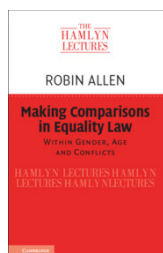


## ***Making Comparisons in Equality Law. Within Gender, Age and Conflicts***

by Robin Allen, September 2020, Cambridge University Press, 358 pages, £24.99 (paperback)



*Making Comparisons in Equality Law* is based on three Hamlyn Lectures delivered by the author in 2018. These lectures have previously been delivered by legal luminaries such as Baroness Kennedy, Lord Denning and Lord Justice Woolf. Robin Allen QC ably follows in their footsteps.

Allen expands on his lectures, with the final chapter in particular developing the subject of comparisons of rights in conflict, interweaving the development of equality law with key questions as to how we value and prioritise competing rights.

The introductory chapter asks why we make comparisons, and why do they matter? Rather than being a complex philosophical debate, such comparisons simply reflect a basic idea of fairness.

Allen notes that the law ‘tries’ to help with comparisons. In UK equality law the role of the comparator is essential, can be to its detriment, with the comparator acting as a ‘knockout point’. The ECtHR takes a broader approach, recognising that comparison and justification are ‘two sides of the same coin’ and what matters is the scrutiny of the facts and the reasons for the treatment in question. Allen recognises, however, that this less prescriptive approach is not in keeping with the public’s understanding of discrimination.

Public opinion, and social and cultural considerations are crucial parts of the framework for comparison and Allen reminds us that time and place are everything.

In the second chapter Allen tackles the behemoth of equal pay: *The oldest problem: establishing equal work*, and reviews the basis for establishing equal pay and the crucial legal developments, providing a substantial level of detail. Describing a debate which has spanned two world wars, the suffrage movement and various global developments, Allen outlines the progress made and the inequalities which still exist despite the introduction of the Equal Pay Act 1970, over 50 years ago.

He also debunks a number of misconceptions; e.g. the Ford Dagenham sewing machinists were the first to raise the issue of equal pay for equal work (see the 1919 Treaty of Versailles); gender pay gap reporting will resolve inequality of pay between men and women’s work, and unions led the charge for equal pay. He shines a light on some of the lesser known actors fighting this battle and makes astute suggestions as to how the UK

can guarantee a fair wage for both sexes.

In the third chapter Allen addresses age – the newest ground of equality. Developing his lecture: *The newest problem: making a fair comparison across all ages*, Allen examines our changing society which simultaneously penalises and venerates our oldest citizens.

He challenges us to consider what is ‘old’, and why? He discusses the moving marker which is the age at which we stop working and highlights the lack of protection for age-related discrimination, across all fields.

Allen sets the legal developments against recent societal changes and identifies the poor public discourse (and lack of legislative action) on the topic of ageing which, he asserts, is preventing the necessary development of adequate protection against age discrimination.

The fourth chapter expands on Allen’s final lecture: *The most contentious problem: comparing rights in conflict* and is devoted to comparisons between competing rights. He refers to four SC cases in which he was instructed, to demonstrate how the conflict of competing rights can be decided.

This is the standout chapter which showcases Allen’s ability to distil complex legal arguments into everyday language, and demonstrates that even the biggest cases come down to the most everyday issues, such as buying a cake or getting on a bus.

At its heart, this is a book about comparisons; and ‘making comparisons appropriately’ is far from a simple undertaking, as the last 100 years have shown us.

Allen approaches this significant challenge with intellect and keen analysis, interspersing his personal insights gained from his involvement in all types of equality cases throughout. He has written a book not simply for lawyers, but one for anyone with an interest in how rights have been developed and protected.

Looking forward, Allen speculates on future developments such as those which need to be addressed in public discourse (e.g. age discrimination) or legislative changes, (e.g. the rights of transgendered people).

The UK’s less than exemplary record on equality does not escape unscathed (the *Defrenne* case is one of several examples) and it is sadly prescient given the effect of the COVID-19 pandemic on equality in the UK. *Making Comparisons* is more relevant than ever.

**Claire Powell, Leigh Day**