

Examining the Commission on Appointments

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I. INTRODUCTION

On 11 June 2014, Department of Justice Secretary Leila M. de Lima, Department of Social Welfare and Development Secretary Corazon J. Soliman, and Department of Environment and Natural Resources Secretary Ramon P. Paje finally received confirmation of their appointments from the Commission on Appointments (CA), after four years of service.¹ It took de Lima two sessions to be confirmed, Soliman took three, and Paje took the

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1. See Louis Bacani, *CA confirms appointment of De Lima, Soliman, 3 others*, PHIL. STAR, June 11, 2014, available at <http://www.philstar.com/headlines/2014/06/11/1333624/ca-confirms-appointment-de-lima-soliman-3-others> (last accessed Sep. 30, 2014).

longest, with seven hearings.² It must be noted that as of March 2014, de Lima and Soliman were actually bypassed by the CA 17 times, while Paje was bypassed 13 times.³ There are still numerous presidential appointees who await confirmation by the CA. This long delay means that for the past four years, the abovementioned Departments were headed by presidential appointees who have yet to comply with the basic constitutional requisite of confirmation by the CA.⁴

This is not something new. This issue has actually plagued not only the CA, but also the President, in its exercise of its power to appoint, ever since the need for confirmation was restored in the 1987 Philippine Constitution.⁵ Allegations of corruption, bribery, and abuse have also been cast against the CA.⁶ One of the biggest stories to make the headlines was in 2007 involving the accusation of then Negros Oriental Congressman Herminio G. Teves, who publicly claimed that certain CA members asked him five million pesos in exchange for his son's confirmation as Finance Secretary.⁷ The Executive has had its share of issues too, as allegations of nepotism, favoritism, and abuse of power in making ad-interim appointments continuously hound those seated in the presidency.⁸

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2. See De Lima, Paje, Soliman confirmed after 4 years, *available at* <http://www.rappler.com/nation/60301-de-lima-paje-soliman-confirmed-appoint> (last accessed Sep. 30, 2014).
 3. Rappler.com actually provides a table listing President Benigno “Noynoy” Aquino’s appointees who have been repeatedly bypassed by the CA. See Rappler, Confirmation Limbo: Long but futile process?, *available at* <http://www.rappler.com/newsbreak/61186-commission-on-appointments-part-one> (last accessed Sep. 30, 2014).
 4. PHIL. CONST. art. VII, § 16.
 5. The Commission on Appointments was removed by the 1973 Constitution. This was restored under the 1987 Constitution “as a check on the President’s appointing authority.” See JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 872 (2009).
 6. See INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE, *PHILIPPINE DEMOCRACY ASSESSMENT: RULE OF LAW AND ACCESS TO JUSTICE* (2010). See generally Philippine Center for Investigative Journalism, A ‘horse-trading agency,’ *available at* <http://pcij.org/blog/2007/06/27/a-horse-trading-agency-called-the-ca> (last accessed Sep. 30, 2014).
 7. *Id.*
 8. See generally Alex B. Brillantes, Jr. & Maricel T. Fernandez, *Toward a Reform Framework for Good Governance: Focus on Anti-Corruption*, 54 PHIL. J. PUB. ADMIN. 87, 88 (2010). See Yen Makabenta, *Of course, it’s nepotism*, MANILA TIMES, June 6, 2014, *available at* <http://www.manilatimes.net/of-course-its-nepotism/102229/> (last accessed Sep. 30, 2014) & Susan Rose-Ackerman, et al., *Leveraging Presidential Power: Separation of Powers without Checks and Balances in*

A number of critics, political analysts, and legislators have called for reforms in the CA, such as setting a limit to the number of times one can be bypassed.⁹ Some even suggested the need for its abolishment.¹⁰ Clearly, this issue is of a grave concern as it seriously undermines democratic integrity. There is a need to re-examine the relationship of the presidential power to appoint and the CA's power to confirm, in light of history, legislative intent, jurisprudence, and current practice, in order to identify whether these two powers may still be reconciled or whether reforms need to be done.

II. THE POWER TO APPOINT

A. Definition and Nature of Power to Appoint

The Philippines, as a “democratic and republican state,”¹¹ observes the “principle of separation of powers and the system of checks and balances.”¹² This means that power is divided equally among the three branches of the Government — the Executive, Judiciary, and Legislative. The principle of separation of powers has been described by the Court as

a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government.¹³

The power of appointment, which is “the designation of a person, by the person or persons having authority therefore, to discharge the duties of some office or trust,”¹⁴ has been held to be “intrinsically an executive

Argentina and the Philippines, 31 YALE LAW SCHOOL FACULTY SCHOLARSHIP SERIES 1, 37-39 (2010).

9. See *To fix or to scrap the confirmation system*, available at <http://www.rappler.com/newsbreak/61222-commission-on-appointments-part-three> (last accessed Sep. 30, 2014).
10. Conrado De Quiros, *Scrap the CA*, PHIL. DAILY INQ., June 10, 2014, available at <http://opinion.inquirer.net/75470/scrap-the-ca> (last accessed Sep. 30, 2014).
11. PHIL. CONST. art. II, § 1.
12. RICARDO S. LAZO, PHILIPPINE GOVERNANCE AND THE 1987 CONSTITUTION 63 (2006 ed.).
13. *Francisco, Jr. v. Nagmamalaskit na mga Manananggol ng mga Manggagawang Pilipino, Inc.*, 415 SCRA 44, 124 (2003). See also *Angara v. Electoral Commission*, 63 Phil. 139 (1936).
14. *Flores v. Drilon*, 223 SCRA 568, 578 (1993).

act[.]”¹⁵ This does not necessarily mean, however, that the other branches are prohibited from making appointments. The Legislative and Judiciary may exercise appointment powers that are incidental to the exercise of their primary powers.¹⁶ As provided for in the 1987 Constitution, this power is primarily vested in the President. Section 16, Article VII thereof provides —

The President shall nominate and, with the consent of the [CA], 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 the recess of the Congress, whether voluntary or compulsory, but such appointments shall be effective only until disapproved by the [CA] or until the next adjournment of the Congress.¹⁷

The President, as Chief Executive,¹⁸ has the power to choose whom he or she wants to appoint subject to the exercise of good faith and the limitations provided by law. The power of appointment is an exercise of discretion on the President’s part.¹⁹ The President is given the right to appoint someone who is not only capable, qualified, and competent, but also someone that he or she can trust. This is a necessary outcome of giving the President the power to appoint and control a subordinate officer whom he or she should be accountable for. This right of choice, being “the heart of the power to appoint”²⁰ may not be controlled or usurped by the other branches of the Government, as long as the appointing authority properly

15. *Concepcion v. Paredes*, 42 Phil. 599, 603 (1921).

16. *See Government v. Springer*, 50 Phil. 259, 285 (1929).

17. PHIL. CONST. art. VII, § 16.

18. PHIL. CONST. art. VII, § 1. This provision states that “[t]he executive power shall be vested in the President of the Philippines.” PHIL. CONST. art. VII, § 1.

19. *See Flores*, 223 SCRA at 579 (citing *Pamantasan ng Lunsod ng Maynila v. Intermediate Appellate Court*, 140 SCRA 22, 35 (1985)). The Court held that “[t]he power to appoint is, in essence, discretionary. The appointing power has the right of choice which he may exercise freely according to his judgment, deciding for himself who is best qualified among those who have the necessary qualifications and eligibilities. It is a prerogative of the appointing power[.]” *Id.*

20. *Id.* at 579.

exercises such power, otherwise, the doctrine of separation of powers will be violated.²¹

B. Types of Appointments

The 1987 Constitution and jurisprudence, most recently in the case of *General v. Urro*,²² classify a presidential appointment based on its nature or the manner in which it was done.²³ Under the first classification, there can either be a permanent or temporary appointment.²⁴ A permanent appointment enjoys security of tenure and may only be removed by a just cause, while a temporary appointee may be removed without the need of such.²⁵

There are two types of temporary or acting appointments. The first type deals with appointments made by an Acting President. Such appointment remains effective, until revoked by the elected President, within 90 days from assuming or re-assuming office.²⁶ The second type is also known as a midnight appointment, made by a President within two months before the next presidential elections and up to the end of his or her term.²⁷ This type

21. See *Gloria v. De Guzman, Jr.* 246 SCRA 126, 128 (1995).

22. *General v. Urro*, 646 SCRA 567, 579 (2011).

23. *Id.*

24. *Id.*

25. *Id.*

26. PHIL. CONST. art. VII, § 14 provides that “[a]ppointments extended by an Acting President shall remain effective, unless revoked by the elected President within [90] days from his [or her] assumption or re-assumption of office.” PHIL. CONST. art. VII, § 14.

27. See PHIL. CONST. art. VII, § 15. This provision states the rule on midnight appointments — “Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety.” PHIL. CONST. art. VII, § 15. President Benigno Aquino, Jr. issued an Executive Order which provides the following —

SECTION 1. Midnight Appointments Defined. [—] The following appointments made by the former President and other appointing authorities in departments, agencies, offices, and instrumentalities, including government-owned or controlled corporations, shall be considered as midnight appointments:

- (a) Those made on or after [11 March 2010], including all appointments bearing dates prior to [11 March 2010] where the appointee has accepted, or taken his oath, or assumed public office on or after [11 March 2010], except temporary appointments in the executive positions when continued

of appointment is only temporary, and may be revoked by the next President.

As to the second classification, an appointment may either be regular or ad-interim.²⁸ A regular appointment is one made by the President while Congress is in session, as compared to an ad-interim appointment which is made while Congress is in recess.²⁹ Ad-interim appointments are effective until disapproved by the CA or until the next adjournment of the Congress.³⁰ It must be noted that both regular and ad-interim appointments are permanent — the appointment “takes effect immediately and can no longer be withdrawn by the President[, absent a just cause,] once the appointee has qualified into office. The fact that it is subject to confirmation by the [CA] does not alter its permanent character.”³¹ The Court distinguishes regular appointments from ad-interim appointments in the following manner — “[i]n the former[,] the President nominates, and only upon the consent of the [CA] may the person thus named assume office. It is not so with reference to ad-interim appointments. It takes effect at once. The individual chosen may thus qualify and perform his function without loss of time.”³²

As provided in Section 16 of Article VII, there are also appointments which require the consent of the CA (first sentence), and those that do not.³³

vacancies will prejudice public service or endanger public safety as may be determined by the appointing authority.

- (b) Those made prior to [11 March 2010], but to take effect after said date or appointments to office that would be vacant only after [11 March 2010].
- (c) Appointments and promotions made during the period of 45 days prior to the [10 March 2010] elections in violation of Section 261 of the Omnibus Election Code.

SECTION 2. Recall, Withdraw, and Revocation of Midnight Appointments. [—] Midnight appointments, as defined under Section 1, are hereby recalled, withdrawn, and revoked. The positions covered or otherwise affected are hereby declared vacant.

Office of the President, Recalling, Withdrawing, and Revoking Appointments Issued by the Previous Administration in Violation of the Constitutional Ban on Midnight Appointments, and for Other Purposes, Executive Order No. 2 [E.O. No. 2], §§ 1 & 2 (July 30 2010).

28. *Urro*, 646 SCRA at 579.

29. *Id.*

30. *Id.*

31. *Matibag v. Benipayo*, 380 SCRA 49, 67 (2002).

32. *Pacete v. The Sec. of the Commission on Appointments*, 40 SCRA 58, 66-67 (1971).

33. PHIL. CONST. art. VII, § 16.

The enumeration in the first sentence is exclusive and may not be expanded by legislation.³⁴ The exclusivity was declared by the Court on the basis of an examination of the Minutes of the Constitutional Commission.³⁵ Appointments to positions not mentioned in the first sentence of Section 16 do not require the confirmation of the CA.³⁶

The President's exercise of its power in appointing and re-appointing subordinates during the ad-interim period of the Congress has been criticized as a circumvention of the constitutional requirement of confirmation.³⁷ This problem, however, may also be attributed to the CA itself, considering the fact that it continuously "bypasses" upon appointments instead of rejecting or accepting such. This practice is problematic because the CA's primary purpose in checking the President's authority becomes ineffectual and meaningless. To better understand this purpose, an examination of the CA's history is in order.

III. THE ORIGIN AND HISTORY OF THE POWER TO CONFIRM

As mentioned earlier, a corollary to the principle of separation of powers is the system of checks and balances.³⁸ Hence, the 1987 Constitutional Commission restored the CA as a limit on the President's exercise of appointing authority. It moderates "the President's executive power to appoint at will, by passing judgment over the fitness and qualifications of Presidential appointees and nominees."³⁹

A. *American Roots*

The idea of having a system of checks and balances on the Presidential power to appoint is mainly an American concept.⁴⁰ After Spain ceded the

34. See *Sarmiento III v. Mison*, 156 SCRA 549, 579 (1987) & *Soriano III v. Lista*, 399 SCRA 437, 441 (2003).

35. See *Sarmiento III*, 156 SCRA at 556 & BERNAS, *supra* note 5, at 878-80 (citing II RECORD OF THE CONSTITUTIONAL COMMISSION 520-21 (1986)).

36. *Calderon v. Carale*, 208 SCRA 254, 261 (1992).

37. Transparency and Accountability Network, Issue Paper on Ad Interim Appointments, available at http://www.tan.org.ph/index.php?option=com_content&view=article&id=189:transparencyandaccountabilitynetwork&catid=56:caw-2011&Itemid=99 (last accessed Sep. 30, 2014).

38. See *Francisco, Jr.*, 415 SCRA at 105.

39. COMMISSION ON APPOINTMENTS, THE COMMISSION ON APPOINTMENTS' JOURNEY: 25 YEARS OF PURSUING THE MANDATE TO CONFIRM 18 (2012). [hereinafter CA, JOURNEY].

40. See JOSEPH P. HARRIS, THE ADVICE AND CONSENT OF THE SENATE: A STUDY OF THE CONFIRMATION OF APPOINTMENTS BY THE UNITED STATES SENATE, 78 (1953 ed.).

Philippines to the United States (U.S.), the Americans instituted this system to ensure that the President was prevented from abusing the power given to him or her by filling government offices with his or her allies who may not even be qualified.⁴¹

During the American occupation in 1900, U.S. President William A. McKinley formed a second Philippine Commission, headed by William Howard T. Taft, to reconstruct the civil government of the Philippines.⁴² The Taft Commission was to serve as the sole Philippine legislative authority with the power to “make rules and orders having the effect of law to achieve certain goals, such as raising revenues by means of taxes, customs duties, and other imposts; ... and *appointing officials in the judicial, educational[,] and civil services.*”⁴³ In 1901, the U.S. President, with the U.S. Congress’ approval, appointed three Filipinos as its members.⁴⁴ The Commission exercised such functions until the end of September 1907.⁴⁵ In the following years, the U.S. Congress slowly paved the way for Philippine independence by passing numerous laws which allowed Filipinos to participate in its own government such as the Cooper Act or the Philippine Bill of 1902,⁴⁶ the Jones Law or the Philippine Autonomy Act in 1916,⁴⁷ and the Tydings-McDuffie Law in 1935.⁴⁸

41. *Id.*

42. See ROSARIO M. CORTES, ET AL., *THE FILIPINO SAGA: HISTORY AS SOCIAL CHANGE* 248 (2005). See also TEODORO A. AGONCILLO, *A HISTORY OF FILIPINO PEOPLE* 247-386 (8th ed. 1990).

43. CORTES, ET AL., *supra* note 42, at 250 (emphasis supplied).

44. AGONCILLO, *supra* note 42, at 300.

45. CORTES, ET AL., *supra* note 42, at 250.

46. An Act Temporarily to Provide for the Administration of the Affairs of Civil Government in the Philippines Islands, and for Other Purposes (Philippine Organic Act), 32 Stat. 691 (1902).

47. An Act to Declare the Purpose of the People of the United States as to the Future Political Status of the People of the Philippine Islands, and to Provide a More Autonomous Government for those Islands (The Jones Law of 1916), 39 Stat. 545 (1916).

48. An Act to Provide for the Complete Independence of the Philippine Islands, to provide for the Adoption of a Constitution and a Form of Government for the Philippine Islands, and for Other Purposes (The Philippine Independence Act), Pub. L. 73-127, 48 Stat. 456 (1934). It may be said that the idea for the creation of a CA may have first appeared in the Jones Law. There is a provision which required the confirmation of the Philippine Senate for a Governor General to be appointed, to wit —

It is not believed to be wise that such power as this should be lodged in the hands of any single official, no matter how exalted his character or great his ability, without requiring his appointments to receive

B. The 1935 Philippine Constitution

The Tydings–McDuffie Law allowed for the creation of the Philippine Commonwealth, thus leading to the creation and ratification of the 1935 Philippine Constitution on 14 May 1935, and the establishment of the Commonwealth Government on 15 November 1935.⁴⁹ It is in the provisions of the 1935 Constitution where the CA first appeared.⁵⁰ In the beginning, when the Legislature was unicameral, 21 assemblymen elected from the National Assembly comprised the CA.⁵¹ These 21 officials were “chosen according to proportional representation of the political parties in the Assembly.”⁵² When the 1940 Amendment restoring the bicameral system was enacted, the CA’s composition came to be what it is now — “a joint Senate–House Body with 25 members (the Senate President as *ex-officio* Chairman [and] 12 Senators and 12 Representatives from the [] Congress),”⁵³ thus —

There shall be a [CA] consisting of [12] Senators and [12] Members of the House of Representatives, elected by each House, respectively, on the basis of proportional representation of the political parties therein. The president of the Senate shall be the Chairman [*ex officio*] of the [CA], but shall not vote except in case of tie.⁵⁴

The original proposal during the 1934 Constitutional Convention was “that the power to confirm appointments be vested in a permanent commission [— the National Assembly —], which would [also] recommend

consent and approval of a [S]enate directly responsible to the people affected thereby.

Id. See Carlo Martin Li, *Confirming the Commission on Appointments: A study on the enforcement of the constitutional requirement of proportional representation in the election of members of the Commission on Appointments 25* (2012) (unpublished J.D. thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University). See generally, *Commission on Appointments, Historical Notes*, available at <http://comappt.gov.ph/index.php?id1=2&id2=1&id3=0> (last accessed Sep. 30, 2014).

49. CA, JOURNEY, *supra* note 39, at 18.

50. *Id.* at 19. See also Joaquin G. Bernas, S.J., *Thoughts about the Commission on Appointments*, PHIL. DAILY INQ., Aug. 13, 2007, available at http://opinion.inquirer.net/inquireropinion/columns/view/20070813-82127/Thoughts_about_the_Commission_on_Appointments (last accessed Sep. 30, 2014).

51. CA, JOURNEY, *supra* note 39, at 19.

52. Bernas, *supra* note 50. See *Cunanan v. Tan, Jr.*, 5 SCRA 1, 8 (1962).

53. CA, JOURNEY, *supra* note 39, at 19.

54. 1935 PHIL. CONST. art. VI, § 12 (superseded 1973).

laws and initiate impeachment proceedings.”⁵⁵ This was rejected and the CA’s task was reduced to the review and approval of executive appointments.⁵⁶ The scope of CA’s power to concur was actually broader than the CA’s current authority because the CA’s concurrence was needed for all Presidential appointments “unless Congress vested the power to appoint officers of lower rank in the President alone, in the courts, or in the heads of departments.”⁵⁷ This is provided for in the following provision —

The President shall nominate and with the consent of the [CA] of the National Assembly 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 National Assembly may by law vest the appointment of inferior officers, in the President alone, in the courts, or in the heads of departments.⁵⁸

Requiring the CA’s consent for almost all presidential appointments however, as the Court has pronounced, led it to become a venue of corruption and malpractice.⁵⁹ The Court has even characterized this period as “a sad part of our political history” with its rampant abuse and political maneuvering.⁶⁰

C. *The 1973 Philippine Constitution*

When former President Ferdinand E. Marcos declared Martial Law, and a new form of government was adopted, the CA completely disappeared.⁶¹ There was no power to confirm given to any government body. No checks and balances meant that the President was able to appoint allies, political supporters, friends, and relatives in the Government and government-owned corporations. The President exercised absolute authority to appoint anyone

55. CA, JOURNEY, *supra* note 39, at 19.

56. *Id.*

57. Bernas, *supra* note 50.

58. 1935 PHIL. CONST. art. VII, § 10 (3) (superseded 1973).

59. The Court specifically used the phrase “horse-trading and other similar malpractices.” See *Manalo v. Sistoza*, 312 SCRA 239, 246-47 (1999). Horse trade means “a clever and often secret agreement made by powerful people who are usually trying to get an advantage over others[.]” Merriam-Webster, Horse Trade, available at <http://www.merriam-webster.com/dictionary/horse%20trade> (last accessed Sep. 30, 2014).

60. *Sarmiento III*, 156 SCRA at 556.

61. CA, JOURNEY, *supra* note 39, at 19.

that “the practice of appointment became so deliberate, discretionary, and largely partisan.”⁶²

D. The 1987 Philippine Constitution

Having learned its lesson, the 1986 Constitutional Commission decided to restore the CA. As the Court has said, that

[g]iven the above two 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 [CA] 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.⁶³

Despite the realization of this need to revive the CA, there were still many hesitations and misgivings from certain members of the Commission. Some were uncertain for fear that the power would once again be subject to abuse, to wit —

Mr. De Castro: I would only like to put on record the many sad experiences we in the Armed Forces suffered in the hands of the [CA.] We do not want the [CA] to be a stepping stone for a star[.] I will cite the case of a Member here, Commissioner delos Reyes. He should have been an Appellate Court Justice now if he was confirmed as fiscal then. But because one member of the Commission had refused his appointment, the position was lost.⁶⁴

The 1986 Commission, however, recognized that the need for a confirmation authority to prevent an unchecked absolute appointing power far outweighs the possible malpractices that may be committed by the CA —

Mr. De Castro: Thank you. I notice that the Committee maintained the [CA] consisting of 24 members, as provided for in the 1935 Constitution. In maintaining this agency, has the Committee considered the many misfeasance and nonfeasance of the [CA]? I will say that this misfeasance and nonfeasance are still light words to use considering the many misdeeds that the [CA] had brought upon the appointees of the President for confirmation.

Mr. Davide: Commissioner de los Reyes will answer the question.

62. LAZO, *supra* note 12, at 174.

63. *See Sarmiento III*, 156 SCRA at 556.

64. Li, *supra* note 48, at 27 (citing II RECORD OF THE CONSTITUTIONAL COMMISSION 142).

Mr. de los Reyes: Yes. Undoubtedly, there are misfeasance and nonfeasance committed by the members on the [CA], but the evil is greater if there is no [CA] because there will be unilateral appointment by the President.⁶⁵

In answering these apprehensions, the Commission decided to revive the CA but with powers more limited as compared to those given in the 1935 Constitution. Under the 1935 Constitution, all presidential appointments needed the consent of the CA unless they fall under the exception.⁶⁶ This is broader compared to the 1987 Constitution where the CA's consent is only needed for appointments of those included in the first sentence of Section 16, Article VII.⁶⁷ The 1987 Constitution likewise provides that the Commission's decision on the confirmation of appointments shall be decided within 30 session days from Congress' submission⁶⁸ and by a majority vote.⁶⁹

IV. THE COMMISSION ON APPOINTMENTS

A. Powers of the Commission

Given the history of the establishment of the CA, it is clear that its primary responsibility is to check the President's appointing authority, and to ensure that there is no abuse of such power. This power, although vested with members of the Congress, is not a legislative power. The CA is "a separate and distinct entity from Congress."⁷⁰ The Court reiterated this in the case of *Cunanan v. Tan, Jr.*⁷¹ stating that "[t]he CA is a creature of the Constitution. Although its membership is confined to members of the Congress, said Commission is independent of Congress. The powers of the Commission do not come from Congress, but emanate directly from the Constitution. Hence, it is not an agent of Congress."⁷²

Pursuant to its Constitutional mandate, the CA has the following powers:

65. *Id.* at 17-18 (citing II RECORD OF THE CONSTITUTIONAL COMMISSION 82, 142).

66. See 1935 PHIL. CONST. art. VII, § 10 (superseded 1973).

67. See PHIL. CONST. art. VII, § 16. See also *Sarmiento III*, 156 SCRA at 556-66.

68. PHIL. CONST. art. VI, § 18.

69. *Id.*

70. MAURO R. MUÑOZ, JR. & DELILAH GONZALES-MUÑOZ, PHILIPPINE GOVERNANCE AND CONSTITUTION 74 (2002 ed.).

71. The Court held that the "the functions of the Commissioner are purely executive in nature." See *Cunanan*, 5 SCRA at 3.

72. *Id.* at 3.

- (1) To create its own rules.⁷³ In order to perform its functions and mandate, the CA created and promulgated its own Rules that are different from the rules of either the House of Representatives or the Senate;
- (2) To create its own standing committees.⁷⁴ Currently, there are 23 standing committees on: (1) Foreign Affairs; (2) National Defense; (3) Finance; (4) Budget and Management; (5) Justice and Judicial and Bar Council; (6) Agriculture and Food; (7) Public Works and Highways; (8) Education, Culture, and Sport; (9) Labor, Employment, and Social Welfare; (10) Health; (11) Trade and Industry; (12) Tourism and Economic Development; (13) Environment and Natural Resources; (14) Science and Technology; (14) Interior and Local Government, Regional Consultative Commissions, and Regional Autonomous Governments; (15) Constitutional Commissions and Offices; (16) Tourism and Economic Development; (17) Transportation and Communications; (18) Agrarian Reform; (19) Energy; (20) Government Corporations and Other Offices; (21) Accounts; (22) Rules and Resolutions; and (23) Ethics.⁷⁵ Evidently, these standing committees deal with the evaluation of all presidential appointees or nominees in the different government branches, as required by the Constitution.⁷⁶ The Committees may also initiate investigations *motu proprio* or at the instance of any Committee member,⁷⁷ examine witnesses,⁷⁸ or exercise the power of contempt.⁷⁹ These powers may also be exercised by the CA as a plenary;
- (3) To issue subpoenas;⁸⁰ and
- (4) To apply suppletorily the rules of either the House or the Senate.⁸¹

73. See Commission on Appointments, Rules of the Committee on Appointments [hereinafter Rules of the Committee on Appointments].

74. *Id.* ch. V, § 5.

75. *Id.*

76. See Commission on Appointments, Rules of the Standing Committees [hereinafter Rules of the Standing Committees].

77. *Id.* art. VI, § 1.

78. *Id.* art. VI, § 8.

79. *Id.* art. VI, § 9.

80. *Id.* art. VI, § 6 & Rules of the Committee on Appointments, ch. IV, § 21.

B. Jurisdiction of the Commission

According to the clear wording and intent of the law, the jurisdiction of the CA is limited only to the following:

- (1) 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;
- (4) Regular members of the Judicial and Bar Council;⁸²
- (5) Chairman and commissioners of the Civil Service Commission;⁸³
- (6) Chairman and commissioners of the Commission on Elections;⁸⁴
- (7) Chairman and commissioners of the Commission on Audit;⁸⁵ and
- (8) Members of the Regional Consultative Commissions.⁸⁶

The last five positions in the enumeration are not specifically stated in Section 16, Article VII of the Constitution, but are included in the phrase “other officers whose appointments are vested in him in this Constitution.”⁸⁷ This list is exclusive, as held in the case of *Sarmiento III v. Mison*,⁸⁸ to wit —

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 [CA], except appointments to offices expressly mentioned in the first sentence of [Section] 16, Article VII. Consequently, there was no reason to use in the third sentence of [Section] 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 [CA], in the second sentence of the same [Section] 16, Article VII.

81. Rules of the Standing Committees, § 26.

82. PHIL. CONST. art. VIII, § 8 (2).

83. PHIL. CONST. art. IX-B, § 1 (2).

84. PHIL. CONST. art. IX-C, § 1 (2).

85. PHIL. CONST. art. IX-D, § 1 (2).

86. PHIL. CONST. art. X-B, § 18.

87. PHIL. CONST. art. VII, § 16.

88. *Sarmiento III*, 156 SCRA at 564.

Therefore, the third sentence of [Section] 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 [Section] 16, Article VII of the 1987 Constitution, as a literal import from the last part of [Paragraph] 3, [S]ection 10, Article VII of the 1935 Constitution, appears to be redundant in the light of the second sentence of [Section] 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 [Section] 16, Article VII, are not subject to confirmation by the [CA].⁸⁹

The Court has also declared in the case of *Calderon v. Carale*⁹⁰ that Congress may not expand or reduce the jurisdiction of the Commission through legislation.⁹¹ The said case involved the proper application of a provision of Republic Act (R.A.) No. 6715⁹² requiring the confirmation of the CA in the presidential appointments of the Chairman and the Commissioners of the National Labor Relations Commission (NLRC).⁹³ The President appointed the Chairman and the Commissioners of the NLRC without the required confirmation by the CA.⁹⁴ A petition for prohibition was filed questioning the constitutionality of the said appointments.⁹⁵ The Court ruled against the petition and reiterated the rule enunciated in *Sarmiento III* by stating that the CA’s confirmation is not required because the NLRC Chairman and Commissioners fall within the second sentence of Section 16, Article VII of the Constitution.⁹⁶

C. Process of Confirmation

89. *Id.*

90. *Calderon*, 208 SCRA at 260-65.

91. *Id.*

92. An Act to Extend Protection to Labor, Strengthen the Constitutional Rights of Workers to Self-Organization, Collective Bargaining and Peaceful Concerted Activities, Foster Industrial Peace and Harmony, Promote Preferential Use of Voluntary Modes of Settling Labor Disputes, and Reorganize the National Labor Relations Commission, Amending for these Purposes Certain Provisions of Presidential Decree No. 442., as Amended, Otherwise Known as the Labor Code of the Philippines, Appropriating Funds Therefore, and for Other Purposes, Republic Act No. 6715, § 7 (1989).

93. *Calderon*, 208 SCRA at 260-65.

94. *Id.*

95. *Id.*

96. *Id.*

The confirmation process in the CA begins with the President's submission of the nominees or appointees to the CA.⁹⁷ Upon the receipt of the nomination papers, the CA will inform the nominees to submit all documentary requirements prescribed in Section 24, Chapter V of the Rules within 15 days from receipt of notice.⁹⁸ The Chairman then refers the nomination or appointment to the corresponding standing committee for consideration.⁹⁹ The nominations referred to the standing committee shall be published within three days from the date of referral in at least two newspapers of general circulation.¹⁰⁰ A certification to this effect "shall be executed and signed by the Secretary of the Commission and shall be served on the Chairman of the appropriate Committee before the Committee meeting called to consider the nomination."¹⁰¹ After one week from publication, the committee shall conduct public meetings or hearings to deliberate the nomination or appointment — whether the nominee or appointee has the necessary qualifications for the position.¹⁰² The committee then makes its recommendations and submits it to the CA en banc.¹⁰³ The recommendation may either support the appointment or requests for further deliberations.

The CA en banc, in a plenary session, rules on all nominations or appointments by a majority vote of all its members present.¹⁰⁴ The CA's decision on the recommendation may be favorable or unfavorable. When the decision is:

- (a) unfavorable
 - (1) the nomination or appointment is either rejected;
 - (2) referred back to the committee level for further deliberations;
 - (3) or simply left:
 - (i) favorable, in which case, the nomination or appointment is confirmed; or

97. Commission on Appointments, The Confirmation Procedure, *available at* <http://comappt.gov.ph/index.php?id1=3&id2=3&id3=0> (last accessed Sep. 30, 2014).

98. Rules of the Committee on Appointments, ch. V, § 24.

99. *Id.* ch. IV, § 16.

100. Rules of the Standing Committee, art. II, § 2.

101. *Id.*

102. *Id.* art. II, § 3.

103. *Id.* art. II, § 1.

104. Rules of the Committee on Appointments, ch. IV, § 16.

- (ii) unfavorable, in which case, the nomination or appointment is either: (a) rejected; (b) referred back to the committee level for further deliberations; or (c) simply left unacted¹⁰⁵ or “bypassed” on at the plenary level to be taken up in the next succeeding session of the CA.¹⁰⁶
- (b) confirmed
 - (1) “a certification of confirmation is issued by the [CA] to the nominee or appointee that he has successfully passed the confirmatory process and that his fitness and qualification for the position have been established and ascertained.”¹⁰⁷ The result of the CA’s action shall be reported to the President at the close of a Congressional session.¹⁰⁸

V. CURRENT PROBLEMS FACING THE COMMISSION ON APPOINTMENTS

With recent (and past) events, it seems like the good intentions and efforts of the 1986 Constitutional Commissioners are for nothing. The problems encountered under the CA provisions on the 1935 Constitution — bias, horse-trading, inefficiency, and corruption — are still the very same ones prevalent today. The following sections discuss key problem areas that need to be examined and addressed.

A. The CA’s Lack of Guidelines and Standards

Despite the appointing and confirming process being generally political, there is still a need for guidelines and standards in order to ensure that no abuse will be committed by the Executive or the CA. It may be argued that there are actually already existing rules promulgated by the CA, but it is submitted that these are not enough. These rules may have been rendered useless by existing loopholes in the system.

For example, the CA’s continuous practice of bypassing appointments or nominations, thus allowing the President to just reissue an appointment until the CA finally decides on the matter (if ever), makes the whole confirmation process an ineffectual and worthless one, its primary purpose being set aside. The CA Rules do not really provide a standard on why an appointee or nominee may be approved, rejected, or bypassed other than “the Committee Members shall be guided by no consideration other than that of the

105. *Id.* § 17.

106. Commission on Appointments, *supra* note 97.

107. *Id.*

108. *Id.*

integrity, competence[,] and fitness of the nominees or appointees.”¹⁰⁹ Clearly, without any further guidelines or requirements for determining integrity, competence, or fitness, or the lack such qualities, this phrase may be interpreted arbitrarily and be subject to abuse of power by the CA.

Further, the CA provision allowing any of its members to move for the suspension of action on any appointment or nomination is problematic.¹¹⁰ A commission member may just ask for the suspension of the consideration of an appointee or nominee without any explanation or justification. No other limitation may be found in this provision other than such motion “shall not apply to nominations or appointments taken up by the [CA] during the last session prior to a *sine die* adjournment of Congress.”¹¹¹ Problems have arisen because of the lack of safeguards in the use of this provision.¹¹² Absent any limitation, CA members may just subject this right to their own whim and for their own political use — possibility of using this for political maneuvering or horse-trading arise. Evidently, this provision needs to be amended.¹¹³ There must be transparency in the use of such right. A specific set of guidelines should be set in the Rules in order to justify the exercise of the motion of suspension. CA members must also, at the very least, explain the reason as to why they are invoking the said provision.

109. Rules of Standing Committees, art. I.

110. See Rules of the Committee on Appointments, ch. IV, § 20. This provides —
SUSPENSION OF CONSIDERATION OF NOMINATIONS OR APPOINTMENTS. Any member may move for the suspension of action by the [CA] on any nomination or appointment favorably recommended by a standing committee and the Chairman shall suspend the consideration of said nomination or appointment: Provided, that, such suspension may be taken up on the next succeeding session of the [CA]; Provided, further, that this section shall not apply to nominations or appointments taken up by the [CA] during the last session prior to a [*sine die*] adjournment of Congress.

Id. See also Rappler, *supra* note 3.

111. Rules of the Committee on Appointments, ch. IV, § 20.

112. See Christine Mendez, *Jamby blocks Duque, Macarambon confirmation*, PHIL. STAR, Mar. 13, 2008, available at <http://www.philstar.com/headlines/49815/jamby-blocks-duque-macarambon-confirmation> (last accessed Sep. 30, 2014) & Joel E. Zurbano, *Santiago: CA bending rules for Soliman*, MANILA STAND. TODAY, June 5, 2014, available at <http://manilastandardtoday.com/mobile/2014/06/05/santiago-ca-bending-rules-for-soliman> (last accessed Sep. 30, 2014).

113. See Rozzano Rufino B. Biazon, *The Commission on Appointments: More Transparency Please!*, available at <http://www.ruffybiazon.ph/?p=1020> (last accessed Sep. 30, 2014).

Another criticism against the CA is the lack of a specific timeframe or limit in the number of times it may bypass an appointee or nominee.¹¹⁴ A legislator has even said that this practice of “constant reappointments of nominees bypassed by the CA has become a ‘mockery’ of the constitutional provision that it confirms all presidential nominees who will occupy key positions in [G]overnment.”¹¹⁵ Proposals have been made by legislators to limit such bypass to three times.¹¹⁶ After the third time, the CA must decide on whether to confirm or reject the appointment or nomination.¹¹⁷ Another proposal was to prohibit the President from reappointing an appointee or nominee after he or she has been bypassed thrice.¹¹⁸

B. The CA as a Political Tool

Absent the standards and limits to the CA’s confirmation power, the whole process has been criticized as perpetuating the *padrino* system¹¹⁹ — the practice of “actually taking advantage of power connections for the personal benefit of the person eventually appointed due to such power.”¹²⁰ Allegations have also been made that CA members have used their authority as leverage in order to receive either money or political favors from the appointees or nominees in exchange for their confirmation.¹²¹ As mentioned earlier, a recent example of this was the case of Margarito B. Teves who was appointed as Secretary of Finance.¹²² His father, then Negros Oriental

114. *Id.*

115. Mario Casayuran, *Solon calls for rejection of bypassed appointees*, MANILA BULL., Mar. 5, 2014, available at <http://www.mb.com.ph/solon-calls-for-rejection-of-bypassed-appointees> (last accessed Sep. 30, 2014).

116. *Id.* See Llanesca T. Panti, *Lawmaker wants ban on ‘recycled’ Cabinet members*, MANILA TIMES, June 14, 2014, available at <http://www.manilatimes.net/lawmaker-wants-ban-on-recycled-cabinet-members/104257> (last accessed Sep. 30, 2014). See also Jess Diaz, *CA leader pushes 3-strike rule on Cabinet appointees*, PHIL. STAR, June 13, 2014, available at <http://www.philstar.com/headlines/2014/06/13/1334249/ca-leader-pushes-3-strike-rule-cabinet-appointees> (last accessed Sep. 30, 2014).

117. Diaz, *supra* note 116.

118. See An Act Limiting the Re-Appointment of Presidential Nominees Bypassed by the Commission on Appointments, S.B. No. 1719, 14th Congress, 1st Reg. Sess. (2010).

119. GMA News Online, *Rough sailing still awaits appointees at CA confirmation*, available at <http://www.gmanetwork.com/news/story/98906/news/nation/rough-sailing-still-awaits-appointees-at-ca-confirmation> (last accessed Oct. 12, 2014).

120. RAYMUNDO JULIO A. OLAGUER, *FIGHTING CORRUPTION* 26 (2006 ed.).

121. *Id.* at 6.

122. *Id.*

Representative Herminio G. Teves, accused some CA members of soliciting money from him for his son's confirmation.¹²³ This was also affirmed by other members of the Cabinet.¹²⁴ There have also been claims that CA members have been using their power as a way of getting even with rivals or thwarting the latter's political maneuvering.¹²⁵

The CA has also been accused of politicizing the whole confirmation process — one that is supposed to be based on merit and fitness.¹²⁶ What matters now, as some have claimed, is not what you can do for the Government, but what you can do for the members of the CA.¹²⁷ Of course, when one looks at the bigger picture, truly, the CA's confirmation is a mere "title" these days considering that ad-interim appointees have the same rights as regular ones. The only difference is that ad-interim appointees have to be continuously reappointed until rejected by the CA.

These practices must be abandoned as it put into question not only the integrity of the appointee or nominee, but also that of the confirming authority and the whole system itself.

VI. CONCLUSION

Based on the examination of the history and legislative intent in the creation of the CA, its principal purpose is clear. As pronounced in the Constitution and in the CA's own mandate and rules, the CA serves to keep under control the President's exercise of its appointing power. It has the authority to approve "officials" chosen by the President for a certain position. However, despite this intention, its exercise has been far from satisfactory. Issues have been raised alleging bribery, horse-trading, inefficiency, favoritism, and abuse of power against the members of the CA. Thus, calls for reforms or even abolishment have been made.

123. *Id.*

124. *Bribery in the commission*, MANILA TIMES, June 26, 2007, available at <http://news.google.com/newspapers?nid=2518&dat=20070626&id=f5Q1AAA AIBAJ&sjid=9ScMAAAAIBAJ&pg=611,8570651> (last accessed Sep. 30, 2014).

125. See Kristine Felissa Mangunay, et al., *Commission on Appointments scrambles to honor Robredo in death*, PHIL. DAILY INQ., Aug. 22, 2012, available at <http://newsinfo.inquirer.net/255150/commission-on-appointments-scrambles-to-honor-robredo-in-death> (last accessed Sep. 30, 2014).

126. See generally Joel E. Zurbano, *Santiago: CA bending rules for Soliman*, MANILA STAND. TODAY, June 5, 2014, available at <http://manilastandardtoday.com/mobile/2014/06/05/santiago-ca-bending-rules-for-soliman> (last accessed Sep. 30, 2014).

127. Conrado De Quiros, *Scrap the CA*, PHIL. DAILY INQ., June 10, 2014, available at <http://opinion.inquirer.net/75470/scrap-the-ca> (last accessed Sep. 30, 2014).

It must be noted though that the CA alone cannot be blamed. In a way, it may be said that the President is also guilty of contributing to the problem. The President, as Chief Executive, has the prerogative of who to appoint in certain government positions. This right of choice may not be controlled by the other branches of the government. However, this does not mean that the President may exercise such power absolutely or arbitrarily. There must still be means to safeguard this power. Hence, the President must still submit nominations and appointments required by the Constitution to the CA. It seems that this is not the case in practice, as accusations have been made that the President purposely fails to forward nominations required by the Constitution to be presented to the CA.¹²⁸ It has also been claimed that the President abuses the power to appoint, in his continuous exercise of acts of re-appointment.¹²⁹ These alleged acts by the President curtail the system of checks and balances required by the Constitution.¹³⁰

From these observations, it is evident that the current system has problems. The prevailing notion of the CA has to be discarded. At the very least, reforms have to be made in the system in order for the CA to perform and fulfill its constitutional mandate in checking the President's power to appoint. The proper exercise of the power to confirm is of utmost importance because it serves as the limit to the President's power to appoint. As the Court has held, a system of checks and balances must be exercised without destroying the separation of powers of the three branches of the government, in order to temper the official acts of each.¹³¹ These two doctrines, "the bedrock of a republican government[,]"¹³² are intended

to insure that governmental power is wielded only for the good of the people, mandate a relationship of interdependence and coordination among these branches where the delicate functions of enacting, interpreting[,] and enforcing laws are harmonized to achieve a unity of governance, guided only by what is in the greater interest and well-being of the people. Verily, *salus populi est suprema lex*.¹³³

128. Zurbano, *supra* note 126.

129. *Id.* See Panti, *supra* note 116 & Diaz, *supra* note 116.

130. Zurbano, *supra* note 126.

131. *Francisco, Jr.*, 415 SCRA at 124.

132. Johann Carlos Barcena, *Checking the Balance of the Separated Powers: A Critical View of De Castro v. JBC*, 85 PHIL. L.J. 132, 142 (2010).

133. *Francisco, Jr.*, 415 SCRA at 105.