

journey through the lowlands, the heights of principles are sharply in view and subject to clear delineation. He seeks precision in analysis, but he applies his precision to dilemmas and predicaments in regions of hazy thought and vague presentiments in which precision does not yield the simple anticipated answers. Finally he pauses from time to time to state maxims and principles in which simple antitheses are abandoned to bring the moral and the legal into relation. He states one such principle which applies to the judicial process:

If not the testimony of the scientists, then what did precipitate the decisions? I suggest that, in order to identify the catalyst, one must first recognize a certain elementary principle about the nature of the judicial process and the requirements of effective advocacy. That is, if you wish a judge to overturn a settled and established rule of law, you must convince both his mind and his emotions, which together in indissociable blend constitute his sense of injustice. You must satisfy his mind not only that the general doctrines of the past are wrong in their specific current application but also that they themselves contain, if properly reinterpreted, the guides that will lead to a rule which is right and just. His mind must see not only that the law has erred but also that the law itself proffers a remedy. Then he can feel free to correct the error without betraying the consistency and continuity of the legal order because he will only be replacing mistaken law with correct law.<sup>3</sup>

It is a principle which illustrates one of the drives Cahn is fond of detecting in democratic thought, the drive by which the traditional and the Given are used as material for new progress and creation. His treatment of the paradoxes involved in equality and freedom, in association and the rights of association, and in the democratic qualities of judgment, honor, and associability suggest a need for the statement of like principles which will save us from the limitations of customary distinctions between "is" and "ought" and will open up the path from the sense of injustice to the justice which begins and ends at points at which the "ought" and the "is" are experienced together before they are separated in analysis.

RICHARD MCKEON\*

\* Professor of Philosophy, University of Chicago.

<sup>3</sup> P. 129.

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It is interesting to observe that, at the present time when foreign trade and its effect upon our national economy appear to be a continually growing feature of interest in our daily lives, with the President of the United States leading the forces of trade and tariff policy liberalization, a publication should

be presented which relates to matters having a marked effect on foreign trade.

Reference, of course, is made to the recent publication of the five volume *Customs Law Digest* compiled, edited and published by the Bobbs-Merrill Company, Inc. of Indianapolis, copyrighted 1960 but released for public consideration in 1961 with its up-to-date pocket pamphlets for 1961 already distributed and in the hands of set owners.

Whether or not one agrees or disagrees with the many foreign trade views being aired daily in the public press, a welcome should be accorded this publication, since it represents the first attempt in twenty-five years<sup>1</sup> to record, codify and index the decisions of the United States Customs Court. This tribunal was established by Act of May 28th, 1926,<sup>2</sup> and its decisions are subject to review by the United States Court of Customs and Patent Appeals (formerly the United States Court of Customs Appeals).<sup>3</sup> The decisions have a direct bearing on the continuation of importation into the United States and indirectly in our eventual relations with nations throughout the world.

The Customs Court has exclusive jurisdiction of appeals for reappraisal of imported merchandise,<sup>4</sup> as well as reviewing on protest the decisions of any Collector of Customs, including all orders and findings entering into the same, as to the rate and amount of duty, and exactions of whatever character within the jurisdiction of the Treasury Department, and decisions excluding any merchandise from entry or delivery under any provisions of the Customs Laws.<sup>5</sup>

Under this statutory authority, the Customs Court, originally created as a Board of General Appraisers,<sup>6</sup> is charged with the responsibility of interpreting the Acts of Congress and the regulations of the Treasury Department and various government agencies promulgated in pursuance therewith, clarifying ambiguities where they are found to exist, and generally acting as arbiter between the importing public and the government of the United States; which frequently involves fundamental rights of litigants in addition to substantial amounts of money.

To do this, the nine judges of the Customs Bench, who are well versed in the problems relating to foreign trade, classification and appraisal of imported articles, are called upon daily to render decisions and judgments, the results of which can and do have far-flung and important influence in the effective administration of the Customs statutes.

<sup>1</sup> DOHERTY, DIGEST OF CUSTOMS AND RELATED LAWS AND THE DECISIONS THEREUNDER (1936).

<sup>2</sup> Ch. 411, § 1, 44 Stat. 669 (1926).

<sup>3</sup> Tariff Act ch. 6, § 28, 36 Stat. 105 (1909), as amended, 28 U.S.C. §§ 211-16 (1958).

<sup>4</sup> 28 U.S.C. § 1582 (1958).

<sup>5</sup> 28 U.S.C. § 1583 (1958).

<sup>6</sup> Customs Administrative Act ch. 407, § 12, 26 Stat. 136 (1890).

The last direct congressional organic legislation relating to tariff rates was promulgated in 1929 and is popularly known as the Tariff Act of 1930.<sup>7</sup> Since then, through various amendments, treaties, administrative acts, protocols, simplification acts and special legislation, the rates of duty have been altered, generally downward, or entirely eliminated.

It is under the varying effects of such changes, that the Customs Court has been required to attempt a consistent effort at judicial interpretation which would not be in conflict with previously well-established precedents, decisions and rulings, unless such interpretation represents a change in fundamental approach and thinking.

These decisions of the court, until 1938, appeared in bound volumes of the *Treasury Decisions*. Since then they have appeared in the *United States Customs Court Reports*. The weekly publication of the *Treasury Decisions* in pamphlet form contains the current decisions. The decisions of the Appellate Court are bound in the volumes of the *Court of Customs and Patent Appeals Reports* in two sections; one devoted to customs and the other to patent reports.

In addition, the Customs practitioner and researcher must acquaint himself with the many rulings of the Treasury Department and Bureau of Customs and the variations in Customs administration.<sup>8</sup>

In the light of the foregoing, and to assist the members of the court as well as the Bar, it was necessary to have a complete and modern digest of the court's opinions together with those of the Appellate Court under a comprehensive topical index plan. The court, in its preface to the *Digest*, indicates that since there has never been a topical index digest of the Customs Court opinions and decisions, the present publication will also serve the needs of business people engaged in foreign trade and commerce, be of value to Congress and its various committees and their staffs dealing with tariff and revenue matters; and be useful to the State, Treasury, Justice and other executive departments and federal officers and agencies dealing with Customs law, and matters relating to foreign trade and commerce.

The publisher, in compiling the *Customs Law Digest*, has attempted to put each digest paragraph under all subjects touched upon by the decision. Of course, these subjects are general, specific and in some cases overlapping. Therefore, the entire body of the digest has been divided into eighty principal digest topics, such as "Administrative Practice," "Appraisement," "Chief Value," "Entry," and the like. Then, each principal topic is further divided into analysis topics and sub-topics to fit the requirements of the subjects covered.

<sup>7</sup> 46 Stat. 590, 19 U.S.C. ch. 4 (1958).

<sup>8</sup> See 19 U.S.C. and *Code of Federal Regulations*.

The principal digest topics and the analysis and sub-topics are alphabetically arranged in boldface headings. However, also in alphabetical order between the various principal topics are inserted general subject headings, with cross-references to principal topics and analysis and sub-topics. Cross-references are also inserted at the end of the analysis of each principal digest topic so that a complete relationship may be had among the various subjects included in the principal topics.

This type of alphabetical arrangement, supplemented with the cross-reference, achieves a self-indexing effect for the digest. In addition to this self-indexing feature, Volume 5 is devoted to a more detailed general index which provides coverage of more specific subjects as well as detailed treatment of broad subjects. This general index is preceded by an outline of the principal digest topics and their related sub-topics. Volume 5 also contains a section of digest material and citations under the heading of "Words and Phrases," which is a regularly recognized form of digest indexing and reference material. And finally, this volume has two compilations of cases and citations found in the preceding four volumes of the digest. These tables refer to those cases known by popular names, and a table of cases listed under the name of the plaintiff, since in most cases the United States is the party defendant.<sup>9</sup>

The reviewer has attempted to present in outline the form taken by the publisher in introducing this new, specialized, legal research tool. That its value has already been amply demonstrated is definite and certain. Speaking for the active practitioner before the Customs Bar, this reviewer has found the *Digest* of invaluable aid in the preparation of material prior to trial, in advising clients, and drafting and filing briefs—matters which are so much a part of the Customs attorney's day to day labor. As stated by the Customs Court, this is the first digest which has attempted to incorporate in topical index form the opinions and decisions of the Customs Court with reference to, and analysis of, the related Appellate and Supreme Court decisions.

An appreciative vote of thanks on behalf of all those interested in this subject is voiced on the members of the court, past and present, who initiated this project and followed its preparations with helpful suggestions and whose encouragement was responsible for the accomplishment and publication of the *Customs Law Digest*.

JOSHUA M. DAVIDSON\*

\* Member of the United States Supreme Court, New York, United States Customs Court and United States Court of Customs, and Patent Appeals Bars.

<sup>9</sup> 28 U.S.C. §§ 1582, 2631-37 (1958).