

Locating Progress in the European Convention on Human Rights

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Progress may seem to be a temporal concept. That is certainly how it is usually understood in the literature on progress and international law. Statements of progress [are said](#), for example, to entail “reflections on the past” and to “link our view of the past with our view of the present and the future”. Work dissecting the role of progress in international law scholarship [has underlined](#) that a “conception of time is needed to situate advancement in a time frame with past, present, and future”. All this is no doubt true. What the understanding of progress as a temporal concept misses, however, is that it also has a spatial element. Time and space are mutually constitutive, and progress attaches more easily to some spaces than others.

The time-space of colonialism, in particular, has left a lasting imprint on where progress is located. The [civilizing mission](#) of colonial states posited Europe as a progressive space, [hierarchically superior](#) to non-European territories ostensibly lagging behind Europe in civilizational terms. One way in which these civilizational hierarchies have been carried forward to the present is through European human rights law: as Stefanie Boulila [has noted](#), notions of modernity and progress have been “a key site for pan-European identification”, with values like human rights claimed as “‘at home’ in Europe”. In this blogpost, my aim is to sketch in very broad strokes some ways in which these dynamics of pan-European identification have played out in European human rights law, specifically the European Convention on Human Rights.

“The Ideals and Standards of the Great Democracies”

The notion of “Europe” in the Council of Europe (CoE) or of the “European” in the European Convention on Human Rights (ECHR) has, of course, changed over time. When the ECHR was drafted, the first signatory states were almost exclusively Western European. With the Cold War already well underway, differentiation from the communist East was a core function of the ECHR. Anti-communism combined with general tropes of [Eastern Europe as semi-civilized](#) at most – tropes which would later rear their head with renewed vigour when Eastern European states joined the CoE and found themselves subject to infantilising demands of “catching up” to the progressive values of Western Europe (see critically [here](#)). At the same time, to legitimise the undertaking of a [specifically European and legally binding](#) human rights instrument, delegates emphasised the like-mindedness and homogeneity of European states and their difference to the rest of the world, often in terms of civilizational hierarchies. In both cases – demarcation from Eastern Europe and from the rest of the world – Western Europe figured, through human rights, as the location of progress.

The *travaux préparatoires* (cited here as “TP” from the [Collected Edition of the “Travaux Préparatoires” of the European Convention on Human Rights](#)) provide some examples. Delegates understood human rights as the “indisputable birthright” of Europe (TP I, p. 82) and as “something different from what we see in Eastern Europe” for which the CoE was to be “a beacon of light” (TP I, p. 130). David Maxwell-Fyfe, the leading British delegate involved in drafting the ECHR, invoked the “similar outlook” and “long experience” of Western European states with regard to human rights. He described other regions, by contrast, as “unready in temperament and aspiration for the ideals and standards which the great democracies have set for themselves”, either “because their political systems are totalitarian or because their civilisations are backward”. He therefore regarded Western European states as “in the most favourable position to set an example” to other nations in matters of human rights (TP I, p. 116).

Emphasising the “long experience” of Western European states, like the insistence on human rights as a European “birthright”, speaks to the trope of human rights as “at home” in Europe, which is then extended to their benevolent role as an “example” for other regions. Progress in the form of human rights is thus located in Europe, only subsequently to spread outwards from there. The image of Europe that shaped the ECHR, then, is one that Fatima El-Tayeb [has described](#) in another context as “always creating, never receiving” – a Europe “shaping other cultures, but never being fundamentally touched by them”.

“The Task of Bringing Civilization”

The civilizational hierarchies underlying this image of Europe also found their way into the very text of the ECHR in the shape of the so-called “colonial clause” ([Article 56, originally Article 63 ECHR](#)). It allows states parties to extend the applicability of the ECHR “to all or any of the territories for whose international relations it is responsible”, hence implying that without a declaration to this effect, the ECHR is not applicable. Similarly, the European Court of Human Rights (ECtHR) is competent to receive individual applications only when a further declaration to that effect is made, and in any case the ECHR shall be applied in the territories at issue only with due regard to “local requirements”.

These restrictions quite transparently aimed to prevent the application of the ECHR in colonised territories so that the colonial powers could maintain their self-image as progressive states with spotless human rights records even as they brutally repressed decolonial resistance overseas. The colonial clause did not go unchallenged: most notably, Léopold Senghor, later the first president of Senegal, warned that it would “transform the European Declaration of Human Rights into the Declaration of European Human Rights” (TP VI, p. 174). The clause’s inclusion was justified, however, in civilizational terms which once again assumed progress to originate in Europe. The “state of civilization of certain overseas territories” was stated to not permit the application of human rights, but European states were assumed to “perform the task of bringing civilization” to those territories (TP III, p. 266) and to bring about “the advance of the colonial peoples and the improvement of their physical and spiritual surroundings” (TP VI, p. 178). Progress in the shape

of human rights, then, could only spread outwards from Europe through colonial administration: the white man's burden and civilising mission par excellence.

“Long-Established and Highly-Developed Traditions”

The ECtHR's case-law on the colonial clause built on this localisation of progress in Europe. In the case of [Tyrer v. the United Kingdom \(1978\)](#), which concerned judicial corporal punishment ('birching') on the Isle of Man, the ECtHR was confronted with claims by the Attorney-General of the Isle of Man that public opinion on the island favoured birching and that this constituted a case of "local requirements" in the sense of the colonial clause. The ECtHR responded with an argument based on what is now known as [European consensus](#): it noted that "in the great majority of the member States of the Council of Europe, judicial corporal punishment is not, it appears, used" and held that its use was therefore not required "in a European country". And while a dependency of the United Kingdom, the Isle of Man was clearly seen as such. According to the ECtHR, it "not only enjoys long-established and highly-developed political, social and cultural traditions but is an up-to-date society" and "has always been included in the European family of nations" – in explicit contrast to "certain colonial territories" for whom the colonial clause was designed.

This juxtaposition of the Isle of Man and of "certain colonial territories" provides a textbook example of what Stuart Hall [has described](#) as the discourse of the West and the Rest: it "represents things which are in fact very differentiated (the different European cultures) as homogeneous (the West)", with the point of unity being "the fact that they are all different from the Rest". Within this dichotomy, the ECtHR conceives of the "European family of nations" as progressive, associating it with development and being "up-to-date". Even as the ECtHR challenged the Isle of Man's practice of birching by finding a human rights violation, then, it relied on and further reinforced the idea of a progressive European space with higher human rights standards. In fact, the very idea of European consensus – interpreting rights based on the positions of the states parties to the ECHR – chimes with the notion of human rights as "at home" in Europe: as Claerwen O'Hara [has argued](#), it can generate a "sense of ownership" over human rights that segues into Europe's "moral and cultural superiority vis-à-vis the rest of the world".

At the same time, European consensus constitutes an avenue through which progress is located in differential ways within Europe itself. As Stuart Hall's account highlights, the discourse of the West and the Rest is reductive: the homogeneity of the West is not pre-given, but discursively produced. In a similar manner, debates on European consensus often invoke the supposed homogeneity of European states as a justification for its use (see critically [here](#)). But the ECtHR's use of European consensus doesn't primarily build on existing homogeneity: rather, it produces homogeneity by imposing dominant values within Europe on those states which do not ascribe to them. Again, it associates this move with progress and [modernity](#): European consensus is said to be an expression of "[modern societies](#)" or "[modern European society](#)". The localisation of progress thus serves as a tool for the regulation of sameness and difference both within Europe and in relation to the Rest of the world.

Outlook

The location of progress in Europe through and within human rights seems at times to be so self-evident that it barely needs any elaboration. A particularly common expression of this dynamic is the description of the ECtHR as the most “successful” or “advanced” human rights body. The ECtHR itself, in a memorandum submitted before the 2023 Reykjavík Summit, [stated](#) that “the Convention represents the most advanced supranational system for the protection of human rights worldwide”. The editorial of the inaugural 2020 issue of the ECHR Law Review [opens](#) by introducing the ECtHR as “the oldest and most successful regional human rights tribunal”. The measure of its supposed success is usually not explicated in statements like these, much less questioned with a view to different approaches in other regions which may well be more apt for advancing human rights. Rather, as James Gathii [has argued](#), non-European courts are expected to adapt to European standards or be declared failures.

It is by now a trite point that progress involves a sense of [normativity](#), as in the insistence on the ECtHR’s “success”. We need to acknowledge, however, that this normativity is unevenly distributed and notably, against the backdrop of colonial forms of knowledge production and the civilizational hierarchies that come with it, located in Europe. Discussions of progress and international law will be incomplete so long as they do not account for the [spatialisation of time](#) and the way that human rights and other markers of progress are conceived of as “at home” in Europe.

