The Need to Re-Examine the Doctrine of Condonation for Misconduct Committed During a Previous Term

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I. INTRODUCTION

Sometime during the Commonwealth era, when the Philippines was still about to emerge from its chrysalis and become a full-fledged republic, and while negotiating the grant of independence from the United States of America (U.S.), former President Manuel Luis Quezon spoke the immortal words that he would rather have "a government run like hell by Filipinos" than a government "run like heaven by the Americans."[1]

Though these words were only a means to show how steadfast and resolute he was in insisting that independence be given to the Philippines in the shortest possible time, somebody powerful up in the heavens must have been listening and instead of interpreting Quezon's words as a mere political statement, He viewed it as a wish of some sort or some kind of bargain — this for that. Fortunately for us, Quezon's wish was granted and we were given independence. Unfortunately for us, and as a manifestation of some divine comedy, the other part of his statement came true as well.

The government is indeed run like hell. From the lowliest clerks to the heads of government offices, the Philippines' public officials seem to be the personification of graft, corruption, indolence, and sloth. With the fewest of exceptions, the ordinary Juan de la Cruz perceives the government as being riddled with people who put themselves ahead of and above the country. They seem to think of government service as an opportunity to line their pockets and make money while the sun shines.

This plight of the nation has given rise to numerous attempts to find ways to eliminate corrupt and inefficient public officers. From the 1987 Constitution,[2] down to ordinances, the eradication of corruption and inefficiency has been attempted. Political leaders always cry out that they will stamp out scalawags from office who waste precious money and only hamper the country's growth. The public cheer on while these vitriolic statements are made and repeated.

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1. Manuel L. Quezon III, The Long View: Nationalism, *available at* http://www.quezon.ph/tag/i-prefer-a-government-run-like-hell-by-filipinos-to-a-government-run-like-heaven-by-americans/ (last accessed Feb. 3, 2010).

2. PHIL. CONST.

The Doctrine of Condonation of Misconduct of Public Officers Committed During a Previous Term (Doctrine) is presented in this Article as an example of a method ingrained in the governmental setup that will perpetuate misdeeds by public officers. This Doctrine is, however, more odious than the other, more shady methods. This is because the rule finds its origin in a judicial pronouncement; hence, it is given the imprimatur of legitimacy by the very government it wreaks havoc on.

This Article is made timely by the upcoming elections in May 2010. This Doctrine will inevitably resurface and be brandished by officials seeking re-election, even if they have been tainted by malfeasance or misfeasance in office. Worse, some creative lawyers may seek to expand the application of the doctrine to give legal cover to convicted criminals seeking higher office,[3] making it appear that the vote of the people will wipe away past plundering. This Article seeks to show that such attempts and theories have no rightful place in the legal sphere. Elections should be a tool to put in place true public servants. It should not be used, through this Doctrine, to perpetuate known criminals in the seat of power.

A. Statement of the Problem

The Doctrine is of American origin which sets forth two similar propositions.

The first proposition of the Doctrine is that a public officer cannot be administratively removed from the public position he currently holds by reason of misconduct, malfeasance, or misfeasance committed by him during the previous term. This is the general proposition which applies to all kinds of public officers, whether appointive or elective.[4] The phrase *previous term rule* is used to describe this proposition.

The second proposition is more restrictive in scope and applies only to elective officials. Known as the *Doctrine of Condonation*, it expresses that an elective public official who has been reelected to his position cannot be removed administratively for acts committed during his previous term because, by reelecting the public officer into office, the electorate has been deemed to have condoned or forgiven his acts during the previous term. By the process of reelecting the public officer, they have cleansed him of all his previous "sins" and the public officer becomes immune from removal by way of administrative charges.

3. Although the pronouncements against these are quite clear, such as that set forth in Ingco v. Sanchez, 21 SCRA 1292 (1967) and Luciano v. The Provincial Governor, 28 SCRA 517, 526-27 (1969).

4. As will be seen, the Philippine cases have only been applied to elective officials.

This Doctrine, including both its propositions, was introduced into this country in *Pascual v. Hon. Provincial Board of Nueva Ecija.*[5]

This Article seeks to point out the following:

1. The 1987 Constitution sets forth a strict public policy regarding public officers. This policy was not constitutionally-mandated when *Pascual* was decided.
2. Taking into consideration this formulation of public policy, the Doctrine should be abandoned.
3. The statute in this jurisdiction which allows administrative removal for local government officials, when understood in the light of jurisprudence and the rules on statutory construction, allows removal for misdeeds during a previous term.
4. When the Supreme Court introduced the Doctrine in this jurisdiction, it did not take into account the many factors relevant to the principle. It simply followed an alleged "general rule" in the U.S. that the Doctrine was of widespread acceptance, thereby haphazardly introducing it into this jurisdiction.
5. In later cases invoking the rule, the application of the Doctrine is made automatically, the Court still failing to take into consideration the relevant factors involved.

B. Scope of the Study

1. Scope of "Public Officers"

A public officer has been defined as an individual with a public office.[6] This definition covers both elective and appointive officials. In examining the Doctrine as applied in this jurisdiction however, this Article will deal only with elective local government officials. The reason for this limitation is that in the Philippines, cases that have dealt with and considered the prior term rule and the doctrine of condonation have been cases involving these elective officials.

In order to pinpoint the many factors and circumstances used in applying the Doctrine in the U.S., other types of elective officials in that country will

5. Pascual v. Hon. Provincial Board of Nueva Ecija, 106 Phil. 466, 471 (1959) [hereinafter *Pascual*].

6. RUPERTO MARTIN, ADMINISTRATIVE LAW, LAW OF PUBLIC OFFICERS AND ELECTIONS LAW 140 (1987).

be considered. These include district attorneys,[7] judges,[8] clerks of district courts,[9] county commissioner,[10] sheriffs,[11] treasurers of cities,[12] and other public offices which require election instead of appointment.

Consequently, there have been many occasions for the various state Supreme Courts to ponder, ruminate and decide cases where the Condonation Doctrine has been used. In so doing, there has been an abundant source of authorities that have studied the problem in-depth and have come up with a myriad number of rationales in allowing or disallowing a removal for acts previously committed. These decisions, which have resulted in the Doctrine becoming more complex and intricate, will be examined in order to point out the many details and circumstances that must be considered in the application of the doctrine. The complex doctrine found in the U.S. decisions will be contrasted with what appears is its simplistic application in this jurisdiction.

2. Scope of Statutes

The statute that will be the subject of this Article will be limited to the applicable provisions of the Local Government Code[13] which deal with removal and suspension of public officials. Also, the criminal or civil laws that result in forfeiture of office will not be examined because the prior term rule applies only to administrative cases. However, the characteristics of criminal and administrative cases which result in removal will be differentiated and contrasted with each other in order to highlight their varying natures and effects.

The main provision of law that will be subjected to scrutiny is found in the Local Government Code which provides for removal and suspension on the grounds of "dishonesty, oppression, misconduct in office, gross negligence, or dereliction of duty."[14] This is because the application of the Doctrine of Condonation has often hinged on the construction of the phrase *in office*.

7. Allen v. Tufts, 17 ALR 274 (1921).

8. *In re* Inquiry Relating to Richard J. Rome, 542 P.2d 676 (1975).

9. State ex rel. Beck, Atty. Gen., et al., v. Harvey, 80 P.2d 1095 (1938).

10. The State of Kansas v. Floyd Schroeder, 430 P.2d 304 (1967).

11. State ex rel. Douglas v. Megaarden, 88 NW 412 (1901).

12. Hawkins v. Common Council of City of Grand Rapids, 158 NW 953 (1916).

13. An Act Providing for a Local Government Code of 1991 [LOCAL GOVERNMENT CODE], Republic Act No. 7160, (1991).

14. *Id.* § 60 (c).

II. THE CONSTITUTIONAL POLICY ON PUBLIC OFFICERS

A constitution, it is said, is the manifestation of the express will of the people. In it, the sovereign distributes power to the different departments of government and allots to them the spheres within which they will exercise their power. A constitution however, does not only distribute power but sets the limits on its exercise so that government will not become abusive but will serve the people. The constitution places barriers that government must not cross. As a starting point of this inquiry, an examination of the Philippine Constitution, past and present must be made to understand what the prevailing constitutional policy is towards public officers and to examine how the differing policies of the 1935, 1973, and 1987 Constitutions may have played a role in the genesis, continuation, and possible nullification of the Doctrine of Condonation. The public policy today towards public officers, and the public policy at the time of the promulgation of the 1935 Constitution, when the Doctrine was introduced in this jurisdiction, will be looked into to see what constitutional considerations were present at the time, if any.

The policy of the Constitution regarding public officers and their duty to the people must be examined in order to understand the prevailing attitude this jurisdiction has toward these public officers. This is because jurisdictions that have allowed removal of public officers for acts committed during a previous term have often looked into the prevailing public policy in order to decide one way or the other.[15] It may be the crucial consideration that enables one court to decide in favor of removal. As such, an inquiry into the three Constitutions will trace the progression of the public policy the Philippines has on public officers. It will answer the following questions: What is the present public policy as defined by the Constitution? Is there a stricter policy now or a more lenient one? Has there been a change in attitude from that of the past?

A. The 1987 Constitution's Policy on Public Office

By the time former President Ferdinand Edralin Marcos was unceremoniously booted out of the country, the ordinary man on the street was sick of the excesses of the government and was fed up with the corruption, deceit, and graft that were prevalent among public officers and employees. These vices seemed to be ingrained in the persons who were supposed to serve the public, and there seemed no way to exorcise these evils from them. The writers of the present Constitution were aware of this negative attitude towards the public service sector and they took measures and defined policies that public officials were to follow. These policies and measures were meant to ensure the fidelity of the public officers to their

15. *Schroeder*, 430 P.2d at 314.

primary duty to serve the people. This sentiment is readily evident from a perusal of the Constitutional Convention speeches and debates, most notably the discussion which preceded the inclusion of what is now Article II, Section 27 of the Constitution,[16] which will be set forth shortly.

The Declaration of Principles and State Policies found in Article II of the 1987 Constitution spells out the role of the government and their duty to the people in Section 4 thus: "The prime duty of the government is to serve and protect the people."[17]

In the same article, the 1987 Constitution commits the State to keep public officials in line and ensure that only officials who have the correct character serve the public. It also vows to provide for measures to chastise those who fail to meet the high standards set therein: "The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption."[18]

As was alluded to above, the discussions leading up to the inclusion of this new Section in the Declaration of Principles and State Policies makes clear that the framers felt that nothing less except a constitutional mandate was necessary in order to remove the cancers affecting public office. Section 27 was proposed by Commissioner Crispino M. de Castro who explained the necessity of having such a pronouncement in the fundamental law:[19] "I am requesting that a mandate be made by our Constitution to recognize this very evil of our society and that we take positive and effective measures to eradicate it if possible."[20]

Two other commissioners voiced their approval of the provision and likewise expressed the need for such a pronouncement. Commissioner Ponciano L. Bennagen said, "I feel that we need this in the Declaration of Principles to remind us to be ever vigilant of the ills of graft and corruption which, if unchecked, can undermine any legitimate authority."[21]

To this was added the voice of Bishop Teodoro Bacani who explained how the misdeeds of public officers were adversely affecting the citizenry and thus the timeliness of the proposed provision:

> And hence, I believe that it will be very necessary and very helpful at least, to have in this Constitution an explicit provision on that (graft and

16. PHIL. CONST. art. II, § 27.

17. PHIL. CONST. art. II, § 4.

18. PHIL. CONST. art. II, § 27.

19. IV RECORD OF THE CONSTITUTIONAL COMMISSION 4 (1986) [hereinafter IV RECORD].

20. *Id.*

21. *Id.* at 5.

> corruption), if only to serve also as a flag to wave for an increase of morale and morals in our country which will in turn, alleviate our poverty.[22]

Although one would assume that such a proposal would meet the approval of all the commissioners, the Records show that the inclusion of Section 27 met some resistance. For instance, Commissioner Teofisto Guingona objected to the provision on the ground that, among others, there were enough provisions on the accountability of public officers already and that the inclusion of such provision in the Constitution would give the misimpression that the Filipinos were essentially dishonest.[23] Other obstacles were pointed out by the provision's proponent, when he said that his proposal was being passed around from one committee to the other making him feel that no one wanted to address the problem.[24] In the end, however, the necessity of the proposal was recognized and its opponents were finally convinced of its importance. The provision was unanimously approved without objection, with only three commissioners abstaining.[25] The significance of what is now Section 27 can be culled from the following discussion:

> COMM. SUAREZ. Does the Commissioner feel that this declaration is a culmination of all these measures which are designed to encourage public officers to live a public life of honesty and integrity?
>
> COMM. PADILLA. That is correct. The provisions on Accountability of Public Officers, the Ombudsman and even Education are all complementary in support of this principle of honesty and integrity in the public service.[26]

The next applicable constitutional provision is found in Section 1 of Article XI, entitled "Accountability of Public Officers."[27] The import of public office and the character that a public official must possess are spelled out in Section 1, that "[p]ublic office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice and lead modest lives."[28] The provision was explained by Fr. Joaquin Bernas, S.J. that in a representative

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22. *Id.* at 7.
23. *Id.* at 5.
24. *Id.* Comm. de Castro had complained that his proposed resolution was first referred to the Committee on Accountability of Public Officers, next to the Committee on the Declaration of Principles, and that now it was in danger of not even being included at all.
25. IV RECORD 7.
26. *Id.* at 6.
27. PHIL. CONST. art. XI. § 1.
28. PHIL. CONST. art. XI, § 1.

government, such as the Philippines, "the officers being mere agents and not rulers of the people ... accepts office pursuant to the provisions of law and holds the office as a trust for the people whom he represents."[29]

The scope of *public trust* has also been defined thus: "The trust attached to a public office should be exercised in behalf of the government or of the citizens and extends to all matters within the range of the duties pertaining to office."[30]

As a whole, the Constitution wants to ensure that the highest standards of honesty, integrity, and efficiency are found in a public official in order to meet the public trust. It dictates that a public official must not only possess morality above reproach, but also that the public official must be competent and able. Failure of a public official to meet the standards set by the Constitution runs counter to these fundamental ideals enshrined in the basic law.

As can be seen, the 1987 Constitution has at least three provisions dealing with a public officer's conduct. These provisions tell the people, as much as warns the public officials themselves, of the State's policy towards them.

These three provisions in the Constitution are a result of a constant progression in attitude towards public office. They reflect the highest standards for a public officer to follow, higher than any other time in this country's history. These standards were deemed so important to the people that they decided to enshrine them in the highest law, thereby emphasizing that public officers must not stray from paths bordered by the Constitution.

Did the two former Constitutions require such high ideals to be associated with public office? Could it be said that the 1987 Constitution imposes a standard for public officers, stricter than that set in the 1935 and 1973 Constitutions?

Let us examine then, the policy mandated by the 1935 and 1973 Constitutions and see how they contrast with the 1987 in order to understand these changing standards.

B. The 1935 Constitution's Policy on Public Office

What did the 1935 Constitution have to say about public officers and public office? The simple answer is that it says nothing at all. There are no provisions regarding public office as a public trust or the duty of the State to

29. JOAQUIN G. BERNAS, S.J. THE 1987 PHILIPPINE CONSTITUTION: A REVIEWER-PRIMER 440 (4th ed. 2002) (citing Justice Malcolm in Cornejo v. Gabriel, 41 Phil. 188, 194 (1920)).

30. MARTIN, *supra* note 7, at 94.

maintain honesty and integrity in public office. The provision that comes closest to dealing with public office is Section 2 of Article II,[31] from which Section 4 of Article II of the 1987 Constitution[32] originated. It reads: "The defense of the State is a prime duty of government, and in fulfillment of this duty all citizens may be required by law to render personal military or civil service."[33]

Contrasted with Section 4 of the 1987 Constitution,[34] it is readily apparent that the two provisions emphasize different policies and definitions as to the prime duty of government. The older provision defines the highest duty of the government as the protector of the people. The State was made into the defender of the people, its champion. As written, there seems to be a sort of militaristic overtone that suggests that as long as the State vanquishes its foes, whether in the form of an enemy country or some natural calamity, the State fulfills its purpose. It says nothing about serving the people, which the present Constitution defines as the *prime duty* of government hand-in-hand with protection.

By including service to the people, the 1987 Constitution transformed the role of government from one of defense to that of service. While the 1935 provision seemed to look outward, telling the State to defend the country from anything harmful to it, the 1987 provision asks the State not only to look outward but to look inward, to look not for the enemies of the country but to look and focus its attention on the country itself and the needs of its people.

The most important distinction between the present Constitution and the 1935 Constitution is that, as mentioned, the latter utterly lacks the express provisions in the former regarding public office and public officers. It does not express that the duty of the State is to "maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption."[35] Neither does it mandate that "public officers must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice and lead modest lives."[36]

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31. 1935 PHIL. CONST. art. II, § 2 (superseded 1971).

32. PHIL. CONST. art. II, § 4.

33. 1935 PHIL. CONST. art. II, § 2 (superseded 1971).

34. PHIL. CONST. art. II, § 4.

35. PHIL. CONST. art. II, § 27.

36. PHIL. CONST. art. XI, § 1. That is not to say that the 1935 Constitution allowed or turned a blind eye to illegal conduct. The point here is that the policy of the state against them was not constitutionally mandated.

From this, it can be said that there is now a stricter policy as regards public officers as directed by the present Constitution. This policy was not a constitutional mandate back in 1959, when the Doctrine of Condonation was first introduced in this country in *Pascual v. Hon. Provincial Board of Nueva Ecija*.[37] This is an important observation. The scale between removal or condonation has been so balanced that a constitutional pronouncement may easily tip the scales in favor of one or the other.[38] Looking at the constitutional background therefore in 1959, when the 1935 Constitution was in effect, it seems reasonable to conclude that condonation could have found easier acceptance and could have been more easily adopted by the Supreme Court since the express provisions against lack of integrity in public office were not yet written into the Constitution.

C. The 1973 Constitution's Policy on Public Office

The 1973 Constitution was not as bare as the 1935 Constitution. It is in the 1973 Constitution that a whole article was, for the first time, devoted to the "Accountability of Public Officers," which was found in its Article XIII. Section 1, Article XIII,[39] from which Section 1 of Article XI of the 1987 Constitution[40] was patterned, reads as follows: "Public office is a public trust. Public officers and employees shall serve with the highest degree of responsibility, integrity, loyalty and efficiency, and shall remain accountable to the people."[41]

The only difference from the present provision is that public officers are now expressly required to "act with patriotism, justice and lead modest lives."[42] In the 1973 Constitution therefore, there is a heightened awareness of the responsibility of a public officer to the people whom he is required to serve. It is here that public office is made into a public trust, accountable to the people.

However, the *prime duty* of the State defined in the 1935 Constitution remained the same. The State continues to be the *defender of the people* and its duty to act in the service of the people has not yet been made into a constitutional mandate. Still, the 1973 Constitution, as compared with the 1935 Constitution, made a great leap regarding the duties of a public officer. It made clear that a public officer must serve with integrity and be free of

37. *Pascual,* 106 Phil. at 466.

38. Thomas J. Goger, *Removal of Public Officers for Misconduct During Previous Term,* 42 ALR 3d 691, 695 (1970).

39. 1973 PHIL. CONST. art. XIII, § 1 (superseded 1986).

40. PHIL. CONST. art. XI, § 1.

41. 1973 PHIL. CONST. art. XIII, § 1 (superseded 1986).

42. PHIL. CONST. art. XI, § 1.

corruption. In fine, while the 1973 Constitution was undoubtedly stricter than the first, it was still not as strict as the present one.

CONSTITUTIONAL CHANGES IN ATTITUDE TOWARDS PUBLIC OFFICE: A SIDE BY SIDE COMPARISON OF THE THREE CONSTITUTIONS

1935 CONSTITUTION	1973 CONSTITUTION	1987 CONSTITUTION
1. The defense of the State is a prime duty of government, and in fulfillment of this duty all citizens may be required by law to render personal military or civil service.[43]	1. The defense of the State is a prime duty of government, and in fulfillment of this duty all citizens may be required by law to render personal military or civil service.[44]	1. The prime duty of the Government is to serve and protect the people. The Government may call upon the people to defend the State, and in fulfillment thereof, all citizens may be required, under conditions provided by law, to render personal, military or civil service.[45]

43. 1935 PHIL. CONST. art. II, § 2 (superseded 1971).

44. 1973 PHIL. CONST. art. II, § 2 (superseded 1986).

45. PHIL. CONST. art. II, § 4.

	2. Public office is a public trust. Public officers and employees shall serve with the highest degree of responsibility, integrity, loyalty, and efficiency, and shall remain accountable to the people.[46]	2. The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.[47]
		3. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency and act with patriotism and justice, and lead modest lives.[48]
No express policy toward public office.	Policy of public office as public trust introduced; characteristic of public service likewise introduced.	Public policy is now with increased strictness toward public office; more requirements.

D. Effect of Constitutional Changes on the Doctrine of Condonation

As already pointed out, more than any time in Philippine history, the present constitution directs public officers to observe the strictest adherence to good conduct. As opposed to previous constitutions, the 1987 Constitution makes it plain that corruption, irresponsibility, and even inefficiency are not to be tolerated and that those who offend against these provisions must be removed from their positions of being servants of the people. How then can the doctrine of condonation survive when the present Constitution is taken into account? The constitutional mandate and the Doctrine of Condonation directly oppose each other. If an officer's failure to maintain honesty, integrity, and efficiency in the government is condoned, the State would then fail in its duty to serve the people and to maintain the public service

46. 1973 PHIL. CONST. art. XIII, § 1 (superseded 1986).

47. PHIL. CONST. art. II, § 27.

48. PHIL. CONST. art. XI, § 1.

free from such corrupt and inefficient people. In simpler terms, the Philippines created by the 1987 Constitution seems to be not big enough for the both of them.

The Constitution, being the supreme law of the land, laws and doctrines which are incompatible with it must be deemed unconstitutional or abandoned. With the new provisions imposing fidelity to the service of the people free of corruption, the doctrine of condonation has been placed on precarious footing.

The potency and strength of these new constitutional mandates to revise, if not abandon laws and doctrines, contrary to them, cannot be doubted. Although they seem to be mere policies, they have the force of law. This proposition was made explicit by Justice Fernan in his concurring opinion in *Radio Communications of the Philippines Inc. v. Philcomm.*,[49]: "Also from the constitutional standpoint, that is to render clear that in appropriate cases the Declaration of Principles and State Policies have a mandatory force of their own and are not just mere statements of noble platitudes or glittering generalities unrelated to reality."[50]

In a later case, the Supreme Court has categorized constitutional policies as amounting to rights, the breach of which serve as a cause of action cognizable by the courts. Recognizing the fact that many do not perceive the importance of these policies, the Court said, "While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil or political rights enumerated in the latter."[51]

Thus, in the clash between these constitutional policies and the rationale for condonation,[52] the former should take precedence over the latter.

III. NATURE OF AN ADMINISTRATIVE CASE FOR REMOVAL

In this jurisdiction, the doctrine of condonation of misconduct during a previous term or office applies only to administrative cases against public officers. This has been the rule of the Supreme Court since *Ingco v.*

49. Radio Communications of the Philippines, Inc. v. Philcomm, 65 SCRA 82 (1975).

50. *Id.* at 95.

51. Oposa v. Factoran, 224 SCRA 792, 804 (1993).

52. As will be seen later on, the rationale of condonation has to do with the public policy that once a man is elected to office by the people, he should not be removed easily.

Sanchez.[53] As a starting point to understanding the doctrine, therefore, an understanding of the concept of an administrative case is necessary.

The distinction between criminal and administrative cases for removal was elucidated by the Supreme Court in *Ingco* where the appellant, Mayor Ingco was charged with estafa through falsification of public documents committed while he was mayor thus:

> There is a whale of difference between the two cases. The basis of the investigation which has been commenced here and is sought to be restrained is a criminal accusation, the object of which is to cause the indictment and punishment of petitioner-appellant as a private citizen; whereas in the case cited, the subject of the investigation was an administrative charge against the officer therein involved and its object was merely to cause his suspension or removal from office. While the criminal case involves the character of the mayor as a private citizen and the People of the Philippines as a community is a party to the case, an administrative case involves only his actuations as a public officer as to affect the populace of the municipality where he serves ... 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 a group of persons but to the State as a whole.[54]

Adding to this, Justice Esguerra in his separate opinion in *Oliveros v. Villaluz*[55] explained: "Administrative punishment has for its primary purpose to purge the government of undesirable elements for the efficient and faithful performance of the public service it renders, while punishment for a crime is a vindication for an offense against the body politic."[56]

Clarifying that an administrative case refers to the misconduct of a public officer which affects his public duty, the Supreme Court in *Lacson v. Roque*,[57] discussed the term *misconduct* as used in an administrative case:

> Misconduct in office has a definite and well understood legal meaning. By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the office.

Furthermore, American jurisprudence states, "To warrant the removal of an officer, the misconduct, misfeasance or malfeasance must have direct relation to and be connected with the performance of official duties, and

53. *Ingco*, 21 SCRA at 1292.

54. *Id.* at 1294.

55. Oliveros v. Villaluz, 57 SCRA 163 (1974).

56. *Id.* at 215.

57. Lacson v. Roque, 92 Phil. 456, 465 (1953).

amount either to maladministration or to willful and intentional neglect and failure to discharge the duties of his office."[58]

An administrative case for removal therefore, is essentially a method by which a public officer is sought to be removed from his office because he was found to have conducted himself in a manner that adversely affects his performance in a particular public office. The goal of such a proceeding is to weed out and remove from a position of public service one who has shown ineptness and lack of aptitude in the performance of his duties to the public.

IV. STATUTORY BASIS FOR REMOVAL

In determining whether or not the Doctrine of Condonation will apply in a particular jurisdiction, the starting and most primary considerations are the statutory and constitutional provisions existing in the jurisdiction regarding the removal of public officers. These are the first things courts have to consider in deciding whether or not the rule applies. All authorities are in agreement as to this first proposition: "The grounds which will justify the removal of a public officer are usually established by constitution or statute."[59]

The same authority, after an exhaustive examination of removal cases, concluded:

> The cases treated throughout this annotation have all recognized, at least impliedly, that the propriety of removing a public officer from his current term of office for misconduct which he allegedly committed in a prior term of office is governed by the language of the statute or constitutional provision applicable to the facts of the particular case.[60]

Taking the lead from this, in examining the propriety of removal of officers for acts committed during a prior term in the Philippine jurisdiction, attention must be given to the statutory basis for removal in this country. Not only must attention be focused on this all-important factor, but the statute itself must be carefully dissected, scrutinized and sifted through to finally determine whether or not law mandates that public officers may still be removed for prior misconduct notwithstanding subsequent election to public office.

The Local Government Code of 1991 is the source of the removal statute. The law as it was written provides for administrative removal and the grounds therefore. It states:

> *Grounds for Disciplinary Action* - An elective local official may be disciplined, suspended, or removed from office on any of the following grounds:

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58. 63 Am. Jur. 2D, Public Officers § 190 (1972).

59. Goger, *supra* note 39, at 695.

60. *Id.* at 697.

1. Disloyalty to the Republic of the Philippines;
2. Culpable violation of the Constitution;
3. Dishonesty, oppression, misconduct in office, gross negligence, or dereliction of duty;
4. Commission of any offense involving moral turpitude or an offense punishable by at least *prision mayor*;
5. Abuse of authority;
6. Unauthorized absence for fifteen (15) consecutive working days, except in the case of members of the sangguniang panlalawigan, sangguniang panlunsod, sanggunian bayan, and sangguniang barangay;
7. Application for, or acquisition of, foreign citizenship or residence or the status of an immigrant of another country; and
8. Such other grounds as may be provided in this Code and other laws.

An elective local official may be removed from office on the grounds enumerated above by order of the proper court.[61]

As this Article deals only with the misconduct of public officers during a previous term, only Section 60 (c)[62] will be scrutinized. The other grounds for removal of a public officer are beyond the scope of this Article.

In general, authorities have frequently grouped removal statutes into three categories: (1) those which make no mention of terms; (2) those which expressly allow removal only for acts committed during the present term; and (3) those which also expressly allow removal for acts committed during the prior term.[63]

An example of wording of a statute which allows only removal in the present term is a Texas statute which says, "[n]o officer shall be prosecuted or removed from office for any act he may have committed prior to his election to office."[64] Another is a California law stating that "a sheriff cannot be removed from office, while serving his second term for offenses committed during the first term."[65]

An example of the third type of removal statute allowing removal for previous misconduct is an Oklahoma statute which allows ejection from office upon "acts of commission, omission, or neglect committed, done or omitted during a previous or preceding term of office."[66] Another such

61. LOCAL GOVERNMENT CODE, § 60.
62. *Id.* at (c).
63. Goger, *supra* note 39, at 695.
64. *Id.* at 702.
65. *In re* Fudula, 147 A. 67 (1929).
66. Goger, *supra* note 39, at 702.

statute is found in Section 4670 of the General Code of Ohio[67] which allows complaints against a member of their council who "is or has been interested, directly or indirectly, in the profits of a contract, job, work or service."[68]

It can be seen from a reading of the Local Government Code that it does not belong to the two latter categories which expressly allow or disallow removal for acts committed during a prior term.[69] The Section does not fall into either category since it is silent as to whether or not removal may be made for previous misconduct or only for misconduct in the present term. The law may then be said to be a part of the first category of removal statutes: those which are basically "silent" as to the issue of prior or present term removal.

It is when Section 60[70] is viewed this way, as being "silent" with regard to the question of prior or present term removal that the problem begins. This is where courts in the U.S. start parting ways and their decisions begin contradicting each other. When the statute expressly says so, there is no problem since the answer is clear, but when the law is silent, the job is left to the judiciary to decide the question. As could have been guessed, when a particular statute is silent, courts have resolved the question differently.

State ex rel. Billon v. Bourgeouis[71] is an example of a case interpreting such a *silent* statute. Here, the Supreme Court of Louisiana allowed the removal of a public officer on the ground that their statute, like ours was a *silent* statute, declaring that since it made no mention of when removal should be made, the law impliedly allowed it to be done anytime because there was no limitation:

> Neither of these articles specify in what time a suit to remove an officer shall be instituted, whether in one term or another. Nor do they specify any limitation as to the offense. We must therefore conclude that the articles were intended to remove any unworthy officer while in office, irrespective of the fact of whether the act complained of was committed during his first or subsequent term.[72]

It may be said however, that Section 60 does mention, albeit not expressly, a point in time when removal may be made. This point in time refers to that span when the public officer is *in office* which would mean that any misconduct he commits while *in office* renders him susceptible to removal, the term in which he did it being immaterial. If seen in this light,

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67. OHIO GEN. CODE § 4670 (Anderson 1931).

68. *In re* Coppola, 98 NE 2d 807, 809 (1951).

69. LOCAL GOVERNMENT CODE, § 60.

70. *Id.*

71. State ex rel. Billon v. Bourgeouis, 14 S. 28 (1983).

72. *Id.* at 30.

there have been many differing opinions as to just what point in time *in office* means. A closer examination of this divergence of opinion is needed.

A. Significance of the Interpretation of Misconduct in Office

The three seemingly simple words of Section 60 (c) — "misconduct in office" — are of paramount importance in determining whether or not condonation should apply. The removal of an officer has often hinged upon the construction of this very phrase. Thus, "[t]he construction of statutes permitting the removal of a public officer on grounds of misconduct in office has sometimes been contingent upon the interpretation of the phrase 'in office' as referring to the term of office in which the alleged misconduct must occur to justify the accused officer's removal."[73]

Not surprisingly, the two schools of thought regarding removal for previous misconduct have opposing interpretations of what *misconduct in office* really means.

B. Jurisprudence Favoring Condonation

Proponents of condonation adhere to the theory that the phrase *in office* should be understood as *each term in office*. According to them, this is necessary since one rationale for the condonation doctrine is that "each term is separate from other terms, and that the re-election to office operates as a condonation of the officer's previous misconduct to the extent of removing the right to remove him therefrom."[74] For this group, therefore, *in office* actually talks about a *term of office*. It should be noted that most cases interpreting *in office* in this light have given as a reason for ruling in this manner that the term should be given a strict construction because of the quasi-penal or even penal nature of a removal proceeding.[75]

An example of this kind of construction is given in *State ex rel. Stokes v. Probate Court of Cuyahoga County*.[76] The Supreme Court of Ohio defined the question before it this way: "Thus, the specific question is whether 'misfeasance or malfeasance in office' refers to conduct during the existing term or refers more broadly to conduct during the existing term and also during prior terms."[77]

In reaching its decision, the court therein first explained that removal statutes are quasi-penal in character and should be strictly construed. They then ruled, "[a] ground for removal from office under this section, the

73. Goger, *supra* note 39, at 698.

74. 43 Am. Jur. Public Officers § 202 (1942).

75. *Id.*

76. State ex rel. Stokes v. Probate Court of Cuyahoga Co., 258 NE 2d 594 (1970).

77. *Id.* at 595.

misfeasance or malfeasance alleged as a ground for removal must occur during the term from which removal is sought and be subsequent to the exercise of the power to elect vested in the electorate of the municipality."[78]

The court then concluded by observing that all the charges against the public officer in the case were alleged to have been committed prior to his present term, hence, the court decided, the question had become moot and academic.[79]

It is also explained that the term *in office* was a "time limitation with regard to the grounds for removal, so that an officer could not be removed for misbehavior which occurred prior to the taking of office."[80] And later pointing out that each term of office should be considered a separate entity, the Court was of the opinion that the constitutional provision did not apply to an offense committed prior to the inception of a term of office, since in such a case it might be assumed that the voters knew of and condoned the offense.[81]

C. Jurisprudence Favoring Removal

On the other hand, those in favor of removal interpret *in office* as just that. *In office* makes no reference to terms but simply refers to *office* as an institution of government itself. Thus, *misconduct in office* as a ground for removal simply means that if a person is occupying a particular office and is guilty of malfeasance or misfeasance therein, then that is already a ground for removal. Since the statute merely says *in office*, it would be error to add a concept that is different as *in office* by saying the statute refers to *term in office*. Seen in this light, it does not matter that the misconduct, malfeasance or misfeasance was committed in a previous term or a present term. What is of essence is that the wrongdoing was committed while the public official was holding an office. This construction and the reasons therefore will be explained below.

D. Interpretation Should be in Favor of Removal

1. Refutation of the Theory that Removal Statutes are Penal or Quasi-Penal in Nature

The strict interpretation of removal statutes used by opposing cases is due to the fact that they treat removal proceedings as being penal in nature. This is not the universal rule, however, since just as many courts have interpreted removal statutes as not being of penal or quasi-penal in nature. Rather, these authorities classify a removal proceeding as being either civil or remedial. As

78. *Id.* at 596.

79. *Id.* at 602.

80. Goger, *supra* note 39, at 698.

81. *Stokes*, 258 NE 2d at 602.

was said in *Territory v. Sanches,*[82] "[b]ut we again apply the test that the procedure for removal is not penal in purpose, but remedial and protective."[83]

And as further explained by the court in reaching its finding:

> [w]e do not perceive why a proceeding should be considered criminal which does not provide for the imposition of a fine or imprisonment for the one through it found to be unfit for office, but leaves him still subject to either or both if the acts for which he is removed are so punishable, which does not even deprive him of property, since in this country a civil office is not property, but which merely by the judgment rendered prevents him from holding the office for which he has been found unfit for the remainder of his term, and does not disqualify him for reelection or reappointment for another term, We hold, then, that the trial judge had the right to direct a verdict as in a civil case.[84]

In another case, the Supreme Court of Kansas agreed with the proposition that quo warranto proceedings to oust a public officer was civil in nature. The Court simply said in one sentence, "[T]his procedure is civil in its nature rather than criminal."[85]

Can we apply these rulings to this jurisdiction? Do we treat administrative cases for the removal of a public officer from his office as penal or quasi-penal? To find the answer, we must first examine some cases touching on this subject and compare them to the nature of public office.

There are some cases in Philippine jurisprudence that have held that administrative cases are considered as having a penal or quasi-penal characteristic. Among these cases are *Cabal v. Kapunan*[86] and *Pascual v. Board of Medical Examiners*.[87]

In the first case, Manuel Cabal of the Armed Forces of the Philippines was faced with graft and corruption charges under the Anti-Graft and Corrupt Practices Act. When the accused was required to answer questions, he invoked his right against self-incrimination. The Supreme Court, upholding his position, ruled that the administrative proceeding in this case partook of the nature of a criminal or penal proceeding because:

> [T]he Anti-Graft Law ... authorizes the forfeiture to the State of property of a public officer or employee which is manifestly out of proportion to his

82. Territory v. Sanches, 94 P. 954 (1908).

83. *Id.* at 955.

84. *Id.* at 956.

85. State ex rel. Beck v. Harvey 80 P.2d at 1096 (1938).

86. Cabal v. Kapunan, 6 SCRA 1059 (1962).

87. Pascual v. Board of Medical Examiners, 28 SCRA 344 (1969) [hereinafter *Pascual v. Medical Board*].

> salary as such public officer or employee and his other lawful income and the income from legitimately acquired property. Such forfeiture has been held, however, to partake of the nature of a penalty... As a consequence, proceedings for forfeiture of property are deemed criminal or penal.[88]

The next case deals with a doctor, Arsenio Pascual, Jr., who was charged with immorality in the performance of his medical duties.[89] The Board of Medical Examiners sought to have him removed from the practice of medicine by revoking his license. The Court also labeled the administrative case before it as having a penal nature, in accordance with its previous decision in the Cabal case:

> The proceeding for forfeiture while administrative in character thus possesses a criminal or penal aspect. The case before us is not dissimilar: petitioner would be similarly disadvantaged. He could suffer not the forfeiture of property but the revocation of his license as a medical practitioner, for some an even greater deprivation.[90]

Now, we move to the nature of public office to determine whether or not an administrative case for removal from office can also be considered as partaking of a penal or criminal proceeding. As a general premise, the courts have accepted the universal proposition that "no person has a right to hold office."[91] In *Cabal*, the Court ruled that the provisions of the Anti-Graft law[92] which provides for forfeiture of property made the administrative case penal in nature. This ruling, however, cannot apply to a public office simply because public office is not deemed *property* of which one can be deprived of without due process of law. As explained by Justice Martin: "A public office is not the property of the office holder within the provision of the Constitution against deprivation of one's property without due process of law, but is revocable according to the will and appointment of the people as expressed in the Constitution."[93]

Also, as further explained by Francisco Carreon in his book:

> Public office is not, strictly speaking, a property right, nor a grant or contract or obligation which cannot be impaired but a public agency or trust. There is no such thing as a vested interest or an estate in office, or even an absolute right to hold office. Public offices are created for the purpose of effecting the end for which government has been instituted, which is the common good, and not for the profit, honor, private interest

88. *Cabal*, 6 SCRA at 1063.

89. *Pascual v. Medical Board*, 28 SCRA at 345.

90. *Id.* at 348.

91. Segovia v. Noel, 47 Phil. 543, 547 (1925).

92. Anti-Graft and Corrupt Practices Act, Republic Act No. 3019 (1960).

93. Martin, *supra* note 7, at 95.

> of any one man, family or class of men. In the last analysis, a public office is a privilege in the gift of state.[94]

In the *Pascual v. Medical Board* case, the Supreme Court characterized the proceedings therein as penal because of the fact that Arsenio Pascual, Jr. might be deprived of his privilege to practice medicine. Such characterization would not apply to an administrative proceeding for removal. Although the public officer also faces a proceeding wherein he may be deprived of his means of sustenance, the fact that a public office is a public trust, one wherein the incumbent is involved in "some portion of the sovereign power and function of the government to be exercised by him for the benefit of the public"[95] makes him more susceptible to removal. While the practice of medicine has been labeled one affecting public interest,[96] it still does not reach the status of a public office which is in the nature of a public trust, where the officer is in office precisely for the purpose of serving the government and the public.

Taking into consideration (a) the nature of public office as being one of public trust; (b) the rule that a public officer has no vested right to office; and (c) the pronouncements that public office is not a property right, it can be concluded that the cases in which administrative proceedings were considered as penal in nature do not apply to cases in which public officers are sought to be removed due to misconduct. The label given in *Sanches* seems most apt in that these cases are more protective in nature, i.e., they are cases which seek to remedy a situation by removing the cause of the misconduct.

In this jurisdiction therefore, removal proceedings do not partake of penal or even quasi-penal proceedings so that a strict interpretation of the removal statute found in Section 60 of the Local Government Code can be applied. Cases describing certain administrative proceedings as penal do not apply due to the nature of public office as a public trust.

Given this conclusion, the reason given by proponents of condonation that removal statutes must be strictly interpreted because of the penal nature of these proceedings must fail. There is no reason, therefore, to give them a strict interpretation. The more liberal interpretation of *in office* as meaning only that and not *term of office* must therefore be adopted. This interpretation would also be in line with the public trust aspect of public office.

2. The Meaning of *In Office*

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94. FRANCISCO CARREON, ADMINISTRATIVE LAW, PUBLIC OFFICERS AND ELECTIONS (1950).

95. *Id.* at 145.

96. Department of Education, Culture and Sports v. San Diego, 180 SCRA 535, 538-39 (1989).

In *Newman v. Strobel*[97] and the *Opinion of the Justices*[98] both Supreme Courts refused to give a strict interpretation of the phrase *in office*. *Newman*, which dealt with an officer who had been reelected to his office and was being removed for acts committed during a previous term, the applicable statute provided for removal of a public official for "any misconduct, maladministration, malfeasance or malversation in office."[99] In construing the phrase, the court ruled that the statute should be construed as was found in the wording of the law and therefore, what the Legislature intended:

> Clearly under the statute, the wrongdoing must relate to the official duties of the accused, and must have been committed while he was in office. But it will be noted that this section does not provide that the misconduct, maladministration, malfeasance or malversation shall have occurred during the particular term which the offender was serving when the proceedings were instituted. It simply refers to wrongdoing `in office'. Doubtless the reference is to the same office which the accused was filling when the attempt was made to remove him, and not to some other, but there is nothing to indicate that the legislature intended to treat each term of office to which an official might be reelected to succeed himself as entirely distinct, separate, and apart from all other terms of the same office, and to confine the remedy provided for to the identical term which accused was serving at the moment the ouster proceedings were instituted. In fact if the legislature had intended any such limitation, it would have so indicated by some appropriate word or expression.[100]

In defending its construction principle, the court said, "It is elementary that a statute should be construed so as to effectuate the intent of the legislature: the language of the act must be read in harmony with the purpose and aim of the lawmaking body."[101]

In *Opinion of the Justices*, the Supreme Court of Massachusetts was asked to render an advisory opinion for the House of Representatives of that state with regard to the interpretation of an impeachment provision found in the state Constitution. The House had grave doubts as to the interpretation of the phrase *misconduct and maladministration in office* and so asked the court to render its opinion as to what this meant exactly.[102]

The court pointed out:

> This constitutional provision...is to be 'given a construction adapted to carry into effect its purpose'; And the Constitution 'was written to be

97. Newman v. Strobel, 259 NYS 402 (1932).

98. Opinion of the Justices, 33 NE 2d 275 (1941).

99. *Newman*, 259 NYS at 403.

100. *Id.* at 403.

101. *Id.* at 404.

102. *Opinion of the Justices,* 33 NE 2d at 279.

> understood by the voters to whom it was submitted for approval'; Its words and phrases are to be interpreted 'in the sense most obvious to the common understanding, because they were proposed for adoption by all the people entitled to vote'; Such words and phrases 'are chosen to express generic ideas and not nice shades of distinction'; They are 'not to be given a constricted meaning.'[103]

After stating that the plain language of the law must be followed the court proceeded to explain what misconduct *in office* meant:

> In our opinion therefore, in order to carry out into effect the obvious purpose of the provisions relating to impeachment, any 'misconduct' of an officer of the Commonwealth while holding his office that can be said reasonably to render him unfit to continue to hold office is such misconduct 'in' his office as constitutes ground for impeachment.
>
> And such misconduct or mal-administration of a councilor, in our opinion, would occur 'in' his office, within the meaning of the constitution, notwithstanding the intervention of one or more reelections to councilor.[104]

E. Interpretations of Key Words in Section 60 of the Local Government Code

In dealing with the issue of condonation of misconduct during a previous term, the Supreme Court has chosen to side with the strict interpretation of *in office* as will be seen in the *Pascual* case.[105] That they have adopted the construction of the phrase as meaning *terms in office* and equating one with the other is evident since they ruled in *Pascual* that each term is separate from another. This construction however, is not the only one found in domestic case law.

In this jurisdiction, there is also authority that the two terms *in office* and *term in office* cannot be used interchangeably and mixed with one another. The Supreme Court has defined the two phrases differently, giving one phrase an entirely different meaning from the other. That there is a substantial difference between them has been explained in jurisprudence: "A 'term' is the period of time during which a person may claim to hold the office as of right, and fixes the interval after which the several incumbents shall succeed one another."[106]

While "office" is the right, authority, and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion

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103. *Id.*

104. *Id.*

105. *Pascual*, 106 Phil. at 466.

106. Topacio Nueno v. Angeles, 76 Phil. 12, 21 (1946).

of the sovereign functions of the government, to be exercised by him for the benefit of the public.[107]

Thus, as Justice Esguerra explained in *Oliveros:* "'Office' is an institutional unit of government, while 'term' is a matter of time during which a person may hold office."[108]

The Philippine Supreme Court has also therefore made a delineation and distinction between the two terms. In so doing it can be reasonably concluded that the Court in those cases has not recognized that a *term of office* is synonymous with the phrase *in office*. They have, in so making such a distinction recognized that one phrase does not mean the other, hence, the term *in office* found in Section 60[109] cannot encompass and carry within its language a different concept as a *term of office*. There is then a conflict in this jurisdiction regarding these two phrases, i.e., between one saying *in office* may mean *term of office*; and the other concluding that the two are different.

F. Proposed Construction in the Light of Philippine Law

In order to resolve the conflict, let us turn to two rules on statutory construction. When applied, the conclusion will be inescapable that to rule that *in office* may be used interchangeably with *term of office* is a violation of these time-honored principles.

1. When the Law is Clear, Courts Have No Choice But to Apply It.

As the rules of statutory construction dictate, in enacting the Local Government Code, Congress was deemed to have meant what it wrote in the statute since it is fundamental that legislative intent must be determined from the language of the statute itself.[110] Since the two terms have different meanings, Congress must be deemed to have chosen one meaning over the other. And in choosing to write into the law *in office*, Congress should be deemed to have made its decision clear.

Looking at it this way, it can be seen that there is nothing ambiguous about Section 60 when it speaks of the situation within which the misconduct must occur in order to be susceptible to removal. When the law is clear, it is the duty of the courts apply the law as written and refrain from interpretation. It has been provided in *Gonzaga v. Court of Appeals*[111] that it "has been repeated time and time again that where the statutory norm speaks unequivocally, there is nothing for the courts to do except to apply it. The

107. *Oliveros*, 57 SCRA at 217.

108. *Id.*

109. LOCAL GOVERNMENT CODE, § 60.

110. Tanada v. Yulo, 61 Phil 517 (1935).

111. Gonzaga v. Court of Appeals, 51 SCRA 383 (1973).

law leaving no doubt as to the scope of its operation, must be obeyed. Our decisions have consistently been to that effect."[112]

2. Laws are Interpreted in the Light of the Constitution.

One of the rules of statutory construction is that the construction of statutes must support the implementation of the constitution.[113] This principle was used by the Supreme Court in rejecting a proposed construction of a minimum wage directive by a penny-pinching corporation.[114] The Court, in refusing to allow a construction at odds with the social justice principle of the Constitution, stressed that the construction used by the corporation likewise ran counter to the intent of congress.[115]

From this, it is not such a far logical jump to apply this principle against the Doctrine. Section 60 (c), like the legislative enactment in *Automotive*, should be construed in a like manner, i.e, it should be construed in conformity with the constitutionally-mandated policies on public officers. To construe it differently would run counter to an established statutory construction principle, since such a construction would view the law outside of what the Constitution seeks to implement. It should be remembered also that the present Local Government Code was enacted in 1991, after the 1987 Constitution came into effect. Hence, the legislative branch of government cannot have intended to allow a construction running counter to the constitutional mandate.

While a strong argument may be made that the rules of statutory construction given above demand that *in office* be interpreted as meaning that as long as a public officer commits any wrongdoing while holding public office, irrespective of the being re-elected or not, the real ammunition of proponents of the theory is found not in statute but in the decisions of the Supreme Court. The Doctrine of Condonation had already been established before the Local Government Code or its predecessor, the Decentralization Act came into effect. It is thus imperative that a review of the jurisprudential basis of the doctrine be examined and analyzed.

V. PHILIPPINE JURISPRUDENTIAL BASIS FOR THE DOCTRINE OF CONDONATION

A. Origin of the Doctrine: A Closer Examination of Pascual v. Hon. Provincial Board of Nueva Ecija

112. *Id.* at 385.

113. UNIVERSITY OF THE PHILIPPINES COLLEGE OF LAW, SOURCEBOOK SERIES PROJECT: STATUTORY CONSTRUCTION 177 (1991).

114. Automotive Parts & Equipment Co., Inc. v. Lingad, 30 SCRA 251 (1969).

115. *Id.* at 253-54.

The Doctrine of Condonation of misconduct during a previous term first came to light in this jurisdiction in *Pascual*.[116] Prior to this, there had been no definite pronouncement as to where the Supreme Court stood on the issue. As a matter of fact, the issue had never been elevated to the highest Court for consideration. Since this case was the source of the Doctrine, a close scrutiny of the case and the thinking process used by the Supreme Court in reaching its precedent-setting decision must be made.

The case involved Arturo B. Pascual, mayor of San Jose, Nueva Ecija. He had been elected to office in November 1951 and was again reelected in 1955. In October of 1956, well within Pascual's second term, administrative charges were filed with the Provincial Board by the Acting Provincial Governor of Nueva Ecija. Among the charges were that Pascual assumed and usurped the judicial power of a justice of the peace by accepting a criminal complaint, conducting the preliminary investigation thereon, issuing a bail bond of ₱ 60,000.00, issuing the corresponding warrant of arrest and afterwards reducing the bail bond to ₱ 30,000.00. All these acts were alleged to have been committed on the 18th and 20th day of December 1954 or during his first term in office.

Pascual then raised the issue of condonation by filing a motion to dismiss with the Provincial Board, claiming that he could not be disciplined for acts committed during his previous term. After the denial of his motion to dismiss and motion for reconsideration in the Provincial Board, Pascual eventually went to the Supreme Court on appeal. The Court then promulgated its four and one-half page decision in 1959.[117]

The Supreme Court defined the issue thus: "We now come to the main issue of the controversy — the legality of disciplining an elective municipal official for a wrongful act committed by him during his immediately preceding term of office."[118] The Court then proceeded to resort to authorities in the United States.[119] Thus, in crafting the Philippine Doctrine of Condonation, the Court sourced it from the U.S. doctrine.[120]

In reaching its precedent-setting decision, the Supreme Court relied on three sources: Corpus Juris Secundum, American Jurisprudence, and American Law Reports.[121] That the Court relied heavily on these sources is evident. That they relied on them solely is probable. In fact, the three

116. *Pascual*, 106 Phil. at 471.

117. *Id.*

118. *Id.* at 472.

119. *Id.*

120. A closer scrutiny of U.S. doctrines in its entirety will be made later on.

121. *Pascual*, 106 Phil. at 471-72.

paragraphs the Court used to define the Doctrine and its rationale in this jurisdiction were bodily lifted verbatim from these sources thus:

> Offenses committed, or acts done, during previous term are generally held not to furnish cause for removal and this is especially true where the constitution provides that the penalty in proceedings for removal shall not extend beyond the removal from office, and disqualification from holding office for the term for which the officer was elected or appointed.[122]

> [E]ach term is separate from other terms, and that the reelection to office operates as a condonation of the officer's previous misconduct to the extent of cutting of the right to remove him therefor.[123]

> The Court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to elect their officers. When the people have elected a man to office, it must be assumed that they disregarded or forgave his faults or misconduct, if he had been guilty of any. It is not for the Court, by reason of such faults or misconduct to practically overrule the will of the people.[124]

At this point, let us try to reconstruct the Court's thinking. Right before resolving the issue, the Court was faced with two very simple choices: to adopt the Doctrine of Condonation and prohibit the removal of Pascual or reject the Doctrine and allow him to be removed. After weighing the options, the Court decided to go along with "the great weight of authority"[125] and thus the Doctine was introduced into the country.

That was all well and fine. After all, it was the Court's duty to decide one way or the other. At that moment of fate, however, the Supreme Court decided to go with the safer view as they reasoned that that was where the *weight of authority* lay. However, in siding with the greater weight of authority, there were some very important points that the Supreme Court chose to ignore. These important points attached to the U.S. doctrine were not overlooked by the Court because of inadvertence or ignorance. Truly, these salient points were staring the Supreme Court right in its face because they were printed in the very sources that the Court used as *authorities*. In thus adopting the Doctrine, the Court lent a blind eye to these points.

The first point is that there really was no great *weight of authority*. That there is such a superior number of cases adopting the theory of condonation was not at all true. This was merely what text writers perceived it to be. In other words, text writers believe and think as a whole, that most courts in the U.S. had decided in favor of condonation. The fact that such thinking

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122. 67 CJS Officers § 60 (1950).

123. 43 Am. Jur. Public Officers § 202 (1942).

124. *Allen*, 17 ALR at 281.

125. *Pascual*, 106 Phil. at 471.

was not accurate was plainly pointed out by *Allen* in its very first paragraph thus:

> It cannot apparently be said that there is a decided weight of authority on either side of the question, although the courts and text writers have sometimes regarded the weight of authority as denying the right to remove one from office because of misconduct during a prior term; and some courts which have held to the contrary have considered that the larger number of cases considered this view. As will be seen from this annotation, the cases, numerically considered are nearly evenly divided.[126]

Also:

> Although, as above shown, there are many cases which hold that misconduct in a prior term of office is not ground for removal of a public officer, there is almost an equal number of cases to the contrary effect, that such misconduct may constitute a ground for removal or impeachment.[127]

In *Territory v. Sanches*,[128] the court made an inquiry into cases which favored condonation and those which favored removal and concluded that, "(O)n either we can have the company of able lawyers and eminent jurists."[129] As a whole therefore, the matter of which side had numerical superiority really depended upon the case which was being read. Cases in favor of removal mention that more authorities agreed with them while those espousing condonation insist that the authorities sided with them. Simply put, both sides were claiming they had the advantage.

The first reason given by the Court in adopting the doctrine was therefore erroneous. They have not sided with the greater number of legal scholars since there were an almost equal number of other legal scholars taking an opposing view. In reality therefore, what the Court did was to simply adopt the Doctrine of Condonation without the issue being decided one way or the other. Taken from a scientific concept, what the Supreme Court did was to accept a mere hypothesis, one that had not yet been proven as the correct thinking as there were still many with a contrary view. In other words, the issue was still very much debatable and not at all laid down. It was inaccurate for the Court to say that most authorities had thought as they do. The mantle of safety therefore, that the Court was merely siding with the majority must be removed.

The second point that the Court chose to ignore was the fact that Pascual's situation was not uncommon in U.S. jurisdiction. There were many cases involving an official reelected to the same position. In such cases,

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126. *Allen*, 17 ALR at 279.

127. *Id.* at 285.

128. *Territory*, 94 P. 954.

129. *Id.* at 955.

this was made an exception to the Doctrine of Condonation by many courts. Courts that have ruled in favor of condonation have recognized this exception, which was plainly spelled out in Corpus Juris Secundum, an American authority the Court had relied upon. It says: "It has also been held that officers who are their own successors may be removed for acts done in their prior terms of office."[130] In other words, an accepted exception to the rule on condonation is the situation where an incumbent is reelected into the same office.[131] The reason for this exception applies in jurisdictions (like ours) which have strong public policies as regard public officers, which will be more clearly discussed later. This exception clearly applied to Pascual as he was reelected to the same position, hence, he was his own successor. Again in choosing to side with the doctrine of condonation, this exception was apparently overlooked, a situation which was on all-fours with *Pascual.*

In the end, the Supreme Court, in *Pascual* decided to adopt a doctrine that had: (1) not been decided with authority in the U.S. from whence it came; and (2) admitted of an exception on public policy grounds, a public policy more in line with the present Constitution.

B. Condonation Gains Inertial Strength: A Review of Cases Following Pascual

After *Pascual* came a host of other cases adopting and strengthening the doctrine. As can be seen from a review of these cases, later Justices of the Supreme Court unhesitatingly and unquestioningly accepted the Pascual doctrine in its entirety. Because of this, the doctrine had been elevated to the status of legal truth, a dogma to be applied in all cases. Except for Justice Esguerra's opinion in *Oilveros* there seems to have been no doubt as to the applicability of the doctrine, and it was therefore applied uniformly.

The cases, stretching from 1959 to 1999, are basically identical in their situations. They all deal with a local government official who is sought to be administratively disciplined for misconduct during his previous term but after his reelection. Let us then take a brief review of these cases and see how condonation has become so well entrenched in jurisprudence.

1. *Lizares v. Hechanova*[132]

The first case to apply condonation after *Pascual* was the 1966 case of *Lizares v. Hechanova et al.* In that case, the official sought to be disciplined was Mario Lizares, the Mayor of Talisay, Negros Occidental. Lizares was administratively charged on 1 June 1962 with "corruption and maladministration in the disbursement of public funds" for shady dealings

130. 67 CJS at 248.

131. This exception will be thoroughly examined during the discussion on the American rule.

132. Lizares v. Hechanova et al., 17 SCRA 288 (1966).

involving infrastructure projects, namely asphalting the Talisay-Catabla road on private property. Although Lizares was acquitted by the Provincial Board in July-August of 1963, he was suspended for one month by the Executive Secretary two months later, after the case was appealed. When Lizares was slapped with the suspension order, he elevated the case to the Supreme Court in March of 1964, on the theory that the Chief Executive had no power to revoke his acquittal by the Provincial Board.[133]

While the case was pending and going through all these appeals, Lizares was reelected as Mayor for another term, from 1 January 1964 until 31 December 1967. In resolving the issue, the Court, speaking through Justice JBL Reyes, dismissed the case on the ground that the issue had become moot and academic. Said the Court: "Considering the facts narrated, the expiration of petitioner's term of office during which the acts charged were committed, and his subsequent reelection the petition must be dismissed for the reason that the issue has become academic."[134]

The Court then quoted the four paragraphs of the *ratio decidendi* of *Pascual* and ended thus:

> Since petitioner, having been duly reelected, is no longer amenable to administrative sanction for any acts committed during his former tenure, the determination whether the respondents validly acted in imposing upon him one month's suspension for an act done during his previous term as mayor is now merely of theoretical importance.[135]

As can be seen, the sole rationale of the Supreme Court was the *Pascual* doctrine. It is another example of the automatic application of the previous term rule without an understanding of the doctrine in its entirety. If the Court had taken pains to look at the doctrine, it would have seen that this is not a case wherein the doctrine of condonation can apply, but an exception. From the recital of facts, it can be seen that Lizares was charged with "corruption and maladministration in the disbursement of public funds."[136] In other words, he was charged with misappropriation of public funds, which as will be seen later on, is a charge that is labeled as a *continuing offense*.[137] As Lizares was charged with a continuing offense, he had the duty to account for the funds from the moment it was misappropriated until he had accounted for it, which duty continued notwithstanding his reelection. Hence, he was being removed for misconduct which continued into his present term since there had been no accounting of the misappropriated

133. *Id.* at 292.

134. *Id.* at 293.

135. *Id.* at 294.

136. *Id.* at 289.

137. This exception will be thoroughly examined during the discussion on the American rule.

funds yet. Lizares was thus removed for misconduct not during his previous term but during his present.

2. *Aguinaldo v. Santos*[138]

The next case involved Governor Rodolfo E. Aguinaldo of Cagayan who was elected to his position in 1988. During his first term as governor, he was administratively charged with disloyalty to the Republic for allegedly taking part in the December 1989 coup attempt. Although he denied the charges, then Secretary of Local Government Luis Santos found him guilty as charged and ordered his removal from office in 1990.[139] Although he was already ordered removed, the governor was able to raise the issue of his removal to the Supreme Court, citing constitutional arguments. The removal of Aguinaldo remained in limbo for two years while the wheels of justice slowly ground on. Given this respite, Aguinaldo filed his certificate of candidacy for the position of Governor in the 11 May 1992 elections. Three petitions for disqualification were filed against him, on the ground that he had been removed from office, thereby rendering him incapable of being a candidate.[140]

The Commission on Elections (COMELEC), acting on petitions for his disqualification, ordered Aguinaldo disqualified as candidate in the local elections, however granting him the right to be voted on since their order would not have become final by 11th of May.[141] Aguinaldo then bought some more time by seeking to have the order of disqualification by the COMELEC nullified by the Supreme Court. Acting on the petition, the Supreme Court obliged Aguinaldo by first granting a temporary restraining order, thereby preventing the COMELEC from implementing its disqualification order and meanwhile, allowing Aguinaldo's votes to be canvassed. In that resolution, the Court also ordered the COMELEC to refrain from proclaiming a winner.[142]

In June 1992, the Court, nullified the disqualification order of the COMELEC on the ground that the 1990 order of removal of the Secretary of Local Government had not yet attained finality and was still pending with the Court. When all the smoke had cleared, and after the votes were canvassed, Aguinaldo had won by a landslide.

By then, enough time had been killed and the way was now clear for the Court to apply the Doctrine of Condonation.

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138. Aguinaldo v. Santos, 212 SCRA 768 (1992).

139. *Id.* at 770.

140. *Id.*

141. *Id.* at 771.

142. *Id.*

The Court said:

> Petitioner's reelection to the position of Governor of Cagayan has rendered the administrative case pending before us moot and academic. It appears that after the canvassing of votes, petitioner garnered the most number of votes among the candidates for governor of Cagayan province.[143]

In keeping with the tradition in condonation cases, the Court then again cited the exact four paragraphs used in the *Pascual* case, also quoted in *Linares* and ended: "Clearly then, the rule is that a public official cannot be removed for administrative misconduct committed during a prior term, since his 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."[144]

This case stands out as emphasizing one point: the theory of condonation allows a smart politician to beat an administrative charge for his removal. Consider the facts: Aguinaldo had already been removed by the Secretary of Local Government in 1990. By immediately raising the issue to the Supreme Court, the issue remained tied up in the appeal process, preventing the removal from becoming final. And on the pretext that the issue was still pending decision, even the COMELEC's order of disqualification was suspended, allowing Aguinaldo enough time to be voted on, eventually reassume the governorship and have the charges against him obliterated by condonation.

3. *Reyes v. Commission on Elections*[145]

Renato Reyes was the municipal mayor of Bongabong, Oriental Mindoro, having been elected on 11 May 1992.[146] During his first term of office, administrative cases were filed against him with the Sangguniang Panlalawigan. He was charged with (a) exacting ₱ 50,000 from each market stall holder in the public market, (b) checks issued to him by the National Reconciliation and Development Program of the Department of Interior and Local Government were never received by the Municipal Treasurer nor reflected in his books of account and (c) with taking 27 heads of cattle from beneficiaries of a cattle dispersal program after the latter had reared and fattened the cattle for seven months. The Sanggunian Panlalawigan then found him guilty of these charges on 6 February 1995.[147]

143. *Id.* at 772.

144. *Aguinaldo*, 212 SCRA at 773.

145. Reyes v. Commission on Elections, 254 SCRA 514 (1996). In reading this case, it would be good to keep the *Aguinaldo* decision in mind.

146. *Id.* at 517.

147. *Id.* at 518.

Upon learning of the decision, Reyes filed a petition for *certiorari,* prohibition and injunction with the Regional Trial Court (RTC), alleging due process violations. A temporary restraining order (TRO) was granted by the court, preventing the Sanggunian from proceeding with the case and from serving the decision on Reyes. Until this point, Reyes had been very vigilant in keeping the removal from attaining finality. However, on 3 March 1995, Reyes committed a mistake by allowing the TRO to expire. The decision then became final and even though he made a futile attempt to avoid being served, the Sangguniang Panlalawigan ordered him to vacate his position. Before the Sanggunian was able to order him out, however, Reyes was able to file his certificate of candidacy.[148]

A petition for disqualification was then filed in the COMELEC but the latter body did not come out with its decision by the time the elections were held on 8 May 1995. Reyes was consequently voted on. It was only on the next day that the COMELEC issued an order disqualifying him. However, the Municipal Board of Canvassers was unaware of the decision and subsequently proclaimed him the winner in the mayoralty race.[149] This proclamation was in turn set aside by the COMELEC since Reyes had already been disqualified.[150]

Reyes then appealed to the Supreme Court on the ground that the COMELEC decision was devoid of basis on the Sanggunian removal had not yet attained finality. He put forth the theory that the charges against him were rendered moot and academic by his being reelected. He invoked *Aguinaldo v. COMELEC* as a shield against his removal.[151]

In deciding against Reyes, the Supreme Court correctly refused to apply the Aguinaldo case. The Court pointed out the differences between the two situations thus:

> But that was because in that case (Aguinaldo), before the petition questioning the validity of the administrative decision removing petitioner could be decided, the term of office during which the alleged misconduct was committed expired. Removal cannot extend beyond the term during which the alleged misconduct was committed. If a public official is not removed before his term of office expires, he can no longer be removed if he is thereafter reelected for another term. This is the rationale for the ruling in the two Aguinaldo cases.[152]

148. *Id.*

149. *Id.*

150. *Id.* at 519.

151. *Reyes,* 254 SCRA at 524.

152. *Id.*

The case at bar is the very opposite of those cases. Here, although petitioner Reyes brought an action to question the decision in the administrative case, the TRO issued in the action he brought lapsed, with the result that the decision was served on petitioner and it thereafter became final on 3 April, 1995, because the petitioner failed to appeal to the Office of the President. He was thus validly removed from office and pursuant to Section 40 (b) of the Local Government Code,[153] he was disqualified from running for reelection.[154]

In trying to prevent his removal by using the Doctrine of Condonation, Reyes had tried to do the exact thing Aguinaldo had done — prevent the decision from becoming final until election day came. This he correctly did by instantly appealing the removal decision to the RTC and securing a TRO. In contrast to the Aguinaldo case however, the decision for removal was able to become final due to a lack of vigilance on Reyes' part. Reyes was therefore very close to beating the administrative removal and it was only due to his neglect that the Sanggunian removal became final.[155]

It should also be noted that Reyes was charged with making illegal exactions from market stall holders, for not accounting for checks issued by the national government and for stealing cattle. Like the *Lizares* case, these charges are *continuing offenses* which fall under the rule that condonation will not apply. Again, the Supreme Court failed to take this fact into account when it decided the case. A more through discussion of these facts will be taken into account below.

4. *Malinao v. Reyes*[156]

This case was the result of two contending government officials. It all started when Mayor Wilfredo Red filed administrative charges against his Human Resource Manager, Virginia Malinao with the Office of the Ombudsman for gross neglect of duty, inefficiency, and incompetence. Malinao retaliated by filing her own administrative charge against the Mayor for abuse of authority and denial of due process.[157]

The case centered around the issue of the validity of a decision promulgated by the Sangguniang Panlalawigan against the mayor. It appears the first decision finding the mayor guilty did not meet the standards for a decision as provided in the Local Government Code. This was the main issue of the case. Condonation was, however, used by the Court in finding

153. LOCAL GOVERNMENT CODE, § 40 (b).

154. *Reyes*, 254 SCRA at 525-26.

155. *Id.* at 527.

156. Malinao v. Reyes, 255 SCRA 616 (1996).

157. *Id.* at 622.

that the administrative charges were rendered moot and academic by the reelection of Mayor Red.[158]

5. *Salalima et al v. Guingona, et al.*[159]

Albay Governor Romeo R. Salalima was administratively charged with others for having his province enter into a retainer agreement with private lawyers and paying out ₱ 7,380,410.31 for legal services, without authority. The retainer contract was signed in 1989. Moreover, Salalima was also administratively charged with unlawfully entering into a negotiated contract on 6 March 1992.[160] It was only after Salalima was re-elected in the 11 May 1992 elections, however, that administrative charges were brought against him for acts committed in his previous term. In an Administrative Order dated 7 October 1994, during Salalima's second term in office, the Office of the President suspended Salalima.[161]

Pascual and *Aguinaldo* served as the basis for the Supreme Court to rule that Salalima's administrative cases involving the retainer agreement and March 1992 contract should be dismissed, on account of condonation.[162] The Supreme Court, noting the factual antecedents of *Pascual,* easily disposed of the argument of the Solicitor General that the Doctrine should be applied only if the administrative case had been filed prior to the official's re-election.[163]

What makes *Salalima* interesting, however, is that the Supreme Court fashioned out a new underlying policy for favoring the Doctrine of Condonation, i.e., to prevent re-elected officials from being hounded by his political enemies:

> The rule adopted in *Pascual,* qualified in *Aguinaldo* insofar as criminal cases are concerned, is still a good law. Such a rule is not only founded on the theory that an official's reelection expressed the sovereign will of the electorate to forgive or condone any act or omission constituting a ground for administrative discipline which was committed during his previous term. We may add that sound policy dictates it. To rule otherwise would open the floodgates to exacerbating endless partisan contests between the reelected official and his political enemies, who may not stop to hound the former during his new term with administrative cases for acts alleged to have been committed during his previous term. His second term may thus be devoted to defending himself in the said cases to the detriment of public

158. *Id.* at 624.

159. Salalima et al., v. Guingona, et al., 257 SCRA 55 (1996).

160. *Id.* at 60.

161. *Id.*

162. *Id.* at 112.

163. *Id.*

> service. This doctrine of forgiveness or condonation cannot, however, apply to criminal acts which the reelected official may have committed during his previous term.[164]

Thus, in *Salalima*, the Doctrine gained further strength, the Supreme Court even erecting a public policy ground to prop it up. This new policy argument, however, will be held up against the contrary Constitutional policies mandating strict scrutiny into a public official's integrity, as will be discussed later on.

6. *Garcia v. Mojica*[165]

Four days before the May 1998 elections, incumbent Cebu City Mayor Alvin Garcia entered into an alleged anomalous contract for the asphalting of the city. After his re-election, the Office of the Ombudsman slapped a six month suspension order on him stemming from the contract.[166] Apparently anticipating that Garcia would put up the defense of condonation, the respondents in the case argued that the electorate could not have possibly known of the asphalting contract which was entered into a mere four days before the election and hence, could not have possibly re-elected him with the knowledge of his anomalous activities.[167] Also, the respondents pointed out that the asphalting contract was to be effective during his re-elective term, hence, should be deemed as having been performed during his re-elected term.[168]

The importance of Garcia is that it fashioned an evidentiary rule to be used in condonation cases. It should be recalled that the *assumption* of the knowledge of the electorate of the past misdeeds of an official seeking reelection was one of the cornerstones of *Pascual*. The Supreme Court in *Garcia*, however, elevated this knowledge not only to an *assumption*, but to a *conclusive presumption*.[169]

The "new" policy against political enemies hounding re-elected officials crafted in *Salalima* was also cited to buttress the foregoing reasoning. Further, the factual underpinning of *Salalima* was also cited to dispose of the argument that the contract was to be performed during the re-elective term of Garcia.

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164. *Id.* at 115.

165. Garcia v. Mojica, 314 SCRA 207 (1999).

166. *Id.* at 322.

167. As will be seen later on, this argument has sufficient basis in U.S. state jurisprudence.

168. *Garcia,* 314 SCRA at 223.

169. *Id.* at 227-28 (emphasis supplied).

C. Similarities and Observations in the Cases

From these cases, it can be seen that all of them dealt with an incumbent public official who was later on re-elected to the same position. The Court then applied the Doctrine to render moot and academic the removal or suspension proceedings that were carried on or instituted in the succeeding term.

The Philippine rule on condonation then is very simple. It admits of no exceptions when the correct situation presents itself. This situation is of two kinds: (1) The public official has been re-elected to the same office and he is sought to be removed or suspended for misconduct committed in the previous term (*Pascual, Salalima, Garcia*), and (2) The public official is being removed or suspended for acts committed during his present term but during the pendency of the proceedings or during the pendency of an appeal, an election is held and the public official is re-elected into the same office (*Malinao, Reyes, Aguinaldo, Lizares*).

Under the circumstances, the Courts will dismiss the case, apply the Doctrine and have the case rendered moot and academic. The public official will then continue occupying the office from which removal was sought.

VI. THE AMERICAN RULE

While the Philippine rule is cut and dry and calls for automatic application under the proper circumstances, the American rule on condonation is much more complex, many factors being taken into account. U.S. Courts do not approach the problem as simplistically as Philippine courts. As was pointed out previously, there are just as many states that refuse to allow the doctrine than there are that apply it. Also, for those jurisdictions which apply the doctrine, the doctrine is not applied without exception. So for jurisdictions allowing condonation, the rule is not one of automatic application when the situation presents itself. There are still other important and essential factors to be considered. The American doctrine must then be likewise examined, its exceptions noted and no less important, its rationale analyzed.

The American cases which have applied the doctrine need not be examined anymore since they all generally follow the same reasoning as the *Pascual* case. What must be scrutinized are the cases which stray from the doctrine of condonation. These cases will enlighten us as to their wisdom and their applicability to the Philippine situation.

An examination of the following areas of the condonation doctrine will be made: (1) the rationale against condonation; (2) the own-successor theory; (3) misconduct being hidden from the electorate; (4) the gravity of the misconduct; and (5) misconduct continuing into the present term.

A. Rationale Against Condonation

The reasons for the adoption of the Doctrine of Condonation have already been stated as, among others, that: "each term is separate from other terms, and that the reelection to office operates as a condonation of the officer's previous misconduct to the extent of cutting of the right to remove him therefor."[170] Further,

> The Court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to elect their officers. When the people have elected a man to office, it must be assumed that they disregarded or forgave his faults or misconduct, if he had been guilty of any. It is not for the Court, by reason of such faults or misconduct to practically overrule the will of the people.[171]

With these in mind, consider the rationale for precluding the application of the Doctrine of Condonation. The main reason for not allowing condonation is a strong public policy concern regarding the high standards of public office. In jurisidictions refusing to succumb to the temptation of adopting condonation, the courts have seen the potentially disastrous effects of keeping a scalawag or a person charged with misconduct in public office, where he can continue to wreak havoc on the affairs of government. In order to prevent such a sorry state of affairs where higher authorities can do nothing but keep a man in office solely on the ground that he has been reelected, notwithstanding his obvious unfitness, these courts have allowed removal in order to protect the public from *bad* officers. They have not agreed with the theory that in placing a man back in office, the electorate has condoned his offenses.

That there is such a strong public policy concern with regard to the fitness of public officers was recognized in *Londerholm v. Schroeder*[172] where the Kansas Supreme Court debated about the propriety of removing an officer who was charged with conflict of interest: "[W]e think there is a public interest in the fitness for public office of one engaging in such calculated trafficking, even though the transactions occurred in a term immediately prior to the present term of the officer."[173]

In other cases, courts have endeavored to explain the purpose of removal statutes as protecting the public. One of the earliest cases rejecting the theory of condonation was the 1899 case of *State v. Welsh*.[174] In that case, the Supreme Court of Kansas explained the purpose of a removal as: "The very object of removal is to rid the community of a corrupt, incapable, or

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170. 43 Am. Jur. Public Officers § 202.

171. *Id.*

172. Londerholm v. Schroeder, 430 P. 2d 304 (1967).

173. *Id.* at 314.

174. State v. Welsh, 79 NW 369 (1899) [hereinafter *State v. Welsh*].

unworthy official. His acts during the previous term quite as effectually stamp him as such as those of that he may be serving."[175] Quoting from the earlier case of *State v. Hill*,[176] the court continued:

> The object of impeachment is to remove a corrupt or unworthy officer. If his term has expired and he is no longer in office, that object is attained, and the reason for his impeachment no longer exists; but if the officer is still an officer, he is amenable to impeachment, although the acts charged were committed in his previous term of office.[177]

The Supreme Court of New Mexico in *Territory* said that the goal of removal is not directed against the public officer to chastise him for his acts, but for the good of the public. The court said, "[T]he object of the removal of a public officer for official misconduct is not to punish the officer but to improve the public service from an unfit officer."[178]

In a similar vein is *Allen v. Tufts*,[179] in which the court said that the purpose of removal statutes is to "purge the public service from an unfit officer"[180]

In re Rome[181] expostulated on the purpose of removal statutes as protecting the public from officers possessing characteristics which are not fit for the particular office and in general, for service to the public.[182] The case involved an appellate court judge who had drawn the ire of women's liberation groups by rendering a limerick-like decision in a prostitution case.[183] The court, in talking about judicial disciplinary proceedings said: "The purpose of a judicial disciplinary proceeding is not to punish the judge for misconduct but rather to protect the public in maintaining the integrity

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175. *Id.* at 370.

176. State v. Hill, 55 NW 794 (1893).

177. *State v. Welsh*, 79 NW at 370.

178. *Territory*, 94 P. at 954.

179. *Allen*, 17 ALR 274.

180. *Id.* at 278.

181. *In re* Rome, 542 P.2d. 676 (1975).

182. *Id.* at 682–83.

183. A snippet from the literary creation of Judge Rome will give an idea of what was so offending:

> At the Brass Rail they met/ And for twenty dollars the trick was all set./ In separate cars they did pursue/to the sensuous apartment of (name left blank)/ Bound for her bed she spared not a minute/ Followed by Harris with his heart not in it!/ As she prepared to repose there in her bay / She was arrested by Harris to her great dismay! / Off to the jailhouse poor ___ was taken / Printed and mugged, her confidence shaken / Formally charged by this great State / With offering Harris to fornicate.

and efficiency of the office."[184] The court likewise did not make a distinction as to whether a wrongful act had been committed in a present or prior term of office.

In these cases then, removal proceedings are seen as a means to improve the government. By expelling those persons who have proven to be unsuitable for their position, these courts have granted the power of removal so that the government can be streamlined and its efficiency improved by cutting out the deadweight and those supposed public servants who seem to serve only themselves. Instead of following the Doctrine and keeping these officers in a position of authority, these courts have taken the more sensible and rational stand of booting out those who are found unworthy so they can no longer pose any danger to the affairs of government.

In *Tibbs v. City of Atlanta*,[185] the proposition was put before the court that Tibbs, a police officer who had been re-elected to his position, could not be removed by the Board of Police Commissioners because the acts he committed were done previous to his second term. The court said that such a proposition would be deleterious to the public interest and would hamper the board from weeding out negative elements from the police ranks.[186]

What the court here recognized is the inherent limitation found in the Doctrine, that such a doctrine in effect ties the hands of higher authorities from using their power to improve government by taking out unfit officers. In the end, the doctrine forces authorities to have to sit back and watch as officers who are adjudged unfit continue their work and misdeeds in office.

1. Clash Between Public Policies

We can conclude from the foregoing that there seems to be a clash between two types of public policy concerns: The first type, and which is one of the reasons for condonation, is the public policy concerning the primary power of the people to choose who will be their public officials and servants. Those in favor of condonation will see this as the stronger public policy concern since if removal is allowed, the electorate will be deprived of their right to choose and elect into office any person they want, even if that person has been charged with unfitness or misconduct in his office.

On the other hand, there is the other public policy concern of those in favor of removal. This concern, which is admittedly more strict and unforgiving, is directed to the ideal of what public service and accountability really means. The public policy is recognized that a public officer must be one possessing the highest virtues of integrity, honesty, discipline and moral

184. *In re Rome,* 542 P.2d at 682-83.

185. Tibbs v. City of Atlanta, 53 SE 811 (1906).

186. *Id.* at 813.

uprightness and once an officer fails in his duty to serve the public honestly and is found not to possess the mentioned characteristics but the opposite, he must be allowed to be removed in order to safeguard the public from his abuses. If he is kept in office, the only one to benefit will be the officer and the public will have to suffer.

2. Strong Public Policy in the Philippines Against Condonation

Which public policy then will prevail or ought to prevail in the Philippines? In the preceding cases, it was seen that courts which have allowed removal for previous term acts have examined the public interest or public policy prevailing in the jurisdiction to determine if there is a strict policy against public officers. If there is such strong public policy against erring public officers, removal may be had.

Does the Philippines have such a strong public policy against deviating officers? The answer is that we do have such a public policy which is emphatically, explicitly and clearly spelled out in basic law. One need not search very hard to determine what the public policy is, since a reading of Article II, Section 4[187] and Section 27[188] and Article XI, Section 1[189] gives a plain understanding that in this country, public officers hold office as a public trust and those who betray such trust by being dishonest, inefficient and corrupt fail to meet the stringent standards found in the Constitution and must be removed. As was explained in the first part of this Article, the present public policy is the most exacting one in this country's history, one that has resulted from the hard-learned lessons of the past.

In *Salalima*[190] and *Garcia*,[191] however, the Supreme Court set forth its own public policy that favors condonation, i.e., to prevent re-elected officials from being hounded by their political enemies. Such policy, however, is grounded on mere expedience and should not take precedence over the more emphatic provisions of the Constitution regarding fidelity by public servants to their offices. Favoring a policy that would, in effect, allow malfeasance or misfeasance no matter how true or duly proved to be swept under the rug thus appears to fly in the face of Constitutional provisions regarding the sanctity of public office and should wilt under the latter.

Since it can be said that the Philippines is one of those jurisdictions which has a strong public policy against public officers who fail to conduct themselves in a manner suitable for their position of trust, the Court in *Salalima* and *Garcia* should have taken this policy into consideration before

187. PHIL. CONST. art. II, § 4.

188. PHIL. CONST. art. II, § 27.

189. PHIL. CONST. art. XI, § 1.

190. *Salalima*, 257 SCRA 55.

191. *Garcia,* 314 SCRA 207.

fashioning a contrary policy. Being a constitutional imperative, it was incumbent upon them to have resolved the case in such a manner as is consistent with the basic law, instead of setting forth a questionable policy based more on evidentiary expedience than the determination of the truth.

B. The "Own-Successor" Theory

1. The Theory as a Well Recognized Exception

As explained previously, the American rule is not as simplistic in application as the Philippine rule. It is not a doctrine to be automatically applied but one that admits of exceptions. One of the most notable exceptions is known as the *own successor* theory. This exception has been accepted even by courts that have habitually ruled in favor of condonation. This was explained in *Hawkins v. Common Council of the City of Grand Rapids*,[192] where the Supreme Court of Michigan held that the general rule of condonation does not apply to one who succeeds himself in office: "While other well-considered cases, recognizing the general rule, make an exception where the accused officer, continuing in office by re-election, was charged with official misconduct in the same office during a preceding term."[193]

The court there pointed out that in previous cases where condonation was applied, the public officer therein was not his own successor in the same office. The court distinguished the present case with a previous one, saying that the public officer

> had not previous to his then-term been an incumbent of the office from which it was sought to remove him. We are not prepared to find in this case, nor to hold as a general rule, that the misconduct of an officer, who is his own successor, committed during the preceding term, may not be inquired into and furnish ground for his removal.[194]

The *own succ*essor doctrine has undoubtedly achieved the status of an exception to the condonation rule. That this is the weight of authority finds ample support in *Newman v. Strobel*,[195] where the New York Supreme Court ruled: "I think that the weight of authority favors the rule that misconduct in a prior term of office, where the tenure has been continuous, furnishes

192. Hawkins v. Common Council of the City of Grand Rapids, 158 NW 953 (1916).

193. *Id.* at 956.

194. *Id.* at 957.

195. *Newman*, 259 NYS 402.

adequate ground for the removal of the official."[196] The court therein then gave a run-down of the numerous authorities sustaining such a position.[197]

As a final word, it must be noted that well known authorities, speaking on the subject of removal for acts committed in a previous term, have indicated that in an *own successor* situation, removal is justified even for misconduct in a previous term. Corpus Juris Secundum provides that "officers who are their own successors may be removed for acts done in their prior terms of office."[198]

2. *Own Successor* Doctrine Explained

Simply put, an own successor is one who has been re-elected to the same position he held in the immediately preceding term. An example would be Ferdinand Eralin Marcos who was elected President in 1964 and was later re-elected to the same position as President in 1968.

The Doctrine contemplates a situation where an incumbent runs for the same position and wins in the election. This situation may sound uncannily familiar since it is on all fours with the situations in all the previously mentioned Philippine cases where condonation was applied. In all these cases, the official sought to be removed was reelected into the position he previously held.

The *own successor* theory in essence attacks one of the rationales of the Doctrine of Condonation, i.e., that each term is separate and distinct from the previous term and that a re-election will whitewash a previous term into a brand new one, free from any sins formerly committed. As an exception to the general rule, the *own successor* theory then says that in the case of a public official who succeeds himself, the situation presented is different. In case of a re-elected incumbent, each term should not be taken as separate and distinct but should be regarded as one continuous term of office. Hence, offenses committed in a previous term will provide grounds for removal because in the case of a re-elected incumbent, there is no previous term to speak of since he will be considered to have been serving only one continuous term without any break in his service. The theory then of separating each term of office as separate entities is debunked by an own successor.

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196. *Id.* at 406.

197. People ex rel. Burby v. Common Council of the City of Auburn, 33 NYS 165; Attorney General v. Tufts, 17 ALR 274; *State v. Welsh,* 79 NW 369; State ex rel. Douglas v. Megaarden, 88 NW 412; *Hawkins*, 158 NW 953; State, ex rel. Timothy v. Howse 183 SW 510; *State v. Hill,* 55 NW 794; *Territory*, 94 P. 954; State ex rel. Perez v. Whitaker 41 So. 218; Bilton v. Bourgeois, 14 So. 28; *Tibbs*, 53 SW 811; Brackenridge v. State 11 SW 630.

198. 67 CJS Officers § 60.

One of the first cases to apply this exception was the 1893 case of *Bilton v. Bourgeois.*[199] The latter, a re-elected sheriff, was sought to be removed for misconduct in his previous term. The court, in allowing the sheriff to be removed explained that:

> The defendant sheriff has been uninterruptedly in office since the commission of the acts complained of. There was, by his re-election, no interruption in his official tenure. At no time was there an interregnum. He was, by the constitution, to continue in office until his successor was elected and qualified. He was his own successor, the identical officer in both terms against whom charges are preferred. It is immaterial, therefore, whether they were committed during his present or immediate preceding term of office. His inability to hold the office results from the commission of said offenses, and at once renders him unfit to continue in office. The fact that he had been re-elected does not condone and purge the offense.[200]

In 1899, *State v. Welsh*[201] set forth the explanation that while the general rule may be that each term of office is separate and distinct, such is not the case for a re-elected official, thus rejecting one of the theories of the Doctrine. The court said:

> For many purposes each term of office is separate and entire. This is especially true with respect to the obligation of sureties. But there is no reason for so holding as to the incumbent. Being his own successor, there is no interregnum. His qualification marks the only connection between his terms. The commission of any of the prohibited acts the day before quite as particularly stamps him as an improper person to be intrusted with the performance of the duties of the particular office, as though done the day after. The fact of guilt with respect to that office warrants the conclusion that he may no longer with safety be trusted in discharging his duties.[202]

3. Philippine Jurisprudence Disregards the Exception

It can be seen from the foregoing that all the Philippine cases applying condonation fall into the exact situation that would otherwise call for an exception to the application of the Doctrine. Thus, Mayors Pascual, Lizares, and Garcia and Governors Aguinaldo and Salalima, all re-elected incumbents, fell under the exception. They should have therefore been removed, but were retained. Perhaps the Supreme Court overlooked this generally accepted exception.

It should be asked that even if the Court chooses, as it has indeed chosen, to adhere to condonation, should it not also accept the doctrine together with its accepted and recognized exceptions such as the *own successor*

199. *Bourgeois*, 14 So. 28 (1893).

200. *Id.* at 30.

201. *State v. Welsh*, 79 NW 369.

202. *Id.* at 371.

rule? Because if it does accept the Doctrine of Condonation while rejecting its connected exception, it is not looking at the theory holistically and is choosing only to apply one part of it. In the end it applied the Doctrine without fully understanding its differing intricacies and ramifications.

C . Misconduct Being Hidden From the Electorate

As was previously explained, the Doctrine of Condonation works on a number of assumptions and public policy considerations. Perhaps the greatest public policy consideration which gave rise to the doctrine is that the people have the fundamental right to choose who their public officers will be and no entity, not even the courts, can deprive them of this right. This justification is best expressed in *Pascual*:

> When the people have elected a man to office, it must be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. It is not for the court, by reason of such faults or misconduct, to practically overrule the will of the people.[203]

Indeed, in *Garcia*, as previously seen, the mere assumption in *Pascual* that the electorate has knowledge of past misdeeds was promoted to a conclusive presumption.

Also pertinent is this rationale found in *In re Fudula*[204] which said: "Each official term is a separate entity, and a citizen whom the electors have chosen to a public office cannot be deprived thereof because of nonperformance or misperformance of duty in some other office or during a prior term of the same office."[205] The Doctrine therefore assumes and even conclusively presumes the electorate knew of the misconduct. But is such a leap in conclusions valid? Can it be safely presumed or even assumed that the electorate possesses such a degree of omnipotence that they know of the acts of misconduct committed by public officers?

There are cases that point out this glaring flaw in the Doctine. Misconduct may easily be concealed by a public officer and the facts of such misconduct may not appear until he has been reelected into office by an ignorant electorate. How then can it be safely presumed that the electorate knew of his misconduct when they reelected him when the same was hidden from them?

This defect in the Doctrine was put to the fore by the Supreme Court of Kansas in *State v. Schroeder*[206] wherein the defendant interposed the defense

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203. *Pascual*, 106 Phil. at 472.

204. *In re* Fudula, 147 Atl 67 (1929).

205. *Id.* at 68.

206. State v. Schroeder, 430 Pac. 2d 304.

of condonation after he was reelected. The Court, in denying his argument said: "We would have difficulty supposing any electorate would knowingly reelect as guardian of the public funds one guilty of the deceitful dealings involved here... The wrongdoing has been concealed from public view and there is nothing before us which may fairly be interpreted as condonation by the electorate."[207]

Other cases have likewise recognized the stark reality that misconduct can be easily hidden from the electorate or the appointing authority and therefore debunked the theory of the electorate condoning previous offenses, such as: *State v. Welsh*,[208] *Bolton v. Tully*,[209] and *Sarisohn v. Appellate Division of Supreme Court*.[210]

On the other hand, an example of a case wherein previous misconduct was deemed to be condoned by reelection appears in *State v. Blake*.[211] Here, the court disallowed the removal of the public officer therein invoking the condonation rule. As one of the reasons for favoring the Doctrine, the Court mentioned that his misconduct was not hidden from the electorate, hence by electing him, people were able to make a knowing and well-informed decision.

Of note is the fact that in deciding this case, the court recognized the possibility that a reelection may be made by an electorate oblivious to the charges against the public officer. In applying the Doctrine, the Court had to make a finding that the reelection was made with knowledge of the misconduct.

The fact that there is a big possibility of the electorate's being unaware of the public official's misconduct is too important to be ignored by courts in this jurisdiction. It is a fact that adheres to common sense and reality. Misconduct can be easily hidden from the public; and even if the misconduct comes to light, these facts may be learned only after the guilty officer has been unwittingly reelected. How then can it be said that by the simple expedient of reelection, the electorate automatically condoned the offense?

The conclusive presumption fashioned by the Court in *Garcia* regarding the knowledge of the electorate must not, therefore, be given attribution as a Gordian-knot solution. Given the strong public policy regarding public officers and the practical reality that malfeasance or misfeasance in office occurs under the cloak of darkness, such a quick-fix should be questioned.

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207. *Id.* at 313-14.

208. *State v. Welsh,* 79 NW 369.

209. Bolton v. Tully 158 A 805 (1932).

210. Sarisohn v. Appellate Division of Supreme Court 286 NY 2d 255 (1967).

211. State v. Blake, 280 P. 833 (1929).

The ordinary man in the street is not expected to be abreast of administrative cases pending against a public official and the facts surrounding it. Hence instead of a conclusive presumption, the Court should require as a threshold evidentiary fact that there was some degree of disclosure of such facts to the electorate in general such that they knew or should have known that the person they were reelecting into office committed or could have committed acts which breached the trust reposed upon him. This would not be too difficult since newspaper articles or news reports on such cases can be proven by simple evidentiary means and need not be as impossible as the Court in *Garcia* made it appear.

D. Gravity of the Misconduct

Another factor that American courts have considered in weighing their options is the seriousness of the offense committed. Innocuous infidelities like taking home paper clips should not, of course, be considered so grave as constituting grounds for removal. However, there are certain offenses that are considered to be so harmful and contrary to public office that they demand removal, even if committed during a previous term.

Thus, if the gravity of the offense so warrants, the Doctrine of Condonation will not be applied. This is illustrated in *Allen v. Tufts*.[212] Allen was a district attorney who was faced with removal for acts committed by him in his term prior to his reelection. The court ruled that the gravity of the offense required his removal from office.[213] In addition, the court labeled the acts committed as involving "moral obliquity and positive crime of great magnitude, committed in connection with the office of district attorney."[214] Due to this finding, the court said that it could not allow the officer to remain in his post simply because he had been reelected.

In deciding this case, the court wrestled with the Doctrine and whether or not to apply it. One of the factors that tilted the scale in favor of the non-application of the rule was that the offenses committed were too serious to be overlooked. From *Allen*, it can be seen that an offense which strikes at the very heart of the public trust reposed upon public officers warrants removal from office. This refers to acts which show their abuse and wanton disregard of the sacred trust given to them by the public. These offenses are of such gravity and seriousness that they show the unworthiness of the officer, hence justifying their removal, even if the heinous acts were committed during a previous term.

In dealing with the factor of the gravity of the offense, it is the duty of the court to look at the nature of the offense in relation to the office held by

212. *Allen*, 17 ALR 274.

213. *Id.* at 278.

214. *Id.*

the officer sought to be removed. If the offense is so incompatible with and runs counter to the nature of the office, eroding the trust inherent in such office, courts must not hesitate to allow removal, rather than permit the officer to remain in his position. By the gravity of his acts, he has already shown that he is unworthy of the office.

E. Misconduct Continuing into the Present Term

The final consideration that a court must look into before deciding any condonation case is whether or not the misconduct is a continuing one. If it is continuous, then the Doctrine will not apply for one simple reason: the act will not be considered as being done in the previous term since the misconduct is still being performed in the present term. Hence, the misconduct will be deemed to be performed in the current term and the Doctrine will not apply.

This class of offenses is usually limited in its scope to malversation and misappropriation or maladministration of public funds cases. The scenario that often presents itself is when a public officer has misappropriated public property or funds for himself during the previous term and has not returned, accounted or made restitution of the same even when he had been reelected. The public officer is deemed to have an obligation to return the property malversed from the moment he took it for himself and is duty is deemed to continue until he makes payment, whether it be in the form of being removed from office or in the form of returning what he had taken. Failure to perform this duty amounts to *misconduct* by the officer which would warrant his dismissal.

This situation presented itself in *State v. Megaarden*.[215] Philip Megaarden was a sheriff of Hennepin County who allegedly made illegal collections. When he raised the defense that he could not be investigated for acts committed during his previous term, the court ruled that his offense was a continuing one, thus justifying his removal from office.[216]

Also of similar vein is *State v. Harvey*.[217] The defendant was a district court clerk who was sought to be ousted due to shortages in her accounts for the previous terms. She had been continuing her duty for three terms and put up the defense that she could not be tried for acts committed during the previous terms. The court ruled that her duty to return the money that was due was a continuing one and that there was no need to apply the prior term doctrine. "But there is no necessity of doing that (applying the prior term rule) in this case. Here the misconduct continued into the present term of

215. *Megaarden*, 88 NW 412 (1901).

216. *Id.* at 413.

217. *State v. Harvey*, 80 P.2d, 1095 (1938).

office. There was a duty upon defendant to restore this money on demand of the county commissioners."[218]

The *Harvey* case was then used by the Supreme Court of Kansas in *State v. Schroeder*.[219] The charge against Schroeder for failing to deliver merchandise paid for by the county and excessive prices charged by him to the county. There arose from such action a continuing duty for Shroeder to make restitution, his neglect to do so were brought under the *Harvey* rule and labeled as continuing offenses.[220]

The lesson to be learned from these cases is that the courts, in addition to the other inquiries it must perform before applying the condonation or prior term rule, mentioned above, must also determine whether or not the offense is a continuing one and therefore falls under the rule that removal may be made. Continuing misconduct cases will not be difficult to spot, since most of them will fall under malversation or misappropriation cases. Once it is recognized that the offense is a continuing one, the court must not hesitate to allow removal.

These simple lessons were not heeded by the Supreme Court as earlier pointed out. *Lizares, Reyes, Salalima*, and *Garcia* clearly fall under the *continuing offense* rule. All these charges are glaringly similar if not exactly the same charges faced by the public officers in the cases referred to above.

Looking closer at the charges in these cases and comparing it with those faced in the *Megaarden* and *Harvey*, it will be evident that cases like these fall under the continuing offense rule. In *Megaarden* the charge that he had made illegal collections was labeled as a continuing offense.[221] Is not the charge of illegally exacting and collecting ₱ 50,000 from each market stall holder from the public market as in *Reyes* exactly the same charge? Harvey on the other hand was charged with failure to account for public funds received by her,[222] which was exactly the same charge against Reyes when he failed to account for the Department of the Interior and Local Government checks received by him. Sadly, these similarities were unnoticed by the Supreme Court which again applied the prior term doctrine automatically and, with all due respect, simplistically.

218. *Id.* at 1099.

219. *Schroeder*, 430 P.2d 304.

220. *Id.* at 314.

221. *Megaarden*, 88 NW at 413.

222. *Harvey*, 80 P.2d at 1097.

VII. CONCLUSION

A. The Doctrine of Condonation was Misapplied and Continues to be Misapplied by the Supreme Court, thereby Resulting in Deleterious Consequences

When the Supreme Court introduced the Doctrine of Condonation, it relied on mere generalizations found in secondary sources; generalizations which may have alluded to the fact that the Doctrine was not very simple, but which fact the Court appears to have ignored in promulgating its decisions. It failed to make a thorough study on the issue and in so doing, it was ultimately unable to grasp the conflicting rationales, reasons and public policies involved in the Doctrine. It simply relied on what the general view allegedly was, when, as explained there was in face, none. To give an illustration, the Court acted like a judge who relied solely on the fiscal's certification that there is probable cause to issue an arrest warrant. It had failed to look behind the certification, failed to look at the supporting documents from which probable cause actually arises. A more thorough approach should have been made before introducing the Doctrine.

As a result of the failure to introduce the true complexity of the Doctrine of Condonation into this jurisdiction, together with all the rationales and reasoning involved, error compounded upon error, as it appears from later decisions of the Court that it had adopted the position that the condonation rule was a simple one: If a public officer is reelected, he is totally immune from administrative removal for acts done prior to his reelection, and any pending cases for his removal are rendered moot and academic. Dismissal of the case will then be ordered. A simple cause and effect formulation.

All the cases decided by the Supreme Court touching on the subject of condonation consistently and automatically refer to the *ratio decidendi* of the *Pascual* case or other cases adopting it. Thus, the first erroneous application gave birth to more erroneous applications. The result of this multiplication of inaccuracies was that the doctrine became a *magic word* to be used by public officers being faced with dismissal. A simple invocation of the words *misconduct during the previous term is condoned by reelection* would magically make the administrative case disappear. By the wave of the wand of condonation, the public officer was free to remain in his position.

This automatic and simplistic application of the Doctrine of Condonation will and has led to abuse. As was shown in *Aguinaldo*, a public officer who is faced with an administrative removal need only delay the case long enough to be reelected. If he is popular enough to be reelected, he is immune from whatever administrative misdeeds he may have committed previously. The doctrine as applied in the Philippines thus makes it more tempting for public officers to commit misdeeds and acts of misconduct during their incumbency since they know there is a way in which they can

escape or suspension removal and evade paying for their actions. The Doctrine provides a system for perpetuating corruption, inefficiency and misconduct by refusing to allow administrative charges to proceed against those suspected of betraying the public trust.

It is truly unfortunate that way back in 1959, the Supreme Court chose to accept the Doctrine without fully considering its implications and nuances. If they had a crystal ball and were able to peer into the future, they might have seen that such Doctrine, as was too rashly adopted by them, would have far-reaching consequences. They could have seen that it would be used as a tool of dishonest men to continue to abuse their positions.

B. The 1987 Constitution Disallows Condonation as Currently Applied in Philippine Jurisdiction

The doctrine enunciated in *Pascual* has outlived its legality. Events have overtaken it so much so that it is no longer applicable. The provisions of the Constitution against graft and corruption in public office are too emphatic to be ignored. The current Doctrine is inconsistent with constitutional directives. The simple act of reelection, taken alone, cannot be taken to condone a public officer's previous acts since to do so would keep a corrupt person in office, thereby running counter to the State's duty to maintain honesty and integrity in public office and to keep officers accountable to the public. More importantly, it collides with the character of public office as a public trust. By performing acts amounting to misconduct, an erring public officer has betrayed the trust reposed upon him by the public, hence it would be illogical to allow him to remain in the office that he was mandated to hold only for the service of the people.

The Supreme Court that decided the *Pascual* case however, should not be faulted for failing to foresee that a new constitution would be drafted that demanded such high ideals for public officers. During their time, the Constitution contained no such provisions requiring the stringent qualities now mandated. While they cannot be faulted for this, the Doctrine they unanimously concurred in must be reexamined in the context of the present, not of the past. The current state of the law and the Constitution should be deemed to have removed the foundation upon which the Doctrine announced in *Pascual* has stood upon all these years.

In the Local Government Code,[223] the removal statute that now exists in this jurisdiction must also be construed in the context of the Constitutional provisions. When seen in this light, the Local Government Code will implement and give life to the mandates found in basic law. This is its only allowable construction.

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223. LOCAL GOVERNMENT CODE, § 60.

VIII. RECOMMENDATION

The proponent believes that the Doctrine of Condonation must be abandoned. Taking the strong public policy enunciated in the 1987 Constitution, public officers who have been charged with misconduct or commission of other acts that amount to a betrayal of the public trust must be made answerable by removal, if the circumstances of the case so warrant. Any reelection must be deemed to have no bearing on the continuation of the administrative case for removal or suspension because once the public trust is betrayed, no amount of condonation by the public can restore what was lost.

There is no doubt that with the upcoming elections, many incumbent officers will be reelected to their positions. Some of them may be facing removal for misconduct committed during the previous term. Some may even have delayed such cases, praying for reelection, in order to have the opportunity to invoke the doctrine. When the issue presents itself, as the proponent is certain it will, the Supreme Court must use the opportunity to take a long and hard look at the doctrine. The Court must ask itself whether the perpetuation of the Doctrine will be for the public good or whether it promotes the opposite effect. The Court, in its reexamination, must then decide that it is a rule that does not enhance the public trust aspect of public office but on the contrary gives rise to more misconduct.

Perhaps, the Court in choosing to abandon the Doctrine and finally lay it to rest, may use the following passage from *Territory v. Sanches*[224] which will be most fitting to inscribe on its epitaph:

> On either we can have the company of able lawyers and eminent jurists. On the one however, we shall find ourselves with those public officers who have shown themselves unworthy of the trust reposed in them, but escaped removal because the courts followed rules which came into being centuries ago, when the individual needed protection against the despotic executive, who claimed to be the state and are but poorly adapted to these times in which the state, now the people collectively, is beset by predatory individuals and is often helpless against them, because it is hampered by such rules.
>
> By the other way we shall join lawyers and judges equally learned and upright, and what is more important, the great body of citizens who are entitled to be served by competent and honest officers. There can be no question then of the choice we should make.[225]

If the Doctrine is reexamined, the choice the Supreme Court must make must be just as clear.

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224. *Territory*, 94 P. at 954.

225. *Id.* at 955.