FAU

Transforming Human Rights

Research Agenda

Cluster of Excellence Transforming Human Rights Research Agenda

Summary

The promise of human rights to protect people everywhere from abuses and injustices and to enable them to live in equal dignity remains unfulfilled for most of the world's population despite the growth of human rights instruments, institutions, and organizations. Furthermore, skepticism in academic discourses and the open rejection of human rights by many states and political actors are on the rise. The Cluster of Excellence Transforming Human Rights therefore seeks to revisit the potential of human rights as a universalistic framework for addressing fundamental changes that shape our times in political, economic, social, ecological, and technological contexts.

To achieve this goal, we will describe, analyze, and assess how five megatrends, namely autocratization, fragmented economic globalization, international migration, planetary environmental crises, and digitalization, are transforming human rights, and how in turn human rights can and should transform responses to the megatrends. We also seek to understand the ways in which these transformations challenge human rights theory, and invite us to rethink fundamental normative claims about human rights.

We will operationalize our research through three central dimensions of human rights norms: rights-holders and duty-bearers of human rights (Who?); content and scope of human rights obligations (What?); and modes of realization and accountability (How?). The Cluster's approach rests on an understanding of human rights that draws on legal, social scientific, and philosophical perspectives. We will therefore pursue multi- and interdisciplinary research as well as transdisciplinary approaches involving practitioners in order to innovate human rights scholarship.

1. Research Objectives of the Cluster of Excellence

The Cluster of Excellence Transforming Human Rights pursues five research objectives (RO). To understand the interplay between human rights and significant shifts in the world across diverse political, economic, social, ecological, and technological contexts, we will:

(1) Describe, analyze, and assess how fundamental changes that shape our times, namely autocratization, fragmented economic globalization, international migration, planetary environmental crises, and digitalization ("megatrends"), independently and in combination transform human rights norms, institutions, and practices.

(2) Describe, analyze, and assess how human rights norms, practices, and institutions affect these megatrends, and how they do and should transform legal, political, and societal responses to the megatrends.

Based on this, we aim to move a step further and revisit the potential of human rights as a universalistic and versatile framework. In this regard we seek to:

(3) Evaluate how the respective transformations challenge existing human rights theory, including underlying normative claims about the human rights framework; rethink the potentials and limitations of human rights; and develop new theoretical insights.

Achieving the first three research objectives will require and facilitate a rethinking of the way that human rights research is conducted. Therefore, we also aim to:

(4) Innovate multi- and interdisciplinary research on human rights, drawing on a broad range of theoretical and methodological approaches in law, social sciences, and humanities.

(5) Advance transdisciplinary research that incorporates experiences and knowledge-creation by relevant actors beyond academia, and critically assess the role, functions, and approaches of academic research in the context of human rights transformations.

2. Research Program

2.1. Background

More than 75 years after the Universal Declaration of Human Rights (1948), and despite a significant growth of human rights instruments and institutions, the promise of human rights as norms which aspire to protect people everywhere from severe political, economic, and social abuses and injustices remains unfulfilled for most of the world's population. While human rights research and practice has acknowledged this, conventional interpretations of ongoing implementation deficits and deteriorations in human rights protection suggested that respective political systems and societies had not yet reached the level of full realization of human rights. This perception was often based on the assumption that time was needed to overcome entrenched power asymmetries, or that human rights were not yet sufficiently institutionalized and internalized in certain contexts. While narratives of progress were never universally shared and often criticized by, among others, feminist and queer scholarship, critical legal theory, postcolonial, and Global South perspectives, mainstream human rights research focused primarily on the codification and legalization of human rights through international treaties and court judgments and implementation and institutionalization through legal and political institutions that aimed to secure compliance with international obligations.

Today we are witnessing a growing academic skepticism toward the aspirations of human rights and an open rejection by states and political actors. This coincides with a shift from generally optimistic approaches to more pessimistic perspectives. At the same time, human rights continue to be an aspirational frame of reference for individuals and groups fighting against suppression and exploitation in many parts of the world, indicating their potential and openness to a variety of different local contexts and struggles. Notwithstanding this, human rights research and practice have reached a critical point at which it is unclear whether and how human rights will remain relevant at a global level in the future.

Against this backdrop, the Cluster seeks to understand how human rights are transformed by significant political, economic, social, ecological, and technological changes of our times, and assess the potential of human rights to shape these developments, that is, how human rights do and should transform these developments. Our research agenda therefore combines empirical and normative perspectives.

2.2. Concepts

We employ the gerund "transforming" to take account of major ongoing transitions and significant changes that fundamentally impact human rights, and of transitions and changes that are steered and catalyzed by human rights. Deviating from narrower concepts of "transformation" focusing on disruptive events or critical junctures like the end of the Cold War, we focus on processes which relate to changes in substance, strategy, and articulation of human rights by various actors in different contexts. The gerund "transforming" allows us to grasp the complex, multidirectional relations and reciprocal entanglements between human rights and the megatrends. This conceptual starting point invites in-depth qualitative and

comparative scholarship and recognizes that disruptive events, including technological inventions, have a prehistory worth describing and analyzing.

We operationalize our research program with the concept of "megatrends" which we understand as significant and systemic changes with transformative impacts on individuals, organizations, and societies that typically develop over a longer period of time. Megatrends are the consequence of various human activities, including political and economic decisions, as well as their mutual effects and resulting ecological developments; they are not the result of a singular policy or specific strategy. We adopt this concept to grasp developments of global magnitude with local effects which have implications for understanding and realizing human rights, and which, in turn, may be affected by analysis and realization of human rights. Megatrends are thus used as fields of study that enable us to observe and understand the transformations of human rights in concrete contexts.

We will focus on five megatrends and their interlinkages with systemic political, economic, social, ecological, and technological relevance for the future of societies and human life on the planet. This allows us to be broad enough to comprehensively address human rights transformations and specific enough to conduct in-depth analysis of these transformations. Through comparative engagement, we can also study the ability of human rights to flexibly adapt to the demands of different contexts. The Cluster will cover the following megatrends: 1) autocratization; (2) fragmented economic globalization; (3) international migration; (4) planetary environmental crises; and (5) digitalization. The five megatrends are not isolated but overlap and intersect, as seen in the use of digital technologies by autocratic regimes, and the impact of climate change on migration.

(1) Existing and new forms of autocratization across the globe not only violate human rights at all levels, but also attempt to redefine or fundamentally question the existence of human rights. Autocratization is now of global magnitude and extends across different countries and regions. Its effects on human rights are not only felt locally and nationally, but also concerning the global human rights system. Autocratic regimes have also played a key role in recent fundamental geopolitical shifts with significant impacts on the multilateral system of global governance.

(2) Fragmented economic globalization significantly affects living and working conditions in global production networks and raises new challenges as supply chains are shortened and reconfigured. At the same time, new supply chain regulations aim to enhance environmental and human rights standards in transnational business relations, which might be difficult in a context of fragmented globalization. Transnational economic activities have global and local effects and are connected to a particular economic model with significant impact on the distribution of economic, social, and environmental harms and benefits.

(3) International migration is a global phenomenon with different effects in different parts of the world. The human rights impact of voluntary or forced cross-border movements and policy reactions to migration will remain pertinent while new challenges arise due the privatization and externalization of migration governance in many countries.

(4) Planetary environmental crises related to anthropogenic climate change, biodiversity loss, and pollution will have ongoing and dramatic effects on planetary living conditions, while also challenging the anthropocentric understanding and practice of human rights. Their effects are felt globally, but not equally in all parts of the world.

(5) Digitalization – that is, the adoption and implementation of information technologies across all areas of life and society – has profound effects on individuals, businesses, and organizations across the globe. It may lead to fundamentally new approaches to realizing human rights and to accountability in the digital space through new forms of communication and mobilization, but it also entails risks for data protection, privacy rights, and human dignity.

Our research focuses on human rights because, as a universalistic and versatile set of legal norms, social practices, and philosophical justifications, they are, in principle, not limited to particular political systems, geographic regions, or social and cultural contexts. Other international normative orders are either limited to certain challenges (e.g., global environmental law is limited to ecological transformations) or are general policy frameworks not based on binding international norms (e.g., the United Nations Sustainable Development Goals). Human rights are therefore the only set of norms with a universal aspiration and the potential to be relevant for all five megatrends.

2.3. Research Questions

The Cluster's overarching research questions concern the interplay between human rights and the megatrends in two ways: On one hand, autocratization, fragmented economic globalization, international migration, planetary environmental crises, and digitalization challenge and transform human rights norms, institutions, and practices. And on the other hand, human rights may shape and transform the megatrends as well as legal, political, and societal reactions to these megatrends (see Figure 1). Systematically understanding how the megatrends transform human rights norms, institutions, and practices, and understanding how human rights norms, practices, and institutions affect these megatrends will enable us to reflect on the impact of these transformations on the foundational aspirations of the human rights framework and its fundamental concepts. This will provide us with a starting point for conceptual reflection on their specific nature. Hence, we will re-evaluate the foundational assumptions and underlying normative claims of the human rights framework and reimagine the nature and functions of human rights. Specifically, we seek to answer the following three overarching research questions:

(1) In what ways do five megatrends that shape our times transform human rights norms, institutions, and practices?

(2) In what ways do and should human rights norms, institutions, and practices transform responses to these megatrends?

(3) In what ways do these transformations affect human rights theory and research and require new concepts and approaches?
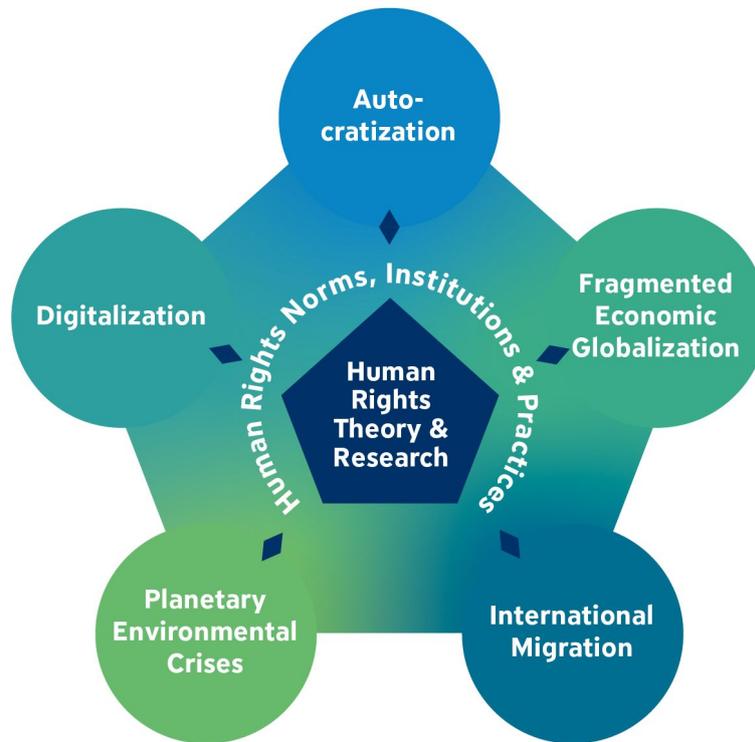
Figure 1: Megatrends Transforming Human Rights and Vice Versa, with Implications for Theory and Research

The overarching ambition of our Cluster is to shift the way we understand the potentials and limitations of human rights in addressing key political, economic, social, ecological, and technological changes that shape our times and to reimagine the relevance of human rights in light of their adaptability now and in the future.

2.4. Research Matrix

To systematically and comprehensively describe, analyze, and assess the respective human rights transformations we will use a research matrix built on the five megatrends and three key dimensions of human rights norms, institutions, and practices. These dimensions are (1) the identification of rights-holders and duty-bearers and the corresponding allocation and distribution of rights and duties (Who?); (2) the content and scope of particular human rights (What?); and (3) modes and instruments of realizing human rights and accountability for human rights violations (How?).

Figure 2: Three Dimensions of Human Rights

(1) The first dimension concerns the identification of persons and entities of a human rights relationship (Who?). This includes those who can and do claim human rights, i.e., rights-holders, and those against whom such claims can and are directed, i.e., duty-bearers. Pertinent questions relate to "traditional" rights-holders (individual human beings) and duty-bearers (states), as well as potential new rights-holders (future generations, elements of nature, hybrid life forms) and duty-bearers (private actors). Additionally, the first dimension examines the relationship between different rights-holders and duty-bearers and identifies who can be the addressees of human rights claims in different institutional contexts. Furthermore, changes in the territorial and jurisdictional scope of human rights raise questions about where human rights apply and which actions by state or non-state actors trigger the application of human rights. Understood broadly, the first dimension refers to who does and should bear responsibility and whose agency is at stake.

(2) The second dimension relates to the content and scope of human rights (What?), including existing rights which may need to be reformulated or whose scope needs to be reassessed, and new rights developed in reaction to the megatrends, such as the right to a clean, healthy, and sustainable environment. Relevant questions relate to the activities or spheres of life which are protected by human rights and how the contents of specific human rights emerge and are diffused into different contexts. Cluster research will also engage with attempts from state actors to reduce the scope of their human rights obligations by means of treaty withdrawals or domestic legislative changes, and with efforts by the international community and civil society to resist such reductions.

(3) The third dimension encompasses the realization of human rights and accountability for human rights violations, notably the political, institutional, procedural, and technical elements of monitoring and implementing human rights (How?). The key questions concern how human rights are realized and accounted for. This includes the study of legal institutions and procedures such as international and domestic court proceedings and jurisprudence, but also specialized human rights bodies at the national, regional, and international level, including National Human Rights Institutions (NHRI) and procedures and institutions within the United

Nations and other international organizations. However, our understanding of the realization of human rights and human rights accountability is not limited to judicial and quasi-judicial settings. Instead, we will also study social movements and forms of protest, and the activities of civil society organizations and other non-state actors such as companies, municipalities, and local communities. We will pay particular attention to the language of human rights and to processes of vernacularization, which describes the conversion and localization of universal human rights into local practices and understandings of social justice, thereby adapting human rights in a partly transformative way to achieve broad(er) local acceptance and legitimacy. Furthermore, we will analyze various forms of grievance mechanisms and other accountability procedures, particularly those that employ the perspective of rights-holders and their representatives.

Even though these three dimensions derive from a legal understanding of human rights, we understand them more broadly and utilize them to analyze human rights as political institutions and social practices, which will make the framework useful for social science research as well. In this regard, the three dimensions address actors, agents, and entities (Who?), the subject matter of political and societal discourses, struggles, and contestations (What?), and the development of, operationalization of, and changes to the relevant political, economic, and social systems, structures, institutions, and organizations (How?). While we will use the three dimensions as one axis of our research matrix, we will also reflect on them and their limits theoretically. This reflection invites multidisciplinary dialogue on alternative concepts. In this regard, the dimension of rights-holders and duty-bearers could be expanded to focus on autonomy and responsibility. The dimension of content and scope of rights might be developed to reflect on concepts of territoriality and temporality. Modes of realization and accountability could be broadened to notions of agency and justice. These broader concepts might contribute to a transformed understanding of human rights and will allow us to integrate and learn from frameworks that point beyond narrowly defined human rights scholarship, and may open up human rights research and thus attract scholars that have hitherto not focused explicitly on human rights. On this basis, theoretical approaches to human rights and to how we conduct research on human rights can be fundamentally rethought.

The research matrix, defined by the five megatrends (see 2.2.) and the three dimensions, helps us synthesize research results achieved at project level.
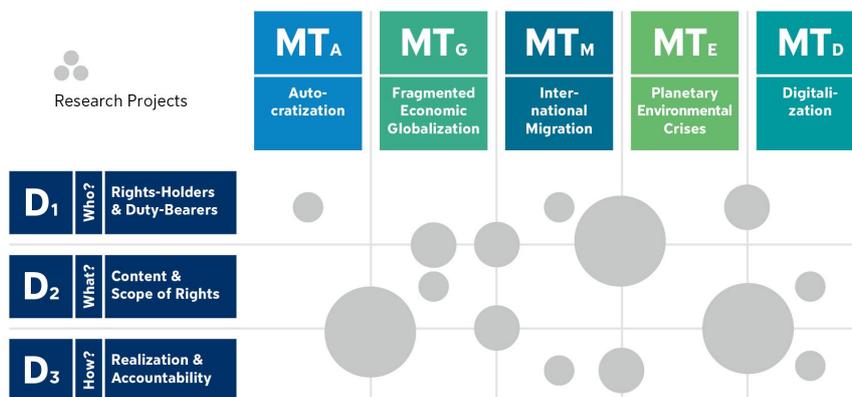

Figure 3: Research Matrix

2.5. Research Approach

Human Rights as a Field of Multi- and Interdisciplinary Research

Our research program is based on an understanding of human rights established as legal norms developed through social practices and based on moral justifications, but it is not restricted to a particular conception or school of thought. This approach encompasses civil and political as well as economic, social, and cultural rights. We understand human rights as legal norms including global and regional human rights treaties, as interpreted and applied by competent institutions as well as supranational and national constitutional law, legislation, and jurisprudence. The implementation of human rights within domestic and international legal frameworks is an important, but not compulsory requirement for norm acceptance and norm diffusion. Rather, processes behind the emergence, internalization, and regression of human rights norms need to be understood comprehensively.

Human rights have constantly been subject to contestation, challenges, and counter-movements and are understood as contingent upon the time and political context in which they have been formulated. They have been shaped by human experiences, vulnerabilities, and capabilities, as well as by various emancipatory struggles and shifting dynamics of power, and by contests over their application and justification. This requires analysis of political processes, actors, and institutions at the international and domestic level, including social movements that articulate and fight against experiences of fundamental injustices by incorporating human rights claims in their struggles.

Notwithstanding their embodiment as legal norms and historically contingent practices, human rights have been defined by their claim to universality – the claim that their binding nature transcends specific historical settings and follows from moral justifications instead of codification in positive law. They are often considered to be based on fundamental characteristics of human beings such as agency. The character of human rights as moral rights is compatible with the admission that these rights have legal and political functions, even though whether these functions define a right as a "human right" is disputed.

Our understanding combines different disciplinary approaches without prioritizing one or following the concept of a lead or dominant discipline. Different research conceptualizations within our Cluster will emphasize different elements of this understanding. We encompass a wide range of theoretical perspectives, emphasize context-sensitive analysis, and include critical perspectives on human rights. We also seek to understand human rights against the background of the lived experiences of minorities, vulnerable persons, and marginalized groups and peoples. Our approach does not suggest a uniform and fixed definition of human rights, but establishes a conceptual field that integrates various empirical and normative perspectives, including those affirmative and skeptical. This understanding requires multi- and interdisciplinary research that draws on law, social sciences, and humanities.

We understand multidisciplinarity as an approach to generating knowledge about a field of study by combining different disciplines, while individual researchers remain within the boundaries of their respective disciplines. Interdisciplinarity, on the other hand, fosters links

and integrates knowledge across disciplines. The multidisciplinary study of human rights norms, institutions, and practices by lawyers, political scientists, anthropologists, philosophers, historians, and scholars from other disciplines who collaborate in our Cluster allows us to enhance and enrich disciplinary research about human rights by situating it in discourses of different disciplines. Multidisciplinarity is a precondition for interdisciplinary human rights research which will enable us to reach beyond the limits of disciplinary boundaries. For example, an understanding of human rights as a social practice centered in essentially contested norms complements doctrinal approaches which focus on the specificities of internationally and domestically codified human rights law, and processes applying these norms in juridical and quasi-juridical settings. Philosophical arguments supporting the universality of human rights are compatible with the idea that the specific content of particular human rights claims and institutions is shaped by historical circumstances and contexts and thus subject to social construction and contestation.

Transdisciplinary Approaches to Engage Non-Academic Partners

We will advance human rights research in our Cluster through transdisciplinary research that focuses on the usage and co-creation of contextualized knowledge with societal actors and seeks to engage non-academic partners in different stages of the research process. We will include non-academic voices in the design and implementation of research projects and the dissemination of their results, when the involvement of these voices is feasible and beneficial to the research process and serves to improve research rigor and relevance. We build on long-standing experience of adopting transdisciplinary research methodologies, particularly collaborative, engaged, and participatory approaches in socio-cultural anthropology, sociology, human geography, and political science, as well as research at the interface of law and society. Such methodologies play a pivotal role in the politics of knowledge and respond to the need for a more democratic and decolonized approach to observation and interpretation. Transdisciplinary approaches are essential to ensure that empirical findings are well sustained, and allow for more fine-grained and nuanced analyses, better contextualization, and the identification of points of contestation between different groups of actors and individuals within actor groups.

Transdisciplinary research should complement, rather than replace, disciplinary, multidisciplinary, and interdisciplinary work. It not only enhances the societal impact of academic research, but also improves the rigor and relevance of the disciplinary research involved. By offering novel options to investigate complex and highly contextualized phenomena, transdisciplinary approaches enable advancements in fundamental research that would otherwise be unattainable. However, we also acknowledge that it will remain crucial to ensure critical distance to the object of research and to avoid conflating the aims and perspectives of scholars and practitioners. Participatory and collaborative approaches may risk losing this distance. To avoid this and to ensure scientifically sound approaches, our research will build on the normative foundation of human rights but insist on contributing academically – and not from an activist perspective – to the realization of human rights. It is also necessary to reflect on the positionality of researchers and the overall research agenda, and to critically scrutinize established approaches to research design and knowledge

production, to which transdisciplinary approaches will make a specific contribution. This will also enable us to achieve our fifth research objective, which is advancing transdisciplinary research that incorporates experiences of human rights practitioners, and critically assessing the role, functions, and approaches of academic research in the context of human rights transformations. The elements and perspectives of the Cluster's research approach are illustrated in Figure 4.
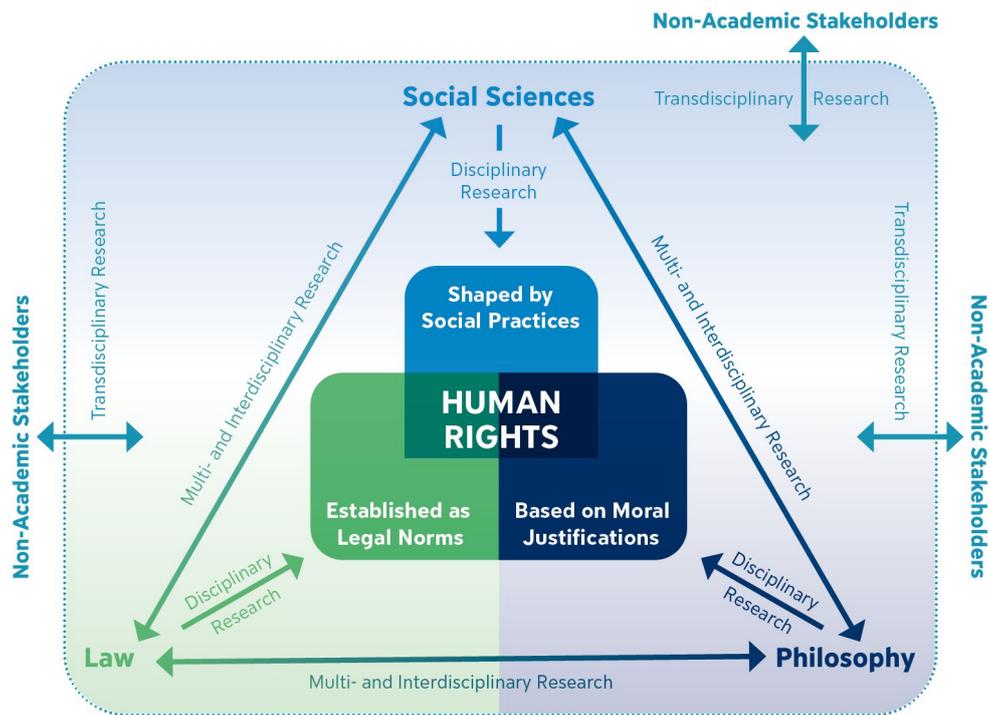

Figure 4: Elements and Perspectives of the Research Approach

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