Canadian Criminal Law: A Treatise, Don Stuart, Toronto: The Carswell Company Limited, 1982. Pp. *liii*, 602, $75.00 (cloth).

The text under review appears at a critical phase in the development of home-based criminal law. The introduction of the Charter of Rights, fundamental shifts in 'traditional' criminal law through legislative action[1] and the expanded jurisdiction, albeit informal, of the Supreme Court of Canada[2] are factors which every student and practitioner alike must, by necessity, make the object of thought and scrutiny. And, one must hasten to add, the various law reform organizations and lobbying groups (speaking solely in the vernacular) must be observed, as they too are destined to impact upon the development of Canadian criminal law.

It is a sign of courage for a writer to release a text during such an apparently critical and vicissitudinous time. The task of objective analysis and projection is all the more difficult when one must consider a rejuvenated Supreme Court, law reform and novel legislation. In short, the times are such that even the newest texts may artificially age at geometric rates.

In "attempting to state and review the general principles of the substantive criminal law of Canada",[3] Don Stuart acknowledges that his purposes are twofold;

1) to fulfill the primary function of a "reformer", and;

2) "to provide the novice student and the busy practitioner with a conceptual basis and reference key to the massive and ever expanding sources, both primary and secondary, of Canadian Criminal Law".[4]

On the basis of objective criteria, this text is a highly successful attempt to meet those grand purposes. Apparently excellent research and reporting are combined in a physically pleasing and accessible format. It is obviously the result of long hours of planning and writing.

On a subjective plane, however, the text attacks the reviewer's sensibilities with an undue emphasis on law reform, an overabundance of fiery statements and a too-relaxed treatment of institutions, such as the jury stytem, which, to the reviewer's mind, are beyond the criticism spawned by argumentative convenience. Consider the following statement;[5]

---

[1]Particularly the changes to assault; see sections 142 to 145, 244 to 246.8, 1980-81-82, c. 125. Criminal Code, R.S.C. 1970, c. C-34.

[2]See for example, *Ford v. The Queen* (1982), 65 C.C.C. (2d) 392; *The Queen* v. *Vasil* (1981), 20 C.R. (3d); *R.* v. *Sault St. Marie* (1978), 40 C.C.C. (2d) 353. *R.* v. *Paquette* (1977) 30 C.C.C. (2d) 417.

[3]Don Stuart, *Canadian Criminal Law: A Treatise* (Toronto: Butterworths, 1982) at v.

[4]*Ibid.*, at v.

> Should a 14-year old mentally deficient child be judged by the standard of the average adult with average intelligence? If the objective standard of negligence were so inflexible, the answer in the negative would seem imperative. This would authorize a naked exercise of power by the State surely inappropriate for a civilized criminal law system. On such an approach the negligence criterion is not a meaningful fault substitute for the usual yardstick of subjective awareness (mens rea). It amounts to absolute responsibility.[5]

The author couches his position in language compatible with that generally used by a "reformer" and in developing his argument suggests;

> The danger is relying on so elusive a yardstick that it alows the trier of fact full reign to convict on personal whim or pet peeve. . . . Resorting to the objective standard may constitute an unconsidered pandering to those who maintain without evidence that an extension of the criminal law is needed for reasons of law and order.[6]

It appears to the reviewe · that the position contrary to the author's is too frequently presented as ; n extreme, an unfortunate habit which prevents the 'fair presentation (f opinions' and barricades the reader from achieving an initial appreciati)n of opinions contrary to those of the author. The propriety of the use of ; text as a medium for this directed argument should be considered.

Any man would find it difficult to restrict his personal bias in the expression of an opinion. That human trait, however, should not provide a basis for indulgence in ? medium designed for the student's exposure to a collection of views. It was well put by Lord Eldon when he suggested that "truth is best discovered by powerful statements on both sides of the question".[7] The addition of the words "A Treatise" to the title of the text under review, does not vitiate the abuse of this medium.

Canadian Criminal Law is less than an objective treatment of our criminal law. Superior research and reporting make the opinion it presents very strong, weighty enough to carry the newly initiated and unquestioning along the paths it projects. Unlike the reviewer, however, the reader may not find that to be a fault.

The text under review is an inclusive treatment of criminal law, and despite the subjective reservations voiced by the reviewer, will undoubtedly be a valuable tool for the student and practitioner alike. Its many qualities suggest that its timing will not hamper its successful competition with other Canadian texts, until, of course, a text dealing with the Charter of Rights and other recent developments fills the existing vacuum. When not in use, it will sit on the reviewer's shelf, in front of American texts and next to those written by Glanville Williams.

PETER FALK*

---

[5]*Ibid.*, at 184.

[6]*Ibid.*, at 187.

[7]Lord Denning, *The Road to Justice* (London: Stevens and Sons, 1966) at 34, footnote 2.

*B.A. (Winnipeg), LL.B. Candidate (U.N.B.).