THE CANADIAN LEGAL SYSTEM, by Gerald L. Gall. Carswell, Toronto, 1977, pp. xi and 316.

The author has taken on a difficult task. It is to write "a treatise on the entirety of the Canadian legal system" with "some originality and freshness of approach," (p.v) and to do so in some 300 pages. The task of a reviewer is doubly difficult. Not only has the author set his sights high, but he has neglected to state what it is he is trying to hit. No one can be expected to cover everything on complex topics. Particularly if the whole, rather than the parts, of something is to be explained, there has to be some criteria for what to leave out and what to stress.

Moreover, the level of analysis should be clarified. It is one thing to try to explain a legal system to a layman, and something else to try to explain it to a lawyer. Even if the audience intended is the student, it makes a difference whether he is the high school, university or law student. In the absence of the author's clarification of these points, a reviewer must do what he can to identify the direction and limits of the work. Yet a reviewer must at the same time refrain from imposing on the author the book that the reviewer would have written.

It is useful to begin with the audience to whom this book is probably addressed. In many places the book is too complex or too cursory for the university student. Yet, for the same reasons, it would seem useful for the beginning law student. The author will obtain brief surveys of the nature and sources of law, including the British legal system, and the constitutional structure of the Canadian legal system. These topics may not be covered elsewhere in the first year of law study, yet they are essential background information for the study of law. At a minimum, the student should know this much. The question is whether he should know more. In any event, the book should be a useful supplement to the conscientious first year law student, especially if it encourages him to pursue the topics more deeply elsewhere in his studies.

In the last two-thirds of the book, we find some depth and freshness of approach beyond the survey of highlights. In discussing the role of judges and lawyers, the author first presents a useful overview of professional ethics. He then examines the judicial role with special attention to the problems of judicial law making, precedent, and *stare decisis*. In his discussion of these topics, he introduces his own survey of Alberta judges which provides some empirical data on their views of the judicial role.

Although the survey only elicited responses from 27 of the 112 judges (which puts in some doubt the representativeness of the survey, but no more doubt than other surveys of the mailed-questionnaire type, which typically receive replies from 20% to 30%), the responses are still informative (pp. 141 - 144, 197 - 199, 210 - 224). The author concludes from his survey that the judges show a high degree (89%) of conservatism.

Yet, an analysis of the data from the strict view that judges should never exercise discretion when interpreting the law reveals a different picture. While most judges stated that the judicial role is not the

legislative role, they did not go to the other extreme of proclaiming "the phonograph theory of jurisprudence". One wonders what their responses would have been had they been asked to reflect, not on a newspaper excerpt imputing to a Quebec judge the view that judges ought to usurp the legislative power in effect, but rather on what was just as radical when stated sixty years ago:

> I recognize without hesitation that judges do and must legislate, but they can do so only interstitially; they are confined from molar to molecular motions.[1]

Even without having had the opportunity to reflect explicitly on the Holmesian aphorism, it is surprising how many of the judicial responses were consistent with it.

The chapter on statutory interpretation is again a quick, but useful introduction for the law student who can expect to follow up the topic in other subjects. But for the university student the survey would be unduly cryptic. For example, *Heydon's Case*[2] is described (on p. 238) as one of the three major canons of construction. But the explanation of the canon is given (on p. 230) without identification of the case. The student would have to have some legal knowledge to make the connection. The three problems of statutory interpretation (251 - 256) are useful for giving the student the opportunity to apply his knowledge. Again, they appear designed for the first year law student, not the university student. Their usefulness raises the question of why similar problems were not used elsewhere in the book.

The chapter on the administrative process is perhaps a more instructive one for the new law student. It provides a useful introduction to the typical law course in administrative law, but again it presupposes that a student knows something about the law already or can find out about it on his own. The last chapter on new directions touches on law and technology, the legal profession, legal education and legal reform, all of which should be more, rather than less, interesting for those committed to a professional career in law.

The key concern, however, remains. Even though the work appears usefully oriented to the beginning law student, could it have been more useful? In pursuing his aim of a "treatise on the entirety of the Canadian legal system", why did the author pick and choose the topics he presented? Are they the more effective topics for conveying a sense of the whole of the legal system? Or are they simply interesting fragments of the legal system whose coherence has yet to be explained? More specifically, will the first year law student, by studying the book, say, in an introductory course, gain that synoptic vision of the Canadian legal system that he would lose if he were to study the various topics in different cognate courses?

The valid answer to these questions can only come by way of experience. However, the author would have made the task of using his work to achieve his commendable, but formidable aim, much easier had he explained his rationale of exclusion and inclusion.

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1. *Southern Pacific Co.* v. *Jensen* (1917) 244 U.S. 205 at 221.
2. (1584) 76 E.R. 637.