We acknowledge and celebrate the First Australians on whose traditional lands we meet, and whose cultures are among the oldest continuing cultures in human history.

Professor Sally Wheeler OBE MRIA FAcSS FAAL (left), Deputy Vice-Chancellor (International Strategy), ANU, and Dean, ANU College of Law, and Dr Aunty Matilda House, Ngunnawal, Ngambri and Wiradjuri Elder.
Welcome to the ANU College of Law Research Overview 2021, which highlights a sample of the impressive research at the College. Despite significant global disruption caused by the pandemic, the College continued to produce, and receive recognition for, high-quality, high-impact research.

We are proud of the research achievements of our world-class academics and we celebrate the impact of our research in advancing knowledge in academic and applied debates involving policy-makers, community advocacy and innovative enterprise.

At the ANU College of Law, we strive to make research relevant and impactful for the broader community, particularly our outstanding alumni. If you are reading this report and see opportunities for collaboration, or would just like to know more, please get in touch.
2021 by the numbers

- Professors: 14
- Associate Professors: 20
- Senior Lecturers: 10
- Lecturers: 4

- Grants: 28
- Research funding: $21m
- Books: 17

- Chapters: 35
- Journal articles: 165
- Excellence in Research Australia: eligible publications: 131

- Research centres: 4
- Media engagements: 180
- Research events: 57
Our research strengths

- Administrative law
- Criminal law
- Environmental law
- Human rights law and policy
- Indigenous peoples and law
- International law
- Law and gender
- Law and psychology
- Law and religion
- Law and social justice
- Law and technology
- Legal education
- Legal history and ethnology
- Legal theory
- Law, governance and development
- National security law
- Migration and movement of peoples
- Private law
- Public law
- Regulatory law and policy
- Law and psychology
- Law and religion
- Law and social justice
- Law and technology
- Legal education
- Legal history and ethnology
- Legal theory
- Law, governance and development
- National security law
- Migration and movement of peoples
- Private law
- Public law
- Regulatory law and policy
Monographs

Judging at the Interface: Deference to State Decision-Making Authority in International Adjudication

Judging at the Interface: Deference to State Decision-Making Authority in International Adjudication (Cambridge University Press, 2021) analyses the approaches to deference taken by the Permanent Court of International Justice, the International Court of Justice, the European Court of Human Rights, and investment treaty tribunals in more than 1,700 decisions between 1924 and 2019.

Associate Professor Esmé Shirlow was inspired to explore the topic of the book while working in the Attorney-General’s Department on the Philip Morris tobacco plain packaging claim.

“This was a case filed under a bilateral investment treaty between Australia and Hong Kong by a foreign company, which sought compensation from Australia in relation to Australia’s tobacco plain packaging measures (which the company contended damaged its intellectual property rights). The issue of deference ran across many aspects of that case,” she said.

The book builds on, and benefits from, Dr Shirlow’s experience advising states and investors in international proceedings. The issues addressed in the book arise increasingly in international adjudication, reflecting that international law has expanded in recent years to cover a diverse array of subjects, prompting qualitatively different and quantitatively increased opportunities for overlap and interaction between domestic and international decision-making.

Furthermore, Dr Shirlow examined these interactions in much of her academic work, including a number of works focusing on deference specifically (including two pieces in the ICSID Review — Foreign Investment Law Journal, and a chapter in an edited collection with Oxford University Press). Dr Shirlow was also invited to contribute the entry on ‘deference’ to the Max Planck Encyclopaedia of International Procedural Law, which builds on the conceptual approach to analysing deference that she set out in the book but also extends this to relations between international courts/tribunals themselves.

The book, which includes a foreword by the late Judge James Crawford AC SC FBA, has received praise from experts including Judge Joan Donoghue, President of the International Court of Justice.

“Dr Shirlow’s ground-breaking study of multiple dispute settlement mechanisms combines empirical, inductive and comparative inquiries to shine light on the diverse ways in which deference operates in international courts and tribunals, deepening our appreciation of particular institutions and providing rich comparisons among institutions and over time,” she said.
General Principles as a Source of International Law: Art 38(1)(c) of the Statute of the International Court of Justice (Hart Publishing, 2021) by Associate Professor Imogen Saunders provides a comprehensive analysis of an often neglected, misunderstood and maligned source of international law. Article 38(1)(c) of the Statute of the International Court of Justice sets out that the Court will apply the ‘general principles of law recognized by civilized nations’. This source is variously lauded and criticised: held up as a panacea to all international law woes or denied even normative validity. The contrasting views and treatments of general principles stem from a lack of a model of the source itself. This book provides that model, offering a new and rigorous understanding of Article 38(1)(c) that will be of immense value to scholars and practitioners of international law alike.

At the heart of the book is a new tetrahedral framework of analysis — looking to function, type, methodology and jurisprudential legitimacy. Adopting an historical approach, the book traces the development of the source from 1875 to 2019, encompassing jurisprudence of the Permanent Court of International Justice and the International Court of Justice as well as cases from international criminal tribunals, the International Criminal Court and the World Trade Organization. The book argues for precision in identifying cases that actually apply general principles, and builds upon these ‘proper use’ cases to advance a comprehensive model of general principles, advocating for a global approach to the methodology of the source.
Over the last decade, Pakistan’s superior judiciary has emerged as a powerful and overtly political institution. In his book, Associate Professor Moeen Cheema examines the power and politicisation of the judiciary and presents a deeply contextualised historical account of judicial review in postcolonial Pakistan.

The ‘judicialisation of politics’ in Pakistan has been an ongoing focus for Dr Cheema, who built on his doctoral research in Courting Constitutionalism: The Politics of Public Law and Judicial Review in Pakistan (Cambridge University Press, 2021). The book aims to answer two key questions: under what circumstances—particularly focusing on Pakistan, but with an eye to comparative constitutional law—do courts become more powerful? And when they have that power, how do they exercise it?

“Those are the questions I’ve really focused on for the book. I’ve tried to be as least evaluative and normative as possible about whether what happened was a good thing or a bad thing, and rather try to understand why it happened,” Dr Cheema said.

The book has been described as “a landmark contribution to the study of public law” by Professor Richard Albert of the University of Texas. “[It is] at once a rich contextual inquiry into the construction of judicial power in Pakistan, a superb exemplar of the best traditions of historical institutionalism, and an outstanding model for the next generation of constitutional studies,” he says.

As Emeritus Professor Peter Cane FBA FASSA FAAL of the University of Cambridge observed: “In this beautifully written and meticulously researched book, Moeen Cheema complicates and enriches common narratives of judicialisation of politics by showing how, since independence, the Supreme Court of Pakistan has creatively built on foundations laid in the colonial period using materials and resources provided by concepts and tools of administrative legality. This is a gripping and important story.”
Living with Myanmar (ISEAS Publishing, 2021) co-edited by Associate Professor Jonathan Liljeblad provides a timely, in-depth examination of the legacies of half a century of military rule from socio-political, economic, legal perspectives and more.

Contract Law: Text and Cases (LexisNexis, 2021) by Honorary Associate Professors Dilan Thampapillai and Alex Bruce provides students with the essential knowledge and skills in contract law to succeed in their studies and professional practice. It combines academic commentary with extracts from key legal cases in a single volume.

The Responsible Shareholder (Edward Elgar, 2021) by Emeritus Professor Stephen Bottomley FAAL is a key resource for students and scholars of corporate law and governance, business law and insolvency law. It is also valuable reading for company law policymakers, corporate interest groups and think tanks engaged in corporate law reform.

War and Peace in Outer Space: Law, Policy and Ethics (Oxford University Press, 2021) co-edited by Dr Cassandra Steer FHEA examines the growing weaponisation of outer space and the potential for a space-based conflict in the near future.

It features contributions from a range of experts, including academics, military lawyers, military space operators, aerospace industry representatives, diplomats, and national security and policy advisors.
Public Finance and Parliamentary Constitutionalism (Cambridge University Press, 2020) by Associate Professor Will Bateman analyses constitutionalism and public finance (tax, expenditure, audit, sovereign borrowing and monetary finance) in Anglophone parliamentary systems of government. The book surveys the history of public finance law in the UK, its export throughout the British Empire, and its entrenchment in Commonwealth constitutions.

Capitalism As Civilisation: A History of International Law (Cambridge University Press, 2020) by Associate Professor Ntina Tzouvala draws from Marxism and deconstruction bringing together the textual and the material in our understanding of international law. Dr Tzouvala argues that international law incorporates and attempts to mediate the contradictions of capitalism as a global system of production and exchange that both homogenises and stratifies societies, populations and space.

Revolutions in International Law: The Legacies of 1917 (Cambridge University Press, 2021) co-edited by Associate Professor Ntina Tzouvala examines how the October Revolution of 1917 and the adoption of the revolutionary Mexican Constitution shook the foundations of the international order in profound, unprecedented and lasting ways. These events posed fundamental challenges to international law, unsettling foundational concepts of property, statehood and non-intervention, and indeed the very nature of law itself.

Leading Works in Law and Social Justice (Routledge, 2021) co-edited by Associate Professor Faith Gordon FRSA FHEA assesses the role of social justice in legal scholarship and its potential future development by focusing upon the ‘leading works’ of the discipline and is an essential resource for all those working in the areas of social justice, socio-legal studies and legal philosophy.
Funding highlights

Dr Eve Lester | Governing by looking back: A socio-legal account of Cambodian boat people
This project aims to establish a socio-legal account of the arrival of Cambodian ‘boat people’ in Australia from 1989 to the present. The project expects to shed new light on these events by using an innovative blend of research methods. Interweaving archival and oral history sources, it seeks both to describe institutional responses to these events and show how participants experienced and remember them. Expected outcomes include enhanced knowledge of the effects of asylum-related policy and the generation of international and domestic policy guidance for ensuring that such policy is historically informed. Significant societal benefits will flow by generating new historical knowledge and understanding, and better-informed policy.

$399,095

Associate Professor Moeen Cheema | Justice and security reform in north-western Pakistan
This project aims to investigate the post-conflict criminal justice reform program in formerly Federally Administered Tribal Areas (FATA) in north-western Pakistan. It will develop a new interdisciplinary framework for studying how three categories of cases—terrorism, narcotics smuggling, murder and cyclical violence—are being handled by the criminal justice system. Expected outcomes include enhanced understanding of the social, legal and institutional factors impacting the prosecution of these crimes in former FATA. It will benefit Australian and international policymakers seeking to support the agenda to enhance state-building and rule of law reform in this region bordering Afghanistan.

$447,798

Associate Professor Rebecca Monson | Navigating justice systems: How Pacific women secure their property rights
This project aims to investigate the strategies that Pacific women use to challenge gender inequality, and improve understanding of the pathways to justice in Pacific legal systems. Using an innovative socio-legal approach, the project will collect, analyse and disseminate data on the strategies used by women to advocate for stronger property rights, and develop a framework for understanding those strategies. Expected outcomes include an improved empirical and conceptual basis for development organisations to design and implement gender equality programs. This should provide significant benefits including enhanced understanding of women’s engagement with legal systems, and better-informed and more effective development assistance.

$443,774
Professor Andrew Macintosh | Agriculture biodiversity stewardship pilot program

The aim of the package is to establish and pilot systems that would: provide new and expanded opportunities for the agriculture sector to sell environmental services to the Australian Government, state/territory governments and the private sector; improve the quality, extent and durability of environmental outcomes; improve the efficiency of the administration of the carbon and biodiversity markets by provided additional technical and scientific support to relevant government agencies, particularly in relation to the development of methods and the establishment and maintenance of the necessary monitoring, reporting and verification processes.

Professor Andrew Macintosh | Biodiversity trading platform

The Department of Agriculture contracts ANU to research, develop and provide a biodiversity trading platform as part of its Agricultural Stewardship Package. The biodiversity trading platform will help farmers monetise the biodiversity services they provide by enabling them to connect with buyers and support their development of projects.

Professor Andrew Macintosh | Environmental credentials for Australian beef

The project is a partnership between Meat and Livestock Australia, the University of Queensland and World Wildlife Fund and aims to work with beef producers to design and develop a practical tool that can be used to demonstrate on-farm environmental sustainability credentials, enabling verification of sustainably produced beef.

Professors Jeremy Farrall and Jolyon Ford SFHEA and Associate Professor Imogen Saunders

Reconceiving engagement with international law in a populist era

This project seeks to address the fundamental problem of how to reconceive engagement by states with the international legal order, in the face of a sustained populist backlash. It proposes to develop a new analytical framework to evaluate the origins and impact of populist concerns about international law. Expected outcomes include detailed empirical studies of the extent to which countries with populist leaders have disengaged from the international legal order, and evidence-based recommendations to increase committed engagement by states with that order. Anticipated benefits include expanding national research and policy capacity in reinforcing the rules and institutions that support Australia’s security and prosperity.
**Associate Professors Kate Ogg and Ntina Tzouvala | Diversifying the law curriculum for the 21st century**

This project aims to map, evaluate and change the curriculum of core courses in the College of Law to make it more responsive to gender as a vital social issue. Our aim is to catalyse internal change and to produce publicly accessibly resources that will inspire change beyond the College of Law. This is part of a broader initiative to diversify our curriculum that will also tackle questions of Indigeneity and race. The initiative is being driven by a working group of eight College of Law academics, has the support of the Dean and supports many of the objectives in the College of Law’s strategic plan.

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**Scott Chamberlain | Ripple university blockchain research initiative**

This funding aims to support curriculum development, research, technical projects and other initiatives to advance understanding and innovation in blockchain, cryptocurrency, digital payments and related fields.

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**Scott Chamberlain | Evernode**

Evernode brings layer 2 smart contracts to the XRP Ledger. It combines our HotPocket protocol with the proposed Hooks amendment to create a global, permissionless, decentralised network of nodes designed and incentivised to run any dApp cheaply and speedily in any language at any scale in concert with the XRP Ledger.

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**Scott Chamberlain | Australia–Africa Awards climate change adaptation public policy short course**

Delivery of a Department of Foreign Affairs and Trade-funded executive education short course under the Australia–Africa Awards program.

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**Professor Desmond Manderson FAAL FASSA FRSC**

**French-Australian symposium series on surveillance and the humanities**

The field of surveillance studies gained momentum after 9/11 (Lyon, 2007), within a somewhat narrow scope, which may be explained by the fact that it constituted itself from a small pool of disciplines — most notably legal studies and social sciences. This initiative built on the suggestions that an articulated discussion with the humanities could be fruitful (Rosen and Santesso, 2013) and that literary works in particular could flesh out operative concepts in surveillance studies (Vareschi, 2018). It seeks to set the conditions to initiate a conversation, or ‘productive dialogue’ (Marks, 2015), between arts and humanities, and the various fields in which surveillance is used (political science, law, computer science, etc.), thereby contributing to what social scientist Torin Monahan has called the ‘emerging ‘cultural studies’ of surveillance” (Monahan, 2010).
Humanising machine intelligence (ANU Grand Challenge)

Machine intelligence (MI) promises to revolutionise decision-making, enabling us to draw on more evidence, more effectively than we ever could on our own. MI systems are already prevalent in society, everywhere from the phone in your pocket to government decisions over welfare. They will only become more pervasive. But to date, MI research and development have focused almost exclusively on solving technical problems. There is growing awareness throughout society, in Australia and elsewhere, that a different approach is necessary. We cannot responsibly outsource decision-making to MI without ensuring that efficiency gains don’t come at an unacceptable moral cost. Our goal is to design more ethical MI systems, and so solve this problem.

Legal and economic conceptions of money

This project started with the question: What is money today? Money is changing — more quickly perhaps than ever before, accelerated in particular by developments in digital technology. The forms of money, pathways and processes of money’s creation, and the role of public and private actors in that process are both being renegotiated in political fora and being challenged by market developments. Nothing illustrates this more clearly than the rise of ‘shadow money’, i.e. an increasingly diverse set of digital payment systems that operate alongside the conventional monetary system. The intuition underlying this project is that the concept of money was of interest both to law and to economics, and that both disciplines play an essential role in explaining the concept — and drawing lines between, for example, different types of money or money and its ‘cognates’. Rather than assuming that these two disciplines simply study a common phenomenon from orthogonal points of view, however, the interdisciplinary project team sought to explore the ways that the law constitutes economic phenomena.

FA Mann and his contribution to English, German, European, and international law

Dr Bateman’s contribution to the project focuses on the complications of monetary authority in liberal constitutional states under Bretton Woods. A systematic account of the constitutional distribution of monetary power in International Monetary Fund member states is articulated, focusing especially on the interplay of international and domestic legal frameworks and institutions. The constitutional and monetary frameworks of the US and UK will receive detailed treatment. After engaging in this complex mapping exercise, the research will then explore the unique constraints imposed by Bretton Woods on domestic constitutional structures, and, by extension, national economic policy, through three case studies: the 1967 Sterling Crisis; the 1972 Nixon Shock; and the 1976 Sterling Crisis.

Regulation of AI in the public sector

This project aims to produce concrete solutions to regulate the use of artificial intelligence (AI) by government agencies and public officials. The initiative starts from the premise that existing legal frameworks do not address the pressing challenges of government use of data-informed prediction and artificial intelligence systems. If left unregulated, the use of AI by public officials will curtail people’s dignity, reduce their economic opportunities, and cause significant social harm. Urgent action is required to ensure that legal constraints on governments’ use of AI meet the expectations of local, national and international communities, as well as commercial actors.
Associate Professor Jonathan Liljeblad | **Framework agreement for online learning materials**

The purpose of this project is for an online university education program in response to the Myanmar military coup. The Myanmar military (Tatmadaw) reopened Myanmar universities 5 May 2021, but subsequently suspended and then removed university teachers involved in the CIVIL Disobedience Movement (CDM). In response more than 90 per cent of university students have boycotted universities and have launched self-teaching initiatives. Myanmar’s private tertiary institutions have expanded course offerings. University students and representatives of these institutions have reached out to international contacts for support in the form of learning materials that can be accessed by students with internet access and then shared virally with students who do not have internet access.

Associate Professor Emma Aisbett | **The Southeast Asia Energy Transition Partnerships (ETP): Energy transition roundtable**

The primary objective of the Southeast Asia Energy Transition Partnership (ETP) is to provide an opportunity for the region’s energy transition stakeholders— in particular, mid-career policymakers from identified Southeast Asia countries (Vietnam, Indonesia and the Philippines) and regional level bodies — to engage in an intensive roundtable series on the energy transition, with a specific focus on policy challenges in the move to 100 per cent zero-carbon energy. Participants will gain applied technical experience and create high-value professional contacts and linkages within the energy sector.

Associate Professor Emma Aisbett | **Zero Carbon Energy for the Asia Pacific**

Associate Professor Emma Aisbett is the chief investigator of this strategic Grand Challenge initiative that aims to transform the way Australia trades with the world through the development of zero-carbon export industries and develop technologies, policies and approaches that can be applied in the Asia-Pacific and beyond.

Additional researchers: Professor Asmi Wood and Associate Professor Esmé Shirlow
**Associate Professor Kate Ogg**  
**The role of community sponsorship for refugee resettlement in Australia** (externally-led Discovery Program)  
This project aims to conduct the first large-scale comparative study of community or private sponsorship of refugee resettlement in Australia and other jurisdictions. It will generate ground-breaking insights into Australia’s role historically in community sponsorship of refugee resettlement and identify the legal and policy background of current successful community sponsorship programs.

**Emerita Professor Margaret Thornton FAAL FASSA, Kieran Pender**  
**A roadmap for respect: Preventing and addressing sexual harassment in Australian workplaces**  
This project aims to combine doctrinal, qualitative and quantitative research methods to provide a comprehensive overview and understanding of damages and costs in sexual harassment litigation and the intersection between them.
Research impact

ANU College of Law scholars made significant contributions to our research impact in 2021. From articles published in esteemed research journals to innovative, multidisciplinary projects with scholars across the world, the impact of our research was varied and far-reaching. We also established our expertise across law and its many disciplinary intersections through high volumes of media engagement and submissions to parliamentary inquiries at the federal and territorial level.
Landmark three DECRAs secured in 2021 round

Three ANU College of Law scholars were awarded almost $1.3 million in Federal Government funding for their interdisciplinary, socio-legal projects under the Discovery Early Career Researcher Awards (DECRA) scheme. The awards to Associate Professor Rebecca Monson, Associate Professor Moeen Cheema and Dr Eve Lester made ANU the first Australian university to secure three DECRA grants in the Law and Legal Studies field of research in a single year.

Dr Monson’s research is primarily influenced by approaches in interdisciplinary studies of ‘law and development’, political ecology and feminist thought. Her DECRA project aims to investigate the strategies that Pacific women use to challenge gender inequality, and improve understanding of the pathways to justice in Pacific legal systems.

Justice and security reform in Northwest Pakistan is the focus of Dr Cheema’s DECRA-funded project. His research aims to provide a valuable assessment of the process of establishing criminal justice institutions in what he described as “a highly understudied part of the world despite its strategic ... and geopolitical significance”.

Dr Eve Lester is an expert on refugee and migration law who joined the ANU College of Law in 2021. With many years in the NGO sector, including with Amnesty International, her project aims to establish a socio-legal account of the arrival of Cambodian ‘boat people’ in Australia from 1989 to the present.

The Australian Royal Commissions and Public Inquiries Library project

Dr Dominique Dalla-Pozza and her project team were successful in their application for the Linkage Infrastructure, Equipment and Facilities funding scheme for The Australian Royal Commissions and Public Inquiries Library project. This project aims to provide free online access to the reports of all royal commissions and other public inquiries held in Australia. It will support an understanding of the pivotal role public inquiries play in the development of Australian law and public policy.

Combating modern slavery around the world

A research project that aims to combat modern slavery around the world was awarded the Thomson Reuters Foundation Stop Slavery Innovation Award 2021. Since 2018, Professor Jolyon Ford SFHEA has contributed to this project by overseeing ANU Law students completing research on particular aspects of modern slavery reporting for the Walk Free Foundation (London), and evaluating how companies are responding to modern slavery legislation for the WikiRate open data platform.
Law’s new era of smart technologies

Lex Automagica is a research project by entrepreneurial fellow Scott Chamberlain that combines blockchain, smart contracts and digital assets. Mr Chamberlain sees promise in ‘smart statutes’, or laws published as code, not text, that people can use to discharge their rights and obligations.

Diversifying the law curriculum

A research project launched by ANU College of Law scholars in 2021 aims to challenge the traditional concept of a legal education by broadening the representation of historically marginalised groups, theories and perspectives.

In a year shaped by global movements including Black Lives Matter and #MeToo, educators and researchers note the timely and practical value of embedding ‘critical evaluation’ skills among the next generation of lawyers.

Media engagement

Did you know ANU College of Law researchers were cited in media outlets nearly 200 times in 2021? Their expert commentary featured in op-eds, podcasts, articles, radio and television on topics spanning law and technology, constitutional law, environmental law, national security law, space law, emergency law, and international law. Here are some of the outlets our experts were cited in.

[Image of various media outlets]
Youth injustice and COVID-19
Associate Professor Faith Gordon FRSA FHEA, along with colleagues at Rutgers University and Monash University, published a journal article titled, ‘Youth (In)Justice and the COVID-19 Pandemic: Rethinking incarceration through a public health lens’ in the Current Issues in Criminal Justice journal as part of a special issue on COVID-19 and the criminal justice system.

The illegality of ‘genuine’ unilateral humanitarian intervention
The activation of the crime of aggression at the International Criminal Court has renewed interest in one of the oldest and most fraught questions of the jus ad bellum: whether a state is entitled to unilaterally use force on the territory of another state for humanitarian purposes. Professor Kevin Jon Heller authored a research article on the topic in the European Journal of International Law.

Australian perspectives on the backlash against international law
Volume 38 of The Australian Year Book of International Law presented a collection of papers by Associate Professor Imogen Saunders, Professor Jeremy Farrall, Professor Jolyon Ford SFHEA and Associate Professor Kate Ogg on the ‘The Backlash against International Law: Australian Perspectives’.

Eurocentrism in international legal history
Associate Professor Ntina Tzouvala authored a research paper, ‘The Specter of Eurocentrism in International Legal History’, in the Yale Journal of Law & the Humanities.

Contractual interpretation in paper

The law of the sea, international courts, and judicialisation
Professor Donald Rothwell FAAL authored an essay examining the issue of maritime boundary delimitation under the 1982 UN Convention on the Law of the Sea (UNCLOS). The essay formed part of a collection for the American Journal of International Law’s ‘Unbound’ symposium.
Article on deference to MPEiPro
Associate Professor Esmé Shirlow authored an entry in the Max Planck Encyclopedia of International Procedural Law on deference. The article built on her monograph, Judging at the Interface: Deference to State Decision-Making Authority in International Adjudication (Cambridge University Press, 2021). This entry concerns the concept of deference and examines how it functions under international law.

Research paper and book review on investment arbitration
Associate Professor Esmé Shirlow authored an article, 'E-Discovery in Investment Treaty Arbitration: Practice, Procedures, Challenges and Opportunities', in the Journal of International Dispute Settlement. Her paper considered how parties and tribunals might be supported to become better equipped to accommodate e-discovery appropriately in investor-state arbitration.

COVID-19 and corporate social responsibility in India
Dr Akshaya Kamalnath authored an article, ‘A Post-Pandemic Analysis of CSR in India’, in the Journal of Comparative Law that examined how effective India’s corporate social responsibility provision has been by assessing responses before and during the COVID-19 crisis.

Race, force and the 2011 NATO intervention in Libya
Associate Professor Ntina Tzouvala reflected on the ongoing synergies between international law, race and empire, as they are articulated in the regulation of mercenarism, in her article, ‘Deploying Race, Employing Force: “African Mercenaries” and the 2011 NATO Intervention in Libya’, published in the University of California Los Angeles Law Review.

The protection of genetic resources in Chinese patent law

Vaccine equity and the case for limiting patent rights

Investor–state mediation
Associate Professor Esmé Shirlow authored a paper, ‘The Promises and Pitfalls of Investor-State Mediation’, in the Yearbook on International Investment Law and Policy. Her paper analysed how mediation interacts with investment treaty arbitration, and explores the benefits and risks associated with this form of dispute settlement.

Transnational corporations and modern slavery
Lessons from Indigenous business forms
Dr Akshaya Kamalnath wrote a brief, ‘Indigenous corporations: Lessons from Māori business forms’, for the Alternative Law Journal. She analysed Māori business forms, along with developments in Canadian Indigenous businesses, to make suggestions for proving the regulatory support and options available for Indigenous businesses in Australia.

60 years of the Antarctic Treaty
Professor Donald Rothwell FAAL authored an article, ‘Australian law in the freezer: 60 years of the Antarctic Treaty’, in the Law Society of NSW Journal. It examined what lies ahead for the Antarctic Treaty after 60 years of legal and political challenges.
Honorary lecturer Kieran Pender discusses implied freedom considerations related to political advertising in Australia with Associate Professor Phillipa Ryan at a research seminar on 3 March 2021.

Government schemes for extrajudicial compensation

Professor Greg Weeks co-authored a research paper for the 100th edition of the *Australian Institute of Administrative Law Forum*. The paper considered the provision of compensation outside the legal system, usually paid on the basis of ‘moral liability’ rather than a claim founded in law.

Explanations about ‘parliamentary sovereignty’ in Australia

A paper by Associate Professor Ryan Goss, ‘What Do Australians Talk About When They Talk About “Parliamentary Sovereignty”?’, in the journal *Public Law* (Sweet & Maxwell) identified four possible explanations of what Australians mean when they invoke parliamentary sovereignty or parliamentary supremacy.

Constitutional characterisation and embedding value judgements

Professor James Stellios FAAL authored an article, ‘Constitutional Characterisation: Embedding Value Judgements about the Relationship between the Legislature and the Judiciary’, in the *Melbourne University Law Review*. His paper considered the process of characterising a Commonwealth law with respect to a federal head of power, organising the enquiry into three distinct steps of determining the essential character of a power, the definitional character of a power and the telescopic character of a power.

Reimagining the constitution and its ‘big picture’

Professor Desmond Manderson FAAL FASSA FRSC explored how the constitutional ‘big picture’ is systematically reduced to a ‘strict and complete legalism’ that shows little interest in the social and cultural functions of a constitution in the modern world. His article for *Federal Law Review*, ‘The Big Picture: Imagining the Constitution’, argues why we can — and should — expect more of our peak legal institutions.

The price of justice: costs-conditional special leave in the High Court

A journal article by visiting fellow Kieran Pender, ‘The ‘Price’ of Justice? Costs-Conditional Special Leave in the High Court’, was cited by the New South Wales Court of Appeal. Published in 2018 in the *Melbourne University Law Review*, his article considered the High Court of Australia’s occasional practice of granting special leave to appeal on a costs-conditional basis, whereby the appellant pays the respondent’s costs regardless of the outcome.
Human rights and the ethical governance of critical technologies

Professor Jolyon Ford SFHEA and Dr Damian Clifford co-authored a paper on the governance of critical technologies in the Indo-Pacific. Their paper was published by the ANU National Security College as part of the Quad Tech Network initiative, which aims to promote regional research and public dialogue on cyber and critical technology issues.

Dark patterns and the legal requirements of consent banners

A paper co-authored by Dr Damian Clifford received an Honourable Mention Award at the 2021 ACM CHI Conference on Human Factors in Computing Systems conference. Dr Clifford’s paper, ‘Dark Patterns and the Legal Requirements of Consent Banners: An Interaction Criticism Perspective’, placed in the top 5 per cent of conference submissions.

Urgent need for e-safety reform

More than 70 per cent of children and young people have seen content online that they found concerning, including violent and explicit content, according to a study led by Associate Professor Faith Gordon FRSA FHEA for The Social Switch Project, which is a partnership between charities Catch22 and Redthread.

E-sports and the platforming of child’s play during COVID-19


Privacy, participation and protection rights in a pandemic

Associate Professor Faith Gordon and Dr Damian Clifford co-authored an article, ‘Children’s Privacy in Lockdown: Intersections between Privacy, Participation and Protection Rights in a Pandemic’, in a special issue of the *Law, Technology and Humans* research journal.

A common law tort of interference with privacy

Dr Jelena Gligorijević authored an article, ‘A Common Law Tort of Interference with Privacy for Australia: Reaffirming ABC v Lenah Game Meats’, in the *UNSW Law Journal*. 
Submissions

United Nations Special Rapporteur on trafficking in persons
Associate Professor Faith Gordon FRSA FHEA provided a submission to the United Nations Special Rapporteur on trafficking in persons, especially women and children, in relation to the Human Rights Council report on the implementation of the non-punishment principle.

New report: 34 ways to improve asylum appeals
Dr Jessica Hambly co-authored a report in February 2021 outlining 34 recommendations to improve asylum appeal hearings. Published by the Public Law Project, the report adopts an interdisciplinary perspective on the day-to-day workings of asylum law within the UK's asylum appeal hearings.

‘Turnback’ practices and their impact on migrants’ human rights
Dr Jessica Hambly submitted a report to the Special Rapporteur on the human rights of migrants for their 2021 report on pushback practices and their impact on the human rights of migrants. In her submission, Dr Hambly drew on Australian policy around ‘turnbacks’ in relation to recent events in the Mediterranean and English Channel.
Submission on defamation provisions
Dr Jelena Gligorijević provided a written submission in response to a discussion paper for the Stage 2 Review of the Model Defamation Provisions. “There is a particular and peculiar harm in online publication of defamatory (or otherwise unlawfully published) material, due to the nature of the medium,” she argued.

Inquiry into the Drug of Dependence (Personal Use) Amendment Bill
Professor Desmond Manderson FAAL FASSA FRSC made a submission with colleagues from the ANU Drug Research Network into the Inquiry into the Drug of Dependence (Personal Use) Amendment Bill. Their submission endorsed the Bill, which seeks to remove criminal sanctions for those in the ACT found to be in possession of an amount of an illegal drug deemed for personal use.

UNCTAD’s Digital Economy Report 2021
Dr Neha Mishra contributed to the United Nations Conference on Trade and Development’s (UNCTAD) Digital Economy Report 2021. The report explores the development and policy implications of cross-border flows of digital data. Dr Mishra was also on the report’s peer review panel.

Influencing reform of the Privacy Act 1988
The Federal Government released a discussion paper reviewing the scope and enforcement mechanisms of the Privacy Act 1988 (Cth). The paper quotes submissions by Dr Jelena Gligorijević on options for a new privacy tort for Australia (see pp. 191–195). The Attorney-General’s Department subsequently drew on Dr Gligorijević’s research and submissions in shaping and setting out its specific proposals for a new Australian tort of interference with privacy.

Senate report cites lawtech expert
A submission by entrepreneurial fellow Scott Chamberlain was quoted extensively in the Select Committee on Australia as a Technology and Financial Centre’s final report, identifying challenges and opportunities for cryptocurrency projects, investments and skills in Australia.

Defence Legislation Amendment ( Discipline Reform) Bill 2021
Associate Professor David Letts AM CSM provided input to an inquiry into the Defence Legislation Amendment (Discipline Reform) Bill 2021 [provisions], which was quoted extensively.

Pioneering research leads to QE transparency
Associate Professor Will Bateman gave evidence to a major inquiry into quantitative easing (QE) launched by the UK Parliament House of Lords’ Economic Affairs Committee. Dr Bateman’s written evidence drew on themes explored in his book Public Finance and Parliamentary Constitutionalism (Cambridge University Press, 2020) and two major academic articles published this year in Modern Law Review and the Oxford Journal of Legal Studies.

Research cited in UK’s Draft Online Safety Bill
Research by Associate Professor Faith Gordon FRSA FHEA for Catch22 in the UK was mentioned in the Joint Committee on the Draft Online Safety Bill Report. The Bill marks a key step forward for democratic societies to bring accountability and responsibility to the internet.
‘Citizen-consumers in a personalised Galaxy: Emotion influenced decision-making, a true path to the dark side?’ is a chapter by Dr Damian Clifford in Future Law: Emerging Technology, Regulation and Ethics (Edinburgh University Press, 2021). ‘Emotional AI’ refers to a technological subset that measures, simulates and reacts to human emotions, and this chapter explores the emergence of technologies purportedly capable of detecting, classifying and responding to users’ emotional lives and thereby appearing to understand their audience.


‘The Domestic Institutionalisation of Human Rights’ is a chapter co-authored by Professor Jolyon Ford SFHEA in The Domestic Institutionalisation of Human Rights (Routledge, 2022).

‘How to run an empire (lawfully)’ is a chapter authored by Associate Professor Ntina Tzouvala in The Critical Legal Pocketbook (Counterpress, 2021).

‘Intelligence sharing among coalition forces’ is a chapter authored by Associate Professor David Letts AM CSM in National Security Intelligence and Ethics (Routledge, 2021).
Research events

Each year the ANU College of Law hosts more than 100 events, many of which are dedicated to showcasing our research impact to the public and building on our relationships with peer institutions. In 2021, we held a wide variety of seminars, webinars, book launches, symposiums and conferences that celebrated our faculty’s scholarship and innovation within their research interests.

ANU Media Law Seminar Series: Reporting on Parliament
The first seminar in the ANU Media Law seminar series was delivered by Dr Jack Simson Caird, Legal Counsel at the House of Commons, on the topic of ‘Reporting on Parliament’.

FEBRUARY
Human Rights Act 2004 of the ACT
Visiting fellow Professor Miho Aoi discussed her research on the Human Rights Act 2004 (HRA) of the ACT. Her overall research plan was on the mode of Australian human rights protection, which can be said to be an exception compared to the global constitutionalism.

Regulating truth and lies in political advertising: Implied freedom considerations
Visiting fellow Kieran Pender discussed his research on implied freedom considerations in the design of truth in political advertising laws.

Law, capitalism and political economy: Public and international perspectives
We celebrated the works of Associate Professors Ntina Tzouvala and Will Bateman for the first ANU Centre for International and Public Law (CIPL) book launches of 2021.

MARCH
Artificial intelligence and sensitive inferences: New challenges for data protection laws
Dr Damian Clifford examined the new challenges for data protection laws for the continuing advances in technology, including artificial intelligence.

ANU Media Law Seminar Series: Perspectives from the bench
The second seminar in the ANU Media Law seminar series was delivered by The Hon Justice Peter Applegarth AM, Justice of the Supreme Court of Queensland, on ‘Perspectives from the Bench’.

APRIL
Menzies Cyber Law Series #1: Future Humans
This online event was the first in the 2021 Menzies Cyber Law Series, featuring three prominent speakers on human/machine intelligence, global health law, cyber warfare, and the future of humanity.

ANU Media Law Seminar Series: Statues, free speech and prosecution
The third seminar in the ANU Media Law seminar series was delivered by Ivan Hare QC of Blackstone Chambers on the topic of ‘Statues, statutes and free speech: the Colston prosecutions’.

Ceremonial lives of the nation
This panel discussion featuring Associate Professor Heather Roberts SFHEA and Dr Anne Macduff explored the history and contemporary significance of ceremony in three distinct arenas of Australia’s national life: citizenship, the honours system, and the swearing-in of new judges.

Be careful what you look for! Internet searches as evidence in criminal proceedings
Associate Professor Gregor Urbas analysed the advantages and disadvantages of using Internet searches as evidence in criminal proceedings.

Banning new lethal autonomous weapons: Possibilities and pitfalls
Dr Stephanie Koorey discusses autonomous weapons, what autonomy means and whether creating pre-emptive law is viable.
Role of UN Expert Mechanism on the Rights of Indigenous Peoples
Binota Moy Dhamai discussed how the UN mechanisms relating to indigenous peoples promote indigenous peoples’ rights.

Secrecy and spying: The trials of Bernard Collaery and Witness K
Some of Australia’s leading experts on civil liberties, whistleblowing and national security law debated the allegations made against Witness K, a former Australian spy, and his lawyer, former ACT Attorney-General Bernard Collaery.

Problem or panacea? The puzzle of general principles of law as a source of international law
Hosted by CIPL, this symposium served to launch and discuss Associate Professor Imogen Saunders’ book, General Principles as a Source of International Law: Article 38(1)(c) of the Statute of the International Court of Justice (Hart Publishing, 2021).

The Antarctic Treaty at 60: Reflections, Current Realities and Future Challenges
Led by Professor Donald Rothwell FAAL, this symposium reviewed the 60-year history of the Antarctic Treaty and reflected upon the strengths and weaknesses of the associated Antarctic Treaty System. Australia’s role was particularly considered and the future of the Treaty was assessed.

The Annual Kirby Lecture in International Law: International law and the provocation of the digital
The 2021 Annual Kirby Lecture in International Law, hosted by CIPL, was delivered by Professor Fleur Johns (UNSW).

Privacy: Past, present and future with The Hon Michael Kirby AC CMG
For Privacy Awareness Week 2021, we heard from some of the great legal minds and subject-matter experts, including The Hon Michael Kirby AC CMG.

Book launch: ‘Judging at the Interface: Deference to Domestic Authority in International Adjudication’
This book launch and symposium celebrated Associate Professor Esmé Shirlow’s monograph, Judging at the Interface: Deference to Domestic Authority in International Adjudication (Cambridge University Press, 2021).

Australia’s national environmental law, the Environment Protection and Biodiversity Conservation Act 1999
Honorary Associate Professor Peter Burnett reflected on recent independent reviews of Australia’s most important single environmental law and the future of reform proposals in this fraught area of regulation and policy.

ANU Defamation Law Conference: The changing landscape of defamation law
The inaugural ANU Defamation Law Conference focused on the changing landscape of defamation law.

Public lies and public goods: 10 lessons from when patents and pandemics meet
Hosted by the ANU College of Law Visitors Committee, this seminar was presented by Professor Peter Drahos (ANU RegNet, European University Institute, Florence).

ANU Media Law Seminar Series: Privacy and police investigations
The fourth seminar in the ANU Media Law seminar series was delivered by Professor Nicole Moreham, Victoria University of Wellington, New Zealand, on the topic of ‘Privacy and Police Investigations’.

Advancing indigeneity, gender, and sustainability: Indigenous women’s rights activism in Inle Lake, Myanmar
Associate Professor Jonathan Liljeblad explored the case of indigenous women’s activism in Inle Lake in Myanmar, examining the intersectional nature of its work across indigenous identity, gender, environment, and development.

‘Practical Guide to Law and Protests in the ACT’ launch

What is wrong with slavery?
Associate Professor Joshua Neoh explored what is wrong with slavery and its implications in this session of the ANU College of Law Research Seminar Series.

Modern slavery event series
The ANU College of Asia and the Pacific and ANU College of Law held a two-day event series addressing modern slavery in the Oceania region and beyond.

Trade union internationalism under the Myanmar military coup
Ye Yint explored Myanmar’s contemporary labour affairs with a focus on the local and international trade unions’ role and efforts in the resistance and pro-democracy movement in this instalment of the ANU College of Law Research Seminar Series.

Menzies Cyber Law Series #2: The beginning and end of truth
The Hon Justice Monika Schmidt AM (Supreme Court of New South Wales), Jonathan Harley (Canva), Dr Mark Staples (CSIRO’s Data61) and Associate Professor Philippa Ryan (ANU College of Law) took part in this panel discussion on the nature of truth and the role it plays in different contexts.
Voluntary assisted dying and discrimination on the basis of state residence
Associate Professor Amelia Simpson explored voluntary assisted dying and discrimination on the basis of state residence in this instalment of the ANU College of Law Research Seminar Series.

RACE 1001 X LAW: In-conversation with Jody Armour
We are told that everyone is equal in the eyes of the law, but is it true in practice? Professor Jody Armour (University of Southern California) unpacked this question with Mary Spiers Williams and Associate Professor Jonathan Liljeblad.

ANU Media Law Seminar Series: Topical issues in media law
Sharon Rodrick, Lesley Power, and Brendan Clift, co-authors of the leading text, Australian Media Law (6th ed, 2021), spoke in this instalment of the ANU Media Law Seminar Series.

ANU Law Reform and Social Justice and Amnesty International jointly held this seminar featuring Dr Emefa Gbekor and Dr Kirth T. Joseph from Amnesty International and Dr Fiona Wheeler FAAL and Professor Tim Bonyhady AM FASSA FAAL from the University of Melbourne in a broader range of international disputes.

Modern slavery in supply chains: Assessing corporate reporting
Who makes our clothes and under what conditions do they work? Experts and student research interns from ANU College of Law discussed the emerging patterns of corporate reporting on modern slavery.

Sustaining a legal research career: From dodgy IT to a pandemic and everything in between
This panel featuring Professors Donald Rothwell FAAL, Peta Spender FAAL, Fiona Wheeler FAAL, Stephen Bottomley FAAL and Tim Bonyhady AM FASSA FAAL brought together their reflections on sustaining and building their research careers, and lessons learnt which can be applied during the pandemic.

State responsibility and rebels: The history and legacy of protecting investment against revolution
Hosted by CIPL, this online event with visiting fellow Dr Kathryn Greenman (UTS) discussed her latest book with CIPL director, Professor Leighton McDonald.

Climate change and human rights at COP26
ANU Law Reform and Social Justice and Amnesty International jointly held this discussion analysing the 26th UN Climate Change Conference of the Parties (COP26) .

‘Dissonance and Distrust’: A Silver Jubilee
In 1996, Emerita Professor Margaret Thornton’s landmark book Dissonance and Distrust: Women in the Legal Profession (Oxford University Press) was published. This webinar celebrated the book’s insights as well as its continuing relevance and resonance for the study of women in the legal profession today.

A latent encounter with the court: How Australia and Japan settled a dispute over the regulation of pearl fisheries
Dr Emma Nyhan (University of Melbourne, ANU RegNet) talked about her study’s findings into the role of the International Court of Justice in a broader range of international disputes than is generally available, while also demonstrating the value of historical and socio-legal approaches to international law.

Rekindling the fire: Renewed recognition of Māori law in the New Zealand courts
Hosted by the ANU College of Law Visitors Committee, this seminar was presented by Dr Carwyn Jones.

Authoritarian state accountability via private sector strategies
Experts including Associate Professor Jonathan Liljeblad explored the alternative of non-state action as a potential option and present an overview of strategies against authoritarian states available to private parties in civil society and business.

Perspectives from Indian Competition Law on Unilateral Conduct
This lecture by Rahul Rai and Shrutí Aij Murali focused on the legal and economic standards used by the Competition Commission of India in vertical restraints and abuse of dominance cases.

ANU College of Law Visitors Committee, this seminar was presented by Dr Gabrielle Appleby and Professor Megan Davis and chaired by Professor James Stellios FAAL.

ANU College of Law

Menzies Cyber Law Series #3: Lost and found in space
Bruce Cahan (Stanford University School of Engineering) joined Dr Cassandra Steer FHEA, Dr Damian Clifford and Associate Professor Phillipa Ryan (ANU College of Law) in this panel discussion.

The Rule of Law in Context: Australia
Hosted by the ANU College of Law Visitors Committee, this seminar was presented by Dr Gabrielle Appleby and Professor Megan Davis and chaired by Professor James Stellios FAAL.

ANU Law Reform and Social Justice and Amnesty International jointly held this seminar featuring Dr Emefa Gbekor and Dr Kirth T. Joseph from Amnesty International and Dr Fiona Wheeler FAAL and Professor Tim Bonyhady AM FASSA FAAL from the University of Melbourne in a broader range of international disputes.

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