer says—“American, Jew. East Coast inhabitant. Intellectual, and Professor” (Walzer, 1991, p. 110).

The informal characteristic of identity as “belonging to” (a particular national community) emerges clearly in the debate between liberals and neo-communitarians. For neo-communitarians,

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