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Jonathan Crock is Professorial Lecturer at George Washington University and Ph.D. Candidate in Law at Leiden University. He has a master's in international human rights law (Oxford), LL.B. (London), and B.Sc. in politics and international relations (London). He researches the human right to democratic decision-making, focusing on legal innovations in rights of direct political democracy, environmental democracy, economic democracy, workplace democracy, democratic control of money as a public good, and the right to democratic decision-making in global governance. His previous experience includes working at the U.S. Department of State's Office of War Crimes Issues, U.S. Institute of Peace, Office of the U.N. High Commissioner for Refugees, U.S. Department of the Treasury, Supreme Court of the United States, and as a foreign policy advisor on U.S. presidential campaigns.

The Human Right to Intersectional Democracy

With global governance facing endemic structural problems of worsening inequality, persistent underrepresentation of women, minorities, and the poor, recurrent financial crises, climate change, entrenched elite control, corruption, polarization, and some of the worst government approval ratings on record, there is an urgent need to reexamine basic assumptions about democracy in international law. Conventional descriptions assume democracy means governance over a limited public sphere via elected representatives of a nation-state and that democracy is possible without women's parity and without equitable participation of minorities and all socio-economic classes in power.

Critical legal theorists, such as Susan Marks and Dianne Otto, have persuasively shown how traditional forms of democracy reproduce systemic inequality and global exploitation. However, many attempts—including in international human rights law and international trade law—to address the urgent challenges facing the planet are being pursued using the same undemocratic decision-making structures that gave rise to the problems being faced. Critical legal studies powerfully deconstructs this problem but can be short on solutions.

I apply intersectionality theory to the work of critical legal scholars to argue that there is a codified human right to “intersectional democracy.” This right includes a right of women of all socio-economic backgrounds to take part in decision-making “on equal terms with men” and a right of minorities and all socio-economic classes to have equitable participation in decision-making. This paper presents the first in-depth archival analysis of the drafting of the democracy provisions in international treaty law, and it does so from an intersectional perspective that has largely been absent from scholarship on the right to democracy. The scholarship has focused mainly on two instruments—Universal Declaration of Human Rights and International Covenant on Civil and Political Rights—with little examination of how the right to democracy is deepened by the Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women, and a piecemeal codification of the right to the elimination of all forms of class discrimination. Additionally, the drafting debates and subsequent state practice demonstrate a right not only to “political democracy” but also to “industrial democracy” and “economic democracy.”

This paper details the ways state practice has successfully deepened this human right to intersectional democracy to address the structural failures of representative governance, with a particular focus on the use of citizens' assemblies—the random selection of citizen decision-makers. This is one method to help pursue intersectional democracy, automatically achieving 50 percent women's participation, proportional minority participation, and a cross-section of socio-economic classes. This paper pieces together innovations in state practice across all spheres of human governance—from new successes in workplace democracy, to randomly selected citizens helping to draft the constitution of Iceland, to an Indonesian constitutional amendment enshrining “economic democracy” and the use of a form of “citizens' juries” in WTO jurisprudence (*EC – Seal Products*). These successes in intersectional democracy offer new methods that can strengthen the work of international tribunals, human rights bodies, and political and economic governance institutions.