In the words of Winston Churchill, "[w]e shape our buildings and afterwards our buildings shape us."[12] In the spirit of Shaffer's iterative relationship between the building (trade law) and its dwellers (states, infra-state public and private actors, and other transnational entities), we might add that the building will in turn require upgrades, renovations, and additions.

SONIA E. ROLLAND
Northeastern University School of Law

Human Choice in International Law. By Anna Spain Bradley. Cambridge, UK: Cambridge University Press, 2021. Pp. x, 160. Index.
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Human Choice in International Law, by Anna Spain Bradley, is a colorful and historical narrative written by the Vice Chancellor of Equity, Diversity and Inclusion and Professor of Law at the University of California, Los Angeles. Spain Bradley draws upon not only her scholarly expertise, but also her rich experiences in the field, as an advisor at the U.S. Department of State, a U.S. delegate and a legal expert to the United Nations (UN), and counsel for state parties before the Permanent Court of Arbitration.

The book begins with a dinner party and a heated argument between the author and a sitting judge on the International Court of Justice (ICJ). The dispute at hand was a particular ruling on which they disagreed. In 2002, the Democratic Republic of the Congo (DRC) lodged a case against Rwanda alleging massive violations of human rights, including genocide, on its border. Despite the gravity of the atrocities and the tragic loss of human lives, the ICJ ruled that it lacked the jurisdiction to hear the case. For the sitting judge in question, the court had made the correct decision based on available law and practice. For our author, the decision was "a moral abdication" (p. 4). Afterall, "it's genocide!" (*id.*).

That argument was not just Spain Bradley's disagreement with a single judge over a single ruling. It was also a disagreement with a broader idea, in fact a deep-seated culture, that law and emotions should be kept apart. That somehow legal decisionmakers should be rational thinkers willing and able to set aside their feelings and beliefs when making professional choices. When presented with the facts and rules, they should arrive at the right formal decision based on the evidence before them, and their thoughts and emotions should not get in the way. According to Spain Bradley, that idea is outdated. International law is a product of human choice and "human choice is more complex than international law presently takes into account" (p. 5). I agree.

Human Choice in International Law is a valiant effort to introduce various literatures and fields that study human decision making—from psychology, to behavioral economics, neuroscience, political science, and more—to the domain of international law. In ninety-five pages, it provides a sweeping overview of research on the science(s) behind human choice. It has many targets in its sights, such as the once-prevailing view that international rules are primarily the product and province of states or the view that the process of international law is a rationally driven one. Law may be a lot of things, but it is more than just rules and procedures. It is also human beings—with all of their fallibilities and strengths—making choices. Those choices are colored not only by the facts and the rules but also by how people think and the conscious or unconscious inputs they use to arrive at their decisions.

Spain Bradley builds upon already rich and established scholarly traditions, such as international legal process theory that emerged in the 1960s, and the newer and now growing traditions applying insights from behavioral and psychological approaches to the study of international law and international institutions.[1] What she adds is a

[12] HC Deb., Oct. 28, 1943, Vol. 393, cc403-73, 403, The Prime Minister (Mr. Churchill) (House of Commons Rebuilding), *at* https://api.parliament.uk/historic-hansard/commons/1943/oct/28/house-of-commons-rebuilding.

[1] On legal process theory, see ABRAM CHAYES, THOMAS EHRLICH & ANDREAS F. LOWENFELD,

focus on cognitive processes, specifically thought, memory, empathy, emotion, and bias. With this focus, she takes us on a rich journey into the history of legal decision-making processes in the ICJ, UN Security Council (UNSC), and in the realm of international human rights law. Her methods are descriptive, drawing upon a variety of archival materials as well as personal interviews with some of the actual decisionmakers themselves.

One of the book's central claims is that human choice is complex, driven by many factors and many inputs. Sometimes, our choices are consciously made based on the facts and information that surround us. Sometimes we make choices in a way that is not so neatly rational, obvious, or even based on conscious understanding of the factors that drive us. Is this claim true? The answer is an unequivocal "yes."

The questions surrounding how people process information and make decisions are durable ones in Western political thought, but since the 1950s they have been the subject of systematic scientific research rooted in cognitive psychology, and now many other fields.[2] In an impressive effort to synthesize decades of published research across many fields into consumable takeaways, Spain Bradley explains that thought happens in different ways and in stages. Relevant memories sometimes affect choices. Empathy and emotions can guide decisions. Human beings are often biased. In whirlwind speed, she gives a smattering of examples from studies, old and new, connecting how the prefrontal cortex of the brain affects how people synthesize information, how a fond (or unhappy) memory of a food you ate a month ago might shape what kind of food you choose tonight, or that abusive husbands have a much lower capacity for empathy than others.

Spain Bradley is admirably humble in her claims and her reach. She is not trying to demonstrate direct causality between thought processes, memory, empathy, emotions, or biases and the actual choices people make. She recognizes that there "are more questions than answers, and more gaps than certainties" (p. 34). She comes to the subject with "curiosity and fluidity" rather than final certain answers (*id.*).

Often, a book's great strength brings forth a related limitation. There is simply so much research on decision making, from so many disparate fields, that the effort to summarize the lessons learned in short order come at the cost of important nuance or the bigger picture. Of the utmost importance to the study of cognition and decision making are scope conditions—the subset of cases to which theory or finding applies. Scope conditions necessarily confine the conclusions that we can rightfully draw from a brief overview in general, or for the domain of international law in particular. It means the thesis does not apply everywhere. That begs the question: where, then, does it apply?

An example is the discussion on emotion, which spans a very large set of literatures (pp. 31–33). "The central lesson from this emergent emotion research is that attempts to study human decision-making behavior must take into account the impact that emotion can have on cognition. Ignoring emotion ignores the evidence" (p. 33). That is not the lesson that I take away from that large body of research. The lesson I take away is that *under some circumstances*, emotions may very well shape how people make choices. That is both intuitive and also proven fact. But what is not intuitive, or proven, is when, where, and why emotions enter into the decision-making process or result in a certain choice. Do emotions always matter for human choice? Probably not. That is the central question: if so, when do they matter?

If we are to say something predictive—that is, more than establishing that things like emotions matter by 20–20 hindsight—about how emotions are likely to shape a choice, we need to

INTERNATIONAL LEGAL PROCESS (1968); Harold H. Koh, *Transnational Legal Process*, 75 NEB. L. REV. 183 (1996). On behavioral and psychological approaches, see CASS R. SUNSTEIN, BEHAVIORAL LAW & ECONOMICS (2000); Emilie M. Hafner-Burton, Stephan Haggard, David A. Lake & David G. Victor, *The Behavioral Revolution and International Relations*, 71 INT'L ORG. S1 (2017).

[2] For a review focused on elites, see Emilie M. Hafner-Burton, D. Alex Hughes & David G. Victor, *The Cognitive Revolution and the Political Psychology of Elite Decision Making*, 11 PERSPEC. POL. 368 (2013).

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know both when they are, and are not, likely to become an input into the decision-making process in a way that can alter a choice. That will, of course, depend on the context of the situation, the choice at hand, the person making the choice, the institutional rules of the game, etc. As the author repeatedly states, so much revolves around context. That is true. But it is also material for helping us to understand when things like emotion become relevant to the choice process.

This is in no way a criticism of Spain Bradley but rather a commentary on her laudable effort to build bridges between the many fields spanning decision-making sciences and the desire to describe choices in international legal domains (which I shall turn to shortly). If the main takeaway in this example is that emotions can sometimes matter in ways that shape people's choices, I think we would all agree. It is quite interesting to hear examples from the past as to just how this may have played out. But unless we have some more concrete idea how, we are rooted in searching through history to find anecdotes that this has at some point been true. We cannot predict moving forward with any certainty if that is likely to happen again, or when. So what does it mean, then, to take emotion into account? Is that to look retrospectively for anecdotes that fit or to garner some broader understanding of when and how the process of emoting actually shapes a choice? Both have value, but they are very different exercises.

The second part of the book, also a laudable effort, takes these insights and examples of how people make choices from the scientific literatures more broadly and weaves them into the history of international law. This part of the book is a fascinating deep dive into both the history of some key legal decisions by some of the world's most important decision-making bodies—the ICJ, UNSC, the international human rights regime—and the personal accounts of the human beings making the relevant choices.

Returning to the fight over the decision by the ICJ that first motivated her inquiry—the refusal of the Court to find jurisdiction on the DRC's case against Rwanda for genocide—Spain Bradley explores in depth, where possible, how the judges that ruled on this case came to the decisions they made. The bottom line of this story is that many of these judges reported a feeling of conflict between their perceived duty to act with legal impartiality and their deep-seated emotional responses to the atrocities under question. Several acknowledged that emotions played a role in the choices they made. The ensuing request made by the author to her audience is to see the ICJ not simply as a building or an institution but as a living breathing collection of people making choices about international law, informed by their own emotions and cognitive functions and not simply the letter of the law. What is interesting about this particular case is that the vast majority of the judges (15–2) ruled against jurisdiction at the time, and yet many expressed real frustration with these constraints on the Court's jurisdiction and the state of international human rights law more generally. One dissenting opinion, by Judge Korma, found this decision to be morally unjust, suggesting that perhaps emotions played a role in his reasoning.

Spain Bradley also interrogates the role of human choice at the UNSC. She considers those powerful people charged with representing their nations, deciding on things like humanitarian intervention that will affect the lives of many people, as they did in Libya. As someone who once, myself, worked within the walls of the United Nations (in my case, in the area of disarmament), Spain Bradley's claims and anecdotes suggesting that emotions, theatrics, trust (or lack thereof), a sense of urgency, and even fatigue and stress shape how people make critical political and legal choices ring perfectly true. But, in my experience, they did not always, which again begs the same question of when do cognitive processes tip the scales on a particular decision.

The same is true for the domain of international human rights law—the third area the book explores. Certainly, all kinds of forces—biases, disgust, empathy, memories—come into play. The question is when do they come to affect decisions and how. My guess is that answers to that question will depend at least in part on the kinds of actors making the choices. Are emotions, for instance, likely to shape the decisions of an

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activist or scholar who sits on the Committee on the Elimination of Discrimination Against Women (CEDAW) in the same way as they might for a lawyer or bureaucrat? Will they shape how a lawyer with focused legal training in the domain makes choices in the same way as a lawyer with less focused experience? Maybe. But maybe not. The answer seems pretty essential to understanding how cognition is likely to flow through this process of arriving at decisions around international human rights law.

There is a difference, in my view, however, between what a model of human choice means for judicial decision making in the ICJ than for the other two domains. Spain Bradley may be correct that the long-held conventional wisdom in the field of international law is that there is no place for those things that make us human—such as our cognitive reasoning—in the making, interpretation, or application of international law by judges and arbitrators. (I do believe there is a growing body of work now questioning this wisdom; certainly, my own work in the field of international relations does.)[3] There is no such conventional wisdom at the UN. There, emotional displays are often a key part of the decision making process, at least in my experience. It has long been known that these diplomats are not always able or even intended to be rational agents of their state; often they fail on purpose or by mistake to do their leader's bidding.[4] It is an interesting question whether and how a model for human choice might apply differently in different domains of international legal decision making, across different types of actors serving different masters and holding different norms, customs and rules.

Here again Spain Bradley is appropriately humble as to what she can say. Speaking of the ICJ, she recognizes that this "methodology is imperfect: I offer no claim that these stories represent anything more than illustration" (p. 44). She knows that she cannot claim that one thing, such as an emotion by a particular ambassador to the UN, caused a specific choice in that institution. This puts us back to the question of whether we can say anything more than sometimes, things like emotions or brain processing matter for human choice on international law. From my own perspective, that would be a worthwhile pursuit, though simply hearing the quotes and anecdotes is a worthy gift in its own right.

It is clear that the book's thesis is anecdotally true at least some of the time—that human choice is a fundamental part of international law, and that inputs such as emotions empathy, and bias probably shape some very important choices in the field. But is it equally clear that this reality is desirable; that we should want to encourage this? No, it is not, at least not all of the time.

The book ends, in Part 3, with a call to change the culture of choice. "If it is not preferable for judges to consider their emotions when adjudicating a case, then let it be for well-explored reasons, not because of a flawed premise that a person can simply put aside emotions and apply law to fact in making a choice" (p. 83). That statement is a powerful one because it points us to the difference between *does* and *should*. We have already discussed the *does*, and my refrain is that to really understand the *does*, we need clearer scope conditions on when, where, and why. That is not the purpose of this book, but this book should hopefully inspire more investigation into those questions.

In my view, the *should* question is very different. The book starts and ends with a solid call for the *should*. By being more accurate in understanding how choices about international law are made, we "can better inform decisions about who should serve in these important decision-making roles. Diplomats, judges and other elite decision makers in international law are not exempt from the cognitive biases and functions that affect us all, and learning about the processes of choice can empower and improve international legal decision making" (p. 27). I think it may certainly help us to better understand some of the choices we make. Whether that would improve international law, or

[3] Emilie M. Hafner-Burton, Brad L. LeVeck, David G. Victor & James H. Fowler, *Decision Maker Preferences for International Legal Cooperation*, 53 INT'L ORG. 699 (2015).

[4] Robert D. Putnam, *Diplomacy and Domestic Politics: The Logic of Two-Level Games*, 42 INT'L ORG. 427 (1988).

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influence choices about who serves in the first place, are different questions entirely.

Here, there is much room for healthy debate. I think most of us might agree that things like implicit or explicit bias should in principle play no formal role in judicial decision making, though almost certainly they do, some of the time. Much like my own university requires implicit bias training for anyone making, for example, a hiring choice, perhaps our law degree programs need similar (and better) training. Should sitting judges perhaps take online bias courses every few years, like I do? So far, I am not aware of much evidence that these courses achieve their goals, but at least it is an effort to counteract how our personal biases may shape critical choices.

Emotions and feelings are something quite different. They may clearly play a role in international legal decision making some of the time, but should they? Is that something to work to overcome, as is bias? Or, if not, then what does it mean to embrace it? When Spain Bradley bravely says that "[i]t is time for international law to acknowledge and accept its humanity" (p. 85), what does that concretely mean? The people making choices know they are people—they may not know their implicit biases or be consciously aware of all of their cognitive functions (almost no one is)—but they would never deny their humanity. So is it the pedagogy of law that needs to change to become more human centered? The formal or informal standards for practice? What would that look like in real terms?

At the end of the day, this book is a much needed reminder of the ways in which international law is more than words on paper or institutions; it is also composed of complex acts of human choice that reflect among many things cognitive functions and abilities. As a roadmap for the enterprise, it raises more questions than it answers. That is a great way to advance the conversation. I would highly recommend the book and look forward to the debate I hope it sparks.

EMILIE M. HAFNER-BURTON
University of California, San Diego

Standing Up for Justice: The Challenges of Trying Atrocity Crimes. By Theodor Meron. Oxford, UK: Oxford University Press, 2021. Pp. xii, 347. Index.
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"[W]ith sufficient political will and resources —principled accountability for violations of international law can be achieved" (p. 311). This message brings forth the very essence of Meron's book: optimistic, as it trusts the inherent goodness of international criminal justice; conscientious, as it signals that such goodness inevitably depends on the respect for principles of fairness toward the defendants; yet pragmatic, as it realistically acknowledges the key role of politics in the success of the international criminal justice enterprise.

Standing Up for Justice follows the steps of Theodor Meron's life as a judge of international criminal tribunals, by blending legal analysis and autobiographical notes. The author is well-known for having been the first president of the International Residual Mechanism for Criminal Tribunals (Mechanism), a four-term president of the International Criminal Tribunal for the former Yugoslavia (ICTY), and a Judge on the Appeals Chamber of the latter tribunal and of the International Criminal Tribunal for Rwanda (ICTR). An academic at heart, Meron has also taught at several universities around the world, most notably the Graduate Institute of International and Development Studies in Geneva, NYU Law School, and the University of Oxford.

The insights offered by his first-hand tale are, unsurprisingly, unique. As such, the book is recommended to both specialists in international criminal law, who might like to see the field through the eyes of one of its towering figures, and non-specialists who would like to learn more about international criminal justice from an insider's perspective. The first half of this review will provide a bird's eye view of the book's structure and content. The second half will zoom in to the key themes of the book, namely: the importance of fairness toward the