THE JURISTIC STYLE OF MR. JUSTICE ROBERTO CONCEPCION *

It has often been said that the past usually holds the key that will throw wide open the gates of the future. Guided by this saying, we take a look at the life and method of thought of Justice Concepcion—51 years of life, 85 years of which have been devoted to his great love, the law—to find a reason and basis for his conduct and from them attempt to gauge the measure of his future.

The Benjamin of the Supreme Court of the Philippines is Mr. Justice Roberto R. Concepcion. A brilliant jurist, the magistrate, in answer to our question regarding any important events in his life, modestly stated that he is a "man and nothing important ever happens to a man." But this was just a way of brushing aside his numerous achievements, which, as tools to a prophecy, this account will try to show.

Mr. Justice Concepcion was born in Manila on June 7, 1903 to Isidro Concepcion and Catalina Reyes. After graduating from high school, he enrolled in San Beda College from where he obtained the title of Associate in Arts in 1920. Subsequently, he transferred to the University of Santo Tomas for his law studies. It was here where he showed the first signs of a legal scholar—in 1924 he graduated from the same university with the degree of Bachelor of Laws, *summa cum laude* and in the same year he topped the list of successful Bar examinees.

For four years after graduation, Attorney Concepcion entered into private practice. In 1929, he was appointed by the Bureau of Justice to the position of Assistant Attorney. He was promoted to the position of Assistant Solicitor-General in the then Bureau of Justice (now Office of the Solicitor-General) in 1938.

In January 1940, he received his first appointment to the bench, that of Judge-at-Large. Recognizing the then Judge Concepcion's ability in the field of law, the late President Manuel L. Quezon appointed him General Consultant to the First Code Committee in February, 1941. He was named District Judge of the Court of First Instance of Samar in September of the same year. The valuable services which Judge Concepcion rendered to the Code Commission did not go unnoticed. On May 1, 1942, he was recalled to the Code Commission, this time as a full-fledged member, which position he held until July 31, 1942.

When the Commonwealth government was re-established shortly after the liberation, Concepcion was called upon to help reorganize the Department of Justice in the capacity of Undersecretary of Justice. On November 22, the Undersecretary received his appointment as Associate Justice of the Court of Appeals. During the latter part of his tenure in the Appellate Court, he became Presiding Justice of the Court.

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* Acknowledgment is due Miss Pacita Canizares for the interview and biographical materials used in this article, written in early December, 1954.

On February 9, 1954, he was elevated to the highest tribunal of the land, an honor which he richly deserves. He thus became an Associate Justice of the Supreme Court of the Philippines at the relatively young age of fifty-one years.

Justice Concepcion is the proud head of a big and intellectual family. The eminent jurist is married to the former Dolores Concepcion. They have five children who now tend to follow the footsteps of their illustrious father. Catalina, the eldest, is a *cum laude* graduate from the Faculty of Civil Law of the University of Santo Tomas. The second child, Carmen, also in the University of Santo Tomas, is a fourth year medical student. Roberto, Junior, is a senior in the College of Law, also of the University of Santo Tomas. Milagros obtained the degrees of Bachelor of Arts and Bachelor of Social Service, both *summa cum laude*, from Saint Theresa's College. The youngest, Jesus, is a fourth year high school student at the Ateneo de Manila.

Concepcion is a golf enthusiast, and is a lover of music. They are his means of relaxation from the strenuous work which he has to tackle day in and day out. As a musician, he used to be a member of a string quartette during his younger days.

At time of writing—December, 1954—Mr. Justice Concepcion has been in the Supreme Court for only ten months and therefore has not yet had the chance to fully impart his profound knowledge of law. The opinions he has written are still relatively few [1] to furnish an accurate index of the direction he shall take in jurisprudence. Two or three cases in a particular subject would hardly justify a conclusion as to his philosophy on the matter. They could even be hardly taken to indicate the trend of his juristic thoughts. A citation of some of his decisions would therefore be made not so much as to show his attitudes and views, but more to acquaint the student of law with the penetrating insight of his erudition, the force of his logic, and the manner of his approach to complex problems.

His style of rendering decisions is lucid and strong. He uses simple language. He has no flair for flowery phrases, nor does he have a particular taste for the ponderous and complex. He is not partial to any style of logic, his choice of attack being determined by the circumstances of the case. But whatever the pattern is—inductive or deductive—his statements flow in a steady stream of well-established premises followed by inevitable conclusions. His opinions have a desirable quality of precision. Thus in the case of *Camus v. Maceren*,[2] where the judge denied the taking of deposition of plaintiff who was permitted to maintain the suit as a pauper, she being domiciled in Manila while the case was being tried in Davao, Justice Concepcion opined—

> "The main reason given in support of the contested order is that, if the deposition were taken, the court could not observe the behaviour of the deponents. The insufficiency of this circumstance to justify the interdic-

[1] As of November 30, 1954, Justice Concepcion has forty-four (44) opinions in the Supreme Court.

[2] G.R. No. L-7424, August 31, 1954.

> tion of the taking of a deposition becomes apparent when we consider that, otherwise no deposition could ever be taken, said objection or handicap being common to all depositions alike. In other words, the order of respondent Judge cannot be sustained without nullifying the right to take depositions . . ."

Again, where the Collector of Internal Revenue insisted on taxing the Jesus Sacred Heart College on the basis of Section 27(e) of the National Internal Revenue Code,[3] Justice Concepcion, in denying the power of the Collector stated—

> "Section 27 (e) of the NIRC, exempts from taxation the 'net income' of corporations 'organized and operated exclusively for . . . educational purposes . . . no part of the net income of which inures to the benefit of any private stockholder or individual' and it is conceded that plaintiff corporations belongs to this class. To hold that an educational institution is subject to income tax whenever it is so administered as to reasonably assure that it will not incur in deficit, is to nullify and defeat the aforementioned exemption. Indeed, the effect, in general, of the internet income, contrary to the tenor of said section 27(e) which positively exempts from taxation those corporations or associations which, otherwise, would be subject thereto, because of the existence of said net income."[4]

Justice Concepcion observed that the appellant's view would limit the benefits of the exemption only to schools which are on the verge of bankruptcy, the final results of which would be "to discourage the establishment of colleges in the Philippines, which is precisely the opposite of the objectives consistently sought by our laws."

The Justice's opinions are illustrative of what may be called a happy blending of industry and genius. He is not content with a mere cursory discussion of the case; he does not stop at the particular issue involved. As an offshoot of his erudition perhaps, he has a propensity for writing thorough and often long decisions, exhausting every legal reason or possibility that may influence the results of the case in order to satisfy fully the demands of substantial justice. He is not interested in the results only, but on the reasons as well. In the absence or inadequacy of a precedent, he resorts to the vast store of legal knowledge which he has accumulated through the years, most especially in situations where the law seems hopelessly enmeshed in a blur of confusion.

Witness the case of *Manalang v. Quitoriano* [5] where he patiently and lengthily answered every contention of the petitioner, even to the extent of considering whether he could be held entitled to the position of Deputy Commissioner, he not having been appointed to the position of Commissioner in spite of the fact that he was fully qualified for the position. Or the cases of *Nepumuceno v. San Diego* [6] and *Vega v. Gellada* [7] where he painstakingly examined in detail

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[3] C.A. 466, effective July 1, 1939.
[4] Jesus Sacred Heart College v. Collector, G.R. No. L-6807, May 24, 1954.
[5] G.R. No. L-6898, April 30, 1954.
[6] G.R. No. L-5669, June 30, 1954.
[7] G.R. No. L-6765, May 12, 1954.

conflicting and vague provisions of law dealing with the ordinance power of municipal corporations, more particularly that portion dealing with the limitations on the power to lease municipal waters for fishing purposes, and on the passage of ordinances under the general welfare clause. In *Uy Tengsu v. Republic*,[8] a naturalization case, the Justice dwelt on the various shades of meaning of the terms "residence" and "domicile," and expounded on the policy behind the Naturalization Law [9] requirement that an applicant for citizenship should "reside continuously in the Philippines from the date of the filing of the petition up to the time of his admission to Philippine citizenship." In construing the clause as demanding actual residence, the Justice said that the purpose is

> ". . . . to give the government sufficient time to check the truth of the statements made in said declaration of intention, if any, and in the application for naturalization, especially the allegations therein relative to the possession of the qualifications and none of the disqualifications provided by law . . . Obviously, the government would be in a better position to draw its own conclusions on the matter if its officers could personally observe the behavior of the applicant and confer with him if necessary."

In no other field than that of criminal law are the qualities of hard work and serious study greater in demand. Here the personal liberty, or even the very life of an individual is the price at stake. *Calderon v. People* [10] is illustrative of how much Justice Concepcion would do to fully comply with the proof beyond reasonable doubt rule. In upholding the conviction for homicide imposed by the Court of First Instance, he went through the gamut of carefully reconciling the different pronouncements of the Supreme Court [11] with regard to the degree of care an officer of the law must exercise under varying circumstances. The following statement which he made in the same case is only typical of his whole attitude towards every case laid before him for decision:

> "Is appellant herein guilty of homicide or merely of homicide through either simple or reckless negligence? We have given considerable thought to this question and devoted a good deal of our time in the study of the authorities pertinent thereto, and the conclusion reached by the majority of the members of this Court is in favor of the first alternative."

Justice Concepcion is careful and seems to be overly meticulous in the writing of his opinions. He abhors the loose use of language, which, more often than not, is the source of so much doctrinal confusion and accounts for so much instability in the interpretation of the laws. On more than one occasion, he has concurred in a decision, only to file a separate opinion for the purpose of pointing out an

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[8] G.R. No. L-6379, September 29, 1954.

[9] C.A. 473, effective June 17, 1939.

[10] G.R. No. L-6189, November 30, 1954.

[11] Among the cases are United States v. Mojica, 42 Phil. 784 (1922); People v. Mamasalaya, 50 O.G. No. 3, p. 1104 (1954); United States v. Ah Chong, 15 Phil. 239 (1910); and People v. Oanis, 74 Phil. 257 (1943).

apparent inaccuracy in the statements made in the main opinion. In the case of *Reyes v. Court of Appeals*,[12] where Chief Justice Paras, speaking for the court, seemed to imply that a failure to state a cause of action in a complaint does not warrant the dismissal of the action on that ground if the defendant did not cite that reason in his motion to dismiss, Justice Concepcion was quick to opine:

> "Failure of defendant Ismaela Dimagiba to allege in the CFI that plaintiffs have no cause of action cannot vest one to the latter if they have none. Said omission would not warrant, therefore, a judgment for the plaintiffs if the records do not show that they have a cause of action against the defendants. Hence, I find myself unable to subscribe to the view expressed in the main opinion of the Court, in so far as it might seem to justify the opposite conclusion."

So was it in the case of *Farrales v. Fuenticilla*.[13] In filing a separate opinion, Justice Concepcion believes that the statement of Justice Bautista Angelo, to the effect that the lifting of a writ of preliminary injunction can be done *ex parte* was too sweeping. He would limit such an *ex parte* proceeding to the lifting of writs of preliminary mandatory injunction, which was the writ involved in the case. As a matter of fact, he believes that the action to lift a preliminary injunction should always be done with a hearing where the parties are represented. In showing the difference between the two actions, Justice Concepcion started with the premise that when a judicial power is granted, previous notice and hearing are due the party who may be adversely affected by its exercise. An exception lies in actions to preserve the *status quo*, which may be done *ex parte*, no right being endangered in such a case. An action for a writ of preliminary injunction, being done merely for the purpose of maintaining the *status quo*, is the best example. Consequently, its dissolution would give the defendant a free hand to change the *status quo*. Justice therefore requires that the plaintiff at least be given prior notice. On the other hand, an action for a writ of preliminary mandatory injunction sought to change existing conditions. Hence, an action to dissolve such a writ would have the effect of restoring the parties to their *status quo*, and therefore could be issued *ex parte*.

But the quality that strikes one most in reading the opinions of Justice Concepcion is the impression it conveys that it was written with confidence. It is as if "we hear the voice of the law speaking by its consecrated ministers with the calmness and assurance that are born of a sense of mastery and power."[14] Feel the majestic sweep of his rhetoric—

> "Congress cannot, either appoint the Commissioner of the Service, or impose upon the President the duty to appoint any particular person to said office. The appointing power is the exclusive prerogative of the President, upon which no limitations may be imposed by Congress, except those resulting from the need of securing the concurrence of the Com-

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[12] G.R. No. L-5618, July 31, 1954.
[13] G.R. No. L-6354, July 26, 1954.
[14] Cardozo, B., *Law and Literature and Other Essays and Addresses*, p. 10 (1931).

mission on Appointments and from the exercise of the limited legislative power to prescribe the qualifications to a given appointive office.

"At any rate, petitioner's record as a public servant—no matter how impressive it may be as an argument in favor of this consideration for appointment either as Commissioner or as Deputy Commissioner of the Service—is a matter which should be addressed to the appointing power, in the exercise of its sound judgment and discretion, and does not suffice to grant the court, whose duty is merely to apply the law, the power to vest in him a legal title which he does not have." [15]

"The judgment and discretion of public officers, in the performance of their duties, must be exercised neither capriciously nor oppressively, but within reasonable limits. In the absence of a clear legal provision to the contrary, they must act in conformity with the dictates of a sound discretion, and with the spirit and purpose of the law. This is specially true in the case of members of the armed forces, whose main duty is to defend the state, and, consequently, the people who, in a democratic society like ours, are the repository of sovereignty. Such duty would be a myth if a law-abiding tax-payer could be slain in his own home with impunity.

"The army bolo held by Rodil at the time of the occurrence does not suffice to justify his killing for, does the fundamental law not guarantee the inviolability of his domicile? Was it not, accordingly the legal obligation of appellant to respect and even protect the same? Was Rodil not entitled, therefore, to defend it as his own 'castle' or citadel? Any other view would create the impression that peace officers are public masters, not public servants, thus alienating the faith and confidence of the people in the government and undermining the foundation of all democratic institutions." [16]

The above quotations from two of his decisions are also proof of his abiding faith in the principles underlying our system of government and as embodied in our Constitution. The first is the antithesis of a dictatorship—power and authority must be divided between the separate branches of government, each branch being supreme within its own sphere, yet co-equal with the others. The second is basic in a democratic form of government—public office is a public trust, and that public officers are the servants of the people acting in their sovereign capacity.

It would seem very significant to note here that the very first opinion which Justice Concepcion ever penned in the Supreme Court is a dissent. Which is quite uncommon, because as a neophyte in the highest tribunal, it would not have been less honorable for him to have simply voted with the majority, considering that he was alone in his dissent. This should acquaint us at once with his nature and frame of mind—intellectual honesty, integrity, and independence of judgment. This is not to say that he just dissented for its own sake. As of this writing, the Justice has on record in the Supreme Court only one dissent, the very first opinion he wrote—and something which is illustrative of what the late Chief Justice Hughes of the United States Supreme Court says is "an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision

[15] Manalang v. Quitoriano, see note 5.

[16] Calderon v. People, see note 10.

may possibly correct the error into which the dissenting judge believes the court to have been betrayed." [17] In the case of *Festejo v. Fernando*,[18] a suit against the Director of Public Works for the return of a parcel of land which was illegally appropriated for an irrigation canal built by the government, the majority of the court, in permitting the suit against Director Fernando opined that, since the Director acted outside the scope of his jurisdiction and without authority of law, he rendered himself amenable to personal liability in a civil suit. Justice Concepcion thought differently. He believes that the case is in the "nature of a suit against the state and may not be maintained without its consent." His well-considered dissent runs thus—

> "We take judicial notice of the fact that the irrigation projects and system referred to in the complaint—of which defendant Fernando, according to the same pleading is 'in-charge' and for which he is 'responsible' as Director of Public Works—are established and operated with public funds which pursuant to the constitution, must be appropriated by law. Irrespective of the manner in which the construction may have been undertaken by the Bureau of Public Works, the system or canal is, therefore a property of the government. Consequently, in praying that possession of the portions of land occupied by the irrigation canal involved in the present case be returned to plaintiff, and that said land be restored to its former condition, plaintiffs seek to divest the government of its possession of said irrigation canal, and, what is worse, to cause said property of the government to be removed or destroyed. . . . The government is accordingly the party in interest as defendant in the case at bar."

Justice Concepcion has been in close and constant contact with the law, not only in the pragmatic role of a judge, but in the more dynamic and searching field of academic scholarship. This perhaps is one of the keys to his mastery of the law. Since 1935, he has been continuously a professor of law, teaching practically every subject in the field—civil law, mercantile law, political law, remedial law, and international law—in no less than nine law schools in Manila.[19] On top of this, he is a constitutionalist. The law, more especially the Constitution, he says, is supreme, and as such should receive the primary consideration of every judge in deciding any controversy. For him, the Constitution is the "Ten Commandments of the political field . . . the compass that marks the direction to be taken . . . the embodiment of the civil liberties of the individual." It is not at all surprising then to note, that in his opinions, there is a frequent allusion to the letter and spirit of the Constitution.

As a civil libertarian, he is one of the strongest supporters of civil rights. He is an active member of the Civil Liberties Union,

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[17] Bowen, C. D., *Yankee From Olympus*, p. 376 (1944).

[18] G.R. No. L-5156, March 11, 1954.

[19] Justice Concepcion has taught in the following law schools: University of Manila, Philippine Law School, Far Eastern University, University of Santo Tomas, San Beda College, Manuel L. Quezon School of Law, University of the East, Lyceum of the Philippines, Arellano Law College.

an organization which has been noted as a staunch defender of the civil liberties of the people. The Union has often been at odds with the administration, because it is generally the party in power which is guilty of the offense of violating the civil rights of the people. The power to govern does not include the sanction of the power to suppress. The President has been no exception. The Union has often singled out the questionable actuations of past Presidents of the Philippines, including the present one, more particularly the conduct of Presidents in publicly criticizing the decisions of judges.[20] As Justice Concepcion would say—the president must obey the law; he is no dictator; if he were allowed to publicly criticize the decisions of judges, it would result in producing a deterrent force on the judges with respect to their future decisions.

Justice Concepcion has his own ideas about the position of law and the courts in society. He believes that the justification for the existence of courts, as instruments of the law, is the meting out of substantial justice to the parties concerned. Judges and lawyers, being officers of the court, should work together in the achievement of such an aim. He counsels lawyers to "look to the objectives of the law and rise above its technicalities." It is of common knowledge that too many cases are won or lost because of technicalities. But while the primary function of the court is to mete out substantial justice, yet it is not a guardian and lord protector of every litigant. A party to a case must not sleep on his rights. The courts will be vigilant in the protection of a litigant's rights and interests only if he brings the matter to the attention of the court. Where he appears without a lawyer and yet does not attempt to justify his predicament or to explain its cause, where he does not express his readiness to defend himself and introduce evidence on his behalf or even move for the postponement of the hearing, where it appears that he left the courtroom while the evidence for the other party was being introduced—his predicament is his own making. In short, if his rights, if any, have been prejudiced he has himself to blame therefor. The respondent judge accordingly, had no other alternative than to render judgment against him in conformity with the evidence on record.[21]

The full force and effect of the law has to be applied in every case. Sometimes however, circumstances intervene where to do so would be incompatible with the essence of justice—mercy. "Justice is nothing less than justice tempered with mercy. Far from being a strict pound of flesh standard, it is rather what is altogether fair and equitable, consistent with good conscience."[22] While Justice Concepcion has a passion for the proper application of the law, as can be seen from his brilliant dissertations on it, yet he is not above mitigating the harshness of the application of the law when the sit-

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[20] The Civil Liberties Union took issue with President Magsaysay on the occasion of his having publicly and severely criticized Judge Solidum for his decision sentencing Luis Taruc, Huk Supremo in the Philippines, to imprisonment of only twelve (12) years in the case of People v. Taruc, et al.

[21] Alberto v. Tan, G.R. No. L-6983, May 17, 1954.

[22] Levy. B. H., *Cardozo and Frontiers of Legal Thinking*, p. 72 (1938).

uation demands such a mitigation. In *Calderon v. People* [23] after upholding the decision of the Court of First Instance convicting the appellant of homicide, Justice Concepcion ended with the note that—

> "in view of the appellant's youth and considering that he had joined the Philippine Army a few months only, prior to the occurrence, the Clerk of Court is hereby directed to forward a copy of this decision to the President of the Philippines, through the Secretary of Justice, for consideration of the propriety of extending to appellant herein the benefits of executive clemency, after service of such period of the sentence imposed as may be deemed sufficient to satisfy the demands of justice and public interest."

Mr. Justice Concepcion, in his ten months in the Supreme Court, has ably demonstrated that he is a master of the art of dispensing justice and interpreting the law. Judging from his enviable record in the law profession, coupled with his scholarship and industry matched only by his integrity and honesty of purpose, we can safely prophesy that his tenure as a Justice of the Supreme Court would have a tremendous influence in the progress of legal thought in the country.

TEODORO Q. PEÑA *

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[23] See note 10.

* LL.B. (U.P.), 1955; Formerly member of the Student Editorial Board of the *Philippine Law Journal*, 1954-55.