

Carpio Morales v. Court of Appeals and Binay, Jr.:
Why the Supreme Court Abandoned the
Fifty-Six Year-Old Doctrine of
Condonation

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I. INTRODUCTION

The doctrine of condonation of misconduct of public officers committed during a previous term is ... an example of a method ingrained in the governmental set up that will perpetuate misdeeds by public officers. ... [T]his work is, therefore, an attempt to imitate what Jose Rizal attempted in the Noli Me Tangere back in 1896 [—] to expose the diseases infecting our country so that it may be cauterized for the good of all. As our great hero said [—] ‘Wishing thy health which is ours, and in search of the best treatment, I shall do for thee what the ancients did for the sick: they exposed them on the steps of the temple, in order that every person who had just invoked the Divinity might propose a remedy for them.’

— Miguel U. Silos¹

The family of former Makati City Mayor Erwin S. Binay, Jr. (Binay, Jr.) has led the local government of Makati since the year 1986.² Almost three

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The content of this Article does not reflect the official opinion of the OP or the PMS. Responsibility for the information and views expressed herein lies entirely with the Author.

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Cite as 61 ATENEO L.J. 204 (2016).

1. Miguel U. Silos, *The Doctrine of Condonation for Misconduct Committed During a Previous Term: Past Inaccuracies and Future Inapplicability*, at 3-4 (1998) (unpublished J.D. thesis, Ateneo Law School) (on file with the Professional Schools Library, Ateneo de Manila University) (citing JOSE P. RIZAL, *NOLI ME TANGERE* dedication (Soledad Lacson-Locsin trans., 2006)) [hereinafter Silos Thesis].
2. See Anna Katrina T. Singcol, *Profile of Jejomar “Jojo” Cabauatan Binay*, available at <http://news.abs-cbn.com/botomo/05/13/09/profile-jejomar-jojo-cabauatan-binay> (last accessed Aug. 31, 2016) & Rudy Romero, *The sad history of Makati’s mayorship*, MANILA STAND. TODAY, Apr. 21, 2015, available at <http://www.thestandard.com.ph/opinion/columns/business-class-by-rudy-romero/175292/the-sad-history-of-makati-s-mayorship.html> (last accessed Aug. 31, 2016).

decades after his father became “the first local executive to be appointed after the EDSA Revolution,”³ Binay, Jr. found himself entangled in a legal battle involving allegations of corruption against him and his family.⁴ Naturally, one of his strongest defenses against eventual incrimination was the so-called “condonation doctrine” — a doctrine that was first enunciated in our local legal landscape through the 1959 case of *Pascual v. Hon. Provincial Board of Nueva Ecija*.⁵ Despite the strength of this decades-old doctrine, Binay, Jr.’s legal squabble was, nevertheless, troublesome.

After months of highly-publicized investigations by the Office of the Ombudsman that began in 2014,⁶ it issued a preventive suspension order placing Binay, Jr. and 22 other former and current Makati City Hall officials⁷ under preventive suspension during the pendency of the criminal cases⁸ against them, then pending before the Office of the Ombudsman.⁹ A member of Binay, Jr.’s staff received the said preventive suspension order a day after its issuance, necessitating him to file a petition for *certiorari* before the Court of Appeals (CA).¹⁰ In the said petition, he asked the CA to, inter alia, grant him an injunctive relief, on the basis of the condonation doctrine, against the implementation of the preventive suspension order.¹¹ In the interim, Binay, Jr. barricaded himself inside the Makati City Hall in what

3. Singcol, *supra* note 2.

4. *Carpio Morales v. Court of Appeals and Binay, Jr.* G.R. No. 217126-27, Nov. 10, 2015, available at <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/november2015/217126-27.pdf> (last accessed Aug. 31, 2016).

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

6. *Carpio Morales*, G.R. No. 217126-27, at 3.

7. Aries Rufo, Rappler, ‘Guilt strong’ vs Junjun Binay – Ombudsman, available at <http://www.rappler.com/nation/86511-guilt-strong-junjun-binay-ombudsman> (last accessed Aug. 31, 2016) & Louie U. Navarro, Makati mayor gets 60-day restraining order on suspension, available at <http://cnnphilippines.com/metro/2015/03/16/Mayor-Binay-TRO-suspension.html> (last accessed Aug. 31, 2016).

8. *Carpio Morales*, G.R. No. 217126-27, at 3. The said criminal cases were for violations of Section 3 (e) of Republic Act No. 3019, Malversation of Public Funds, and Falsification of Public Documents. *Id.* at 5.

9. *Id.* at 3.

10. *Id.* at 6.

11. *Id.*

seemed like a last-ditch effort at defiance.¹² Crowds had gathered on the grounds of the city hall to show support for the then Mayor.¹³ Tensions rose¹⁴ as the CA issued a temporary restraining order (TRO) only a few hours after officials of the Department of Local and Interior Government (DILG) implemented the preventive suspension order on 16 March 2015.¹⁵

While the main basis of the TRO was the condonation doctrine,¹⁶ the more pressing controversy at that time was whether the TRO temporarily barred the implementation of the preventive suspension order.¹⁷ The latter took the back seat, however, when Ombudsman Conchita Carpio Morales brought the matter before the Supreme Court where Binay, Jr. reiterated that the Ombudsman's preventive suspension order was not in accordance with the state of law at that time.¹⁸ Almost a month after the said preventive suspension order was issued, the CA cited the condonation doctrine and its jurisprudential bases when it issued a writ of preliminary injunction (WPI) that further precluded the implementation of the Ombudsman's contested order.¹⁹

After a series of textual arguments before the CA and the Supreme Court, many wondered about, and had to recall the familiar doctrine of condonation. For a doctrine that had stood the test of time, it was intriguing how the condonation doctrine suddenly became a popular subject matter

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12. GMA News Online, LOOK: Tensions rise as riot police arrive at Makati City Hall, *available at* <http://www.gmanetwork.com/news/story/453017/news/metro/look-tensions-rise-as-riot-police-arrive-at-makati-city-hall> (last accessed Aug. 31, 2016).
 13. *See* GMA News Online, *supra* note 12; Aries Joseph Hegina & Julliane Love De Jesus, *DILG serves suspension order on Junjun Binay*, PHIL. DAILY INQ., Mar. 16, 2015, *available at* <http://newsinfo.inquirer.net/679086/break-dilg-serves-suspension-order-vs-junjun-binay> (last accessed Aug. 31, 2016); & Jun Loyola, 60-day TRO issued vs Junjun Binay suspension but Roxas says 'there's nothing to restrain', *available at* <http://interaksyon.com/article/107013/suspension-order-vs-makati-mayor-junjun-binay-posted-outside-city-hall> (last accessed Aug. 31, 2016).
 14. *See* GMA News Online, *supra* note 12; Hegina & De Jesus, *supra* note 13; & Loyola, *supra* note 13.
 15. Loyola, *supra* note 13.
 16. *Carpio Morales*, G.R. No. 217126-27, at 7.
 17. Loyola, *supra* note 13.
 18. *Carpio Morales*, G.R. No. 217126-27, at 8.
 19. *Id.* at 7.

even for laymen. Although to a student of the law this Administrative Law doctrine had been cemented in legal jurisprudence, many were surprised that such a doctrine existed and, despite numerous allegations of irregularities and corruption, allowed the perpetuation of political dynasties like that of Binay, Jr.²⁰ Hence, when the Supreme Court abandoned the archaic condonation doctrine in *Carpio Morales v. Court of Appeals and Binay, Jr.*,²¹ it was hardly welcomed with questions or disapproval.

In revisiting the condonation doctrine, this Comment will discuss the factual and legal antecedents of *Carpio Morales*. As they delve into the *ponencia* of the said Case, the Authors will study the extent of legal literature that gave life to the doctrine that the Supreme Court decided to abandon despite the procedural limitations pointed out by Justice Lucas P. Bersamin in his dissenting opinion.²²

II. FACTS OF THE CASE

The now celebrated case of *Carpio Morales* began with a complaint/affidavit that was filed on 22 July 2014.²³ It accused Binay, Jr. and several other public officers and employees of the City Government of Makati with the commission of Plunder²⁴ and a violation of the Anti- Graft and Corrupt

20. See, e.g., Ellen T. Tordesillas, ABS-CBN News, A golden opportunity for the Supreme Court to right a wrong, available at <http://news.abs-cbn.com/blogs/opinions/04/21/15/golden-opportunity-supreme-court-right-wrong> (last accessed Aug. 31, 2016).

21. *Carpio Morales*, G.R. No. 217126-27.

22. *Carpio Morales*, G.R. No. 217126-27 (J. Bersamin, dissenting opinion).

23. *Carpio Morales*, G.R. No. 217126-27, at 2.

24. Section 2 of Republic Act No. 7080, or the Act Defining and Penalizing the Crime of Plunder, defines Plunder as follows —

Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1 (d) hereof, in the aggregate amount or total value of at least Seventy-five million pesos (₱ 75,000,000.00), shall be guilty of the crime of plunder and shall be punished by life imprisonment with perpetual absolute disqualification from holding any public office. Any person who participated with said public officer in the commission of plunder shall likewise be punished. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and

Practices Act²⁵ in connection with the five phases of procurement and construction of the Parking Building.²⁶ Consequently, the Ombudsman put together a Panel of Investigators to look into the matter.²⁷ The Panel filed a Complaint against Binay, Jr., et al., charging them with six *administrative* cases for Grave Misconduct, Serious Dishonesty, and Conduct Prejudicial to the Best Interest of the Services, and six *criminal* cases.²⁸ As to Binay Jr., the Complaint alleged that the procurement and construction of the Parking Building was plagued with several anomalies:²⁹

- (1) During Binay, Jr.'s first term, from 2010-2013, he issued a Notice of Award and approved the release of funds to Hilmarc's Construction Corporation (Hilmarc) for Phases III, IV, and V of construction, despite the fact that there had been no publication and no architectural design;³⁰ and
- (2) During his second term, from 2013-2016, he once again approved the release of funds to pay the remaining balance owed to Hilmarc for construction, and to MANA Architecture and Interior Design Co. for design and architectural services.³¹

shares of stock derived from the deposit or investment thereof forfeited in favor of the State.

An Act Defining and Penalizing the Crime of Plunder, Republic Act No. 7080, § 2 (1991).

25. In particular, Binay, Jr. was charged under Section 3 (e) of the Anti-Graft and Corrupt Practices Act, which provides —

Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

Anti-Graft and Corrupt Practices Act, Republic Act No. 3019, § 3 (e) (1960).

26. *Carpio Morales*, G.R. No. 217126-27, at 2.

27. *Id.* at 3.

28. *Id.*

29. *Id.* at 3-4.

30. *Id.*

31. *Id.* at 4-5.

A second Panel of Investigators conducted a preliminary investigation and ordered Binay, Jr. to file his counter-affidavit.³² Before he was able to comply, however, the Ombudsman issued a preventive suspension order against him, based on the following grounds:³³ *First*, the evidence against Binay, Jr. was strong.³⁴ The losing bidders and the members of the Bids and Awards Committee of Makati City had attested to the alleged irregularities, the documents on record negated the publication of bids, and the disbursement vouchers, checks, and receipts showed that there had been a release of funds;³⁵ *Second*, the administrative offenses with which he was charged, if proven true, would have warranted removal from public service under the Revised Rules on Administrative Cases in the Civil Service (RRACCS);³⁶ and *Third*, Binay, Jr.'s position gave him access to public records and the ability to influence possible witnesses, and his continued stay in office would have prejudiced the investigation.³⁷

After receipt of the said preventive suspension order on 11 March 2015, Binay, Jr. filed a petition for *certiorari* before the CA³⁸ praying for:

- (1) The nullification of the preventive suspension order;³⁹ and
- (2) A TRO and/or WPI to enjoin its implementation.⁴⁰

According to him, he could not be held administratively liable for any anomalous activity attending any of the five phases of the construction of the Makati Parking Building since Phases I and II were completed before he was elected Mayor of Makati in 2010, and Phases III to V had taken place during his first term in office.⁴¹ *Citing the condonation doctrine in the main, he argued that his landslide re-election for a second term, as City Mayor of Makati, effectively condoned any administrative liability from his previous term, i.e., that he could no longer be removed from his position on those grounds.*⁴² Moreover, he claimed that

32. *Carpio Morales*, G.R. No. 217126-27, at 5.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Carpio Morales*, G.R. No. 217126-27, at 6.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

the Ombudsman had failed to show that the evidence of his guilt was strong enough so as to warrant the issuance of a preventive suspension order.⁴³

On 16 March 2015, at around 8:24 a.m., DILG officials implemented the suspension order by posting its copy on the wall of the Makati City Hall.⁴⁴ A little over an hour later, the Assistant City Prosecutor of Makati administered the Oath of Office to then Vice Mayor Romulo V. Peña, Jr. (Peña, Jr.).⁴⁵ At noon of the same day, notwithstanding that Peña, Jr. had already been sworn in as Acting Mayor, the CA issued a resolution granting Binay, Jr.'s prayer for an issuance of a TRO.⁴⁶ *Citing the case of Governor Garcia, Jr. v. Court of Appeals*,⁴⁷ the CA held that it was more prudent to issue a TRO given that, if it were to be established that the acts giving rise to administrative liability had in fact transpired prior to Binay, Jr.'s re-election for a second term, the condonation doctrine would apply, effectively rendering his past administrative offenses moot and academic.⁴⁸

In her Manifestation before the CA, the Ombudsman countered that there was nothing for the TRO to restrain because the preventive suspension order had already been served and Peña, Jr. sworn in when the CA issued the TRO.⁴⁹ Apparently disagreeing with the Ombudsman, Binay, Jr. filed a petition for contempt against her and other government officials.⁵⁰ The CA consolidated the petition for contempt with the petition for *certiorari* before it and scheduled a hearing for oral arguments.⁵¹ Prior to the said oral arguments, however, the Ombudsman filed a petition for *certiorari* before the Supreme Court — the instant case.⁵² Binay, Jr. reiterated in his Comment

43. *Id.*

44. *Carpio Morales*, G.R. No. 217126-27, at 6.

45. *Id.*

46. *Id.* at 7.

47. *Garcia, Jr. v. Court of Appeals (Twelfth Division)*, 586 SCRA 799 (2009).

48. *Carpio Morales*, G.R. No. 217126-27, at 7.

49. *Carpio Morales*, G.R. No. 217126-27, at 7.

50. *Id.*

51. *Id.*

52. *Id.* at 8. The Ombudsman claimed in her petition for *certiorari* that:

- (1) The CA had no jurisdiction to grant Binay, Jr.'s prayer for a TRO, citing Section 14 of Republic Act No. 6770, or 'The Ombudsman Act of 1989,' which states that no injunctive writ could be issued to delay the Ombudsman's investigation unless there is prima facie evidence that the subject matter thereof is outside the latter's jurisdiction; and

before the Supreme Court that, *inter alia*, “he could not be held administratively liable for any of the charges against him since his subsequent re-election in 2013 operated as a condonation of any administrative offenses he may have committed during his previous term.”⁵³

During the pendency of the instant case, the CA issued a WPI against the implementation of the Ombudsman’s preventive suspension order.⁵⁴ Citing *Aguinaldo v. Santos*,⁵⁵ *Salalima v. Guingona, Jr.*,⁵⁶ and *Mayor Garcia v. Mojica*,⁵⁷ the CA ratiocinated in its order granting the WPI that

Binay, Jr. [had] an ostensible right to the final relief prayed for, namely, the nullification of the preventive suspension order, in view of the condonation doctrine Particularly, ... the Ombudsman can hardly impose preventive suspension against Binay, Jr. given that his re-election in 2013 as City Mayor of Makati condoned any administrative liability arising from anomalous activities relative to the Makati Parking Building project from 2007 to 2013. In this regard, ... although there were acts which were apparently committed by Binay, Jr. beyond his first term — namely, the alleged payments on July 3, July 4, and July 24, 2013, corresponding to the services of Hilmarc’s and MANA — still, Binay, Jr. cannot be held administratively liable therefor based on the cases of [*Salalima*] and [*Mayor Garcia*], wherein the condonation doctrine was still applied by the [Supreme] Court although the payments were made after the official’s re-election, reasoning that the payments were merely effected pursuant to contracts executed before said re-election.⁵⁸

Due to the issuance of the WPI, the Ombudsman filed a supplemental petition adding “that the condonation doctrine [was] irrelevant to the

(2) The CA’s directive for the Ombudsman to comment on Binay, Jr.’s petition for contempt [was] illegal and improper, considering that the Ombudsman is an impeachable officer, and therefore, cannot be subjected to contempt proceedings.

Id.

53. *Id.* at 8 (citing Comment/Opposition by the Respondents, Apr. 6, 2015, at 24 (on file with the Supreme Court *en banc*) in *Carpio Morales*, G.R. No. 217126-27).

54. *Carpio Morales*, G.R. No. 217126-27, at 9.

55. *Aguinaldo v. Santos*, 212 SCRA 768 (1992).

56. *Salalima v. Guingona*, 257 SCRA 55 (1996).

57. *Garcia v. Mojica*, 314 SCRA 207 (1999).

58. *Carpio Morales*, G.R. No. 217126-27, at 9 (citing the Court of Appeals’ Resolution, *Carpio Morales*, G.R. No. 217126-27 (Apr. 6, 2015)).

determination of whether the evidence of guilt is strong for purposes of issuing preventive suspension orders.”⁵⁹

Among the contentions brought up to the Supreme Court, the debate on the legality of the condonation doctrine became the focal point of public interest in the instant case.

III. HISTORY

Dictionaries commonly define *condonation* as the voluntary overlooking or pardon of an offense.⁶⁰ The term has a similar meaning in law — “[a] victim’s express or implied forgiveness of an offense, [especially] by treating the offender as if there had been no offense.”⁶¹ In Philippine jurisdiction, the term also has a meaning analogous to the foregoing, but is applied differently depending on the field of law.

In Civil Law, for example, condonation may mean either the remission of a debt⁶² or “the forgiveness of a marital offense constituting a ground for legal separation.”⁶³ In Political Law, the previous doctrinal relevance of condonation went into the prohibition against holding a public official, who is re-elected for another term, administratively liable for offenses committed during a prior term.⁶⁴ The jurisprudential rationale of this doctrine was that “[w]hen the people [re-]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.”⁶⁵

The Civil Law usage of the term condonation *requires* knowledge by the condoning party or parties of the debt or offense made by the party being condoned, i.e., absence of the requisite knowledge will negate condonation.⁶⁶ In Political Law, however, the doctrine of condonation

59. *Carpio Morales*, G.R. No. 217126-27, at 9.

60. Merriam-Webster, *Condonation*, available at <http://www.merriam-webster.com/dictionary/condonation> (last accessed Aug. 31, 2016).

61. *Carpio Morales*, G.R. No. 217126-27, at 51 (citing BLACK’S LAW DICTIONARY 336 (9th ed.)).

62. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 1270 (1939). This is an application of Contract Law. *Id.*

63. Alicia Gonzales-Decano, Annotation, *Legal Separation*, 46 Phil. 1009, 1017 (1924).

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

65. *Id.* at 472 (citing *Conant v. Grogan*, 6 N.Y.S.R. 332 (1887)).

66. See *Dizon v. Court of Tax Appeals*, 553 SCRA 111, 132 (2008).

connoted a conclusive presumption⁶⁷ of knowledge on the part of the condoning party — the electorate — which meant that mere re-election absolved a re-elected public official from administrative liability regardless of his or her guilt. As our laws now stand, this doctrine has become absurd and, to be more precise, illegal; but, apparently, this had not been the case for almost two hundred years in some jurisdictions.

A. The Doctrine of Condonation Prior to Pascual

The condonation doctrine is an ancient principle. Prior to its application in Philippine jurisdiction through the 1959 case of *Pascual*, the condonation of administrative offenses committed by public officers during a previous term was a common issue in the United States (U.S.).

Although the doctrine of condonation was not the main issue in the 1887 case of *Conant v. Grogan*⁶⁸ because the charges therein did not pertain to acts committed during a previous term,⁶⁹ the Supreme Court of New York in the said case held that under a holding where charges against public officers need not be confined to offenses committed after election,⁷⁰ “the people would be deprived of their constitutional right to elect their own officers.”⁷¹ A more accurate illustration of the doctrine’s earliest application is *In Re: Guden*.⁷² The issue before the first level court was “whether the act of the Governor in removing Charles Guden ... [as] Sheriff ... was within the powers conferred upon the Governor by the people of the State[.]”⁷³ Guden claimed that the Governor had no jurisdiction to try or remove him for acts alleged to have been done by him before he was elected.⁷⁴ In this case, it was

67. Miguel U. Silos, *A Re-examination of the Doctrine of Condonation of Public Officers*, 84 PHIL. L.J. 22, 56 (2009) [hereinafter Silos PHIL. L.J.] & Miguel U. Silos, *The Need to Re-Examine the Doctrine of Condonation for Misconduct Committed During a Previous Term*, 54 ATENEO L.J. 1084, 1122 (citing *Pascual*, 106 Phil. 466 & *Garcia* 314 SCRA 207) [hereinafter Silos ATENEO L.J.].

68. *See Conant*, 6 N.Y.S.R. 322.

69. *Carpio Morales*, G.R. No. 217126-27, at 63.

70. Alonzo H. Tuttle, *Removal of Public Officers from Office for Cause: II*, 3 MICH. L. REV. 341, 348 (1905).

71. *Id.* (citing *Conant*, 6 N.Y.S.R. 322).

72. *In Re: Guden*, 171 N.Y. 529 (1902) (U.S.).

73. *Guden Still Sheriff, Justice Gaynor Says*, N.Y. TIMES, Mar. 23, 1902, available at <http://query.nytimes.com/mem/archive-free/pdf?res=9802E1D9103DEE32A25750C2A9659C946397D6CF> (last accessed Aug. 31, 2016).

74. *Id.*

Guden's first term as Sheriff.⁷⁵ Clearly, the factual milieu is not exactly the same with the context of the condonation doctrine as we had known it. In fact, at that point in history, questions regarding whether the power of removal of a public officer belonged to the executive or the judiciary or whether such exercise was an executive, legislative, or judicial one were still points of contention.⁷⁶

However, clear from the first level court's reference to England's common law in *In Re: Guden* was the older version of the condonation doctrine.⁷⁷ Citing *Rex v. Richardson*,⁷⁸ the court in *In Re: Guden* stated that the rule in England, "where the power of removal existed in general terms, ... the power could be exercised ... for offenses ... outside ... of [the] term of office of so infamous a nature as to disqualify him for office,"⁷⁹ did not exist in the State of New York anymore.⁸⁰ This issue was not tackled before the appellate courts, but a concurring opinion before the Supreme Court of New York quoted the pertinent article of the State's Constitution — "The Governor may remove any officer, in this section mentioned, *within the term* for which he shall have been elected."⁸¹ While the court in *In Re: Guden* did not discuss what "within the term" meant, cases⁸² in different U.S. States were able to address this question resulting in the evolution of the condonation doctrine.

In the 1893 case of *State v. Bourgeois*⁸³ and the 1899 case of *State v. Welsh*,⁸⁴ the State courts held that as a general rule each term of office is

75. *Id.*

76. See generally Tuttle, *supra* note 70, at 341.

77. *Guden Still Sheriff, Justice Gaynor Says, supra* note 73.

78. *Rex v. Richardson*, 1 Burr. 517, 538-39 (1758).

79. *Guden Still Sheriff, Justice Gaynor Says, supra* note 73.

80. *Id.*

81. *In re Guden*, 171 N.Y. at 536 (emphasis supplied).

82. Tuttle, *supra* note 70, at 348 (citing *State ex Rel. Billon v. Bourgeois*, 45 La. Ann. 1350 (1893) (U.S.); *State v. Welsh*, 109 Ia. 19 (1899) (U.S.) [hereinafter *Welsh*]; *Avery v. Studley*, 74 Conn. 272 (1901) (U.S.)). See also *Public Officers — Power of City Council to Remove a Member for Offenses Committed in Prior Office*, 85 U. PA. L. REV. 421, 426-27 (1937) [hereinafter *Power of City Council to Remove*].

83. *State ex. Rel. Billon*, 45 La. Ann.

84. *Welsh*, 109 Ia. 19.

separate and distinct from one another,⁸⁵ but when the public officer involved was a re-elected official, his or her new term was considered a continuation of the previous term.⁸⁶ Hence, he or she was held liable for offenses committed during a previous term.⁸⁷ In the 1936 case of *Walsh v. City Council of the City of Trento*,⁸⁸ the Supreme Court of New Jersey found that the public officer therein did not succeed himself in office.⁸⁹ Consequently, it held that the public officer cannot be removed for offenses made in his prior position as city commissioner.⁹⁰ As of 1937, “there [was] a split of authority as to whether an officer who is his own successor by re-election can be removed from office because of his misconduct during the preceding term.”⁹¹ In *Walsh*, for example, a case could have been made for removal, because the functions of the public officer’s previous and subsequent positions therein were similar, despite the fact that the public officer occupied the subsequent position for the first time as in *In Re: Guden*.⁹² In other U.S. jurisdictions at that time, the rules had been conflicting.⁹³

85. Silos Thesis, *supra* note 1, at 98-99; Silos PHIL. L.J., *supra* note 67, at 63-64; & Silos ATENEO L.J., *supra* note 67, at 1130. *See also State ex. Rel. Billon*, 45 La. Ann. at 1354-55 & *Welsh*, 109 Ia. 19 at 371.

86. Silos Thesis, *supra* note 1, at 98-99; Silos PHIL. L.J., *supra* note 67, at 63-64; & Silos ATENEO L.J., *supra* note 67, at 1130. *See also State ex. Rel. Billon*, 45 La. Ann. at 1355 & *Welsh*, 109 Ia. 19 at 370-71.

87. Silos Thesis, *supra* note 1, at 98-99; Silos PHIL. L.J., *supra* note 67, at 63-64; & Silos ATENEO L.J., *supra* note 67, at 1130; *State ex. Rel. Billon*, 45 La. Ann. at 1355; & *Welsh*, 109 Ia. 19 at 370.

88. *Walsh v. City Council*, 117 N. J. L. 64 (1936).

89. *Id.* at 70. *See also Power of City Council to Remove*, *supra* note 82, at 426.

90. *Id.*

91. *Power of City Council to Remove*, *supra* note 82, at 426.

92. *Power of City Council to Remove*, *supra* note 82, at 427 (citing *Bolton v. Tully*, 114 Conn. 290 (1932) (U.S.); *Welsh*, 109 Ia.; *Allen v. Tufts*, 239 Mass. 458 (1921) (U.S.); *Hawkins v. Grand Rapids*, 192 Mich. 276 (1916) (U.S.); & *Newman*, 259 N.Y.S.).

93. G.R.J., *Impeachment — Judges — Misconduct in Personal Capacity — Misconduct During Prior Term*, 4 LA. L. REV. 137, 138-39 (1941). This Louisiana Law Review Note summarized it as follows:

Refusing to allow removal for offenses during a prior term: State ex rel. Attorney-General v. Hasty, 184 Ala. 121, 63 So. 559 (1913); *Jacobs v.*

As of the 1940s, the factors considered in applying the condonation doctrine in U.S. States were the: (1) public's knowledge of the prior unlawful acts;⁹⁴ (2) right of citizens to select its own officials;⁹⁵ and (3) period covered by "term of office."⁹⁶ Nevertheless, the main argument of the opposing school of thought to the condonation doctrine, i.e., allowing removal for acts committed during a prior term, was that the fundamental purpose of the said removal was to remove corrupt, incapable, or unworthy public officers — acts that, regardless of the time when they were committed, "effectively [stamped the said persons] as ... improper ... to be entrusted with the duties and responsibilities of a public office[.]"⁹⁷ In line with this view, the court in *Stanley v. Jones*⁹⁸ removed the public officer involved based on misconduct committed in his *personal* capacity during his prior term of office.⁹⁹

Apparent from the foregoing is the dichotomous application of the condonation doctrine in U.S. States. Within the two decades that immediately preceded *Pascual*, the difference in rules applied by courts in varying States was overwhelming. This was not, however, what the Supreme Court in *Pascual* thought.

B. Pascual and the Extinguishment of Administrative Liability

The Philippine Supreme Court first addressed the applicability of the doctrine of condonation in the 1959 case of *Pascual*. In the said case, Arturo

Parham, 175 Ark. 86, 298 S.W. 483 (1927); *Thurston v. Clark*, 107 Cal. 285, 40 Pac. 435 (1895); *Board of Commissioners of Kingfisher County v. Schectler*, 139 Okla. 52, 281 Pac. 222 (1929); *In re Fudula*, 297 Pa. 364, 147 Atl. 67 (1929); & *State ex rel. Rawlings v. Loomis*, 29 S.W. 415 (Tex. Civ. App. 1895) ... *Contra*: *Tibbs v. City of Atlanta*, 125 Ga. 18, 53 S.E. 811 (1906); *State v. Welsh*, 109 Iowa 19, 79 N.W. 369 (1899); *Attorney-General v. Tufts*, 239 Mass. 458, 131 N.E. 573 (1921); *Territory v. Sanches*, 14 N.M. 493, 94 Pac. 954 (1908); & *State ex rel. Timothy v. Howse*, 134 Tenn. 67, 183 S.W. 510 (1916)[.]

Id. n. 6. (emphasis supplied).

94. *Id.* at 139 (citing *State ex rel. Schulz v. Patton*, 110 S.W. 636, 637 (1908)).

95. *Id.* (citing *State v. Blake*, 138 Okla. 241, 241 (1929) (U.S.)).

96. *Id.* (citing *Jacobs v. Parham*, 175 Ark. 86, 87 (1927) (U.S.)).

97. G.R.J., *supra* note 93, at 139.

98. *Stanley v. Jones*, 197 La. 627 (1941) (U.S.).

99. *Id.* at 645-51.

B. Pascual (Pascual) was elected mayor of San Jose, Nueva Ecija in 1951, and subsequently re-elected in 1955.¹⁰⁰ In 1956, the Acting Provincial Governor of the province filed with the Provincial Board three administrative charges against Pascual.¹⁰¹ With regard to the third charge, the complaint against Pascual stated that he had assumed the judicial powers of the justice of the peace by accepting a criminal complaint filed, issuing an arrest warrant, and setting and collecting a bail bond despite the fact that a justice of the peace, who was not Pascual, had been available.¹⁰²

Pascual sought to have the third charge dismissed on the ground that the acts were committed during his first term of office, and could, thus, not constitute a ground for disciplining him during his second term.¹⁰³ The Supreme Court, “in the absence of any precedent in this jurisdiction ... resorted to American authorities.”¹⁰⁴ It held that although

cases on the matter are conflicting due in part, probably, to differences in statutes and constitutional provisions, and also, in part, to a divergence of views with respect to the question of whether the subsequent election or appointment condones the prior misconduct. *The weight of authorities, however, seems to incline to the rule denying the right to remove one from office because of misconduct during a prior term, to which we fully subscribe.*¹⁰⁵

The rationale, according to the Supreme Court, was that “each term is separate from other terms, and the reelection to office operates as condonation of the officer’s previous misconduct to the extent of cutting off the right to remove him therefor.”¹⁰⁶

In support of its ruling, the Supreme Court cited extensively from U.S. jurisprudence, in particular *Conant*, which held that

[t]he 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 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

100. *Pascual*, 106 Phil. at 468.

101. *Id.*

102. *Id.*

103. *Id.* at 469.

104. *Id.* at 471.

105. *Id.* (emphasis supplied).

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

not for the court, by reason of such faults or misconduct to practically overrule the will of the people.¹⁰⁷

Predictably, the Supreme Court applied the condonation doctrine in Philippine jurisdiction using the considerations¹⁰⁸ enumerated earlier. Since *Pascual* was decided under the 1935 Constitution — a Constitution preceded by a centuries-long struggle for liberation from foreign rule that naturally rendered Filipinos more apprehensive of external enemies than of internal accountability — the Supreme Court gave more credence to the People's right of suffrage that presumably carried with it knowledge of prior misconduct by the public officers they elected. This made sense given the text of the 1935 Constitution, unlike that of the 1987 Constitution, where provisions that described the duty of the government as *protector of the people* eclipsed those of *service to the people*.¹⁰⁹ Specifically, in his *Juris Doctor* (J.D.) Thesis written in 1998, Attorney Miguel U. Silos made the following observation —

Contrasted with Section 4[, Article II] of the 1987 Constitution, 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. That 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 fulfil[ls] its purpose. It says nothing about 'serving' the people¹¹⁰

Following *Pascual*, two other cases that applied the condonation doctrine were decided by the Supreme Court under the 1935 Constitution. One of them was *Lizares v. Hechanova, et al.*¹¹¹ In *Lizares*, Mayor Mario T. Lizares was charged with corruption and maladministration in the disbursement of

107. *Id.* at 472 (citing *Conant*, 6 N.Y.S.R. 322) (emphasis supplied).

108. G.R.J., *supra* note 93, at 139. These are:

- (1) Public's knowledge of the prior unlawful acts;
- (2) Right of citizens to select its own officials; and
- (3) Period covered by "term of office."

Id.

109. Silos Thesis, *supra* note 1, at 21-22; Silos PHIL. L.J., *supra* note 67, at 27; & Silos ATENEO L.J., *supra* note 67, at 1094.

110. Silos Thesis, *supra* note 1, at 21.

111. *Lizares v. Hechanova, et al.*, 17 SCRA 58 (1966).

public funds used for the improvement of a road.¹¹² Subsequently, he was re-elected for another term.¹¹³ In ruling that such re-election had effectively condoned the Mayor's offenses, making it impossible for him to be removed from office, the Supreme Court quoted the justifications in *Pascual* verbatim for almost the entirety of its rationale.¹¹⁴

The other case was *Ingco v. Sanchez*,¹¹⁵ where the then Mayor of Bauan, Batangas was accused of estafa through falsification of public documents committed in the discharge of official functions.¹¹⁶ The Mayor, seeking to dismiss the complaint and prohibit the fiscal from further investigating the allegations, invoked the doctrine in *Pascual*.¹¹⁷ The Supreme Court rejected the Mayor's theory and clarified that the doctrine in *Pascual* did not apply to criminal charges, to wit — “[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 group of persons but to the State as a whole.”¹¹⁸

A few years after *Ingco*, Martial Law was declared in the Philippines. It lasted almost a decade, beginning on 21 September 1972¹¹⁹ and officially ending on 17 January 1981.¹²⁰ Within this period, the 1973 Constitution was ratified.

C. Shifts in the Law of the Land; a Public Office Becomes a Public Trust

Having a Republican Democracy form of government, the powers of public officers in the Philippines emanate from the people.¹²¹ This stems from the political theories of Republicanism and Democracy where the former

112. *Id.* at 59–60.

113. *Id.* at 59.

114. *Id.* at 59–60.

115. *Ingco v. Sanchez*, 21 SCRA 1292 (1967).

116. *Id.* at 1293.

117. *Id.*

118. *Id.* at 1295.

119. Office of the President, Proclaiming a State of Martial Law in the Philippines, Proclamation No. 1081 (Sep. 21, 1972) & Office of the President, Declaring the Continuation of Martial Law, Proclamation No. 1104 (Jan. 22, 1973).

120. Office of the President, Proclaiming the Termination of the State of Martial Law Throughout the Philippines, Proclamation No. 2045 (Jan. 26, 1981).

121. See PHIL. CONST. art. II, § 1.

“implies a distinctively public arena and popular rule,”¹²² while the latter is “closely bound to the idea of representation.”¹²³ In this system, the citizens play a key role during the election of public officers because they are deemed to articulate the views of the people and secure their interests.¹²⁴ The makers of the 1973 and 1987 Philippine Constitutions found the need to inculcate these concepts¹²⁵ in the “basic and paramount law to which all other laws must conform and to which all persons, including the highest officials of the land, must defer.”¹²⁶ The emphasis on the accountability of public officers to the people has been entrenched further in the Constitutional provision that a “public office is a public trust.”¹²⁷

The 1973 Constitution first reflected this shift in the meaning of *public office*. In stark contrast to the 1935 Constitution, it contained an entire Article¹²⁸ dedicated to the “Accountability of Public Officers.” In Section 1 thereof, the phrase *public office is a public trust* made its first appearance as part of the highest law of the land, setting a new tone for what it meant to be an elective and appointive official of the government.¹²⁹ Further, Section 1 also emphasized the duty of public officers and employees to “serve with the highest responsibility, integrity, loyalty, and efficiency, and [] remain accountable to the people.”¹³⁰ Since the ills of the Marcos dictatorship — rampant corruption, abuse of power, and dereliction of duty — were widespread,¹³¹ the shift in the meaning of *public office* became all the more significant during the tumultuous years of Martial Law. It was not long before two million Filipinos poured out onto the streets, demanding Marcos’ removal and

122. ANDREW HEYWOOD, *POLITICAL THEORY: AN INTRODUCTION* 205 (3d ed. 1999).

123. *Id.* at 232.

124. See Heywood, *supra* note 122, at 208-12 & 233.

125. See 1935 PHIL. CONST. art. II, § 1 (superseded 1973) & 1987 PHIL. CONST. art. II, § 1.

126. ISAGANI A. CRUZ, *CONSTITUTIONAL LAW* 4 (2007 ed.).

127. 1973 PHIL. CONST. art. XIII, § 1 (superseded 1986) & 1987 PHIL. CONST. art. XI, § 1.

128. 1973 PHIL. CONST. art. XIII (superseded 1986).

129. 1973 PHIL. CONST. art. XIII, § 1 (superseded 1986).

130. 1973 PHIL. CONST. art. XIII, § 1 (superseded 1986) (emphases supplied).

131. See IX ALEXANDER R. MAGNO, *KASAYSAYAN — THE STORY OF THE FILIPINO PEOPLE: A NATION REBORN*, 123-41 (1998).

democracy's return,¹³² and culminating in the drafting and ratification of the 1987 Constitution.

Having seen the havoc that could be wrought by public officials with unbridled power,¹³³ and keeping in mind the negative attitude of the Filipino people towards the public service sector,¹³⁴ the framers of the 1987 Constitution put special emphasis on the integrity of public service, declaring it as a constitutional principle and a State policy.¹³⁵ Thus, Section 27, Article II of the 1987 Constitution provides that “[t]he State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.”¹³⁶ Further, the Article on “Accountability of Public Officers” remained and Section 1 thereof was reproduced, adding that “[p]ublic officers and employees ... act with patriotism and justice, and lead modest lives.”¹³⁷ As noted in the case of *Belgica v. Ochoa*¹³⁸ —

The aphorism forged under Section 1, Article XI of the 1987 Constitution, which states that ‘public office is a public trust,’ is an overarching reminder that every instrumentality of government should exercise their official functions only in accordance with the principles of the Constitution which embodies the parameters of the people’s trust. The notion of a public trust connotes accountability, hence, the various mechanisms in the Constitution which are designed to exact accountability from public officers.¹³⁹

Following the 1987 Constitution, a *public office is a public trust* was also expressed repeatedly in statute — most notably in the Revised Administrative Code,¹⁴⁰ promulgated on 25 July 1987, and the Code of

132. *Id.* at 277-79.

133. *Carpio Morales*, G.R. No. 217126-27, at 59.

134. Silos Thesis, *supra* note 1, at 13-14.

135. *Carpio Morales*, G.R. No. 217126-27, at 59.

136. PHIL. CONST. art. II, § 27.

137. PHIL. CONST. art. XI, § 1.

138. *Carpio Morales*, G.R. No. 217126-27, at 59 (citing *Belgica v. Ochoa*, 710 SCRA 1, 131-32 (2013)).

139. *Belgica*, 710 SCRA at 131-32 (emphasis supplied).

140. Instituting the “Administrative Code of 1987” [ADMINISTRATIVE CODE], Executive Order No. 292 (1987). Section 1 of the subtitle governing the Civil Service Commission provides the following —

Declaration of Policy. [—] The State shall ensure and promote the Constitutional mandate that appointments in the Civil Service shall be made only according to merit and fitness; that the Civil Service

Conduct and Ethical Standards for Public Officials and Employees,¹⁴¹ approved on 20 February 1989.

Indeed, times changed, but the condonation doctrine did not. Since 1959, the Filipino people had overthrown a dictatorship, transitioned through two new Constitutions, and saw the passage of new statutes governing the actions and accountability of elected and appointive officials. Gradually, the magnitude of what it meant to be a public officer found more emphatic expression in the laws of the land; yet, the blanket application of the condonation doctrine continued.

D. Reiterations of Pascual — The Practice of Impunity

Although the Supreme Court first applied the condonation doctrine in *Pascual*, the case most frequently cited as the basis for the doctrine is *Aguinaldo v. Santos*.¹⁴² Decided in 1992, it centered on a complaint for disloyalty and its consequence on the re-election of Governor Rodolfo Aguinaldo (Aguinaldo).

Commission, as the central personnel agency of the Government shall establish a career service, adopt measures to promote morale, efficiency, integrity, responsiveness, and courtesy in the civil service, strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability; that public office is a public trust and public officers and employees must at all times be accountable to the people; and that personnel functions shall be decentralized, delegating the corresponding authority to the departments, offices and agencies where such functions can be effectively performed.

Id. bk. V, tit. I, subtitle A, ch. 1, § 1.

141. An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees, to Uphold the Time-Honored Principle of Public Office Being a Public Trust, Granting Incentives and Rewards for Exemplary Service, Enumerating Prohibited Acts and Transactions and Providing Penalties for Violations Thereof and for Other Purposes [Code of Conduct and Ethical Standards for Public Officials and Employees], Republic Act No. 6713 (1989). Section 2 of the aforementioned is stated as follows —

Declaration of Policies. — It is the policy of the State to promote a high standard of ethics in public service. Public officials and employees shall at all times be accountable to the people and shall discharge their duties with utmost responsibility, integrity, competence, and loyalty, act with patriotism and justice, lead modest lives, and uphold public interest over personal interest.

Id. § 2.

142. *Aguinaldo*, 212 SCRA.

Aguinaldo was elected Governor of Cagayan in 1988. In 1989, mayors of some municipalities in the said Province filed a complaint for disloyalty against Aguinaldo for his alleged participation in an attempted *coup d'état*.¹⁴³ While the case was still pending before the Supreme Court, Aguinaldo filed his certificate of candidacy for the 1992 elections.¹⁴⁴ Three petitions for disqualification were filed against him on the ground of the pending disloyalty case, which the Commission on Elections (COMELEC) granted through a resolution.¹⁴⁵ Aguinaldo filed a petition for *certiorari* with the Supreme Court, seeking to nullify the COMELEC resolution.¹⁴⁶ The Supreme Court granted the petition and prevented the COMELEC from enforcing its resolution pending the outcome of the disloyalty case, thereby allowing the canvassing of votes and returns in Cagayan to proceed.¹⁴⁷ Aguinaldo won by a landslide margin.¹⁴⁸

In ruling on the disloyalty case, the Supreme Court held —

Petitioner's re-election to the position of Governor of Cagayan has rendered the administration 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.

...

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

...

The Court should [n]ever 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 a 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 fault or misconduct, if he

143. *Id.* at 770.

144. *Id.* at 771.

145. *Id.*

146. *Id.* at 771-72.

147. *Id.* at 772.

148. *Aguinaldo*, 212 SCRA at 772.

had been guilty of any. It is not for the court, by reason of such fault or misconduct, to practically overrule the will of the people.¹⁴⁹

Aguinaldo became the landmark case for the condonation doctrine, which is why the doctrine had often been called the *Aguinaldo doctrine*.¹⁵⁰ In succeeding years, it was reiterated countless times — the panacea for a term of office plagued with the ills of misconduct.

The cases of *Salalima*¹⁵¹ and *Mayor Garcia*¹⁵² are particularly notable because the condonation doctrine was made to apply therein, even when the prohibited acts were made *after* re-election, based on the rationale that they were committed pursuant to a contract executed *before* the re-election.¹⁵³ The Supreme Court in these cases also added standards that inevitably paved the way for easier application of the doctrine.¹⁵⁴ In *Salalima* the Supreme Court enunciated a public policy consideration to apply the doctrine, i.e., to avoid “open[ing] the floodgates to exacerbating endless partisan contests between the reelected official and his political enemies, who may not stop to

149. *Id.* at 772–73 (citing *Aguinaldo v. Commission on Elections, et al.*, G.R. Nos. 105128–30, June 9, 1992).

150. See Ador Vincent Mayol, *Saavedra, Visayas Ombud question if she can still run for office*, PHIL. DAILY INQ., Feb. 6, 2013, available at <http://newsinfo.inquirer.net/353475/saavedra-visayas-ombud-question-if-she-can-still-run-for-office> (last accessed Aug. 31, 2016); Marc Jayson Cayabyab, *Ombudsman Morales questions ‘Aguinaldo doctrine’ in Binay TRO*, PHIL. DAILY INQ., Apr. 17, 2015, available at <http://newsinfo.inquirer.net/686267/ombudsman-morales-questions-aguinaldo-doctrine-in-binay-tro> (last accessed Aug. 31, 2016); Marlon Ramos, *Review policy absolving reelectionists, SC urged*, PHIL. DAILY INQ., Apr. 9, 2015, available at <http://newsinfo.inquirer.net/686447/review-policy-absolving-reelectionists-sc-urged> (last accessed Aug. 31, 2016); Jaymee T. Gamil, *SC asked: Scrap doctrine shielding reelected execs*, PHIL. DAILY INQ., Jul. 6, 2015, available at <http://newsinfo.inquirer.net/703092/sc-asked-scrap-doctrine-shielding-reelected-exec> (last accessed Aug. 31, 2016); & Julliane Love De Jesus, *DILG asks Ombudsman help before serving suspension to Aquino ally*, PHIL. DAILY INQ., Oct. 30, 2015, available at <http://newsinfo.inquirer.net/735632/dilg-asks-ombudsman-help-before-serving-suspension-to-aquino-ally> (last accessed Aug. 31, 2016).

151. *Salalima*, 257 SCRA.

152. *Garcia*, 314 SCRA.

153. See *Salalima*, 257 SCRA. See also *Garcia*, 314 SCRA.

154. Silos PHIL. L.J., *supra* note 67, at 55–56 & Silos ATENEO L.J., *supra* note 67, at 1121–22.

hounded the former during his new term with administrative cases for acts, alleged to have been committed during his previous term.”¹⁵⁵ In *Mayor Garcia*, the Supreme Court changed the evidentiary rule for condonation cases from a *mere assumption* of public knowledge to a *conclusive presumption* of public knowledge as regards a public officer’s misconduct upon re-election.¹⁵⁶

In *Governor Garcia, Jr.*,¹⁵⁷ the factual antecedents are similar to those of the instant case. The Supreme Court in *Governor Garcia, Jr.* declared that “[i]f it were established in the CA that the acts subject of the administrative complaint were indeed committed during petitioner Garcia’s prior term, then, following settled jurisprudence, he can no longer be administratively charged. ... [I]t would have been more prudent for [the CA] to have ... issued a TRO.”¹⁵⁸

In *Salumbides v. Office of the Ombudsman*,¹⁵⁹ the petitioners urged the Supreme Court “to expand the settled doctrine of condonation to cover coterminal appointive officials who were administratively charged along with the reelected official/appointing authority with infractions allegedly committed during their preceding term.”¹⁶⁰ While the Supreme Court therein, where incidentally the petitioner in the instant case was the *ponente*, reiterated the doctrines in, inter alia, *Pascual, Lizares, Ingco, Aguinaldo, Salalima*, and *Mayor Garcia*, it did not apply the condonation doctrine based on its then underlying principle that “[i]t is the will of the populace, not the whim of one person who happens to be the appointing authority, that could extinguish an administrative liability.”¹⁶¹

Apparent from the afore-cited cases is the lack of challenge against the condonation doctrine. The question had always been whether or not the doctrine should apply depending on the set of facts, not whether or not the doctrine was in line with the current state of law, particularly the 1987 Constitution. It is, then, not surprising that in the face of overwhelming precedent, the Supreme Court, since *Pascual*, including the petitioner in the

155. Silos PHIL. L.J., *supra* note 67, at 55 (citing *Salalima*, 257 SCRA at 115) & Silos ATENEO L.J., *supra* note 3, at 1121 (citing *Salalima*, 257 SCRA at 115).

156. Silos PHIL. L.J., *supra* note 67, at 56 & Silos ATENEO L.J., *supra* note 67, at 1122. See also *Garcia*, 314 SCRA.

157. *Garcia, Jr.*, 586 SCRA.

158. *Garcia, Jr.*, 586 SCRA at 810 (emphasis supplied).

159. *Salumbides Jr. v. Office of the Ombudsman*, 619 SCRA 313 (2010).

160. *Id.* at 323.

161. *Id.* at 328.

instant case, did not set aside the doctrine of condonation. In effect, however, the notion that a public office is a public trust, so decidedly enshrined in the law, had not been given full application.

E. Burgeoning Legal Unrest

Although uncommon, and despite sealed legal precedents, there have been legal analyses on the doctrine of condonation in Philippine jurisdiction prior to the instant case.

As mentioned earlier, one of these is the 1998 J.D. Thesis of Atty. Silos, where he challenged the application of the doctrine of condonation in light of “[t]he public policy against public officials who stray from the path of serving the public honestly and faithfully, as found in the 1987 Constitution”¹⁶² and “the removal statute found in Section 60 of the Local Government Code.”¹⁶³ Two law reviews published an updated version of his Thesis more than a decade later.¹⁶⁴ Atty. Silos’ legal analysis was aptly cited by the Ombudsman in her supplemental petition, which the Supreme Court adopted in the instant case.¹⁶⁵

During the pendency of the heavily reported case involving Binay, Jr., media outfits reported that in July 2012, then Solicitor General Francis H. Jardeleza filed a 73-page comment in a case¹⁶⁶ before the Supreme Court urging it to at least revisit, or abandon altogether, the condonation doctrine as its continued application made no sense.¹⁶⁷ It was reported that in the said

162. Silos Thesis, *supra* note 1, abstract.

163. *Id.*

164. See Silos PHIL. L.J., *supra* note 67 & Silos ATENEO L.J., *supra* note 67.

165. See generally *Carpio Morales*, G.R. No. 217126-27.

166. According to reports, the said case is entitled, “Office of the Ombudsman v. Bataan Governor Enrique T. Garcia, Jr.” However, upon the Authors’ research, this case has not yet been decided by the Supreme Court, or was decided with a Minute Resolution that is not accessible. See GMA News Online, Court issues stay order on Bataan gov’s suspension, *available at* <http://www.gmanetwork.com/news/story/134591/news/regions/court-issues-stay-order-on-bataan-gov-s-suspension> (last accessed Aug. 31, 2016). Also, in 2008, there was at least one reported case involving Bataan Governor Enrique T. Garcia, where the Supreme Court “issued an indefinite stay order” on his preventive suspension by the Office of the Ombudsman. *Id.*

167. Marites Dañguilan Vitug, Rappler, Junjun Binay test case for Jardeleza, *available at* <http://www.rappler.com/newsbreak/in-depth/90363-junjun-binay-jardeleza-supreme-court> (last accessed Aug. 31, 2016) & Ellen T. Tordesillas, Justice Jardeleza against condonation doctrine when he was SolGen, *available at*

comment, he explained that when the Supreme Court decided on *Pascual*, there was no express policy towards public office.¹⁶⁸ This changed because, according to the then Solicitor General, “[t]he end of the Marcos regime, wrapped by grave misdeed of public officers and their pillage of the public treasury, brought in a new policy of higher standards on public office in the 1987 Constitution.”¹⁶⁹ He also “cited several provisions of the 1987 Constitution that underscore[d] honesty and integrity in public service”¹⁷⁰ and argued that “[t]he purpose of our Constitution and of various statutes relating to the efficiency of public service is to purge it of unfit officers and employees. Such unfitness may arise from conduct in an office held continuously, although during the term of an earlier election.”¹⁷¹ He warned in the said comment that with the continued application of the condonation doctrine,

rogue politicians will seek refuge in re-election, commit wrongdoing to the hilt in the previous term and use the proceeds for re-election, and control as best as they can the conduct of investigation in the new term, knowing that they could not be preventively suspended anymore and would then be free to intimidate witnesses and cause documents to somehow get lost — the very evils the preventive suspension, introduced by new legislation after *Pascual*, precisely sought to foreclose.¹⁷²

As her response¹⁷³ to the invocation of the doctrine of condonation by Binay, Jr. in the instant case, Senator Miriam Defensor-Santiago filed Senate Bill (S.B.) No. 2716 entitled, “An Act Amending Republic Act [R.A.] No. 3019, Otherwise Known as the ‘Anti- Graft and Corrupt Practices Act,’ by Making an Elective Official Liable for Any Violation of This Act Committed During a Prior Term Despite Reelection” on 24 March 2015.¹⁷⁴ Citing Constitutional provisions, Senator Defensor-Santiago’s Explanatory Note in S.B. No. 2716 stated that “[t]he simple act of reelection alone cannot be

<http://news.abs-cbn.com/blogs/opinions/04/20/15/justice-jardeleza-against-condonation-doctrine-when-he-was-solgen> (last accessed Aug. 31, 2016).

168. Tordesillas, *supra* note 167.

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. Vitug, *supra* note 167.

174. Senate of the Philippines, Amending Anti-Graft and Corrupt Practices Act, available at http://senate.gov.ph/lis/bill_res.aspx?congress=16&q=SBN-2716 (last accessed Aug. 31, 2016).

taken to condone an elective official's previous illegal acts since to do so would run counter to the State's duty to maintain honesty and integrity in public office, and ... [collide] with the character of public office as a public trust."¹⁷⁵ Thus, she proposed to insert a new section stating that "[a]ny elective official shall be liable for any violation of this act committed during a prior term despite reelection."¹⁷⁶ S.B. No. 2716 underwent its first reading on 4 May 2015, but has since remained pending before the Senate's Committee on Justice and Human Rights.¹⁷⁷ Fortunately, because of the instant case, S.B. No. 2716 and its contemplated necessity now has a deeper, more relevant ramification in law.

IV. THE INSTANT CASE

The instant case has evidently been a much needed shift in jurisprudence; a step in the right direction towards aligning the Supreme Court's declarations on erring public officials with the public policies pertaining to public office. After decades of treating re-election as the get-out-of-jail-free card for even the gravest administrative offenses, the Supreme Court has, at last, tipped the scales in favor of accountability — a more faithful reflection of the Constitutional declaration that a public office is a public trust.

The Supreme Court's resolution of the case revolved around the following issues:

- (1) Whether the CA had subject matter jurisdiction over the petition for *certiorari* filed by Binay, Jr.;¹⁷⁸
- (2) whether the CA had subject matter jurisdiction to issue a TRO and/or WPI enjoining the implementation of the preventive suspension order issued by the Ombudsman;¹⁷⁹ and
- (3) *whether the CA committed grave abuse of discretion in issuing the TRO and/or WPI based on the condonation doctrine.*¹⁸⁰

175. An Act Amending Republic Act No. 3019, Otherwise Known as the "Anti-Graft and Corrupt Practices Act," by Making an Elective Official Liable for any Violation of this Act Committed During a Prior Term Despite Reflection, S.B. No. 2716, 16th Cong., 2d Reg. Sess., explan. n. (2015).

176. *Id.* § 1.

177. Senate of the Philippines, *supra* note 174.

178. *Carpio Morales*, G.R. No. 217126-27, at 11.

179. *Id.*

180. *Id.* (emphases supplied).

A. Unconstitutionality of Section 14 of the Ombudsman Act of 1989

The resolution on the first two issues depended on the Supreme Court's interpretation of Section 14 of R.A. No. 6770.¹⁸¹ This Provision states —

Section 14. *Restrictions.* — No writ of injunction shall be issued by any court to delay an investigation being conducted by the Ombudsman under this Act, unless there is a *prima facie* evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Ombudsman.

No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure question of law.¹⁸²

Based on the afore-quoted Provision, the Ombudsman argued before the Supreme Court that the CA did not have subject matter jurisdiction over Binay, Jr.'s petition for *certiorari*¹⁸³ and its issuance of a TRO and WPI against the preventive suspension order¹⁸⁴ of the Ombudsman.¹⁸⁵

Invoking the independence of the Office of the Ombudsman under the Constitution, the Ombudsman claimed that the First Paragraph of Section 14 of R.A. No. 6770 prohibited the CA from issuing an injunctive writ to enjoin her Office's preventive suspension against Binay, Jr.¹⁸⁶ While the Supreme Court agreed that the Office of the Ombudsman is independent, being a constitutionally-created Office, and is protected from political harassment and pressure, the former declared that such independence did not insulate her Office from judicial power constitutionally vested unto courts.¹⁸⁷

From this analysis, the Supreme Court continued that the Ombudsman's stance with regard to the First Paragraph of Section 14 of R.A. No. 6770 was contrary to the powers of the Supreme Court under the Constitution.¹⁸⁸ According to the Supreme Court, "when Congress passed [the F]irst [P]aragraph of Section 14 [of R.A. No. 6770, it] ... took away from the

181. An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes [Ombudsman Act], Republic Act No. 6770 (1989).

182. *Id.* § 14.

183. *Carpio Morales*, G.R. No. 217126-27, at 13.

184. *Id.* at 5.

185. *Id.* at 11.

186. *Id.* at 26.

187. *Id.*

188. *Id.*

courts their power to issue a TRO and/or WPI to enjoin an investigation conducted by the Ombudsman ... [and] encroached upon [the Supreme] Court's constitutional rule-making authority."¹⁸⁹ Resolving that one of the inherent powers of a court is its power to issue provisional injunctive reliefs,¹⁹⁰ the Supreme Court declared that by the aforementioned Provision, "Congress interfered with a provisional remedy that was created by [the Supreme] Court under its duly promulgated rules of procedure Without [its] consent to the proscription, ... there [stood] to be a violation of the separation of powers[.]"¹⁹¹ It also diluted a court's ability to carry out its functions, considering that cases can be mooted by supervening events absent injunctive relief.¹⁹² Thus, the Supreme Court found it proper to declare as ineffective the prohibition under the First Paragraph of Section 14 of R.A. No. 6770, the same being an undue interference of Congress on procedural matters without the Supreme Court's consent.¹⁹³

Based on the same aforementioned grounds, the Supreme Court also invalidated the Second Paragraph of Section 14 of R.A. No. 6770. This Provision banned the whole range of remedies against issuances of the Ombudsman, except a Rule 45 appeal to the Supreme Court on pure question of law.¹⁹⁴ The Supreme Court adjudged that this Provision increased the Supreme Court's appellate jurisdiction without its consent.¹⁹⁵ Consequently, the Supreme Court ruled that the CA had subject matter jurisdiction over Binay, Jr.'s petition for *certiorari* and its resultant injunctive reliefs against the Ombudsman's preventive suspension order.¹⁹⁶

B. Unconstitutionality of the Condonation Doctrine

To reiterate, the third issue before the Supreme Court was whether the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the TRO and WPI based on the condonation doctrine.¹⁹⁷ Notwithstanding the foregoing declarations of the Supreme

189. *Carpio Morales*, G.R. No. 217126-27, at 42.

190. *Id.* at 39.

191. *Id.* at 43-44.

192. *Id.* at 44.

193. *Id.* at 47.

194. *Id.* at 20-2.

195. *Carpio Morales*, G.R. No. 217126-27, at 22.

196. *Id.* at 26.

197. *Id.* at 51.

Court, it found that the basis for the CA's injunctive writs against the pertinent preventive suspension order was the doctrine of condonation.¹⁹⁸ In its resolutions granting the TRO and WPI, the CA cited *Governor Garcia, Jr., Aguinaldo, Salalima, and Mayor Garcia*.¹⁹⁹

Contrary to the Ombudsman's position, the Supreme Court opined that the CA, "by merely following settled precedents ... , which at that time, unwittingly remained 'good law,'" was within its jurisdiction when it issued the said injunctive reliefs.²⁰⁰ This meant that the condonation doctrine was sufficient ground for the TRO and WPI, especially following *Governor Garcia, Jr.* where the Supreme Court ruled that if it was established that the acts complained of were committed during a prior term, a public officer cannot be administratively charged.²⁰¹ Thus, for the purpose of issuing injunctive writs in cases of this nature, it was unnecessary for the CA to determine whether the evidence of guilt was strong.²⁰² The Supreme Court also acknowledged that since the Ombudsman had already found Binay, Jr. administratively liable, and imposed upon him the penalty of dismissal while the instant case was pending, the petition for *certiorari* before the CA was already moot.²⁰³

Nevertheless, the Supreme Court still proceeded to determine the legality of the condonation doctrine, ratiocinating that all the exceptions to the mootness principle obtained in the instant case: (1) there was a grave violation of the Constitution;²⁰⁴ (2) the exceptional character of the situation and the paramount public interest was involved;²⁰⁵ (3) the constitutional issue raised required formulation of controlling principles to guide the bench, the bar, and the public;²⁰⁶ and (4) the case was capable of repetition yet evaded review.²⁰⁷

In examining the condonation doctrine, the Supreme Court undertook two levels of review. *First*, it retraced the origin of the condonation doctrine

198. *Id.* at 49.

199. *Id.* at 50.

200. *Id.* at 67.

201. *Carpio Morales*, G.R. No. 217126-27, at 51.

202. *Id.*

203. *Id.* at 67.

204. *Id.* (citing *Belgica*, 710 SCRA at 93).

205. *Id.*

206. *Id.*

207. *Carpio Morales*, G.R. No. 217126-27, at 67 (citing *Belgica*, 710 SCRA at 93).

in U.S. and Philippine jurisdictions. *Second*, it juxtaposed the factors of or tests for the condonation doctrine as culled from known precedents with the current laws on public officers.

1. Doctrinal Misstep

The Supreme Court was quick to point out that the condonation doctrine was a jurisprudential creation in Philippine jurisdiction, decided under the 1935 Constitution.²⁰⁸ Through *Pascual*, the Supreme Court essentially transplanted the doctrine of condonation from U.S. case law into the Philippine legal system “without going into the variables of [the] conflicting views and cases” in foreign jurisdiction.²⁰⁹ Seemingly echoing Atty. Silos and the Ombudsman’s words, the Supreme Court opined that *Pascual*’s ratiocination was erroneous,²¹⁰ albeit acceptable given the state of law at that time.²¹¹ Specifically, while the *Pascual* Court based its introduction of the condonation doctrine to Philippine jurisdiction on the “weight of authorities” in the U.S. favoring the rule, a careful scrutiny revealed that such weight of authorities was not established.²¹² In fact, the Supreme Court accepted the Ombudsman’s stand that when *Pascual* was decided, the application of the doctrine in U.S. States widely varied. The Supreme Court also noted that the doctrine had already been abandoned in at least 17 U.S. States.²¹³

The nuanced treatment of the doctrine by various U.S. courts was glaring. Citing U.S. jurisprudence prior to *Pascual*, the Supreme Court discussed the three most discernible differences on the application of the condonation doctrine in U.S. States. The Supreme Court found that for

208. *Carpio Morales*, G.R. No. 217126-27, at 51 (citing *Pascual* 106 Phil. at 471).

209. *Carpio Morales*, G.R. No. 217126-27, at 52.

210. *Id.*

211. *Id.* at 55. The Supreme Court stated —

In this case, the [Supreme] Court agrees with the Ombudsman that since the time *Pascual* was decided, the legal landscape has radically shifted. Again, *Pascual* was a 1959 case decided under the 1935 Constitution, which dated provisions do not reflect the experience of the Filipino People under the 1973 and 1987 Constitutions. Therefore, the plain difference in setting, including, of course, the sheer impact of the condonation doctrine on public accountability, calls for *Pascual*’s judicious re-examination.

Id.

212. *Id.* at 52.

213. *Id.*

one, whether or not the doctrine was applicable depended not only on the facts of the case, but also on the language of a State's constitution or statute.²¹⁴ For example, the definition of "in office" or "term of office" differed from State to State.²¹⁵ Another notable difference, according to the Supreme Court, was that other U.S. States recognized the "own-successor" theory as an exception to the condonation doctrine.²¹⁶ This principle means that the two succeeding terms of a public officer re-elected for the same position he occupied during the commission of the alleged acts are continuous and considered as one and the same.²¹⁷ Other States also took into consideration the continuing nature of offenses²¹⁸ making, for example, the doctrines in *Salalima* and *Mayor Garcia* flawed because in the said cases, the Supreme Court applied the doctrine despite the fact that the alleged offenses continued until after re-election.

The Supreme Court acknowledged that the foregoing scenarios in conflicting U.S. cases only had persuasive value in Philippine jurisdiction.²¹⁹ Nevertheless, the different doctrinal applications in U.S. States served as the Supreme Court's guide as it revisited and interpreted the condonation doctrine in the instant case.²²⁰ To the Supreme Court, the controversy ultimately hinged on whether the condonation doctrine as applied in *Pascual* was still valid under prevailing legal norms.²²¹

2. No Bases in Law

The Supreme Court was accurate in stating that the condonation doctrine "was adopted hook, line, and sinker in our jurisprudence."²²² The wealth of jurisprudence applying the said doctrine echoed the declarations in *Pascual* without reference to the constitutional and statutory provisions on accountability of public officers.²²³

214. *Carpio Morales*, G.R. No. 217126-27, at 52.

215. *Id.* at 52-53.

216. *Id.* at 53-54.

217. *Id.*

218. *Id.* at 54-55.

219. *Id.* at 54.

220. *Carpio Morales*, G.R. No. 217126-27, at 54.

221. *Id.*

222. *Id.* at 58.

223. *Id.*

It goes without saying that “[t]he foundation of our entire legal system is the Constitution. It is the supreme law of the land; thus, the unbending rule is that every statute should be read in light of the Constitution.”²²⁴ Thus, the Supreme Court clarified that when *Pascual* was decided under the 1935 Constitution, there was simply no legal obstacle for the application of the condonation doctrine therein based on select U.S. cases.²²⁵ However, with the advent of the 1973 and 1987 Constitutions, the primacy of the integrity of public service was cemented.²²⁶ Given this, there have been scattered provisions on accountability of public officers in statutes.

The mandates of the Revised Administrative Code under the section of the Civil Service Commission (CSC), as well as the Code of Conduct and Ethical Standards for Public Officials and Employees, clearly reflect the constitutional convention that public officers must, at all times, be accountable to the people.²²⁷ The Supreme Court also quoted Section 60²²⁸

224. *Id.* (citing *Chavez v. Judicial and Bar Council*, 676 SCRA 579, 607 (2012) & *Teehankee v. Rovira*, 75 Phil. 634, 646 (1945)).

225. *Carpio Morales*, G.R. No. 217126-27, at 59.

226. *Id.*

227. *Id.* at 60 (citing ADMINISTRATIVE CODE, § 1 & Code of Conduct and Ethical Standards for Public Officials and Employees, § 2).

228. The provision is as follows —

Section 60. *Grounds for Disciplinary Action.* — An elective local official may be disciplined, suspended, or removed from office on any of the following grounds:

- (a) Disloyalty to the Republic of the Philippines;
- (b) Culpable violation of the Constitution;
- (c) Dishonesty, oppression, misconduct in office, gross negligence, or dereliction of duty;
- (d) Commission of any offense involving moral turpitude or an offense punishable by at least prison mayor;
- (e) Abuse of authority;
- (f) Unauthorized absence for fifteen (15) consecutive working days, except in the case of members of the sangguniang panlalawigan, sangguniang panlungsod, sanggunian bayan, and sangguniang barangay;
- (g) Application for, or acquisition of, foreign citizenship or residence or the status of an immigrant of another country; and
- (h) 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.

of the Local Government Code of 1991,²²⁹ which provides for the grounds to discipline, suspend, or remove a local elective official like Binay, Jr. from office.²³⁰ In this regard, Section 40 (b) thereof provides that those officials who are removed from office as a result of an administrative case are *disqualified* from running for any elective local position.²³¹ In a similar vein, Section 52 of the RRACCS provides that the penalty of dismissal from service carries the accessory penalty of perpetual disqualification from holding public office.²³²

Juxtaposed with the Constitution, the foregoing statutory provisions led the Supreme Court to conclude that currently, the condonation doctrine is “bereft of legal bases.”²³³

C. *The Lone Dissent*

Out of the 15 sitting Supreme Court Justices in the instant case, eight concurred with Justice Estela Perlas-Bernabe’s *ponencia*, three were on leave or took no part, and one dissented — Justice Lucas P. Bersamin.

Although he concurred with the declaration of the unconstitutionality of Section 14 of R.A. No. 6770, he expressed his reservations regarding the *ponencia*’s abandonment of the condonation doctrine.²³⁴ His dissent’s main contention was that the re-examination and reversal of the condonation doctrine was *not a justiciable matter* and, thus, unwarranted.²³⁵

Justice Bersamin was of the opinion that, contrary to the Supreme Court’s holding, the CA exceeded its jurisdiction when it relied on the condonation doctrine in issuing the TRO and WPI.²³⁶ According to him, the CA should have based its issuance of the injunctive reliefs on Section 24

An Act Providing for a Local Government Code of 1991 [LOCAL GOVERNMENT CODE], Republic Act No. 7160, § 60 (1991).

229. LOCAL GOVERNMENT CODE.

230. *Carpio Morales*, G.R. No. 217126-27, at 60.

231. *Id.* at 60-61 (citing LOCAL GOVERNMENT CODE, § 40 (b)).

232. *Carpio Morales*, G.R. No. 217126-27, at 61 (citing Civil Service Commission, Revised Rules on Administrative Cases in the Civil Service [RRACCS], CSC Reso. 1101502, § 52 (a) (2011)).

233. *Carpio Morales*, G.R. No. 217126-27, at 61.

234. *Id.* at 1.

235. *Id.*

236. *Carpio Morales*, G.R. No. 217126-27, at 9 (J. Bersamin, dissenting opinion).

of R.A. No. 6770, i.e., whether the Ombudsman complied with its requisites.²³⁷ He noted that the CA simply misapplied the cases applying the condonation doctrine in granting Binay, Jr.'s prayer for injunctive reliefs,²³⁸ opining that its application was irrelevant and unnecessary.²³⁹ Particularly, “the pronouncements in *Aguinaldo*, *Salalima*, and the others could not be applicable to the preventive suspension order issued to Binay, Jr. pending his administrative investigation because [it] was not yet a penalty in itself, but a mere measure of precaution to enable the disciplining authority to investigate the charges”²⁴⁰

Hence, the grave abuse of discretion of the CA herein, Justice Bersamin opined, did not stem from the legality or correctness of the condonation doctrine itself but from the CA's needless misapplication thereof²⁴¹ — a mistake that Justice Bersamin believed the Supreme Court in the instant case also made. In effect, the reversal of the condonation doctrine was the answer to a question that had never been asked before the CA or the Supreme Court.

V. ANALYSIS

A. Justiciability of the Instant Case

The main dissent of Justice Bersamin was that the re-examination of the condonation doctrine in the instant case was not justiciable. A justiciable question has been defined as “one which is inherently susceptible of being decided on grounds recognized by law.”²⁴² Its requisites are:

- (1) There must be an actual case or controversy calling for the exercise of judicial power;
- (2) The person challenging the act must have standing to challenge the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;

237. *Id.*

238. *Id.* at 7.

239. *Id.* at 8.

240. *Id.*

241. *Id.* at 9.

242. *Gonzales III v. Office of the President of the Philippines*, 679 SCRA 614, 639 (2014).

- (3) The question of constitutionality must be raised at the earliest opportunity; and
- (4) The issue of constitutionality must be the very *lis mota* of the case.²⁴³

Applying the foregoing requisites to the Supreme Court's review of the condonation doctrine, the third and fourth requirements were not met. The issue of the doctrine's invocation by Binay, Jr. and the CA arose only in the Ombudsman's supplemental petition and memorandum.²⁴⁴ The Ombudsman also did not raise as an issue the constitutionality of the condonation doctrine, but discussed it at length to argue that the TRO and WPI were improper.²⁴⁵ Clearly, the issue in the instant case was the alleged grave abuse of discretion by the CA, and the Supreme Court ruled that the CA was within its jurisdiction when it issued the TRO and WPI.

Ordinarily, then, the Supreme Court's refusal to exercise its power of judicial review in deciding on the constitutionality of the condonation doctrine would have been justified.²⁴⁶ However, like every general rule, the principle of justiciability has an exception — the doctrine of transcendental importance.²⁴⁷ This doctrine relaxes the requirements for justiciability, allowing the Supreme Court to exercise judicial review despite the lack of one or more of the requisites for justiciability.²⁴⁸

The Supreme Court, in briefly discussing the exceptions to mootness, was able to establish that the exception to justiciability obtained in the instant case. Indeed, with a showing that the continuing application of the condonation doctrine gravely violated the Constitution, it was fair for the Supreme Court to finally abandon it.

B. The CA's Application of the Doctrine Curtailed the Ombudsman's Powers

While the Supreme Court discussed in length the illegality of the condonation doctrine in the instant case based on public accountability

243. *Senate of the Philippines v. Ermita*, 488 SCRA 1, 35 (2006) (citing *Francisco v. House of Representatives* 415 SCRA 44, 133 (2003)).

244. *Carpio Morales*, G.R. No. 217126-27, at 1-2 (J. Bersamin, dissenting opinion).

245. *Id.* at 2.

246. *The Diocese of Bacolod v. Commission on Elections*, 747 SCRA 1, 137 (2015) (J. Brion, concurring and dissenting opinion).

247. *See, e.g., Belgica*, 710 SCRA, at 198 (J. Carpio, concurring opinion) & *Senate of the Philippines*, 488 SCRA at 39.

248. *Id.* *See also The Diocese of Bacolod*, 488 SCRA at 137 (J. Brion, concurring and dissenting opinion).

provisions of the Constitution and statutes, it did not include in its discussion how the doctrine, as applied by the CA, affected the Ombudsman's investigatory powers. This line of inquiry would have been relevant since the way the CA applied the doctrine in issuing the TRO and WPI trumped on the Ombudsman's powers to preventively suspend and investigate an erring local elective official. This would have had an effect on the Supreme Court's ruling with regard to the CA's grave abuse of discretion; it would have effectively rendered the TRO and WPI void.

In his dissenting opinion, Justice Bersamin found the need to draw the line between the application of the condonation doctrine in the event of a preventive suspension order, and its application once the erring public official is already penalized with, for example, removal from office.²⁴⁹ Certainly, this was not just a matter of semantics or nitpicking. To further belabor the point, the possibility, or even the certainty, that an administrative liability of an erring public official may inevitably be condoned by re-election did not diminish the significance of the investigation of the alleged offenses and the administrative proceedings to determine guilt or innocence.

Essentially, the reasoning behind the CA's issuance of the TRO and WPI was that, regardless of the outcome of the proceedings — even if it were proven beyond a shadow of a doubt that Binay, Jr. had in fact committed every administrative violation he was accused of — he could not be removed from office because of the condonation doctrine. Since guilty or innocent, the result would have been the same, it appeared that the CA did not find the necessity to protect the integrity of the investigation and proceedings before the Ombudsman. Instead, it concluded that the said investigation and proceedings were outweighed by

the extreme urgency of the matter and seriousness of the issues raised, considering that if it were established that the acts subject of the administrative cases against Binay, Jr. were all committed during his prior term, then, applying the condonation doctrine, Binay, Jr.'s re-election meant that he can no longer be administratively charged.²⁵⁰

Understandably, the query comes to mind — was there no longer an imperative to protect the integrity of the Ombudsman's investigation and proceedings since, if it was established that the offenses were committed in a term prior to a public officer's re-election, the administrative liability arising from the alleged offenses would be condoned? To answer this in the affirmative, as the CA did, would imply that every administrative complaint filed against a re-elected public official for administrative offenses committed during a previous term should immediately be dismissed. The disposition of administrative cases would be reduced to the mere ascertainment of a timeline, which can be determined with a cursory glance at the complaint.

249. *Carpio Morales*, G.R. No. 217126-27 at 7-8 (J. Bersamin, dissenting opinion).

250. *Carpio Morales*, G.R. No. 217126-27, at 7.

Apparently, this is not in accordance with legal precedents adhering to the condonation doctrine. Ultimately, this is contrary to the constitutionally guaranteed powers of the Ombudsman and would render Section 24 of the R.A. No. 6770 virtually useless.

The legal absurdity of the CA's rationale stemmed not from the condonation doctrine per se, but from its inappropriate application to the rebuttal of a preventive suspension order, as opposed to the rebuttal of a removal from an elective position. A mere look at the cases that it cited for the TRO and WPI would have corrected this interpretation; an exercise of diligence that is required of every court, failing which its resulting issuances should be void due to grave abuse of discretion. After all, this was why the condonation lasted as long as it did in the texts of the Supreme Court.

C. Potential Problems in Prospective Application

It goes without saying that the Authors of this Comment agree with the abandonment of the condonation doctrine. A perusal of the doctrine's origin and evolution in law and jurisprudence, especially locally, makes it clear that neither its legal basis nor policy considerations were ever particularly sound.

To reiterate the three key points on the doctrine in the *ponencia* are:

First, the condonation doctrine's incorporation into our jurisdiction was based on an incredibly broad generalization of the treatment of the subject in U.S. jurisprudence. The statement in *Pascual* that “[t]he weight of authorities [] seems to incline toward the rule denying the right to remove one from office because of misconduct during a prior term, to which we fully subscribe”²⁵¹ failed to reflect the nuances of the cited cases and variation of laws in the different States.

Second, the condonation doctrine is at odds with: (1) the provisions in the 1987 Constitution on the nature of public office and the accountability of public officers; and (2) statutes providing for the penalty of disqualification from holding public office after removal on the ground of the commission of an administrative offense. As held in the *ponencia* —

the basis for the condonation under the prevailing constitutional and statutory framework was never accounted for. What remains apparent from the text of these cases is that the basis for condonation, as jurisprudential doctrine, was — and still remains — the [] postulates of *Pascual* lifted from rulings of [U.S.] Courts where condonation was amply supported by their own state laws[,] ... dependent on the legal foundation of the adjudicating jurisdiction.²⁵²

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

252. *Carpio Morales*, G.R. No. 217126-27, at 58.

Third, “[t]he postulation that the courts would be depriving the electorate of their right to elect their officers if condonation were not to be sanctioned”²⁵³ is without legal basis in this jurisdiction. The presumption — that when the electorate re-elects an official, it has done so with full knowledge of his past misconduct, thereby showing that he has been forgiven — does not reflect the reality that many offenses committed by public officials can be downplayed or hidden from the public. In fact,

[m]isconduct committed by an elective official is easily covered up, and is almost always unknown to the electorate when they cast their votes. At a conceptual level, condonation presupposes that the condoner has actual knowledge of what is condoned. Thus, there could be no condonation of an act that is unknown.²⁵⁴

In spite of these, the abandonment of the condonation doctrine may still suffer from some infirmity. The question remains — *Did its reversal set a precedent and constitute stare decisis, such that it can be invoked in subsequent cases on the matter?*

Precedent has been defined as

a judicial decision which contains in it itself a principle. [And] [t]he underlying principle which thus forms its authoritative element is often termed the *ratio decidendi*. The concrete decision is binding between the parties to it, but it is the abstract *ratio decidendi* which alone has the force of law as regards the world at large.²⁵⁵

On the other hand, *stare decisis* is a Latin maxim,²⁵⁶ which means that “a principle underlying the decision in one case is deemed of imperative authority, controlling the decisions of like cases in the same court and in lower courts within the same jurisdiction, unless and until the decision in question is reversed or overruled by a court of competent authority.”²⁵⁷

This jurisdiction adheres to *stare decisis*,²⁵⁸ allowing the Supreme Court, “especially with a new membership ... to modify or reverse a doctrine or principle of law laid down in any decision rendered *en banc* or in division.”²⁵⁹ This doctrine, however, “is limited to actual determinations in

253. *Id.* at 64.

254. *Id.* at 64–65.

255. Arthur L. Goodheart, *Determining the Ratio Decidendi of a Case*, 40 YALE L. J. 161, 161 (1990).

256. *De Castro v. Judicial and Bar Council (JBC)*, 615 SCRA 666, 657 (2010).

257. *Id.* at 657–58.

258. *See De Castro*, 615 SCRA at 658.

259. *De Castro*, 615 SCRA at 658–59.

respect to litigated and necessarily decided questions, and is not applicable to *dicta* or *obiter dicta*.”²⁶⁰ Thus, not everything tackled in a decision becomes precedent; rather, to have the weight of precedent, “*it must be an opinion the formation of which is necessary for the decision of a particular case*; in other words, it must not be *obiter dictum*.”²⁶¹

A substantial part of the *ponencia* in the instant case was dedicated to the re-examination and reversal of the condonation doctrine, yet the *ponencia* itself noted “[t]hat the constitutionality of [the] first paragraph of Section 14 of the Ombudsman Act [was] the *lis mota* of this case”²⁶² — not the condonation doctrine. As made clear by the dissent, the doctrine did not have to be looked into in order to resolve the issues. This opens up the possibility of some interesting points of contention, if the reversal of the condonation doctrine is to be invoked in deciding future cases.

Notably, as discussed earlier, the instant case fell under the exception to justiciability. More importantly, the dispositive portion — the “judgment” in the instant case — expressly states that “[t]he condonation doctrine is *ABANDONED*.”²⁶³ In all likelihood, regardless of the justifications that led to this particular *fallo*, any subsequent challenge based on Justice Bersamin’s dissent would not be upheld. It should be recalled that

[t]he resolution of the court in a given issue — embodied in the *fallo* or dispositive part of a decision or order — is the controlling factor in resolving the issues in a case. *The fallo embodies the court’s decisive action on the issue/s posed, and is thus the part of the decision that must be enforced during execution.* The other parts of the decision only contain, and are aptly called, the *ratio decidendi* (or reason for the decision) and, in this sense, assume a lesser role in carrying into effect the tribunal’s disposition of the case.²⁶⁴

Hence, although a case could be made that the re-examination and reversal of the condonation doctrine was not needed to make actual determinations with respect to the litigated matter, thereby making it an *obiter* in the case, instead of a *ratio decidendi*, this argument may be futile in light of the foregoing principles. As far as the courts are concerned, the abandonment of the condonation doctrine in the instant case is considered precedent, so as to prescribe its future application under the *stare decisis* rule.

260. BLACK’S LAW DICTIONARY 1578 (4th ed.).

261. Goodheart, *supra* note 255, at 161 (emphasis supplied).

262. *Carpio Morales*, G.R. No. 217126-27, at 32.

263. *Id.* at 70 (emphasis supplied).

264. *Gonzales v. Solid Cement Corporation*, 684 SCRA 344, 352 (2012) (emphasis supplied).

VI. CONCLUSION

There had been no shortage of cases where the Supreme Court could have re-examined the doctrine of condonation and abandoned it. But, admittedly, none of those cases earned as much coverage as the instant case of *Carpio Morales* did. It was in this case where the doctrine received heavier public criticism; where, finally, it was “exposed ... on the steps of the temple.” Former Associate Justice Louis D. Brandeis’ prescience put it well when he said that “[p]ublicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.”²⁶⁵

The reversal of the doctrine has also been a timely re-affirmation of how the legal discourse does not only take place within the corners of the Supreme Court. We recall that within the nearly two decades preceding the instant case, a meaningful legal analysis on the illegality of the doctrine in our jurisdiction was written by a law student who then became a lawyer. Indeed, students and practitioners of the law have as much to contribute as the courts towards the evolution of even the strongest jurisprudential doctrines. While the instant case did not highlight this, it has become apparent that Atty. Silos’ thesis and articles on the doctrine are now part of the footnotes of history.

The Authors view the condonation doctrine’s abandonment as a welcome development in jurisprudence. If the question raised is why only now, then — given the innumerable missteps and misdeeds that have plagued our political reality — safe to say, the response would be the clamor of why not. In the instant case, as many remarkable cases, the Supreme Court was able to once again vindicate our Constitution and, more profoundly, the interminable fight against corruption and impunity in Government.

265. LOUIS D. BRANDEIS, *OTHER PEOPLE’S MONEY AND HOW THE BANKERS* 92 (1914).