**Sonya Walkila, *Horizontal Effect of Fundamental Rights in EU Law*. Groningen: Europa Law Publishing, 2016, 288 pages. ISBN 978908521811**

This book is situated within a growing body of literature, particularly post-Lisbon, that poses the pertinent questions of whether, how and should fundamental rights enjoy horizontal effect in Union law. Valuable work conducted elsewhere has focused on specific issues, such as the horizontality of particular fundamental rights-embodying Treaty provisions or general principles, the extent of the applicability of the Charter, and, more broadly, on critiquing the constitutionalisation of EU private law. By contrast, Walkila’s contribution offers a timely and wider overview of these debates in order to conduct an important analysis of the question of the horizontality of fundamental rights against the uniqueness of the EU legal order.

To this end, the book is divided logically into four parts and employs a number of methodological approaches with the aim of ensuring a rich and comprehensive analysis. Parts one and two principally utilise historical and doctrinal methodologies to critique the interlinked evolutions of, first, horizontality, and, second, fundamental rights, in the Union legal order. Part three conducts a theoretical assessment of the public/private dichotomy alongside a comparative inquiry into different jurisdictional attitudes to the horizontality of fundamental rights and a black-letter examination of the Union’s idiosyncratic approach to this issue. Part four offers conclusions, ultimately arguing that the horizontal effect of fundamental rights in the Union legal order is a necessary development when set against the contemporary entwinement of the public and private spheres, though a nuanced approach to the form of horizontality is required.

Walkila’s mixed methodological approach yields a number of valuable contributions. In reviewing the progression of horizontality, generally, and the horizontality of fundamental rights more specifically, within the Union legal order, Walkila usefully identifies a number of combined influences across the book. These include: the Union’s historically public law and economic focus; the central position of the individual within European integration, especially after *Van Gend*; the significance of the role played by the Court of Justice in formulating and developing the notions of vertical and horizontal direct effect; the potential Treaty justifications for perceived judicial activism; the impact of internal market objectives on the public/private dichotomy, especially given the inevitable clashes they create between economic and social goals; the fundamental rights, particularly the principles of non-discrimination and equality, that are intrinsically linked to seminal cases on horizontal effect, such as *Defrenne II, Mangold* and *Kücükdeveci*; and the expansion of policy areas covered by the Treaties, including fields associated with the private sphere. Crucially, these insights offer a critical understanding of the significance of the Union’s constitutional evolution, in combination with the expanding generations of fundamental rights, for the EU’s growing influence on relationships between private actors and its unique approach to the public/private divide.

In the fundamental rights context, Walkila helpfully contrasts their traditionally vertical nature, in line with the tenets of liberal autonomy, with the growing relevance of horizontality in the context of the expansion of fundamental rights into economic, social and collective interests. For Walkila, this is amplified by the ‘modern social realities’, such as the influence of privatisation, trade liberalisation and current globalisation, which realign the public and private spheres. Walkila also charts the growing pertinence of fundamental rights within the EU, from their total absence in the Rome Treaty, to their position at the very foundations of the Union legal order, particularly as a result of the ‘intensification of fundamental rights’ post-Lisbon. Cognisant, nevertheless, of the ongoing requirement that an issue falls within the scope of Union law before EU fundamental rights jurisdiction is triggered, Walkila proposes that, for the sake of legal certainty, a test requiring a ‘sufficient connection’ to EU law, based on the applicability of a substantive EU rule, should be determinative of fundamental rights jurisdiction. In addition, Walkila engages comprehensively with the vast array of fundamental rights issues that arise in the contemporary Union landscape, such as the potential fundamental rights status of the free movement provisions, the link between fundamental rights and the national identity clause, *Opinion 2/13*, and the influence and applicability of the Charter.

Of particular interest is Walkila’s convincing defence of the Charter’s silence on the categorisation of ‘rights’ and ‘principles’. Supported by her comparative tour of different jurisdictions, as well as her review of the case-law of the Court of Justice, Walkila cogently concludes that not all fundamental rights are equally suited to direct effect, even if the extent of their applicability cannot feasibly be determined by reference to the old civil/political and economic/social distinctions. Nevertheless, Charter ‘principles’ might become ‘rights’ as their normative content develops. Conversely, Walkila interestingly postulates that some Charter provisions might alternate between ‘rights’ and ‘principles’ depending on the nature of the dispute, the actors involved, and whether negative or positive obligations arise.

Not only does this rich analysis provide Walkila with a credible means of distinguishing existing CJEU judgments, such as *Mangold, Kücükdeveci, Dominguez, AMS,* and *Glatzel*, it also permits a nuanced, and context-based, approach to the central question of the horizontality of fundamental rights. Walkila argues persuasively against limiting direct effect to the purely vertical application of fundamental rights. In particular, she advances that ‘since the boundaries between private and public…blur in contemporary society…fundamental rights should in fact protect private parties from abuse of power on the part of whatever kind of entity, be it of a public, private, or quasi-public nature’. Indeed, for Walkila, rejecting horizontality could risk denying the universality of fundamental rights, since their practical effectiveness often depends on observance by private parties. Similarly, she views horizontality as central to avoiding ‘jeopardising effects’ on the primacy, unity and effectiveness of Union law.

Beyond this it is reasonably clear that Walkila endorses the direct horizontal effect of ‘sufficiently concretised’ fundamental rights. She appears to view this as particularly beneficial where Directives bring an issue within the scope of Union law but cannot be applied to private actors, specifically where duties of consistent interpretation or positive obligations, in the *Francovich/Schmidberger* sense, either cannot resolve the problem or do not offer a straightforward solution. Indeed, Walkila is repeatedly critical of the Court’s tendency to interpret fundamental rights as part of the (other) provision of Union law that creates their jurisdictional peg, instead of in their own right. For other rights, including Charter ‘principles’, Walkila appears to support an indirect effect model, drawing from the German approach, whereby fundamental rights infuse the legal order as part of an ‘objective order of values’. Walkila argues convincingly that authority for such an approach can be drawn from Article 2 TEU, even if more extensive engagement with the case-law beyond *Kadi* was perhaps warranted. Her argument that the Court, as part of its role in ensuring the correct application of the law, must guarantee the value content of Union fundamental rights throughout all EU legislation, usefully draws from the results of her varied methodologies including her historical analysis of the role of the Court under the Treaties, the importance of fundamental rights as a constraint on the legislature, and the commonalities she finds between the position of the CJEU under Article 51(1) of the Charter and the nature of domestic courts under the UK Human Rights Act 1998. Walkila also argues, however, that, in reality, differentiating between direct and indirect effect is often of little practical consequence, adequately supported by her discussion of the *Alemo Herron* and *Sanchez Morcillo and Abril García* CJEU judgments. Nevertheless, this fact could perhaps have been used to inform her conclusions elsewhere that indirect effect offers a more flexible methodology, more respectful of the public/private dichotomy, the separation of powers and questions of competence.

Overall, Walkila’s comparative inquiry into approaches to the horizontality of fundamental rights makes logical jurisdictional choices. Germany, Ireland, and the United States are selected for their distinct, but contrasting constitutional features, while the United Kingdom is chosen for having gone through relevant constitutional change, in the form of its Human Rights Act 1998. Nevertheless, Walkila also conducts a briefer tour of European jurisdictions with common approaches to ‘rights’ and ‘principles’; a review of the Canadian and South African approaches; and an assessment of the methodologies of the Inter-American Court of Human Rights and European Court of Human Rights. Arguably, the key contribution of Walkila’s comparative inquiry, including her assessment of the CJEU, is her recognition of the utility of the commonplace judicial avoidance of theorising the question of horizontality. This credibly supports Walkila’s presentation of horizontality as a polygonal notion, dependent on factual and legal contexts, and power dynamics. Though not discussed in the book, this ‘functional methodology’ also provides a new perspective on the CJEU’s approach in the *Viking* and *Laval* cases, and even *Mangold* and *Kücükdeveci*, in the sense that those judgments still invite debate as to the extent to which they endorse direct effect between purely private parties.

Through her rich methodological analyses, Walkila has clearly provided a comprehensive and accessible history of the development of horizontality and of fundamental rights within the EU legal order and beyond, as well as detailed consideration of their contemporary challenges, which will be of use to a wide-ranging audience. However, in several places, the specific subject-matter of the book – namely, the horizontal effect of fundamental rights in Union law – and the thought-provoking outcomes of Walkila’s diverse methodologies are at risk of becoming buried within a broader overview of much-discussed issues within the wider fields of direct effect and EU fundamental rights. Strong foundations have, nevertheless, been laid for a more explicitly holistic and detailed evaluation of the combined and intertwined impact of the key areas covered, in particular, the interrelationship between the Union’s constitutional evolution, substantive inequality, deregulation, the growth of private activity in the public realm, the expanding nature of fundamental rights, and the consequent normative cases for and against horizontal effect. From a fundamental rights perspective, it would have been interesting to see the analysis grapple with the paradox that emerges from the closer links between economic, social and collective fundamental rights and private actors, on the one hand, and the enforceability issues that surround programmatic obligations, on the other. Walkila’s recognition of increased private involvement in traditionally public endeavours invited more detailed consideration, in the Union context, beyond the established collective regulator case-law, while examination of imbalances of power beyond the employer/employee relationship, given the breadth of the project, would have been welcome, even if both provide strong case-studies. From a Union constitutional perspective, as flagged by Walkila, of particular interest is the centrality to the integration project of the free movement provisions, in combination with the principles of non-discrimination and equality. Though, by contrast, the specific history of these norms means that caution is required in using them to draw more general conclusions, perhaps specifically, in relation to Walkila’s suggestion that Article 6 TEU can attain similar results for other fundamental rights that *Mangold* and the general principles achieved for the principle of non-discrimination.

One potentially fruitful avenue for further exploration concerns the influence of conferral on the relationship between EU law and fundamental rights, since it often bridges the cross-cutting themes with which Walkila usefully engages. In particular, in the context of primary law, an examination of the extent to which the policy area of the legislative ‘hook’ to EU fundamental rights jurisdiction influences fundamental rights approaches would have enhanced the narrower contrasts Walkila draws between the *Viking Line* and *Mangold* lines of case-law. This invites related examination of the relevance of whether fundamental rights operate as a shield or sword, or run congruent to or clash with, provisions of EU law. Such considerations would add nuance to Walkila’s debatable argument that the expanding horizontality of the free movement provisions is to be supported in light of their ‘real and close connection’ to fundamental rights. Conferral would also provide a potential historical, constitutional explanation for Walkila’s legitimate criticism of the Court’s tendency to examine fundamental rights together with the EU norm to which they are pegged, and consequently enrich her argument that the distinction between direct and indirect effect is often ‘merely procedural’. Reich’s identification of the normative imbalance that arises when free movement is able to trigger a dispute, through its (vertical or horizontal) direct effect, where this is not generally matched by directly effective reciprocal rights contained in the Treaty derogations, demonstrates the pertinence of these issues to Walkila’s project.

Conferral also offers a new perspective on Walkila’s support for a ‘sufficient connection’ to Union law test to trigger EU fundamental rights, if, indeed, she views it as going beyond the status quo. Contrasting cases such as *Carpenter, Bluhme* and *Ruiz Zambramo,* on the one hand, with *Dereci, Mickelsson and Roos* or *Garcia Avello* on the other, Nic Shuibhne has been rightly critical of the Court’s inconsistent approach to determining when and how primary free movement provisions are *prima facie* breached. This also introduces questions as to whether the ‘sufficient connection’ test would be as effective as Walkila suggests in addressing concerns that increased horizontality would worsen the perceived growing intrusion of the CJEU into national legal orders.

Though highlighting a variety of interesting issues, Walkila’s broad analysis can also make her own views difficult to decipher, even if a nuanced approach is advocated. Her position on the contemporary pertinence or otherwise of the public/private dichotomy, and the normative case for or against it, can be hard to determine, as well as her stance on horizontality generally, and her preferred approach in the Union context, specifically. This is exacerbated by her repeated and often forceful repetition of the traditional theoretical arguments against the horizontal application of fundamental rights, relating to the separation of powers, the public/private dichotomy, legal certainty and, in the Union context, the question of competence. These are not necessarily overcome by Walkila’s review of indirect effect, general references to ‘modern social realities’, the primacy, unity and effectiveness of Union law, or the requirement that an issue fall within the scope of EU law. The fluidity with which Walkila moves between different categories of horizontality, both in descriptive and normative senses, also impacts on the clarity of her overall stance. In particular, Walkila’s otherwise useful attempts to draw commonalities between the jurisdictions explored as part of her comparative inquiry - for example between indirect effect, objective orders of values, and the Strasbourg Court’s ‘positive obligations’ method, as well as the links drawn between the US ‘State actions’ approach and the EU requirement that the fundamental rights matter ‘fall within the scope of EU law’ - arguably risks some confusion conceptually or for the reader.

Nevertheless, these potential avenues for future research, and some issues of communicative clarity, do not diminish the value of this volume. Indeed, as well as offering many useful insights in its own right, the richness of the analysis stimulates new and thought-provoking questions in this area of EU law. Of course, Walkila’s closing remarks that fundamental rights are both a clear indicator of the Union’s federal progression, and must replace economic integration at the heart of the Union’s political culture, must now be understood against the multifaceted crises facing the European project, and the perceived popular rejection of the post-Lisbon, even post-Maastricht, Union by some. This, however, enriches, rather than undermines Walkila’s conclusions. Indeed, her argument that fundamental rights should enjoy ‘core primary law status’ even above other provisions of EU primary law might offer ways to address certain aspects of the Union’s integration crisis, such as the incursion of the free movement provisions into national law and policy.