SUPREME COURT
EN BANC

ULPIANO P. SARMIENTO III AND JUANITO G. ARCIALLA,
***Petitioners*,**

-versus-

G.R. No. L-79974
December 17, 1987

SALVADOR MISON, in his capacity as COMMISSIONER OF THE BUREAU OF CUSTOMS, AND GUILLERMO CARAGUE, in his capacity as SECRETARY OF THE DEPARTMENT OF BUDGET,
***Respondents*,**

COMMISSION ON APPOINTMENTS,
***Intervenor*.**
x----------x

D E C I S I O N

PADILLA, *J.*:

Once more the Court is called upon to delineate constitutional boundaries. In this petition for prohibition, the petitioners, who are taxpayers, lawyers, members of the Integrated Bar of the Philippines and professors of Constitutional Law, seek to enjoin the respondent

Salvador Mison from performing the functions of the Office of Commissioner of the Bureau of Customs and the respondent Guillermo Carague, as Secretary of the Department of Budget, from effecting disbursements in payment of Mison's salaries and emoluments, on the ground that Mison's appointment as Commissioner of the Bureau of Customs is unconstitutional by reason of its not having been confirmed by the Commission on Appointments. The respondents, on the other hand, maintain the constitutionality of respondent Mison's appointment without the confirmation of the Commission on Appointments.

Because of the demands of public interest, including the need for stability in the public service, the Court resolved to give due course to the petition and decide, setting aside the finer procedural questions of whether prohibition is the proper remedy to test respondent Mison's right to the office of Commissioner of the Bureau of Customs and of whether the petitioners have a standing to bring this suit.

By the same token, and for the same purpose, the Court allowed the Commission on Appointments to intervene and file a petition in intervention. Comment was required of respondents on said petition. The comment was filed, followed by intervenor's reply thereto. The parties were also heard in oral argument on 8 December 1987.

This case assumes added significance because, at bottom line, it involves a conflict between two (2) great departments of government, the Executive and Legislative Departments. It also occurs early in the life of the 1987 Constitution.

The task of the Court is rendered lighter by the existence of relatively clear provisions in the Constitution. In cases like this, we follow what the Court, speaking through Mr. Justice (later, Chief Justice) Jose Abad Santos stated in Gold Creek Mining Corp. vs. Rodriguez,[1] that:

> "The fundamental principle of constitutional construction is to give effect to the intent of the framers of the organic law and of the people adopting it. The intention to which force is to be given is that which is embodied and expressed in the constitutional provisions themselves."

The Court will thus construe the applicable constitutional provisions, not in accordance with how the executive or the legislative department may want them construed, but in accordance with what they say and provide.

Section 16, Article VII of the 1987 Constitution says:

> "The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution. He shall also appoint all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint. The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of the departments, agencies, commissions or boards.
>
> "The President shall have the power to make appointments during the recess of the Congress, whether voluntary or compulsory, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress."

It is readily apparent that under the provisions of the 1987 Constitution, just quoted, there are four (4) groups of officers whom the President shall appoint. These four (4) groups, to which we will hereafter refer from time to time, are:

> First, the heads of the executive departments, ambassadors, other public ministers and consuls, officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution;[2]
>
> Second, all other officers of the Government whose appointments are not otherwise provided for by law;[3]

> Third, those whom the President may be authorized by law to appoint;
>
> Fourth, officers lower in rank[4] whose appointments the Congress may by law vest in the President alone.
>
> The first group of officers is clearly appointed with the consent of the Commission on Appointments. Appointments of such officers are initiated by nomination and, if the nomination is confirmed by the Commission on Appointments, the President appoints.[5]

The second, third and fourth groups of officers are the present bone of contention. Should they be appointed by the President with or without the consent (confirmation) of the Commission on Appointments? By following the accepted rule in constitutional and statutory construction that an express enumeration of subjects excludes others not enumerated, it would follow that only those appointments to positions expressly stated in the first group require the consent (confirmation) of the Commission on Appointments. But we need not rely solely on this basic rule of constitutional construction. We can refer to historical background as well as to the records of the 1986 Constitutional Commission to determine, with more accuracy, if not precision, the intention of the framers of the 1987 Constitution and the people adopting it, on whether the appointments by the President, under the second, third and fourth groups, require the consent (confirmation) of the Commission on Appointments. Again, in this task, the following advice of Mr. Chief Justice J. Abad Santos in Gold Creek is apropos:

> "In deciding this point, it should be borne in mind that a constitutional provision must be presumed to have been framed and adopted in the light and understanding of prior and existing laws and with reference to them. "Courts are bound to presume that the people adopting a constitution are familiar with the previous and existing laws upon the subjects to which its provisions relate, and upon which they express their judgment and opinion in its adoption." (Barry vs. Truax, 13 N.D., 131; 99 N.W., 769; 65 L. R. A., 762.)"[6]

It will be recalled that, under Sec. 10, Article VII of the 1935 Constitution, it is provided that —

x x x

> "(3) The President shall nominate and with the consent of the Commission on Appointments, shall appoint the heads of the executive departments and bureaus, officers of the army from the rank of colonel, of the Navy and Air Forces from the rank of captain or commander, and all other officers of the Government whose appointments are not herein otherwise provided for, and those whom he may be authorized by law to appoint; but the Congress may by law vest the appointment of inferior officers, in the President alone, in the courts, or in the heads of departments.
>
> "(4) The President shall have the power to make appointments during the recess of the Congress, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress.

x x x

> "(7) x x x and with the consent of the Commission on Appointments, shall appoint ambassadors, other public ministers and consuls."

Upon the other hand, the 1973 Constitution provides that —

> "Section 10. The President shall appoint the heads of bureaus and offices, the officers of the Armed Forces of the Philippines from the rank of Brigadier General or Commodore, and all other officers of the government whose appointments are not herein otherwise provided for, and those whom he may be authorized by law to appoint. However, the Batasang Pambansa may by law vest in the Prime Minister, members of the Cabinet, the Executive Committee, Courts, Heads of Agencies, Commissions, and Boards the power to appoint inferior officers in their respective offices."

Thus, in the 1935 Constitution, almost all presidential appointments required the consent (confirmation) of the Commission on Appointments. It is now a sad part of our political history that the power of confirmation by the Commission on Appointments, under the 1935 Constitution, transformed that commission, many times, into a venue of "horse-trading" and similar malpractices.

On the other hand, the 1973 Constitution, consistent with the authoritarian pattern in which it was molded and remolded by successive amendments, placed the absolute power of appointment in the President with hardly any check on the part of the legislature.

Given the above two in extremes, one, in the 1935 Constitution and the other, in the 1973 Constitution, it is not difficult for the Court to state that the framers of the 1987 Constitution and the people adopting it, struck a "middle ground" by requiring the consent (confirmation) of the Commission on Appointments for the first group of appointments and leaving to the President, without such confirmation, the appointment of other officers, i.e., those in the second and third groups as well as those in the fourth group, i.e., officers of lower rank.

The proceedings in the 1986 Constitutional Commission support this conclusion. The original text of Section 16, Article VII, as proposed by the Committee on the Executive of the 1986 Constitutional Commission, read as follows:

> "Section 16. The president shall nominate and, with the consent of a Commission on Appointment, shall appoint the heads of the executive departments and bureaus, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain and all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint. The Congress may by law vest the appointment of inferior officers in the President alone, in the courts, or in the heads of departments."[7] (Emphasis supplied)

The above text is almost a verbatim copy of its counterpart provision in the 1935 Constitution. When the frames discussed on the floor of

the Commission the proposed text of Section 16, Article VII, a feeling was manifestly expressed to make the power of the Commission on Appointments over presidential appointments more limited than that held by the Commission in the 1935 Constitution. Thus —

> "Mr. Rama: May I ask that Commissioner Monsod be recognized.
>
> The President: We will call Commissioner Davide later.
>
> Mr. Monsod: With the Chair's indulgence, I just want to take a few minutes of our time to lay the basis for some of the amendments that I would like to propose to the Committee this morning.
>
> x x x
>
> On Section 16, I would like to suggest that the power of the Commission on Appointments be limited to the department heads, ambassadors, generals and so on but not to the levels of bureau heads and colonels.
>
> x x x"[8] (Emphasis supplied.)

In the course of the debates on the text of Section 16, there were two (2) major changes proposed and approved by the Commission. These were (1) the exclusion of the appointments of heads of bureaus from the requirement of confirmation by the Commission on Appointments; and (2) the exclusion of appointments made under the second sentence[9] the section from the same requirement. The records of the deliberations of the Constitutional Commission show the following:

> "MR. ROMULO: I ask that Commissioner Foz be recognized.
>
> THE PRESIDENT: Commissioner Foz is recognized.
>
> MR. FOZ: Madam President, my proposed amendment is on page 7, Section 16, line 26 which is to delete the words 'and bureaus,' and on line 28 of the same page, to change the phrase

'colonel or naval captain' to MAJOR GENERAL OR REAR ADMIRAL. This last amendment which is co-authored by Commissioner de Castro is to put a period (.) after the word ADMIRAL, and on line 29 of the same page, start a new sentence with: HE SHALL ALSO APPOINT, et cetera.

MR. REGALADO: May we have the amendments one by one. The first proposed amendment is to delete the words 'and bureaus' on line 26.

MR. FOZ: That is correct.

MR. REGALADO: For the benefit of the other Commissioners, what would be the justification of the proponent for such a deletion?

MR. FOZ: The position of bureau director is actually quite low in the executive department, and to require further confirmation of presidential appointment of heads of bureaus would subject them to political influence.

MR. REGALADO: The Commissioner's proposed amendment by deletion also includes regional directors as distinguished from merely staff directors, because the regional directors have quite a plenitude of powers within the regions as distinguished from staff directors who only stay in the office.

MR. FOZ: Yes, but the regional directors are under the supervision of the staff bureau directors.

x x x

MR. MAAMBONG: May I direct a question to Commissioner Foz? The Commissioner proposed an amendment to delete 'and bureaus' on Section 16. Who will then appoint the bureau directors if it is not the President?

MR. FOZ: It is still the President who will appoint them but their appointment shall no longer be subject to confirmation by the Commission on Appointments.

MR. MAAMBONG: In other words, it is in line with the same answer of Commissioner de Castro?

MR. FOZ: Yes.

MR. MAAMBONG: Thank you.

THE PRESIDENT: Is this clear now? What is the reaction of the Committee?

x x x

MR. REGALADO: Madam President, the Committee feels that this matter should be submitted to the body for a vote.

MR. DE CASTRO: Thank you.

MR. REGALADO: We will take the amendments one by one. We will first vote on the deletion of the phrase 'and bureaus' on line 26, such that appointments of bureau directors no longer need confirmation by the Commission on Appointment.

Section 16, therefore, would read: 'The President shall nominate, and with the consent of a Commission on Appointments, shall appoint the heads of the executive departments, ambassadors.'

THE PRESIDENT: Is there any objection to delete the phrase 'and bureaus' on page 7, line 26? (Silence) The Chair hears none; the amendments is approved.

x x x

MR. ROMULO: Madam President.

THE PRESIDENT: The Acting Floor Leader is recognized.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: Madam President, this is the third proposed amendment on page 7, line 28. I propose to put a period (.) after 'captain' and on line 29, delete 'and all' and substitute it with HE SHALL ALSO APPOINT ANY.

MR. REGALADO: Madam President, the Committee accepts the proposed amendment because it makes it clear that those other officers mentioned therein do not have to be confirmed by the Commission on Appointments.

MR. DAVIDE: Madam President.

THE PRESIDENT: Commissioner Davide is recognized.

x x x

MR. DAVIDE: So would the proponent accept an amendment to his amendment, so that after 'captain' we insert the following words: AND OTHER OFFICERS WHOSE APPOINTMENTS ARE VESTED IN HIM IN THIS CONSTITUTION?

FR. BERNAS: It is a little vague.

MR. DAVIDE: In other words, there are positions provided for in the Constitution whose appointments are vested in the President, as a matter of fact like those of the different constitutional commissions.

FR. BERNAS: That is correct. This list of officials found in Section 16 is not an exclusive list of those appointments which constitutionally require confirmation of the Commission on Appointments.

MR. DAVIDE: That is the reason I seek the incorporation of the words I proposed.

FR. BERNAS: Will Commissioner Davide restate his proposed amendment?

MR. DAVIDE: After 'captain,' add the following: AND OTHER OFFICERS WHOSE APPOINTMENTS ARE VESTED IN HIM IN THIS CONSTITUTION.

FR. BERNAS: How about: 'AND OTHER OFFICERS WHOSE APPOINTMENTS REQUIRE CONFIRMATION UNDER THIS CONSTITUTION'?

MR. DAVIDE: Yes, Madam President, that is modified by the Committee.

FR. BERNAS: That will clarify things.

THE PRESIDENT: Does the Committee accept?

MR. REGALADO: Just for the record, of course, that excludes those officers which the Constitution does not require confirmation by the Commission on Appointments, like the members of the judiciary and the Ombudsman.

MR. DAVIDE: That is correct. That is very clear from the modification made by Commissioner Bernas.

THE PRESIDENT: So we have now this proposed amendment of Commissioners Foz and Davide.

x x x

THE PRESIDENT: Is there any objection to this proposed amendment of Commissioners Foz and Davide as accepted by the Committee? (Silence) The Chair hears none: the amendment, as amended, is approved."[10] (Emphasis supplied)

It is, therefore, clear that appointments to the second and third groups of officers can be made by the President without the consent (confirmation) of the Commission on Appointments.

It is contended by amicus curiae, Senator Neptali Gonzales, that the second sentence of Sec. 16, Article VII reading —

> "He (the President) shall also appoint all other officers of the Government whose appointments are not otherwise provided for by law and those whom he may be authorized by law to appoint.
>
> x x x" (Emphasis supplied)

with particular reference to the word "also," implies that the President shall "in like manner" appoint the officers mentioned in said second sentence. In other words, the President shall appoint the officers mentioned in said second sentence in the same manner as he appoints officers mentioned in the first sentence, that is, by nomination and with the consent (confirmation) of the Commission on Appointments.

Amicus curiae's reliance on the word "also" in said second sentence is not necessarily supportive of the conclusion he arrives at. For, as the Solicitor General argues, the word "also" could mean "in addition; as well; besides, too" (Webster's International Dictionary, p. 62, 1981 edition) which meanings could, on the contrary, stress that the word "also" in said second sentence means that the President, in addition to nominating and, with the consent of the Commission on Appointments, appointing the officers enumerated in the first sentence, can appoint (without such consent (confirmation) the officers mentioned in the second sentence.

Rather than limit the area of consideration to the possible meanings of the word "also" as used in the context of said second sentence, the Court has chosen to derive significance from the fact that the first sentence speaks of nomination by the President and appointment by the President with the consent of the Commission on Appointments, whereas, the second sentence speaks only of appointment by the President. And, this use of different language in two (2) sentences proximate to each other underscores a difference in message conveyed and perceptions established, in line with Judge Learned Hand's observation that "words are not pebbles in alien juxtaposition" but, more so, because the recorded proceedings of the 1986 Constitutional Commission clearly and expressly justify such differences.

As a result of the innovations introduced in Sec. 16, Article VII of the 1987 Constitution, there are officers whose appointments require no confirmation of the Commission on Appointments, even if such officers may be higher in rank, compared to some officers whose appointments have to be confirmed by the Commission on Appointments under the first sentence of the same Sec. 16, Art. VII. Thus, to illustrate, the appointment of the Central Bank Governor requires no confirmation by the Commission on Appointments, even if he is higher in rank than a colonel in the Armed Forces of the Philippines or a consul in the Consular Service.

But these contrasts, while initially impressive, merely underscore the purposive intention and deliberate judgment of the framers of the 1987 Constitution that, except as to those officers whose appointments require the consent of the Commission on Appointments by express mandate of the first sentence in Sec., 16, Art. VII, appointments of other officers are left to the President without need of confirmation by the Commission on Appointments. This conclusion is inevitable, if we are to presume, as we must, that the framers of the 1987 Constitution were knowledgeable of what they were doing and of the foreseeable effects thereof.

Besides, the power to appoint is fundamentally executive or presidential in character. Limitations on or qualifications of such power should be strictly construed against them. Such limitations or qualifications must be clearly stated in order to be recognized. But, it is only in the first sentence of Sec. 16, Art. VII where it is clearly stated that appointments by the President to the positions therein enumerated require the consent of the Commission on Appointments.

As to the fourth group of officers whom the President can appoint, the intervenor Commission on Appointments underscores the third sentence in Sec. 16, Article VII of the 1987 Constitution, which reads:

> "The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of departments, agencies, commissions, or boards." (Emphasis supplied)

and argues that, since a law is needed to vest the appointment of lower-ranked officers in the President alone, this implies that, in the absence of such a law, lower-ranked officers have to be appointed by the President subject to confirmation by the Commission on Appointments; and, if this is so, as to lower-ranked officers, it follows that higher-ranked officers should be appointed by the President, subject also to confirmation by the Commission on Appointments.

The respondents, on the other hand, submit that the third sentence of Sec. 16, Article VII, above-quoted, merely declares that, as to lower-ranked officers, the Congress may by law vest their appointment in the President, in the courts, or in the heads of the various departments, agencies, commissions, or boards in the government. No reason however is submitted for the use of the word "alone" in said third sentence.

The Court is not impressed by both arguments. It is of the considered opinion, after a careful study of the deliberations of the 1986 Constitutional Commission, that the use of the word "alone" after the word "President" in said third sentence of Sec. 16, Article VII is, more than anything else, a slip or lapsus in draftmanship. It will be recalled that, in the 1935 Constitution, the following provision appears at the end of par. 3, section 10, Article VII thereof —

> "x x x; but the Congress may by law vest the appointment of inferior officers, in the President alone, in the courts, or in the heads of departments." (Emphasis supplied)

The above provision in the 1935 Constitution appears immediately after the provision which makes practically all presidential appointments subject to confirmation by the Commission on Appointments, thus —

> "3. The President shall nominate and with the consent of the Commission on Appointments, shall appoint the heads of the executive departments and bureaus, officers of the Army from the rank of colonel, of the Navy and Air Forces from the rank of captain or commander, and all other officers of the Government whose appointments are not herein provided for, and those whom he may be authorized by law to appoint; x x x."

In other words, since the 1935 Constitution subjects, as a general rule, presidential appointments to confirmation by the Commission on Appointments, the same 1935 Constitution saw fit, by way of an exception to such rule, to provide that Congress may, however, by law vest the appointment of inferior officers (equivalent to "officers lower in rank" referred to in the 1987 Constitution) in the President alone, in the courts, or in the heads of departments.

In the 1987 Constitution, however, as already pointed out, the clear and expressed intent of its framers was to exclude presidential appointments from confirmation by the Commission on Appointments, except appointments to offices expressly mentioned in the first sentence of Sec. 16, Article VII. Consequently, there was no reason to use in the third sentence of Sec. 16, Article VII the word "alone" after the word "President" in providing that Congress may by law vest the appointment of lower-ranked officers in the President alone, or in the courts, or in the heads of departments, because the power to appoint officers whom he (the President) may be authorized by law to appoint is already vested in the President, without need of confirmation by the Commission on Appointments, in the second sentence of the same Sec. 16, Article VII.

Therefore, the third sentence of Sec. 16, Article VII could have stated merely that, in the case of lower-ranked officers, the Congress may by law vest their appointment in the President, in the courts, or in the heads of various departments of the government. In short, the word "alone" in the third sentence of Sec. 16, Article VII of the 1987 Constitution, as a literal import from the last part of par. 3, section 10, Article VII of the 1935 Constitution, appears to be redundant in the light of the second sentence of Sec. 16, Article VII. And, this redundancy cannot prevail over the clear and positive intent of the framers of the 1987 Constitution that presidential appointments, except those mentioned in the first sentence of Sec. 16, Article VII, are not subject to confirmation by the Commission on Appointments.

Coming now to the immediate question before the Court, it is evident that the position of Commissioner of the Bureau of Customs (a bureau head) is not one of those within the first group of appointments where the consent of the Commission on

Appointments is required. As a matter of fact, as already pointed out, while the 1935 Constitution includes "heads of bureaus" among those officers whose appointments need the consent of the Commission on Appointments, the 1987 Constitution, on the other hand, deliberately excluded the position of "heads of bureaus" from appointments that need the consent (confirmation) of the Commission on Appointments.

Moreover, the President is expressly authorized by law to appoint the Commissioner of the Bureau of Customs. The original text of Sec. 601 of Republic Act No. 1937, otherwise known as the Tariff and Customs Code of the Philippines, which was enacted by the Congress of the Philippines on 22 June 1967, reads as follows:

> "601. Chief Officials of the Bureau. — The Bureau of Customs shall have one chief and one assistant chief, to be known respectively as the Commissioner (hereinafter known as the 'Commissioner') and Assistant Commissioner of Customs, who shall each receive an annual compensation in accordance with the rates prescribed by existing laws. The Assistant Commissioner of Customs shall be appointed by the proper department head."

Sec. 601 of Republic Act No. 1937, was amended on 27 October 1972 by Presidential Decree No. 34, amending the Tariff and Customs Code of the Philippines. Sec. 601, as thus amended, now reads as follows:

> "Sec. 601. Chief Officials of the Bureau of Customs. — The Bureau of Customs shall have one chief and one assistant chief, to be known respectively as the Commissioner (hereinafter known as Commissioner) and Deputy Commissioner of Customs, who shall each receive an annual compensation in accordance with the rates prescribed by existing law. The Commissioner and the Deputy Commissioner of Customs shall be appointed by the President of the Philippines" (Emphasis supplied.)

Of course, these laws (Rep. Act No. 1937 and PD No. 34) were approved during the effectivity of the 1935 Constitution, under which

the President may nominate and, with the consent of the Commission on Appointments, appoint the heads of bureaus, like the Commissioner of the Bureau of Customs.

After the effectivity of the 1987 Constitution, however, Rep. Act No. 1937 and PD No. 34 have to be read in harmony with Sec. 16, Art. VII, with the result that, while the appointment of the Commissioner of the Bureau of Customs is one that devolves on the President, as an appointment he is authorized by law to make, such appointment, however, no longer needs the confirmation of the Commission on Appointments.

Consequently, we rule that the President of the Philippines acted within her constitutional authority and power in appointing respondent Salvador Mison, Commissioner of the Bureau of Customs, without submitting his nomination to the Commission on Appointments for confirmation. He is thus entitled to exercise the full authority and functions of the office and to receive all the salaries and emoluments pertaining thereto.

WHEREFORE, the petition and petition in intervention should be, as they are, hereby **DISMISSED**. Without costs.

SO ORDERED.

Yap, Fernan, Narvasa, Paras, Feliciano, Gancayco, Bidin and Cortes, *JJ*., concur.

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[1] 66 Phil. 259, at 264.

[2] The "other officers" whose appointments are vested in the President in the 1987
Constitution are:

1. Regular members of the Judicial and Bar Council (ART. VIII, Sec. 8(2);
2. Chairman and Commissioners of the Civil Service Commission (ART. IX-B, Sec. 1(2);
3. Chairman and Commissioners of the Commission on Elections (ART. IX-C, Sec. 1(2);
4. Chairman and Commissioners of the Commission on Audit (ART. IX-D, Sec. 1(2); and,

5. Members of the regional consultative commission (ART. X, Sec. 18).

[3] When Congress creates inferior offices and omits to provide for appointments to them, or provides in an unconstitutional way for such appointment, the officers are within the meaning of the clause "officers of the Government whose appointments are not otherwise provided for by law" and the power to appoint such officers devolves on the President. (USC, Const., Par. II, p. 529, citing Op., Atty. Gen. 213.)

[4] The 1935 Constitution says "inferior officers" while the 1987 Constitution states "officers lower in rank."

[5] Example: Sen. Raul S. Manglapus was first nominated by the President for the position of Secretary of the Department of Foreign Affairs (an executive department). After his nomination was confirmed by the Commission on Appointments, the President appointed him Secretary of Foreign Affairs.

[6] 66 Phil. 259, at 265.

[7] Pp. 384-385, Vol. II, RECORD OF THE CONSTITUTIONAL COMMISSION OF 1986.

[8] Pp. 433-435, Vol. II, RECORD OF THE 1986 CONSTITUTIONAL COMMISSION.

[9] The second sentence of Sec. 16, ART. VII of the 1987 Constitution refers to what this Decision calls the second and third groups of officers appointed by the President.

[10] Pp. 514-521, Vol. II, RECORD OF THE 1986 CONSTITUTIONAL COMMISSION.

SEPARATE OPINIONS

TEEHANKEE, *C.J.*, concurring:

The Court has deemed it necessary and proper, in consonance with its constitutional duty, to adjudicate promptly the issue at bar and to rule that the direct appointment of respondent Salvador Mison as Commissioner of the Bureau of Customs (without need of submitting a prior nomination to the Commission on Appointments and securing its confirmation) is valid and in accordance with the President's constitutional authority to so appoint officers of the Government as defined in Article VII, section 16 of the 1987 Constitution. The paramount public interest and the exigencies of the public service

demand that any doubts over the validity of such appointments be resolved expeditiously in the test case at bar.

It should be noted that the Court's decision at bar does not mention nor deal with the Manifestation of December 1, 1987 filed by the intervenor that Senate Bill No. 137 entitled "An Act Providing For the Confirmation By the Commission on Appointments of All Nominations and Appointments Made by the President of the Philippines" was passed on 23 October 1987 and was "set for perusal by the House of Representatives." This omission has been deliberate. The Court has resolved the case at bar on the basis of the issues joined by the parties. The contingency of approval of the bill mentioned by intervenor clearly has no bearing on and cannot affect retroactively the validity of the direct appointment of respondent Mison and other appointees similarly situated as in G.R. No. 80071, "Alex G. Almario vs. Hon. Miriam Defensor-Santiago." The Court does not deal with constitutional questions in the abstract and without the same being properly raised before it in a justiciable case and after thorough discussion of the various points of view that would enable it to render judgment after mature deliberation. As stressed at the hearing of December 8, 1987, any discussion of the reported bill and its validity or invalidity is premature and irrelevant and outside the scope of the issues resolved in the case at bar.

MELENCIO-HERRERA, *J.*, concurring:

I concur with the majority opinion and with the concurring opinion of Justice Sarmiento, and simply wish to add my own reading of the Constitutional provision involved.

Section 16, Article VII, of the 1987 Constitution provides:

> "The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution."

He shall also appoint all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint.

The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of the departments, agencies, commissions or boards.

> "The President shall have the power to make appointments during the recess of the Congress, whether voluntary or compulsory, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress" *(Emphasis and 1st three paragraphings, supplied).*

The difference in language used is significant. Under the first sentence it is clear that the President "nominates," and with the consent of the Commission on Appointments "appoints" the officials enumerated. The second sentence, however, significantly uses only the term "appoint" all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint. Deliberately eliminated was any reference to nomination.

Thus, the intent of the framers of the Constitution to exclude the appointees mentioned in the second sentence from confirmation by the Commission on Appointments is, to my mind, quite clear. So also is the fact that the term "appoint" used in said sentence was not meant to include the three distinct acts in the appointing process, namely, nomination, appointment, and commission. For if that were the intent, the same terminologies in the first sentence could have been easily employed.

There should be no question either that the participation of the Commission on Appointments in the appointment process has been deliberately decreased in the 1987 Constitution compared to that in the 1935 Constitution, which required that all presidential appointments be with the consent of the Commission on Appointments.

The interpretation given by the majority may, indeed, lead to some incongruous situations as stressed in the dissenting opinion of Justice Cruz. The remedy therefor addresses itself to the future. The task of constitutional construction is to ascertain the intent of the framers of the Constitution and thereafter to assure its realization (J.M. Tuason & Co., Inc. vs. Land Tenure Administration, G.R. No. 21064, February 18, 1970, 31 SCRA 413). And the primary source from which to ascertain constitutional intent is the language of the Constitution itself.

SARMIENTO, J., concurring:

I concur. It is clear from the Constitution itself that not all Presidential appointments are subject to prior Congressional confirmation, thus:

> Sec. 16. The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution. He shall also appoint all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint. The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of departments, agencies, commissions, or boards.
>
> The President shall have the power to make appointments during recess of the Congress, whether voluntary or compulsory, but such appointment shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress.[1]

By its plain language, the Constitution has intended that only those grouped under the first sentence are required to undergo a

consenting process. This is a significant departure from the procedure set forth in the 1935 Charter:

> (3) The President shall nominate and with the consent of the Commission on Appointments, shall appoint the heads of the executive departments and bureaus, officers of the Army from the rank of colonel, of the Navy and Air Forces from the rank of captain to commander, and all other officers of the Government whose appointments are not herein otherwise provided for, and those whom he may be authorized by law to appoint; but the Congress may by law vest the appointment of inferior officers, in the President alone, in the courts, or in the heads of departments.[1]

under which, as noted by the majority, "almost all presidential appointments required the consent (confirmation) of the Commission on Appointments."[3] As far as the present Charter is concerned, no extrinsic aid is necessary to ascertain its meaning. Had its framers intended otherwise, that is to say, to require all Presidential appointments clearance from the Commission on Appointments, they could have simply reenacted the Constitution's 1935 counterpart.[4]

I agree that the present Constitution classifies four types of appointments that the President may make: (1) appointments of heads of executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and those of other officers whose appointments are vested in him under the Constitution, including the regular members of the Judicial and Bar Council,[5] the Chairman and Commissioners of the Civil Service Commission,[6] the Chairman and Commissioners of the Commission on Elections,[7] and the Chairman and Commissioners of the Commission on Audit;[8] (2) those officers whose appointments are not otherwise provided for by law; (3) those whom he may be authorized by law to appoint; and (4) officers lower in rank whose appointments the Congress may vest in the President alone.

But like Justice Cruz in his dissent, I too am aware that authors of the fundamental law have written a "rather confused Constitution"[9] with respect, to a large extent, to its other parts, and with respect, to a

certain extent, to the appointing clause itself, in the sense that it leaves us for instance, with the incongruous situation where a consul's appointment needs confirmation whereas that of Undersecretary of Foreign Affairs, his superior, does not. But the idiosyncracies, as it were, of the Charter is not for us to judge. That is a question addressed to the electorate, and who, despite those "eccentricities," have stamped their approval on that Charter. "The Court," avers the majority, "will thus construe the applicable constitutional provisions, not in accordance with how the executive or the legislative department may want them construed, but in accordance with what they say and provide."[10]

It must be noted that the appointment of public officials is essentially an exercise of executive power.[11] The fact that the Constitution has provided for a Commission on Appointments does not minimize the extent of such a power, much less, make it a shared executive-legislative prerogative. In Concepcion vs. Paredes, we stated in no uncertain terms that "appointment to office is intrinsically an executive act involving the exercise of discretion."[12] Springer vs. Philippine Islands[13] on the other hand, underscored the fact that while the legislature may create a public office, it cannot name the official to discharge the functions appurtenant thereto. And while it may prescribe the qualifications therefor, it cannot circumscribe such qualifications, which would unduly narrow the President's choice. In that event, it is as if it is the legislature itself conferring the appointment.

Thus, notwithstanding the existence of a Commission on Appointments, the Chief Executive retains his supremacy as the appointing authority. In case of doubt, the same should be resolved in favor of the appointing power.

It is the essence of a republican form of government, like ours, that "each department of the government has exclusive cognizance of matters within its jurisdiction."[14] But like all genuine republican systems, no power is absolutely separate from the other. For republicanism operates on a process of checks and balances as well, not only to guard against excesses by one branch, but more importantly, "to secure coordination in the workings of the various departments of the government."[15] Viewed in that light, the

Commission on Appointments acts as a restraint against abuse of the appointing authority, but not as a means with which to hold the Chief Executive hostage by a possibly hostile Congress, an unhappy lesson as the majority notes, in our history under the regime of the 1935 Constitution.

The system of checks and balances is not peculiar to the provision on appointments. The prohibition, for instance, against the enactment of a bill of attainder operates as a bar against legislative encroachment upon both judicial and executive domains, since the determination of guilt and punishment of the guilty address judicial and executive functions, respectively.[16]

And then, the cycle of checks and balances pervading the Constitution is a sword that cuts both ways. In a very real sense, the power of appointment constitutes a check against legislative authority. In Springer vs. Philippine Islands,[17] we are told that "Congress may not control the law enforcement process by retaining a power to appoint the individual who will execute the laws."[18] This is so, according to one authority, because "the appointments clause, rather than 'merely dealing with etiquette or protocol,' seeks to preserve an executive check upon legislative authority in the interest of avoiding an undue concentration of power in Congress."[19]

The President has sworn to "execute the laws.[20] For that matter, no other department of the Government may discharge that function, least of all, Congress. Accordingly, a statute conferring upon a commission the responsibility of administering that very legislation and whose members have been determined therein, has been held to be repugnant to the Charter."[21] Execution of the laws, it was held, is the concern of the President, and in going about this business, he acts by himself or through his men and women, and no other.

The President, on the other hand, cannot remove his own appointees "except for cause provided by law."[22] Parenthetically, this represents a deviation from the rule prevailing in American jurisdiction that "the power of removal [is] incident to the power of appointment,"[23] although this has since been tempered in a subsequent case,[24] where it was held that the President may remove only "purely executive officers,"[25] that is, officers holding office at his pleasure. In Ingles vs.

Mutuc,[26] this Court held that the President may remove incumbents of offices confidential in nature, but we likewise made clear that in such a case, the incumbent is not "removed" within the meaning of civil service laws, but that his term merely expires.

It is to be observed, indeed, that the Commission on Appointments, as constituted under the 1987 Constitution, is itself subject to some check. Under the Charter, "[t]he Commission shall act on all appointments submitted to it within thirty session days of the Congress from their submission."[27] Accordingly, the failure of the Commission to either consent or not consent to the appointments preferred before it within the prescribed period results in a de facto confirmation thereof.

Certainly, our founding fathers have fashioned a Constitution where the boundaries of power are blurred by the predominance of checks and counterchecks, yet amid such a rubble of competing powers emerges a structure whose parts are at times jealous of each other, but which are ultimately necessary in assuring a dynamic, but stable, society. As Mr. Justice Holmes had so elegantly articulated:

x x x

> The great ordinances of the Constitution do not establish and divide fields of black and white. Even the more specific of them are found to terminate in a penumbra shading gradually from one extreme to the other. When we come to the fundamental distinctions it is still more obvious that they must be received with a certain latitude or our government could not go on.
>
> x x x
>
> It does not seem to need argument to show that however we may disguise it by veiling words we do not and cannot carry out the distinction between legislative and executive action with mathematical precision and divide the branches into watertight compartments, were it ever so desirable to do so, which I am far from believing that it is, or that the Constitution requires.[28]

x x x

We are furthermore told:

x x x

> It will be vital not to forget that all of these "checks and counterpoises, which Newton might readily have recognized as suggestive of the mechanism of the heavens," [W. Wilson, Constitutional Government in the United States 56 (1908)] can represent only the scaffolding of a far more subtle "vehicle of life." (Id. at 192: "The Constitution cannot be regarded as a mere legal document, to be read as a will or a contract would be. It must, of the necessity of the case, be a vehicle of life.") The great difficulty of any theory less rich, Woodrow Wilson once warned, "is that government is not a machine, but a living thing. It falls, not under the theory of the universe, but under the theory of organic life. It is accountable to Darwin, not to Newton. It is . . . shaped to its functions by the sheer pressure of life. No living thing can have its organs offset against each other as checks, and live." (Id. at 56.) Yet because no complex society can have its centers of power not "offset against each other as checks," and resist tyranny, the Model of Separated and Divided Powers offers continuing testimony to the undying dilemmas of progress and justice.[29]

x x x

As a closing observation, I wish to clear the impression that the 1973 Constitution deliberately denied the legislature (the National Assembly under the 1971 draft Constitution) the power to check executive appointments, and hence, granted the President absolute appointing power.[30] As a delegate to, and Vice-President of, the ill-fated 1971 Constitutional Convention, and more so as the presiding officer of most of its plenary session, I am aware that the Convention did not provide for a commission on appointments on the theory that' the Prime Minister, the head of the Government and the sole appointing power, was himself a member of parliament. For this reason, there was no necessity for a separate body to scrutinize his appointees. But should such appointees forfeit the confidence of the assembly, they are, by tradition, required to resign, unless they

should otherwise have been removed by the Prime Minister.[31] In effect, it is parliament itself that "approves" such appointments. Unfortunately, supervening events forestalled our parliamentary experiment, and beginning with the 1976 amendments and some 140 or so amendments thereafter, we had reverted to the presidential form,[32] without provisions for a commission on appointments.

In fine, while Presidential appointments, under the first sentence of Section 16, of Article VII of the present Constitution, must pass prior Congressional scrutiny, it is a test that operates as a mere safeguard against abuse with respect to those appointments. It does not accord Congress any more than the power to check, but not to deny, the Chief Executive's appointing power or to supplant his appointees with its own. It is but an exception to the rule. In limiting the Commission's scope of authority, compared to that under the 1935 Constitution, I believe that the 1987 Constitution has simply recognized the reality of that exception.

SARMIENTO, J., concurring:

[1] CONST., art. VII, sec. 16.
[2] CONST. (1935), art. VII, sec. 10(3).
[3] Sarmiento vs. Mison, G.R. No. 79974, 6.
[4] As Justice Padilla further notes, Section 16, of Article VII, was originally a verbatim copy of the 1935 provisions. Upon further deliberations of the Constitutional Commission, however, the consensus was reached to amend she same to its present form.
[5] CONST., art. VIII, sec. 8 (2).
[6] Supra, art. IX (B), sec. 1 (2).
[7] Supra, art. IX (C), sec 1 (2).
[8] Supra, art. IX (D), sec. 1 (2).
[9] Sarmiento vs. Mison, supra, Cruz., J., Dissenting, 5.
[10] Supra, 3.
[11] Concepcion vs. Paredes, 42 Phil. 599 (1921); Government vs. Springer, 50 Phil. 259 (1927); Springer vs. P.I., 277 U.S. 189 (1929). The Supreme Court has been vested with the power to "[a]ppoint all officials of the Judiciary in accordance with the Civil Service Law" [CONST., art. VIII, sec. 5(6)] but that is by fiat of the Constitution itself. (See also supra, art. VII, sec. 16.) In Government vs. Springer, supra, we recognized the authority of the legislature to appoint its officers but only as an incident to the discharge of its functions." (At 278). When the Constitution authorizes Congress to vest in the President the appointment of other officers, it is not Congress being

empowered to make the appointments; the President retains his appointing power, through, however, a procedure established by Congress.

[12] Supra, at 603.
[13] Supra.
[14] Angara vs. Electoral Commission, 63 Phil. 139, 156 (1936).
[15] Angara vs. Electoral Commission, supra.
[16] TRIBE, AMERICAN CONSTITUTIONAL LAW, 184-185 (1978), citing Buckley vs. Valeo. 424 US 1 (1976).
[17] Supra.
[18] TRIBE, id., 184.
[19] Id., 184-185, citing Buckley vs. Valeo, supra.
[20] CONST., art. VII, sec. 5.
[21] Buckley vs. Valeo, supra.
[22] CONST., art. IX (B), sec. 2 (3).
[23] Myers vs. United States, 272 US 52 (1926).
[24] TRIBE, id., at 188, citing Humphrey's Executor vs. United States, 295 US 602 (1935).
[25] Id.
[26] No. L-20390, November 29, 1968, 26 SCRA 171 (1968).
[27] CONST., art. VI, sec. 18.
[28] Holmes, J., Dissenting, Springer vs. Philippine Islands, supra, 210-212.
[29] TRIBE, id., 18-19; emphasis in original.
[30] Sarmiento vs. Mison, supra, 6.
[31] CONST. (1973), art. IX, sec. 4; art. XII (B), sec. 3.
[32] See Free Telephone Workers Union vs. Minister of Labor and Employment, No. L-58184, October 30, 1981, 108 SCRA 757 (1981).

GUTIERREZ, JR., *J.*, dissenting:

I join Justice Isagani A. Cruz in his dissent. I agree that the Constitution, as the supreme law of the land, should never have any of its provisions interpreted in a manner that results in absurd or irrational consequences.

The Commission on Appointments is an important constitutional body which helps give fuller expression to the principles inherent in our presidential system of government. Its functions cannot be made innocuous or unreasonably diminished to the confirmation of a limited number of appointees. In the same manner that the President shares in the enactment of laws which govern the nation, the legislature, through its Commission on Appointments, gives assurance that only those who can pass the scrutiny of both the

President and Congress will help run the country as officers holding high appointive positions. The third sentence of the first paragraph — "The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of departments, agencies, commissions, or boards." — specifies only "officers lower in rank" as those who may, by law, be appointed by the President alone. If as expounded in the majority opinion, only the limited number of officers in the first sentence of Section 16 require confirmation, the clear intent of the third sentence is lost. In fact both the second and third sentences become meaningless or superfluous. Superfluity is not to be read into such an important part of the Constitution.

I agree with the intervenor that all provisions of the Constitution on appointments must be read together. In providing for the appointment of members of the Supreme Court and judges of lower courts (Section 9, Article VIII), the Ombudsman and his deputies (Section 9, Article XI), the Vice President as a member of cabinet (Section 3, Article VII) and, of course, those who by law the President alone may appoint, the Constitution clearly provides no need for confirmation. This can only mean that all other appointments need confirmation. Where there is no need for confirmation or where there is an alternative process to confirmation, the Constitution expressly so declares. Without such a declaration, there must be confirmation.

The 1973 Constitution dispensed with confirmation by a Commission on Appointments because the government it set up was supposed to be a parliamentary one. The Prime Minister, as head of government, was constantly accountable to the legislature. In our presidential system, the interpretation which Justice Cruz and myself espouse, is more democratic and more in keeping with the system of government organized under the Constitution.

I, therefore vote to grant the petition.

CRUZ, *J.*, dissenting:

The view of the respondent, as adopted by the majority opinion, is briefly as follows: Confirmation is required only for the officers mentioned in the first sentence of Section 16, to wit: (1) the heads of the executive departments; (2) ambassadors, other public ministers and consuls; (3) officers of the armed forces from the rank of colonel or naval captain; and (4) other officers whose appointments are vested in the President in the Constitution. No confirmation is required under the second sentence for (1) all other officers whose appointments are not otherwise provided for by law, and (2) those whom the President may be authorized by law to appoint. Neither is confirmation required by the third sentence for those other officers lower in rank whose appointment is vested by law in the President alone.

Following this interpretation, the Undersecretary of Foreign Affairs, who is not the head of his department, does not have to be confirmed by the Commission on Appointments, but the ordinary consul, who is under his jurisdiction, must be confirmed. The colonel is by any standard lower in rank than the Chairman of the Commission on Human Rights, which was created by the Constitution; yet the former is subject to confirmation but the latter is not because he does not come under the first sentence. The Special Prosecutor, whose appointment is not vested by the Constitution in the President, is not subject to confirmation under the first sentence, and neither are the Governor of the Central Bank and the members of the Monetary Board because they fall under the second sentence as interpreted by the majority opinion. Yet in the case of the multi-sectoral members of the regional consultative commission, whose appointment is vested by the Constitution in the President under Article X, Section 18, their confirmation is required although their rank is decidedly lower.

I do not think these discrepancies were intended by the framers as they would lead to the absurd consequences we should avoid in interpreting the Constitution.

There is no question that bureau directors are not required to be confirmed under the first sentence of Section 16, but that is not the provision we ought to interpret. It is the second sentence we must understand for a proper resolution of the issues now before us. Significantly, although there was a long discussion of the first

sentence in the Constitutional Commission, there is none cited on the second sentence either in the Solicitor-General's comment or in the majority opinion. We can therefore only speculate on the correct interpretation of this provision in the light of the first and third sentences of Section 16 or by reading this section in its totality.

The majority opinion says that the second sentence is the exception to the first sentence and holds that the two sets of officers specified therein may be appointed by the President without the concurrence of the Commission on Appointments. This interpretation is pregnant with mischievous if not also ridiculous results that presumably were not envisioned by the framers.

One may wonder why it was felt necessary to include the second sentence at all, considering the majority opinion that the enumeration in the first sentence of the officers subject to confirmation is exclusive on the basis of expressio unius est exclusio alterius. If that be so, the first sentence would have been sufficient by itself to convey the idea that all other appointees of the President would not need confirmation.

One may also ask why, if the officers mentioned in the second sentence do not need confirmation, it was still felt necessary to provide in the third sentence that the appointment of the other officers lower in rank will also not need confirmation as long as their appointment is vested by law in the President alone. The third sentence would appear to be superfluous, too, again in view of the first sentence.

More to the point, what will follow if Congress does not see fit to vest in the President alone the appointment of those other officers lower in rank mentioned in the third sentence? Conformably to the language thereof, these lower officers will need the confirmation of the Commission on Appointments while, by contrast, the higher officers mentioned in the second sentence will not.

Thus, a regional director in the Department of Labor and the labor arbiters, as officers lower in rank than the bureau director, will have to be confirmed if the Congress does not vest their appointment in the President along under the third sentence. On the other hand, their

superior, the bureau director himself, will not need to be confirmed because, according to the majority opinion, he falls not under the first sentence but the second. This is carefulness in reverse, like checking the bridesmaids but forgetting the bride.

It must be borne in mind that one of the purposes of the Constitutional Commission was to restrict the powers of the Presidency and so prevent the recurrence of another dictatorship. Among the many measures taken was the restoration of the Commission on Appointments to check the appointing power which had been much abused by President Marcos. We are now told that even as this body was revived to limit appointments, the scope of its original authority has itself been limited in the new Constitution. I have to disagree.

My own reading is that the second sentence is but a continuation of the idea expressed in the first sentence and simply mentions the other officers appointed by the President who are also subject to confirmation. The second sentence is the later expression of the will of the framers and so must be interpreted as complementing the rule embodied in the first sentence or, if necessary, reversing the original intention to exempt bureau directors from confirmation. I repeat that there were no debates on this matter as far as I know, which simply means that my humble conjecture on the meaning of Section 16 is as arguable, at least, as the suppositions of the majority. We read and rely on the same records. At any rate, this view is more consistent with the general purpose of Article VII, which, to repeat, was to reduce the powers of the Presidency.

The respondent cites the following exchange reported in page 520, Volume II, of the Record of the Constitutional Convention:

> Mr. Foz: Madam President, this is the third proposed amendment on page 7, line 28, I propose to put a period (.) after 'captain' and on line 29, delete 'and all' and substitute it with HE SHALL ALSO APPOINT ANY.
>
> Mr. Regalado: Madam President, the Committee accepts the proposed amendment because it makes it clear that those other

officers mentioned therein do not have to be confirmed by the Commission on Appointments.

However, the records do not show what particular part of Section 16 the committee chairman was referring to, and a reading in its entirety of this particular debate will suggest that the body was considering the first sentence of the said section, which I reiterate is not the controversial provision. In any case, although the excerpt shows that the proposed amendment of Commissioner Foz was accepted by the committee, it is not reflected, curiously enough, in the final version of Section 16 as a perusal thereof will readily reveal. Whether it was deleted later in the session or reworded by the style committee or otherwise replaced for whatever reason will need another surmise on this rather confused Constitution.

I need only add that the records of the Constitutional Commission are merely extrinsic aids and are at best persuasive only and not necessarily conclusive. Interestingly, some quarters have observed that the Congress is not prevented from adding to the list of officers subject to confirmation by the Commission on Appointments and cite the debates on this matter in support of this supposition. It is true enough that there was such a consensus, but it is equally true that this thinking is not at all expressed, or even only implied, in the language of Section 16 of Article VII. Which should prevail then — the provision as worded or the debates?

It is not disputed that the power of appointment is executive in nature, but there is no question either that it is not absolute or unlimited. The rule re-established by the new Constitution is that the power requires confirmation by the Commission on Appointments as a restraint on presidential excesses, in line with the system of checks and balances. I submit it is the exception to this rule, and not the rule, that should be strictly construed.

In my view, the only officers appointed by the President who are not subject to confirmation by the Commission on Appointments are (1) the members of the judiciary and the Ombudsman and his deputies, who are nominated by the Judicial and Bar Council; (2) the Vice-President when he is appointed to the Cabinet; and (3) “other officers lower in rank,” but only when their appointment is vested by law in

the President alone. It is clear that this enumeration does not include the respondent Commissioner of Customs who, while not covered by the first sentence of Section 16, comes under the second sentence thereof as I would interpret it and so is also subject to confirmation.

I vote to grant the petition.
