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Book Review: Canadian Criminal Law: A Treatise, by Don Stuart

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Canadian Criminal Law: A Treatise. By DON STUART. Carswell; Toronto. 1982. Pp. vi, 602 (\$75.00); *Learning Canadian Criminal Law*. By DON STUART and RONALD JOSEPH DELISLE. Carswell; Toronto. 1982. Pp. xix, 913. (\$80.00).

If the publishers want a blurb for the second editions of these two books, let me just say that I have never enjoyed teaching criminal law as much as in the fall of 1982 when I used them for the first time. They provide a wonderful package in a field which has lacked an analytical textbook and a casebook that has good organization of the principles of the criminal law, with a minimal excursus into criminal procedure. Stuart's text is very consciously geared to the case book which he has compiled with Delisle. Both start out with an attempt to place Canadian criminal law in an historical and intellectual context, so that the reader gains some sense of the meaning of codification (this is too short), the principle of legality (too often ignored or underemphasized except by Jerome Hall in his excellent *General Principles of the Criminal Law*),¹ and the aims and scope of the criminal law (and the authors are aided by the admirable reports of the Law Reform Commission of Canada).

I think the authors are almost guilty of misleading advertising when they say that they "contrast methods of statutory interpretation". I find

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¹ 2nd ed., Indianapolis, 1960.

little evidence of it. I do not gain the feeling that we are talking about a *code* of criminal law. That is hardly the fault of the present authors because the Canadian courts have given scant attention to the subject of codification and have too often been content to cite English cases and texts and to ignore the experience of Australian and New Zealand jurisdictions which have similar codes.

I find the casebook chapter on Actus Reus far too long but I do not share the editors' belief that *actus reus* and *mens rea* can be sensibly separated.

The rest of the casebook is a delight to use. The authors clearly understand the problems of *mens rea* and lead us through that labyrinth with clarity of thought and presentation. I found that the classes bogged down a little when chapter 8, "Justification and Excuses" was reached. This is really a reiteration of *mens rea* principles—in a negative sense of course—and the cases did not seem to be worth 100 pages. I have serious reservations about the topics of attempt and conspiracy for first year. Both are so full of messy concepts but I suppose they are thought necessary to complete the discussion of general principles. I omitted the chapter on sentencing which seems a strange appendage.

I approached Stuart's text with some trepidation because I had feared that he would be too strongly influenced by Glanville Williams and that author's nitpicking penchant for "that codeless myriad of precedent, that wilderness of single instances".² I was wrong. Stuart is his own man and has created a treatise which is as systematic as the present law, dispensed by Canadian courts, will allow him. I hope that a second edition will be able to show court decisions taking a broader approach to the criminal law, pronouncing on general principles, using the criminal code as a complete body of law and placing less reliance on the single instances of case law. If Dickson J. has his way this might be achieved with the help of the Law Reform Commission of Canada's sensible and constructive suggestions for a General Part to be inserted in the Criminal Code.

Stuart's treatise shows a remarkable grasp of the literature. He is to be heartily congratulated on his industry which is supported by a fine scholarly discussion of his subject.

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² Tennyson, Aylmer's Field.

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