

***HUMAN CHOICE IN INTERNATIONAL LAW* BY ANNA SPAIN BRADLEY
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To what extent is international law a product of human choice? Are there consequences to denying that the interpretation of international law involves elements of human choice?

In her book, *Human Choice in International Law*, Professor Anna Spain Bradley aims to ‘use new knowledge to update old ideas and to recognise that human choice is more complex than international law presently takes into account’.¹ She articulates the book’s thesis as being ‘whatever else international law is, it is also human choice’.² Specifically, she looks to consider the role of human choice in the study and practice of international law and demonstrates that the two are inseparable.

The book is divided into three parts, each of similar length. In Part I, Bradley explains how human choice works and its relevance to international law.³ She begins by recounting an interaction she had with a sitting judge on the International Court of Justice (ICJ), whose understanding of international law she attributes to Aristotle’s teaching: ‘[t]he law is reason unaffected by desire’.⁴ This approach to understanding international law, according to Bradley, is flawed, yet it has persisted throughout time.⁵ She then presents her thesis through a discussion on the ‘creation, use of, and permissible legality of nuclear weapons’.⁶ Here, she cites the example of US war President Harry Truman and his administration’s decision to spare Kyoto from the atomic bomb. This decision was influenced by his Secretary of War, Henry Stimson’s, fondness for the city, developed during a visit there with his wife.⁷ Bradley argues that the decision to abstain from the use of a weapon of mass destruction was not rooted in legal considerations. Kyoto was spared for personal and emotional reasons, not intellectual ones. The continued debate over the bombing’s legality and the relevance of the Hague Conventions of 1899 and 1907 steeds this decision as one central to a highly controversial intersection of international law and global affairs, and a decision mired in personal and emotional reasoning which the author contrasts with the Aristotelian understanding of law.

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¹ Anna Spain Bradley, *Human Choice in International Law* (Cambridge University Press, 2021) 5.

² Ibid 9.

³ Ibid 8.

⁴ Ibid 5.

⁵ Ibid.

⁶ Ibid 9.

⁷ Ibid 16.

In Part II, Professor Bradley explores human choice in three contexts of international law: at the ICJ, the UN Security Council and in international human rights law. Discussing the ICJ, Bradley emphasises how each judge's 'unique identity, life experiences, memories, and emotions' influence their decision-making.⁸ She criticises the ICJ's ruling in the case of *Democratic Republic of the Congo v Rwanda* ('Armed Activities') where the Court declared it had no jurisdiction over Rwanda's armed aggression against the Congolese people in the territory of the Democratic Republic of Congo. Bradley attributes this finding to the biases of individual judges.⁹ She closely examines the separate judgments in the case provided by five of the judges, wherein they criticise a state's capacity in the 21st century to decide for themselves whether to consent to the ICJ adjudicating claims of committing genocide. The fact that these judges, each 'applying international law', have arrived at diametrically opposed positions serves as evidence of the role human choices play in the formation of international law. In her denouement, she reiterates that it is outdated and incorrect to assume that judges can set aside their feelings and biases. She argues that 'in an effort to adhere to such views, our expectations of judges risk denying core aspects of their humanity'.¹⁰

Professor Bradley then shifts her focus to the human choices made by the Security Council. While she fails to concede that these actors are not to be held to as high a standard as the judges of international courts and tribunals, she is warranted in noting just how emotional and biased the Security Council can be. A specific highlight of this chapter is Bradley's inclusion of a UN Security Council diplomat's explanation of the problem. The diplomat divulges that 'legal rules do play "somewhat of a role ... but [they are] not a predominant force" ... We have something we want to do, the lawyers craft language. [They] don't ever say "you cannot do the objective you want to do" because it goes against international law'.¹¹

When commenting on international human rights law, the author demonstrates that the emphasis on the 'human' in international human rights law means that 'passions, emotion, and expressions of humanitarian concern are not merely tolerated but are expected and, at times, encouraged'.¹² A firsthand example is her witnessing the Inter-American Human Rights Commission hearings at the University of Colorado School of Law in November 2018. There, two commissioners acknowledged the emotion-laden pleas of families and advocates of people who have disappeared along the US border, even going as far as to thank them for sharing their emotions alongside their legal claims.¹³

Part III of the book concludes her work. Professor Bradley argues for a 'culture shift in international law that better aligns the duties and expectations international law requires with the realities of human choice'.¹⁴ In doing so, she offers 10 guiding principles for her 'human choice approach to international law'.¹⁵ Among these principles are 'embrace empathy', 'encourage authentic human engagement', 'understand that choice is more thinking than knowing', and 'avoid unrealistic expectations (such as by requiring a decision maker to suppress or disregard their emotions).

⁸ Ibid 38.

⁹ Ibid 40.

¹⁰ Ibid 51.

¹¹ Ibid 67.

¹² Ibid 71.

¹³ Ibid 77.

¹⁴ Ibid 10.

Readers may need to be aware that, throughout her book, Bradley primarily seeks to illustrate instances of irrationality in international law, and to provide a scientific explanation for its occurrence. Additionally, some aspects of her analysis may seem somewhat debatable. For instance, concerning her comments on the ICJ in *Armed Activities*, one could equally argue that the decision instead shows the court's capacity to overcome its biases and reach an impartial and legally sound conclusion. Also, Bradley appears to overlook the mitigating impact that having multiple judges can have against the sway of the emotions, life experiences, and biases of any individual judge.

All in all, *Human Choice in International Law* by Professor Anna Spain Bradley is an enjoyable read, being succinct, informative, and understandable. The book includes many interesting and cogent case studies and does well to simplify and delineate complex psychological findings. Nevertheless, Professor Bradley deliberately confines herself to an assertion that human choice is integral to international law without attempting to answer the normative question of whether or not it should be.¹⁵ She effectively shows that international law decisions will be made with feeling and bias, however, she does not attempt to prove that international law circles should not strive to suppress their effects. For if her intention was only to prove that international law actors are influenced by bias and feeling, she argues a moot point, of course, they are.

¹⁵ Ibid 19.