A desirable end cannot be promoted by prohibited means."[26] Or, as the American Supreme Court has put it: "The essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion."[27]

From the above considerations it is the conclusion of this writer that, whether from the point of view of the teaching of Vatican II or from the constitutional point of view, the question is not whether the state may *allow* civil divorce and remarriage. Rather, the question is whether in a pluralistic society such as ours the state may *prohibit* divorce and remarriage. The teaching of Vatican II is that "the usages of society are to be the usages of freedom in their full range. These require that the freedom of man be respected as far as possible and curtailed only when and in so far as necessary" and that curtailment becomes "necessary" when it is demanded not by the "common welfare," which is a very broad concept, but by the "public order," which is a much narrower concept. The teaching of the Constitution is that the Bill of Rights withdraws "certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials,"[28] and that religious liberty is one of these subjects and may be curtailed only when demanded not by the ordinary requirements of public welfare, which also is a broad concept, but only by the narrower concept of "compelling state interests."

Fear may be expressed that the position espoused by this essay leaves society powerless to promote the common welfare. That is to misconstrue the function of the constitutional order. The constitutional guarantee, also demanded by Vatican II, is not an assertion of the laicist creed that religion is purely private matter. Rather, it is merely a recognition that the juridical order as the legal armature of human rights has a limited function. By guaranteeing a maximum degree of freedom of action the juridical order merely creates a constitutional climate wherein the various forces of society are free to pursue the common welfare of all. This common welfare "consists chiefly in the protection of the rights, and the performance of the duties, of the human person," and the duty to pursue the common welfare "devolves upon the people as a whole, upon social groups, upon government, and upon the Church and other religious Communities . . . in the manner proper to each."[29] Neither the Constitution nor the *Declaration* of Vatican II demands an abdication of social responsibility. Rather, both together pose a challenge to all to work towards building a city of man without doing violence to a right that is as original as the human person itself.

[26] *Id.* at 76.
[27] Wisconsin v. Yoder, 40 LW 4476, 4479 (May 15, 1972).
[28] Philippine Blooming Mills Employees v. Philippine Blooming Mills, 51 SCRA 189, 201 (June 5, 1973).
[29] *Declaration*, no. 6.

THE LEGALITY OF DISCIPLINING AN ELECTIVE OFFICIAL FOR A WRONGFUL ACT COMMITTED BY HIM DURING HIS PRECEDING TERM OF OFFICE

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There are very few cases dealing on the subject matter of suspension and removal of public officials for offenses committed during the previous term of office. The evident lack of jurisprudence on the matter is accepted by no less than the Supreme Court, when it resorted to American authorities, in resolving the issues in *Pascual vs. Provincial Board of Nueva Ecija.*[1] American cases on the question are also in conflict, due to differences in statutes and constitutional provisions, and also in part to a divergence of views.

In the case of *Pascual vs. Provincial Board of Nueva Ecija,*[2] Pascual, then mayor of San Jose, Nueva Ecija was administratively charged by the Acting Provincial Governor of Nueva Ecija for abuse of authority and usurpation of judicial functions. Pascual filed with the provincial board a motion to dismiss on the ground that the wrongful acts alleged therein had been committed during his previous term and could not therefore constitute a ground for disciplining him during his second term. The Supreme Court resorted to American authorities in the absence of any precedent in this jurisdiction. The weight of authority of the United States cases seem to incline to the rule denying the right to remove one from office because of misconduct during a prior term. The Supreme Court subscribed to this weight of authority of United States cases. "The underlying theory is that each term is separate from the other terms, and that the reelection to office operates a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor.[3] To remove a public officer

* LL.B. '76
[1] 106 Phil. 466 (Oct. 31, 1959).
[2] *Id.*
[3] 43 Am. Jur. 45, cited in *Pascual V. Provincial Board, supra,* note 1.

for the acts done prior to his present term of office is to deprive the people of their right to elect their officers. In a subsequent case of *Lizares vs. Hechanova,*[4] the aforesaid ruling in Pascual was reiterated.

In the case of *Ingco vs. Sanchez,*[5] Ciriaco Ingco, who was then mayor of Bauan, Batangas, was accused of estafa through falsification of public document committed in the discharge of his official function. Ingco moved for the dismissal of the complaint on the ground that his reelection to the position had operated to condone an alleged malfeasance committed by him during his previous term of office, relying on the doctrine of *Pascual vs. Provincial Board.*[6] The Supreme Court ruled that the doctrine in *Pascual* was not applicable, because in *Pascual* the subject of investigation was an administrative charge, whereas in Ingco's case, it was a criminal accusation, the object of which is to cause the indictment and punishment of Ingco as a private citizen. The Supreme Court in this case took time to point out that the pronouncement in *Pascual* that a public officer should never be removed for acts done prior to his present term of office, is only applicable in administrative charges, seeking the removal of an officer from office. It does not apply to a criminal case, because a crime is a public wrong more atrocious in character than mere misfeasance or malfeasance committed by a public officer in the discharge of his duties, and is injurious not only to a person or to a group of persons but to the state as a whole.

In 1969, the Supreme Court came out with a decision reiterating the doctrine in *Ingco.* In the case of *Luciano vs. Provincial Governor,*[7] Maximo Estrella argued that his re-election erected a bar to his removal from office for misconduct committed during his previous term of office. The Supreme Court, reiterating the *Ingco* doctrine ruled that:

> A circumspect view leaves us unconvinced of the soundness of respondents' position. The two cases relied upon have laid down the precept that a re-elected public officer is no longer amenable to administrative sanctions for acts committed during his former tenure. But the present case rests on an entirely different factual and legal setting. We are not here confronted with administrative charges to which the two cited cases refer. Here involved is a criminal prosecution under a special statute, the Anti-Graft and Corrupt Practices Act (RA 3019).[8]

The Supreme Court deemed it impermissible to distinguish since the Anti-Graft Law does not make any distinction between an act done during a former term of office and acts done during a later term. This is backed up by the perpetual disqualification as a penalty, clearly showing the futility of distinguishing whether an act was committed during the previous term or during the present term.

[4] 17 SCRA 58, (May 17, 1966)
[5] 21 SCRA 1292, (Dec. 18, 1967)
[6] *Supra,* note 1.
[7] 28 SCRA 517, (June 20, 1969)
[8] *Id.* at 527

The most recent case on the subject is that of *Oliveros vs. Villaluz,*[9] where the mayor of Antipolo was charged with violation of the Anti-Graft Law. The respondent judge issued an order suspending him from office. However, in the general elections of 1971, petitioner ran for election and was re-elected. The Supreme Court deciding *en banc* the issue of whether a criminal offense for violation of the Anti-Graft Law committed by an elective officer during one term may be the basis of his suspension in a subsequent term in the event of his re-election to office, ruled that:

> Petitioner's reliance on the loose language used in *Pascual vs. Provincial Board of Nueva Ecija* that each term is separate from the other terms and that the reelection to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor, is misplaced.
>
> The Court has in subsequent cases made it clear that the *Pascual* ruling (which deal with administrative liability) applies exclusively to administrative and not criminal liability and sanctions. Thus in *Ingco vs. Sanchez* the court ruled that the re-election of a public officer for a new term does not in any manner wipe out the criminal liability incurred by him in a previous term.[10]

In a separate opinion, Justice Fred Ruiz Castro reserved his vote on the matter of whether Mayor Oliveros may yet be suspended from office after his re-election. His reservation was due to his interpretation of the first sentence of Section 5 of the Decentralization Act (RA 5185) which recites "Any provision of law to the contrary notwithstanding, the suspension and removal of elective local officials shall be governed exclusively by the provisions of this section." However, he conceded that he has ". . .not come across any unequivocal indication in the deliberations in Congress on the decentralization bills that the Decentralization Act, which is of later vintage (1967), was intended to modify the intendment of the Anti-Graft and Corrupt Practices Act (1960) on the matter of the preventive suspension of elective local officials."[11]

To Justice Castro, the deliberations in the halls of Congress revealed that a local official charged criminal'y may mete out a preventive suspension only if the corresponding administrative case is likewise filed against the said official. The legislators intended the Decentralization Act to exc'usively govern the suspension and removal of elective local officials, nothwithstanding laws to the contrary. The provisions of Section 5 of the Decentralization Act allows 60 days as the maximum period of suspension of an elective official charged administrative'y, and therefore the suspension order issued against Mayor Oliveros can not exceed the 60-day period provided for by law. So that when consequently he was re-elected, the court can no longer suspend him anew. The deliberations in Congress revealed that:

> ...it is our belief that the supreme arbiter in administrative law should be the people. Therefore, if the people feel that despite the decision of an administrative body they would still like to have this man represent them or be their mayor or governor, we feel that this is something that is in keeping with our philosophy of expanded local

[9] 57 SCRA 163 (May 30, 1974)
[10] *Id,* at 169-170
[11] 57 SCRA 163, 195 (May 30, 1974)

> autonomy. Sen. Padilla expressed the view that the penalty of suspension in an administrative case, as distinguished from the accessory penalty of suspension in a criminal case is totally extinguished by the respondent's vindication in an election. Sen. Padilla went further to say that the re-election or election to another but higher office of an official who has been meted out the penalty of suspension operates to remove the said penalty altogether and entitles the same official to his former office. Sen. Padilla was quite insistent that whether an official has been meted out the penalty of either suspension or of removal, he is entitled to immediate reinstatement upon his re-election by the people.[12]

In conclusion, present jurisprudence would treat an administrative liability committed during the prior term of office of an elective official as condoned by his re-election, on the pretext that the supreme will of the people should not be frustrated.

On the other hand, there can be no condonation by re-election of an elective official's act that is criminal in nature.

> ...to hold that... reelection erased his criminal liability would in effect transfer the determination of the criminal culpability of an erring official from the court to which it was lodged by law into the changing and transient whim and caprice of the electorate. This cannot be so, for while his constituents may condone the misdeed of a corrupt official by returning him back to office, a criminal action initiated against the latter can only be heard and tried by a court of justice, his nefarious act having been committed against the very State whose laws he had sworn to faithfully obey and uphold. A contrary rule would erode the very system upon which our government is based, which is one of laws and not of men.[13]

Added to this is the fact that "reelection to public office is not provided for in article 89 of the Revised Penal Code as a mode of extinguishing criminal liability incurred by a public officer prior to his reelection."[14]

The distinction therefore between an administrative charge and a criminal charge is well founded, in the sense that condonation of an administrative charge is adhered to because of the philosophy that the electorate of a small community can condone an act that is an offense against them as members of the electorate. Whereas, to apply the same rule to criminal charges would result in condoning an act that is an offense against the state and its people, which is not within the power of the electorate of a community to condone. Besides that would be putting the official in a pedestal — the mere fact of reelection would result in the extinguishment of his criminal liability. If sanctioned, this doctrine would incite elective officials to commit offenses while performing public functions and then work for their reelection to bar prosecution.

The doctrine of suspending an elective official for criminal acts done during his previous term even if re-elected is founded more on the provision of the Revised Penal Code. Since when the offender is a public official, the accessory penalty of perpetual or temporary absolute disqualification is also imposed. This disqualification results in the "deprivation of the public offices and em-

[12] *Id.* at 196-197
[13] *Id.* at 171
[14] *Id.* at 170

ployment which the offender may have held, even if conferred by popular election."[15]

When the act committed by an elective official is administrative in nature, the suspension imposed is not viewed as a punishment but rather a concrete step of preventing damage to the office and to the people dealing with said office. As enunciated in *Bautista vs. Negado*[16] "when a public official or employee is disciplined, the object sought is not the punishment of such officer or employee but the improvement of the public service and the preservation of the people's faith and confidence in their government."

[15] Art. 30, Revised Penal Code (Act No. 3815, as amended)
[16] 108 Phil. 283 (May 26, 1960)