

violation of any of her rights. But the conclusion that Mrs. Philipp had no standing to sue seems implausible – as does the alternative answer that Mrs. Philipp’s claim involved an exception to the normal standing rules. Nor is it an answer to say that Mrs. Philipp had standing on the basis that she merely *claimed* to have a primary right, else this would open the door to recognising standing in cases where Liao rightly wishes to deny it (such as Gardner’s example of suing NASA for the alleged wrong of having a bad logo: p. 94).

At the heart of these issues lies the simple fact that there are a range of different senses of “standing”. True it is that we might meaningfully speak of “standing” in the procedural sense of persons who are at liberty to initiate proceedings and thereby invoke the jurisdiction of the court. We might equally speak of “standing” in the sense of being the right person to complain of a particular wrong. Conversely, it is true to say that there is a sense in which people subject to vexatious litigant orders are deprived of standing; and a different sense in which people whose statements of case disclose no wrong done to them personally have no standing to sue for those wrongs (p. 95). In this respect, the novelty and ambition of *Standing in Private Law* truly shines – in forcing us to interrogate and clarify a term which has been used all too infrequently and all too imprecisely. To conclude with one final sense of “standing”: *Standing in Private Law* will certainly stand out as a rigorous and rich contribution to an area of private law which has long awaited such a work.

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*Shakespeare’s Strangers and English Law*. By PAUL RAFFIELD. [Oxford: Hart Publishing, 2023. xx + 268 pp. Hardback £85.00. ISBN 978-1-50992-984-9.]

With *Shakespeare’s Strangers and English Law*, Paul Raffield brings to a close his series of monographs on law and Shakespeare. Like its predecessors, this new book sets out to cast new light on particular plays by juxtaposing those plays with aspects of law and legal culture (broadly defined). The juxtaposition enables Raffield to suggest echoes, parallels, allusions and contexts which mutually illuminate the plays and the law.

In *Shakespeare’s Strangers* the five central plays are *Measure for Measure*, *The Comedy of Errors*, *Troilus and Cressida*, *The Merchant of Venice* and *King Lear*. The unifying theme is “what it meant to be a ‘stranger’ to English law in the late Elizabethan and early Jacobean period” (p. i). However, the book does not confine itself to these plays – indeed, some of its most engaging discussion is prompted by *The Book of Sir Thomas More*; nor does it limit itself to strangers – there is a very valuable analysis of the likely first performance of *Troilus and Cressida* at an Inn of Court (pp. 141–50), for instance. This is not a book that announces a thesis, then proceeds to demonstrate it. It is, rather, a series of wide-ranging reflections on, and responses to, the selected plays. This review highlights some of the most striking and interesting of these reflections and responses.

Raffield’s point of departure is Shakespeare’s contribution to the multi-authored *The Book of Sir Thomas More* (c. 1600), in which Sir Thomas More is shown

attempting to quell civil disorder provoked by resentment at the influx of foreigners to London. More addresses the mob, putting to them “the stranger’s case”: if they were, for some reason, banished from their homeland, they would become strangers, reliant on the hospitality of their host nation. It is essentially a plea for empathy, consideration and a reminder of how easily a person might become a stranger. Raffield persuasively argues that Shakespeare’s depiction of these events of 1517 would surely have been shaped by the very similar apprentices’ riots of the 1590s. He also makes a connection between the riots and *The Comedy of Errors*. There, in material that has no parallel in the Roman source (Plautus, *The Menaechmi*), Shakespeare makes it a capital offence for an Ephesian citizen to be present in Syracuse, and, *vice versa*, for a Syracusan to be in Ephesus: the play opens with the Duke of Ephesus pronouncing a death sentence on the Syracusan merchant Egeon, unless a ransom be paid by five o’clock that day. This is the ultimate, the terminal, rejection of the stranger.

*The Comedy of Errors* also provides the opportunity for Raffield to develop another important theme, which is the pervasive influence of Aristotle. The play is very unusual in the Shakespearian canon for its compliance with the Aristotelean unities of place, time, and action (Aristotle, *Poetics*). Raffield proposes that it is also Aristotelean in a different, political, sense, namely, that it emphasises that harmony in a community requires friendship in the creation and maintenance of society (Aristotle, *The Politics* and *The Nicomachean Ethics*) (p. 87). Certainly the play is full of discord, cross-purposes and misunderstandings; and its resolution involves the dropping of the death sentence imposed at the start of the first scene, even though Egeon’s sons can now pay the ransom. Raffield also makes the point that the closing image of the play – as the twin servants, just reunited, leave hand in hand – is a perfect picture of friendship. In addition, he proposes a symbolic reading of the gold chain which is a crucial plot device, arguing that it has “powerful juristic connotations, traceable to the Platonic description of public law as a ‘golden and holy’ cord or chain, attached to citizens and connected to the gods, ‘tugging’ at the populace to make it compliant with a prescribed and divinely ordained legal order” (p. 76).

Although the gold chain does not feature in other plays, the themes of discord, harmony and friendship do recur, and Raffield makes particularly good use of them in his treatment of *The Merchant of Venice*. He sets out to make the case for the value of Act V, which critics have tended to regard as, at best, “a thematic appendix” (F. Kermode, *Shakespeare, Spenser, Donne: Renaissance Essays* (Abingdon 1971), 214). Shylock’s trial, humiliation and departure have all been completed in Act IV, and there is a palpable drop in intensity in Act V as the focus moves to the lovers Lorenzo and Jessica, Portia and Bassanio, and Gratiano and Nerissa. Raffield argues that Act V’s thematic significance is disharmony. We might conventionally expect the united lovers at the end of a comedy – *The Comical History of the Merchant of Venice* is the play’s full title – to be in harmony, but these lovers clearly are not. Raffield tellingly points out that of the three pairs of lovers mentioned in the dialogue between Lorenzo and Jessica, at V.1.1-14, one relationship is destroyed by infidelity, and in the other two one of the lovers commits suicide. These are hardly good omens. Nor is it encouraging to have the concluding, obscene, words of the play spoken by Gratiano, whom Raffield describes, politely, as “one of the foremost voices of discord in the play” (p. 204). He is a violent, obnoxious antisemite. Harmony and the resolution of discord has plainly not been achieved here.

This review has only touched on some of the most interesting themes of a wide-ranging and thought-provoking book. The book avoids a general conclusion, or statement of Shakespeare's "position" on strangers, but it has a very clear, and explicit, ethical concern with the treatment of strangers, both in Shakespeare's time and the present day. One leaves the book with the sense that Shakespeare's attitude is more ambivalent: the moral high points of *The Book of Sir Thomas More* and *The Comedy of Errors* have to be set against the dispiriting conclusion of *The Merchant of Venice*. There is, similarly, little cause for optimism in the conclusion of *Measure for Measure* – things seem likely to continue, with the same hypocritical disdain for "strangers", as before (p. 40). Elsewhere, in plays that Raffield can only touch on in passing, such as *Henry V*, the portrayal of the French seems rather less sympathetic than Raffield suggests when he says that "they are never denigrated, and nor are they despised" (p. 67) – the French nobility are shown as arrogant, conceited and complacent (see for instance, III.7, IV.2, alternating with scenes showing the humility and bravery of the English army). Shakespeare was clearly alert to the processes, dynamics, dangers and, above all, the dramatic potential of "strangeness"; Raffield's study invites, and encourages, us to reflect on Shakespeare's multifaceted, opportunistic exploitation of this powerfully divisive concept.

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*The Judge and the Philosopher*. By DAVID H. MOSKOWITZ. [Bedford: Huge Jam Publishing, 2023. 264 pp. Hardback £20.00. ISBN 978-1-91124-999-3.]

In his series *The Judge and the Creative Positivist*, Moskowitz puts forward a legal theory which he has termed creative positivism. This theory, which builds on Hart's legal positivism, supplements the latter by offering a theory of judicial decision-making in common law systems. Moskowitz's thesis is that the function of judges is not simply to determine what the law is, but that they are also authorised to create law themselves – by deliberately making just and/or wise decisions which otherwise run counter to the pre-existing law. Hart's task was to provide a general account of legal systems. Moskowitz's creative positivism offers an engaging refinement of this general theory for the context of Anglo-American adjudication. In this book, volume two of his series *The Judge and the Creative Positivist*, he discusses a variety of legal philosophies, and highlights connections between these and his own creative positivism. This work will be of interest to students of adjudication in common law systems, legal positivism and those with a general interest in the philosophy of law.

Moskowitz argues that the decisions made by judges can be evaluated according to three criteria: whether they are correct (in line with pre-existing law); whether they are just; and whether they are wise. Although a decision can be incorrect by virtue of mistake, judges are also empowered by the rule of change, according to Moskowitz, to deliberately make decisions which are incorrect (inconsistent with the pre-existing law), if they are just and/or wise. Such incorrect decisions, he emphasises, are