

OF CHIEF JUSTICE ROBERTO CONCEPCION: SUAVITER IN MODO, FORTITER IN RE*

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A few appreciative words about Chief Justice Roberto Concepcion on the occasion of his retirement, when one can write so much about him — and all to his credit. For it is not often, whether here or in the United States, that such an exalted position is held by a man of diverse interests and varied talents. He is justly famed as an ardent civil libertarian, a militant nationalist, an erudite scholar, a distinguished educator, and a leading Catholic layman, a Papal knight no less. It is as a member of the legal profession though, whether as a prudent counselor, skilled advocate, a top-notch constitutional and international law authority, and an eminent jurist with thirty-three years of service on the bench, twenty-seven on an appellate court level, that he is justly acclaimed far and wide. There is a sense of fitness then, almost inevitability, of the office searching for the man, in his becoming the Chief Justice. It is not amiss to recall the steady progression of his career as he ascended step by step the judicial ladder. He was successively a promising practitioner, a persuasive government counsel, a court of first instance judge, a department undersecretary, then a Justice, first of the Court of Appeals and then of the Supreme Court, till finally in 1966 he was deservedly made its Chief.

There he was *primus inter pares* for seven eventful years. The Concepcion era was one of high accomplishment. It could not have been otherwise under his inspired leadership. A thorough preparation combined with a sterling character, a first-rate mind, rare powers of analysis, mastery of both public and private law, an unswerving dedication to duty and a winning personality assured its being so. It is of his role as our exemplary and beloved Chief that this brief, discursive essay is all about, from one vouchsafed the good luck of being associated with him as a member of the Court from 1967 till his retirement a few weeks ago. Essentially then it is one man's appraisal, one moreover

* This article will be one of the essays in a book shortly to be published on the occasion of the retirement of Chief Justice Roberto Concepcion, with Professors Alberto Cañio and Guillermo Pablo, Jr. as editors.

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bound to him by ties of admiration, affection and gratitude.¹ There is nonetheless an earnest striving to be as fair and as objective as possible and to let his impeccable record speak for itself.

In writing about him as the Chief Justice, the starting point must be Concepcion, the man. It can truly be said that even if he were not the learned jurist or the skillful administrator that he is, he would still have been the exemplary head of the Court that he was. What manner of man is he? His innate good breeding immediately and inescapably manifests itself even upon the most casual acquaintance. It is no wonder then that no effort on his part is needed for him to cast a spell of warmth and friendliness that enchants and conquers. With all that, no one leaves his presence without an awareness of his firmness of character. It is so easy to understand then why the late Claro M. Recto spoke of him as best described by the Latin phrase, *suaviter in modo, fortiter in re*. There was about him the air of authentic compassion, but not of softness. Thus he was never oblivious of the demands of his calling to manifest fidelity to the rule of law and to cling to the luminous vision of justice triumphant, even if for the parties that have deviated from the path of rectitude, the result necessarily was one of expectations frustrated and hopes blasted.

How well do I remember that November day almost thirty years ago when we first met. He was at the time presiding judge in the San Juan branch of the court of first instance of Rizal. Along with one of the leading practitioners then as well as now, Senator Lorenzo M. Tañada, the principal defense counsel, I was retained to appear for one of the accused in a concubinage case. The then Judge Concepcion, who was related to the man indicted for the offense, disqualified himself. With that characteristic courtesy and friendliness, he forthwith invited counsel and prosecutor to take coffee in his chambers. He and Senator Tañada even then were on the best of terms. They took the bar the same year, with the Chief obtaining the highest grades, one of the very few University of Santo Tomas graduates to win that signal honor. They were young practitioners together, and soon thereafter entered the government service, the Senator in the City Fiscal's Office of Manila and the Chief in the Department of Justice as one of the government

¹ When President Marcos had under consideration the nomination of the author to the Supreme Court, one of the persons close to the Chief Executive had this to say: "*Kay suwerte mo, Iking. Mayroon kang bendisyon.*" He was referring to the endorsement of Chief Justice Concepcion, as well as his other associates in the Civil Liberties Union, the then Justices J.B.L. Reyes, Arsenio Dizon, and Jesus Barrera. It was also at the suggestion of the Chief Justice that the author was named Jose P. Laurel Professor of Constitutional Law in the Lyceum of the Philippines.

attorneys, now known as solicitors. Later, they were both leading members of the Civil Liberties Union.

The conversation was informal, with humorous anecdotes to enliven the occasion. During those grim days of Japanese occupation, such interludes were all the more welcome. Then as if it were the most natural thing, the talk shifted to certain doctrines in constitutional law, and the Chief casually made mention of his having heard that I was one of the latest recruits in the faculty of the University of the Philippines College of Law, with that subject assigned to me. For a comparative newcomer to be thus noticed by someone who, even then, was ranked as among the most competent in that branch of the law was quite flattering. Thus encouraged, even if such were not the intention of the Chief, I took the opportunity to talk at some length on due process as one of the most valuable constitutional rights of an accused, citing American decisions. This prompted Senator Tañada to say that with our Judge such doctrines may carry weight but with the belligerent occupant, Japan, they were not likely to mean a thing at all. He was not too certain that such talk would be salubrious, considering the atmosphere, especially so where the prosecution was for an offense tinged with political overtones, but concluded, not surprisingly, as he was for the defense, that concubinage hardly qualified under such category. In a way, it was a *faux pas* on my part, stressing the solicitude that the law has for a defendant. It was one though that the experienced counsel Senator Tañada took advantage of. The then Judge Concepcion, however, tactfully turned the conversation to other topics, but not until after in his usual gracious way, he complimented me. Then and there, he added one more recruit to his goodly number of admirers, one who has remained so to this day.

It was not, to be sure, the first time his name had come to my attention. More than four years earlier, March of 1939, I would say, in a random encounter with my former professor, Justice Jose P. Laurel, I distinctly remember his referring to the Chief, who had just distinguished himself as government counsel in the Goldcreek Mining Company case,² that the then Assistant Solicitor General Roberto Concepcion *ay may mabuting kinabukasan, sapagka't taglay ang kabaitan at kata-linuhan*. There was in such an appraisal more than a hint of the characterization of the Chief in Latin terminology that came from Don Claro. *Kabaitan* does not merely imply innate goodness but the soft-spoken and unassuming manners of the Chief that deceptively concealed the vast talents with which he was endowed at birth. In 1941, just

² Goldcreek Mining Corporation v. Rodriguez, 66 Phil. 259 (1938).

shortly before my joining the faculty of the University of the Philippines College of Law, its then President, the late Bienvenido Gonzalez, spoke of the Chief, along with Justice J.B.L. Reyes and Delegate Salvador Araneta, as not only respected members of their profession, but leading scholars in the law. That was by way of stressing the importance of juristic studies for one who, like me, was desirous of pursuing a teaching career. It was but natural then, that when I at last had the opportunity of meeting him in 1943 at his sala in San Juan, I was already more than favorably disposed towards him, an impression further intensified when, by his kindly ways and gentlemanly demeanor, a then comparatively newcomer in the field of law was made to feel at ease and allowed to have his say. With what I heard from him, coupled with the depth and perceptiveness of his talk, even if apparently casual in tone, but quite indicative of views strongly held, it is easy to understand why the late Claro M. Recto spoke of him as *suaviter in modo*, but *fortiter in re*.

It was not after Liberation, in early 1945, that I came to know the Chief better. As a Judge-at-Large, he was detailed at the Department of Justice in Malacañang, the third in the official hierarchy, just below the Secretary and Undersecretary. Some of us professors in the College of Law were likewise assigned to the Office of the President prior to the reopening of the school, which was closed during the Japanese Occupation. The duty entrusted to me was that of a legal assistant to the then Executive Secretary, former Dean Jose Reyes, with the then Assistant Executive Secretary, my former professor, later Ambassador, Melquiades Gamboa, as my immediate superior. Since the task that was mine to perform was legal, I was instructed to get the approval of the Undersecretary of Justice, the late Ramon Quisumbing, who afterwards became my father-in-law, before putting in final form whatever had to be done. The first time I did so, he informed me that while he was always ready to see me, it would be better, as he was usually busy conferring with many people of consequence and had many other things to attend to, that I see the Chief instead. As he only half-facetiously put it, Berting, the name his friends had for him, would keep me on the right path. It was not only that. His learning was profound and his temperament ideal. He was easy to get along with and did not consider such consultations a bother. There was not the least exaggeration in what was said. So I did verify for myself, having thereafter continued to seek his advice and counsel, even when subsequently he became Undersecretary, with Secretary Jaranilla being named to the Supreme Court and the then Undersecretary Quisumbing becoming the department head. Parenthetically, may I say that once I asked the latter why, notwithstanding a directive from Secretary Ickes that those who were in the

service during the Occupation period were not eligible for governmental positions, such a policy apparently was ignored in the case of the Chief, who was among the very first to be recalled. The reply was something like this. Secretary Jaranilla and he, cognizant of the Chief's extensive background in the law as well as his habits of diligence, industry and thoroughness, had no choice but to send for him. He was well-nigh indispensable.

When later in that year, 1945 that is, I was honored with an invitation to join the Civil Liberties Union of the Philippines, of which the Chief, Justices J.B.L. Reyes, Jesus Barrera, Arsenio Dizon, Senator Lorenzo Tañada, Dr. Francisco Lava and the late Dr. Paulino Garcia and Anselmo Claudio were prominent members, our association became close, and I have had since then the privilege of being counted as one of his friends. Again in the bi-monthly meetings of the Civil Liberties Union and other times we met, I had the opportunity of witnessing how ably and well the Chief could handle himself in group discussions. No one could elucidate a point better with the minimum of fuss, the absence of heat, the support of scholarship and fealty to reason. No one, moreover, could be as firm, well-nigh immovable, once he had thought to its logical conclusion any intellectual problem posed.

One incident is still vivid in my memory. Early in 1955, long after the late Don Claro himself became a member of the Civil Liberties Union, he and the Chief were the star performers, in a dialogue carried on the highest intellectual level. The subject was the course of action to be taken by the Union on the Laurel-Langley Agreement. Its reception was highly favorable, even enthusiastic in the press and other sectors of society. Dr. Francisco Lava however had doubts as to its beneficent effects for us. His approach found favor with Don Claro, who, in his usual devastating way, spoke of it as another manifestation of the triumph of colonialism. Its repudiation was almost certain until the Chief, in his quiet, self-effacing way, urged caution, invoking both constitutional and international law principles, especially in the latter case, the doctrine of *pacta sunt servanda*, and reminding us that Senator Lorenzo Tañada was one of the leaders of the mission that went to the United States. Was it not incumbent on us then that we hear our colleague first, before we pass judgment on the matter? He did succeed in postponing any definitive action. Moreover, while he felt it was not absolutely necessary, he did impress on the Union certain aspects not touched upon previously. His performance was so impressive and persuasive that after the meeting, Don Claro made that memorable remark: "He is the example of that Latin saying, *suaviter in modo, fortiter in re.*"

For me, at least, nothing is more illustrative of the aptness of such characterization than the performance of his role as Chief Justice, a position which was his, as earlier noted, from 1966 until his retirement. It was my unique privilege that for six of those seven years, I served with him as a member of the Concepcion Court. There is an appropriateness in such an appellation. He was our Chief. He was at the helm. With his customary courtesy, friendly disposition and infinite patience, he discharged the responsibilities of leadership to the satisfaction of everyone of us. That is no mean achievement, considering our disparate personalities. We have convictions, or perhaps even prejudices that we love to label such. Moreover, we are attached to them and quite convinced as to their merit. We do not always take easily to contrary views. As is rightfully expected of us however, we are not supposed to be averse to the possibility of reconciliation of what at first blush may appear to be opposite extremes. Obstinacy is not always a virtue for a man on the bench. It does help a lot though if a man with the irenic temperament and pleasant disposition of the Chief would take the lead in attempting to bring about that desirable objective. He was thus in his element. It does not detract from what was said if it be admitted that where the differences touched matters of conscience, he manifested full and entire respect for the autonomy of will of each of his colleagues. More often than not however, he was able to effect a unified stand. What contributed greatly to such success was the undeniable fact of his competence as a jurist. In the arena of jurisprudence, he is a past master. In such a field, whether the area be public or private law, he belongs to the elect. He is more than fully equipped with more than the necessary learning, which to this credit, he carries lightly. What was even more impressive for us, his brethren, is his uncompromising honesty and vigor of thought. Added to that is his acknowledged talent for thoroughness and rigor in the analysis of legal problems. There is for him then no deviation from a total commitment to the ends, purposes, and mechanics of the legal order. It was thus our good fortune that to him was entrusted the leadership of the Court.

It may be said further that for such a task, he was eminently qualified. In its discharge, he brought extraordinary skill and aptitude. For in addition to his deep and reflective scholarship, coupled with solidity of judgment, he was an expert administrator. His record as such was most remarkable. The problems he had to face grew increasingly complex, but he was never at a loss for the right solutions. The success thus attained was owed to his exceptional qualities of mind and heart. His relationship to the staff and the personnel of the Supreme Court could not have been improved upon. He was like a father to

them, and they responded with loyalty and with industry. Nor could they be any less conscientious for his devotion to duty was legendary. He was the first to arrive and the last to leave, long after the working day was over and the time for repose had come. It was not only on them that such habits made an impression. So it was with us, his colleagues. With him to show the way, we tried to keep abreast of things or did our best not to lag too far behind. With him setting the example, we tried to follow suit. With him setting the pace, apparently without strain, we strove with might and main, although not always successfully, not to falter. From him then came leadership of no mean order, in manner mild, as to matter weighty. Verily, *suaviter in modo, fortiter in re*.

It is too early to reminisce, but we will certainly miss his presence as our beloved Chief. Always the relationship during his incumbency was most congenial. It could not have been otherwise, as he is a gentleman to the manner born. It was literally so. His treatment of those around him, his colleagues no less than the officials and employees was worthy of emulation. There was more than a verbal adherence to the truism that every human being, whatever his station in life, is entitled to dignity and respect. His temper was always under control, even when mightily provoked. We were always comfortable in his presence, and we certainly were most appreciative that no one else was the Chief. Ever solicitous of our well-being, he was always considerate. He was never lacking in those small courtesies that made life pleasant for those around him. Even during the period in late 1967 and early 1968 that his body seemed to be racked in pain with a hip ailment, fortunately attended to in time, he had nothing but words of good cheer and kind thoughts for his brethren in the Court. What is more, there was certainly no mean bone in his body. Ever polite, tactful, and generous to a fault, his sincerity was never in doubt. Not for him the labyrinthine ways of artful flattery, concealing emotion truly felt. That in slightly more detail is the man who was our Chief.

Nor will it be inappropriate if the matter is pursued further with specific reference to my experience. Having been appointed in June 1967 by President Marcos directly from the bar, without a single day of prior judicial service, I was a complete neophyte. During my first two months, July and August, the Chief was away, attending international conferences and conventions in Europe and the United States. My tutors were then the Acting Chief, J.B.L. Reyes, a good friend and former professor, and Justice Conrado V. Sanchez, under whose guidance when he was the senior associate of the Revilla Law Office I started the practice of the law. By the time the Chief assumed the reins anew in

September of that year, the ways of the Court and its traditions were no longer totally alien to me. Nevertheless, there was still much to learn, and the Chief was most patient. Perhaps out of *delicadeza*, some of my associates would not say outright that my phrasing of doctrines or principles in the drafts of my early opinions could, from their standpoint certainly, stand improvement. They would suggest however that I talk it over with the Chief. How pleasant and instructive those informal sessions with just the two of us turned out to be. If my opinions thereafter were not as polished and accurate as they ought to have been, no blame should attach to him. There would be instances though where after my other colleagues had no objections and had consequently affixed their signatures, and the opinion reached the Chief, he could not go along in all respects. Instead of sending for me, he would visit me in my chambers. In those days, he had the troublesome hip condition, and walking brought some discomfort. That did not deter him from still going down to my room on the first floor (his was on the third floor) instead of sending for me. There also was never the thought of an imposition as to the changes he would want to see embodied. They were always suggestions and reasons, usually cogent and plausible, given in that even-tempered tone of his. After hearing him, it was difficult not to agree, for there was a mind at work, insistently probing questions to the roots. Even if there were a tendency at first not to yield fully to his persuasive ways, a more mature judgment, at least on my part, even if arrived at after he had left the room, would see things his way. These discussions in chambers were not prospects to be dreaded but something to look forward to. For that invaluable help during those early months and the unfailing sympathy with which requests of mine for more books and additional secretarial help were met I certainly am most appreciative. Nor, I dare say, is my experience unique.

What can be said of the Chief as he presided over and participated in our daily deliberations? After hearing his colleagues, he would speak on the matter before us. What immediately impressed us was the range and precision of his knowledge as well as the soundness of his views. At least, I was. It did appear to me that he had devoted precious hours and energy to what was being discussed. Or it could be that with his long years on the bench and in Cardozo's phrase, "habitude in the art", the persuasive quality of his approach was a fact that could not be denied. Evidently, he had given more time and attention to the question at issue than the rest of us, with the result that the conclusion reached by him was hard to resist. I must confess that it was the way he developed the theme of how far the Supreme Court can go in its appraisal of the exercise of what formerly was considered to be the sole

and exclusive prerogative of the President beyond the power of the judiciary to scrutinize that led me to concur in his landmark Lansang opinion,³ sustaining the suspension by President Marcos of the privilege of the writ of habeas corpus. That was typical of the Chief, the highly cerebral man, intellectually gifted far beyond the rest of his fellow mortals, with no ax to grind and, what is more praiseworthy, with never a thought of showing off, talking others down, or appearing always in the right.

It is no wonder then that under his expert ministrations, the daily sessions proceeded smoothly. With him being the very personification of calmness and objectivity, a display of temperament even under the stress of discussing complex issues on which convictions are strongly and tenaciously held seemed singularly inappropriate. This is not to say however that all was sweetness and light. It has been correctly stressed that justices in the highest court would not be where they are if they had always been meek and submissive or accustomed to turning the other cheek. Moreover, it certainly is an accurate picture that Hamilton presented that the drive of the work, the zest of inquiry, the pride in the craft all make for heat. Fortunately for us, there was always the Chief to shed a little light. With him there to guide and to lead our deliberations, the intellectual approach more often than not prevailed, and the tension that did normally arise from situations that contained explosive potentialities considerably lessened. To pursue the matter in the same vein of thought, viewpoints coming from men of strong convictions would settle like a cloud over judicial deliberations. It was but natural then to expect the rumble of thunder. Then came the shower. That certainly did cool matters. There would be less tendency for his colleagues to give sharp tongues to their disagreements. There was the example of a leader, who was *suaviter in modo*. It is true that at times with his calmness and patience under the most trying conditions, verbosity appeared to be unchecked, certain points of views reiterated time and time again. There was no doubt as to the members of the Court always feeling more than ever that the Chief was a true egalitarian, never imposing his will to cut the discussions short and tolerating the continued expression of sentiments, at times not wholly relevant, *ad infinitum*. There might be minor defects in such virtue, but better by far a *primus inter pares* than a would-be autocrat.

What of his opinions? It has been aptly remarked that they are polished, clear, and direct. Incisiveness was a feature that invariably characterized them. Nonetheless, they are not coldly analytical. There

³ *Lansang v. Garcia*, G.R. No. L-33964, December 11, 1971, 42 SCRA 448 (1971).

is a reaffirmation of the warmth, even the humanity of the law. Such quality is most evident in his constitutional law pronouncements, so notable likewise for their thoroughness, lucidity, and scholarly excellence. He was the skilled craftsman exploring the dark corners of the law, with an eye to its improvement. This he accomplished, relying usually on tried and accepted doctrines. Where there was need for change, however, no one was more persuasive in demonstrating that traditional principles are not devoid of potentialities for growth. There was never though too violent a break with the past. There is no tear in the fabric of the law. For him, it is truly, in Maitland's phrase, a seamless web. His was always a fighting faith in the rule of law, no less militant because expressed in the mellifluous accents of reason, disdainful of the dramatic and the theatrical. The depth of his conviction for such a regime is attested by his competence, courage and dedication, steadfastness under fire, given utterance in language of true eloquence by its tone of calmness, sobriety and sincerity. Verily, as is so typical of the man, *suaviter in modo, fortiter in re*.

Rightfully, though, the stress must be on his personification of the latter quality. It is so because he stands for integrity, which is properly identified with the wholeness of a man's conduct and the fullness of his commitment. In a man or a justice, the act or the word that is true only to a part of his self is flawed. For both man and justice, the cost is the same, the loss of a faith in what he is and what he stands for. That has never been said, that cannot be said, of the Chief. His is a rocklike integrity.

That is why we take so much pride in him, a pride stirred further in those of us trying so hard, and many a time in vain, to reach what appears to be his unattainable standard in the jurist's art by the skill with which he has blended the rule of law with the majesty of conscience. For not only has he led the way in the perception of and dedication to valid juridical concepts, he has also shown by precept and example that adjudication if based solely on such proficiency can never be at its best. It must be responsive to the innate sense of goodness that is the finest manifestation of the human spirit. So it was for him; so it should be for us.

That is why, we who have had the rare privilege of knowing him and being associated with him, we who have felt the irresistible force of his influence, we are the fortunate ones. We shall forever be in his debt.