Existing scholarship is sceptical about the capacity of parliamentary legislatures to hold bureaucratic agents to account, citing both the weakness of available mechanisms and the limited opportunities for their deployment within a fused system of government. Moreover, it is anticipated that within power-hoarding, adversarial systems such as the UK, there would be a rational reluctance on the part of government to cede such powers. Yet, since 1997, the House of Commons in the United Kingdom has become increasingly instrumental in the pre-appointment scrutiny of the most senior ministerial appointments. As this paper demonstrates, the scrutiny of senior public appointments by select committees therefore confounds these expectations. In particular, it reveals that although instigated by the executive, select committee have seized the opportunities afforded by pre-appointment scrutiny to develop specialist skills by which to hold appointees and their political sponsors to account. In turn, select committees have become influential veto players in relation to some appointments, although this veto capacity is largely founded on the prospect of negative publicity rather than formal powers. The article also reveals the extent to which the tribalism of the Westminster system has permeated the system, despite hope that MPs could temper their partisanship in order to institute a transparent and merit-focused system of legislative scrutiny, which has important implications for participation in public life.

In recent years the ‘unbundling’ or ‘unravelling’ of the state has been the focus of sustained analysis; and, as a result, the dilemmas associated with reconciling the centripetal thrust of delegation with the centrifugal logic of political accountability and control are generally well known (e.g. Bertelli, 2008; Verhoest et al 2011). Much less, however, is known about what Frank Vibert (2007) labels ‘the rise of the unelected’ and who actually runs those delegated elements of modern state, let alone exactly how they are appointed to key positions on agencies, boards and commissions (ABCs) throughout the semi-state. Until very recently, the thin seam of scholarship on executive patronage has been imbued with two central assumptions: that
‘patronage is the study of political parties’ and that ‘patronage is evil’ (Bearfield, 2009, p. 66). Yet, within a densely populated and increasingly fragmented governance terrain, the power to appoint individuals to key positions throughout the delegated state can be understood as an ex-ante tool of bureaucratic control: a risk reduction mechanism that enables ministers to appoint those in whom they have confidence due to personal, party or ideological affiliations. Indeed, the normative assumptions of earlier scholarship have begun to be challenged by a slightly broader and relatively small body of ‘revisionist’ scholarship that emphasises a shift in the political deployment of patronage capacities from a ‘tool of corruption’ towards a ‘tool of governance’ in large parts of the world (e.g. Kopecký and Scherlis, 2008; Kopecký, 2011; Kopecký, Mair and Spirova, 2012; Ennser-Jedenastik, 2013; Park and Kim, 2013). This, in turn, resonates with several historical analyses that have highlighted the transition from closed-elitist patronage systems towards open merit-based public appointments frameworks (e.g. Hoogenboom, 1982; Grindle, 2012).

It is within this broader intellectual canvas that this article focuses on a topic which has been almost completely overlooked by existing research: the role of parliamentary legislatures in scrutinising and controlling executive patronage. This lack of research in itself reflects that fact that parliaments have (historically and comparatively) rarely enjoyed significant - if any - powers over executive patronage. The OECD’s 2002 report into ‘Distributed Public Governance’ concluded that parliaments generally remained ‘the great outsider’, and whilst exceptions may exist (the provincial legislatures of Ontario and Nova Scotia in Canada have been granted formal opportunities to scrutinise ministerial appointments), such pre-appointment hearings have often been little more than rubber-stamping exercises or opportunities to yield material for attacks on government (Pond, 2008a, 2008b). Against this comparative backdrop, the UK now stands in an exceptional and unique position in terms of its relative strength over executive patronage. Since 2007, the House of Commons within the United Kingdom (UK) has been granted formal powers of voice – even choice – over ministerial appointments to ABCs; and since 2007, select committees have been increasingly keen to exercise their newly-granted powers, holding a total of 64 pre-appointment hearings with 66 candidates. In is exactly in this context that this article highlights a series of critical, and comparatively relevant, empirical findings:
• In the last decade, parliamentary scrutiny over the most senior government appointments to ABCs has increased significantly, entailing elements of both voice and choice.
• This has resulted in the emergence of a multi-leveled, yet ultimately ad hoc, ‘ladder of legislative scrutiny’ over executive patronage.
• This ad hoc drift has led to a shift in the balance of power between government and Parliament; and the House of Commons has become an influential and increasingly partisan actor in the appointments process.
• As a result, parliamentarians have been increasingly willing to assert choice and challenge the appointments made by ministers.
• In procedural terms, this drift has added an additional layer of complexity to an already congested regulatory landscape.
• In political terms, this shift has resulted in a range of unintended consequences including (re-)politicisation and deterrence, the effects of which are only just emerging.

Yet, despite the implications of this drift towards a ‘ladder of legislative scrutiny’, these developments have been almost completely overlooked by both political scientists and political commentators. The only other existing study on this topic was a short evaluation report commissioned by the House of Commons examining the period 2007-2010 (HC 1230, 2011), which neglects a more assertive phase of select committee activism that has emerged since 2009 and gathered pace under the Coalition Government. As a result, the more detailed and extensive research presented here (covering 1997-2013), challenges many of the conclusions of that initial evaluation and provides the first analysis of the emergent (re-)politicisation of executive patronage.

In turn, through its analysis of the resultant shift in executive-legislature relationships, this article develops a series of critical theoretical contributions, which span the micro- to the macro-levels of analysis and again reiterate the broader comparative relevance of the research presented. Firstly, whilst key theories of legislative scrutiny (e.g. McCubbins and Schwartz, 1984) predict that legislatures will move away from regular and formalised ‘police patrol’ modes of scrutiny towards more efficient and flexible systems of ‘fire alarms’, it is clear that the process of drift within the UK has moved in the opposite direction. Secondly, the increasing activism

1 Later summarised in Hazell et al, 2012.
of select committees in patrolling the use of executive patronage stands against the central thrust of the ‘parliamentary decline thesis’, which rests on normative assumptions regarding the emasculation of Parliament vis-à-vis a dominant executive (for a review, see Flinders and Kelso, 2011). Thirdly, the findings of this article run counter to Lijphart’s conclusions that since 1997, the UK has become more majoritarian as a result of the weakening of formal and informal channels of executive accountability (Lijphart, 2012, p. 215). Questions regarding whether the UK remains a paradigm of power-hoarding majoritarianism, in which changes to the legislative-executive relationship form a critical component, therefore remain intensely contested.

In terms of methodological rigor, this article presents the results of a three-year research programme entailing the analysis of the select committee reports and associated minutes of evidence for all 64 pre-appointment hearings (plus an additional 20 reports relating to all post-appointment hearings held by the Treasury Select Committee), along with all published government responses. The results of this analysis were interrogated in more detail through a programme of 56 interviews with ministers, senior officials, parliamentarians, appointees and recruitment specialists. These findings were then subjected to further reflection and review through engagement with two select committee inquiries. In order to set out and explore the findings of this research this article is divided into four sections. The first section unpacks the logic of parliamentary democracy and explores the relevance of the ‘fire alarm’ and ‘police patrol’ models of legislative scrutiny within this context. Building on this, the second section provides the historical foundations. It shows that whilst the House of Commons was historically intended, structured and resourced to operationalise a ‘fire alarm’ mode of scrutiny over appointments, a range of pressures conspired to encourage successive governments to reform patterns of executive patronage in ways ostensibly at odds with the governing norms of parliamentary politics. The third and most substantive section then charts the impact of this emergent ‘ladder of legislative scrutiny’ and seeks to analyse the logic, drivers and (unintended) implications of this development. The final section deals with the ‘so what?’ question by placing the findings of the research presented in this article within the contours of wider comparative and theoretical debates.
I. Fire Alarms, Police Patrols and Parliamentary Democracy

A theoretical misconception exists that the choice between a merit-based and patronage-based bureaucracy constitutes a ‘fundamental dichotomy’ (Laupente and Nistotskaya, 2009, p. 436; see also Grindle, 2012, p. 31). In the context of delegation, patronage can also be understood as a risk-reduction mechanism through which high-trust relationships can be manufactured and sustained. From this perspective, executive patronage can instead be understood as part of the chain of delegation that extends from voters to those charged with policy implementation (Müller, 2000). There are also empirical misconceptions that surround the study of executive patronage. The UK has been widely regarded as a classic example of ‘party government’ in which the governing party has very few, if any, restrictions on its capacity to appoint individuals key positions across the delegated state; and notion of ‘sleaze’ often overshadowed serious academic analysis (e.g. Goldston, 1977; Holland and Fallon, 1978). Whilst such perceptions dovetail with the perception of the UK as a power-hoarding majoritarian democracy, cross-European comparative analysis reveals the patronage capacities of British government ministers to be the lowest within those countries studied (Kopecký, Mair and Spirova, 2012). This has been underlined by a handful of recent studies on ministerial appointments in the UK, which have focused on the impact of the rise of independent regulatory appointment commissions in terms of ‘shrinking reach and diluted permeation’ (e.g. McTavish and Pyper, 2007; Flinders and Matthews, 2010). However, none have focused on what might be termed ‘legislative regulation.’

In terms of understanding the options and approaches available to legislatures to regulate and control executive patronage, the work of McCubbins and Schwartz (1984) offers conceptual and empirical insights, notably in relation to the distinction drawn between ‘police patrol’ forms of direct monitoring and ‘fire alarm’ mechanisms of indirect oversight (table 1, below). Police patrol monitoring is ‘centralized, active and direct’, as legislatures ‘patrol’ the bureaucracy through regular and detailed inquiries ‘with the aim of detecting and remedying any violations of legislative goals and, by its surveillance, discouraging such violations.’ In contrast, fire alarm oversight is ‘less centralized and involves less active and direct intervention’, whereby legislatures establish societal ‘fire-alarms’ which alert attention to the existence of issues that may warrant investigation:
instead of sniffing for fires, Congress places fire-alarm boxes on street corners, builds neighborhood fire houses, and sometimes dispatches its own hook-and-ladder in response to an alarm (McCubbins and Schwartz, 1984, p. 166).

In developing this taxonomy, McCubbins and Schwartz sought to challenge the way in which congressional scrutiny of independent ABCs was perceived as lax and ineffective. They argued that what scholars had interpreted as a neglect of oversight was instead a preference for one form of oversight (fire alarms) over another less effective form (police patrols), the latter being perceived as costly, resource intensive and inefficient (McCubbins and Schwartz, 1984, p. 168).

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Table 1: Models of Legislative Oversight

The work of McCubbins and Schwartz draws inspiration from principal-agent theory, and its associated challenges such as agency shirking, adverse selection, information asymmetries and moral hazard. Like many other scholars working in the principal-agent tradition, their work focused on the American context, specifically on the capacity of Congress, through its committee system, to ensure administrative compliance with legislative goals. Nonetheless, they boldly hypothesised that 'as most organizations grow and mature, their top policy-makers adopt methods of control that are comparatively decentralized and incentive based, [and] will work more efficiently... than direct, centralized surveillance' (McCubbins and Schwartz, 1984, p. 172). Yet, many of the assumptions that underpin their work reflect the separation of powers, non-linear chains of delegation, and multiple institutional checks associated with presidential systems. In contrast, parliamentary systems are characterised by a linear chain of delegation that runs from voters through to officials in governments departments or ABCs, which is mirrored by a corresponding chain of accountability running in the reverse direction. In turn, whereas agents in presidential systems may be accountable to multiple principals, agents in parliamentary systems are accountable to either single or non-competing principals, which also reduces the reliance on the institutional checks (Strøm, 2000, pp. 266-73).

Reflecting on these constitutional distinctions, scholars have underlined the limited capacity of legislatures in parliamentary systems to scrutinise the actions of
bureaucratic agents, and the weaknesses of the tools available to them. Strøm, for example, argues that parliamentary legislatures ‘do not have monitoring capacity necessary to determine when such sanctions might be appropriate’; and that scrutiny mechanisms ‘much less prominent, and have much less teeth.’ Specifically, parliamentary committees ‘have much lower oversight capacity, and in the classical Westminster model, this capacity is almost entirely absent’ (Strøm, 2000, p. 274; see also Huber and Shipan, 2000). Focusing on the UK specifically, Lupia and McCubbins suggest that ‘legislative committees are impermanent structures, subject to the whimsy of leadership’, and that ‘the structure of government is not conducive to learning, and British backbenchers would be hard pressed to act against their leaders even if they were to learn that these agents’ actions had damaging consequences’ (Lupia and McCubbins, 1994, p. 373). Yet, it is important to recognise that the constitutional configuration of parliamentary democracy does not rest on a clear separation of powers, but instead is a fused system of government in which the legislative and executive branches are interdependent. Indeed, as the next section emphasises, within majoritarian Westminster systems such as the UK, the legislature is not intended, expected or resourced to play a proactive role in the administration of the state. In this context, both the abdication by ministers of their patronage capacity and the empowerment of the House of Commons to scrutinise public appointments runs counter to the logic of delegation and accountability associated with parliamentary democracies.

II. Patronage, Parliament and Scrutiny Creep

The ‘fire-alarms’ and ‘police-patrols’ dichotomy detailed above provides a tightly focused and comparatively relevant taxonomy through which to trace and understand recent developments in the UK. Yet, legislative scrutiny in the UK has followed a different path from that anticipated by McCubbins and Schwartz, as this article’s research has revealed a transition in relation to parliamentary oversight of ministerial patronage from a ‘fire-alarm’ towards a variant of the ‘police-patrol’ model. To substantiate this argument, this section sets out the competing reform pressures that conspired to encourage successive governments to introduce reforms ostensibly at odds with the governing norms of parliamentary politics.

Throughout the twentieth century, successive governments rejected requests from the House of Commons for a formalised role in the oversight of ministerial
appointments on the basis that such measures were incompatible with the convention of individual ministerial responsibility (Richards, 1963). However, in 1995 allegations of impropriety against Prime Minister John Major’s Conservative Government brought the issue of ministerial patronage under intense public scrutiny, which led to the creation of the independent Office of the Commissioner for Public Appointments (OCPA) with a remit to regulate senior public appointments. The establishment of OCPA constituted a critical juncture from the unfettered capacity of ministers to make appointments to an increasingly constrained selectivity focused solely on merit. Indeed, since 1995, the regulation of ministerial patronage has expanded and deepened as OCPA’s Code has gradually extended to encompass a wider range of appointments (and latterly re-appointments). The creation of OCPA also paved the way for a plethora of additional independent appointments commissions – such as the NHS Appointments Commission and the Judicial Appointments Commission – whereby the plenipotentiary patronage powers of ministers were fully rescinded away from ministers.

With regards to the legislative scrutiny of such appointments, it is possible to identify two distinct phases of activity. The first phase covers 1997-2009, during which select committees pressed for additional scrutiny capacities, and sought to demonstrate the responsible execution of their duties; and the second phase covers 2009 onwards, a period that has witnessed increased parliamentary activism and heightened tensions between government and Parliament. These two phases provide not simply a chronological account of the evolution of ministerial patronage, but a way of understanding the changing dynamics of executive-legislative relationships. What is particularly interesting is the stark shift in the behavior and attitudes of select committees during this second phase. This is a critical point. The only evaluation of pre-appointment scrutiny to date covers the period from July 2008 to April 2010 (Constitution Unit, 2010), and was commissioned by the Liaison Committee (HC 830, 2011). This concluded that: select committees exerted a significant but informal influence over appointments; committees had generally restricted focused on the expertise of the minister’s preferred candidate; the procedure was generally consistent across committees; and, that there was no evidence that pre-appointment hearings had deterred potential applicants. The research undertaken for this article challenges many of these nascent findings, especially in relation to how the policy and politics of legislative scrutiny of ministerial appointments has evolved since

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Abolished by the Coalition Government as part of its public bodies reform programme in October 2012.

The academic (and former MP) Tony Wright once described the politics of parliamentary reform as being about the insertion of ‘cracks and wedges’ into established practices that over time could be levered to introduce more significant reforms (2004). With regards to pre-appointment scrutiny, the first significant crack occurred just days after the May 1997 general election when the Labour Government, despite pre-election pledges to give select committees greater powers over appointments, rejected the Treasury Select Committee’s request for a formal role in appointments to the new Monetary Policy Committee (MPC) of the Bank of England (HC 282, 1997, paras. 47-9). The Government cited ‘substantial difficulties with this proposal’ and ‘important constitutional issues which go far wider than the Bank of England’ (HC 502, 1998, paras. xiii). Undeterred, the Treasury Select Committee announced its intention to introduce its own system of informal ‘confirmation hearings’ for all appointments and re-appointments to the MPC, with questioning ‘restricted to issues of the appointee’s personal independence and professional competence’ (HC 571, 1998, para. 6); and held its first round of hearings in June 1998.

The Treasury Select Committee’s experiment with post-appointment scrutiny was generally deemed successful and seen as evidence that MPs could be trusted to set aside party politics to focus on the professional competency of the minister's appointee. A degree of momentum therefore built that became visible in March 2000 when the Liaison Committee recommended the introduction of a formalised system of pre-appointment hearings (HC 300, 2000, para. 24), supported by a number of external commissions, including the Conservative Party’s Commission to Strengthen Parliament and the Hansard Society’s Commission on Parliamentary Scrutiny. Yet, citing constitutional precedence, the Government rejected such demands on the basis that ‘[a]ny indication that a Ministerial appointment relied upon the approval of a select committee or was open to a select committee veto would break the clear lines of accountability by which Ministers are answerable to Committees for the actions of the executive.’ The Government also highlighted the risk of ‘lame duck’ appointees, ‘appointed by the Minister but without Select Committee endorsement’; and of the scrutiny process serving to ‘deter good candidates from putting themselves forward because of the nature of the hearings’ (HC 748, 2000, paras. 17-19).
The scrutiny of ministerial patronage thus became one strand of a broader debate concerning executive-legislature relationships. Many parliamentarians deemed the dominance of the executive as unsustainable, arguing that there was a need to move select committees from their traditionally reactive and under-resourced form of oversight towards a more proactive and ‘systematic’ model (Hansard Society, 2003). A set of reforms were passed by a resolution of the House that were designed to shift the balance of power back towards the legislature, and included in the set of ‘Core Tasks’ for select committees to undertake was the requirement to ‘scrutinise major appointments made by the department’ (HC 558, 2002). In July 2003 the Public Administration Select Committee (PASC) again recommended a formalised system of pre-appointment scrutiny (HC 165-I), but the Government remained resolute regarding its incompatibility with parliamentary democracy (e.g. Cm. 6056, 2003). This situation therefore evolved in a typically British muddled manner as select committees held ad hoc informal pre-appointment hearings under the new ‘Core Tasks’, whilst the Government refused to sanction their formal introduction.

In July 2007, the situation changed unexpectedly when Gordon Brown used his first speech as Prime Minister to announce a package of constitutional reforms, including allowing Parliament ‘a bigger role in the selection of key public officials’ (Hansard, 3 July 2007, c. 816). The accompanying Governance of Britain green paper explained that hearings ‘would be non-binding, but in light of the report of the committee, Ministers would decide whether to proceed’ (Cm. 7170, 2007, para. 76), thus equipping parliamentarians with the powers of voice. Yet, at the same time, the Government also announced that the appointment of the Chair of the newly-established Statistics Authority would be subject to a full confirmatory vote in the House of Commons, and in this specific instance therefore granted parliamentarians the power of choice. On the same day the Chancellor of the Exchequer, Alistair Darling, announced that in future all members of the MPC would be subject to formalised pre-commencement hearings in front of the Treasury Select Committee (Hansard, 3 July 2007, c43W). Responding to these announcements, the PASC stressed the need for committees to mirror the behavior of the Treasury Select Committee by focusing on the ‘professional competence’ and ‘personal independence’ of candidate, otherwise ‘the reputations of committees are likely to suffer and the Government is likely to reconsider whether pre-appointment hearings are
appropriate’ (HC 152, 2008, para. 34). This was subsequently reiterated in the guidance produced by the Liaison Committee and the Cabinet Office (HC 152, 2008; Cabinet Office, 2009), and following a period of negotiation with the Liaison Committee, the Cabinet Office published in August 2009 an agreed list of 53 posts subject to pre-appointment hearings (Cabinet Office, 2009).

**Phase 2: Emboldened Activism, 2009-2013**

As this overview illustrates, 1997-2009 marked the beginning of a transition from ‘fire alarm’ oversight to a more formalised system of ‘police patrol’, underpinned by what might be termed as ‘good behavior’ by select committees (see Table 1, above). By 2009, however, the initial cracks that had reshaped executive patronage had been prised open, and this period can be understood as one of ‘emboldened activism’, as parliamentarians sought to accrue further powers and demonstrate their independence from the executive. From 2010 onwards, the Coalition Government instigated several *ad hoc* changes to the scrutiny process. The formal coalition agreement included a commitment to ‘strengthen the powers of select committees to scrutinise major public appointments’ (HM Government, 2010, p. 21), and in September 2010 the Chancellor of the Exchequer, George Osborne, announced his intention to implement a system of ‘double-locking’ for appointments to the Office for Budget Responsibility whereby the appointment and dismissal of senior staff could only proceed with the joint approval of government and parliament. The *Budget Responsibility and National Audit Act 2011* thus instituted a critical shift in the balance of power between the executive and legislature by providing the first ever statutory veto over a ministerial appointment (i.e. *choice* and not just *voice*), in a manner reminiscent of the American congressional model. In February 2011 a second model of non-statutory ‘double-locking’ was introduced when the Justice Minister announced that Government would accept the Justice Select Committee’s final recommendation regarding the minister's preferred candidate to the post of Information Commissioner in order to strengthen the Office’s independence (Hansard, 16 February 2011, cc. 87-88WS). The Government also sanctioned hearings for positions not covered by Cabinet Office Guidance, bowing (for example) to pressure in March 2011 to subject the Chair of the BBC Trust to a pre-appointment hearing. The withdrawal of the preferred candidate for the Chair of the UK Statistics Authority in June 2011 (discussed below) opened the way for yet another constitutional innovation with the Cabinet Office granting the PASC a greater role in
the selection process, consulting the committee on matters including the person specification, role description and remuneration. The composition of the appointment panel was even reconstituted to include a parliamentarian with responsibility for assessing the independence of candidates from the executive. Similarly, in July 2011 the appointment for the Parliamentary and Health Service Ombudsman proceeded as a ‘joint appointment’, whereby the Chair of the PASC sat on the selection panel; and, following a pre-appointment hearing, the appointment was approved by the House. These changes were consolidated in updated Cabinet Office guidance, published in 2013, which provided an updated list of 52 positions subject to pre-appointment hearings. Reflecting changes to the wider delegated state, this updated list included positions on bodies created since the last guidance was published (e.g. the Independent Commission for Aid Impact, Monitor and NHS England), whilst dropping those positions on bodies abolished as part of the Coalition Government’s public bodies reform programme (e.g. the Agricultural Wages Board and NHS Appointments Commission). The revised list also included several pre-existing positions, including the Chair of the BBC Trust and Chair of SC4, both of which had already been subject to pre-appointment hearings following demands by the relevant select committees.

Stimulated by this disparate raft of changes, this period has also witnessed select committees demanding extended and additional powers. The Liaison Committee has been particularly proactive in ensuring that the views of committees are ‘given due weight’ in the appointments process (HC 426, 2010, para. 72), producing a list of demands that would embed select committees at all stages. Its recommendations have included: consultation between departments and committees on the job specification prior to advertisement (HC 426, 2010, para. 71); information about short-listed candidates not selected (HC 1230, 2011, 3); private meetings between ministers and committees in cases where a committee is inclined to make a negative report (HC 426, 2010, para. 72); and, a confirmatory vote in the House in relation to key appointments (HC 1230, 2011, p. 3). The Committee also recommended enhanced scrutiny for a small number of top-tier posts, and sought to stratify between different types of appointments. For the very top-tier appointments, it recommended that Parliament was afforded a veto over appointment and dismissal; for the second tier, that a minister would appear before a committee if they decided to proceed against its recommendation; and, for a third tier, the continuation of the right to choose to hold pre-appointment hearings (HC 1230, 2011, para. 40). The
proposed tripartite system was therefore an attempt to clarify and streamline the *ad hoc* system that had emerged, whilst simultaneously increasing the House’s powers over a broader range of appointments. Such demands have been echoed elsewhere. In June 2012, the Home Affairs Committee demanded information about unsuccessful candidates and interview performances so that they did not have to assess the suitability of the nominated candidate in ‘a vacuum’ (HC 183-I, 2012, para. 8); and in July 2013, the PASC published a ‘call for evidence’ to solicit questions from the public that could be addressed to the candidate for the Chair of the Committee on Standards in Public Life at their pre-appointment hearing.

In June 2012 the Government rejected the Liaison Committee’s recommendations outright, including, critically, the recommendation for committees to have an effective veto on a wider range of positions. The Government’s justification was telling. It stated that ‘[t]hese are ministerial appointments and it would not be appropriate for parliament to be an equal partner in appointment decisions’ (HC 394, 2012, 17); whilst reminding the Committee that ‘[i]n the majority of cases, we would expect that the select committee will agree with the appointment of the Government’s preferred candidate where an open and transparent process has been followed, the candidate has been selected on merit, and the relevant committee has been engaged’ (HC 912, 2012, p. 3). The Government’s position could therefore be interpreted as an example of ‘the negative executive mentality’ (Judge, 1993), wherein the convention of individual ministerial responsibility was deployed not as a weapon to deliver scrutiny but as a shield through which the executive can reject certain recommendations by reference to the need to protect the convention. The Government’s response was met with frustration, as the Liaison Committee stated that ‘[w]hile we deplored the delay, we hoped that at least it would mean that the Government’s response would have real substance, and take us forward to a new stage in the accountability of ministerial appointments. [T]he response fails to engage with our recommendations, and is somewhat dismissive in tone’ (HC 394, 2012, paras. 6-7). In coming to such a conclusion the Liaison Committee suggested that the Government had misjudged ‘the mood of this Committee and – we believe – the mood of the House and the expectations of the public’ (HC 394, 2012, p. 18). Yet by November 2013, it appeared that the Government was prepared to concede further ground to select committees, and revised Cabinet Office guidance (2013) included provisions for the sharing of information at all stages of the appointments process, including the job specification and a summary of the overall field of applications.
Moreover, in the event of disagreement between a minister and select committee, whereas previous guidance simply required the minister to ‘consider any relevant considerations contained in the report’ and ‘formally notify the Committee Chair of the decision’ (Cabinet Office, 2009, pp. 6-7), the revised guidance also required ministers to ‘respond to the Committee explaining the reason(s) why’ the report ‘is not accepted’. Crucially, however, the guidance reiterated the principle that ‘it is for Ministers to decide whether or not to accept a committee’s recommendations’ (Cabinet Office, 2013, p. 4-5). Nonetheless, as the research presented in the next section illustrates, select committees have been engaged in a process of ‘scrutiny creep’, exceeding their stated competencies; and that this in turn has resulted in a range of unintended consequences.

III. The Drift Towards a Ladder of Legislative Scrutiny

In setting out the evolution of pre-appointment scrutiny within the UK, the previous section captured the twin dynamics of legislative recalcitrance and executive acquiescence that fostered a more formalised ‘police patrol’ in relation to the most senior ministerial appointments. Yet this transition should not be interpreted as a considered shift in governance, but as a more piecemeal and disordered drift. Reforms were often the product of bilateral ad hoc agreements between specific departmental ministers and their respective select committees, and imposed upon an already congested institutional landscape with limited consultation or planning. Indeed, it was this organisational confusion that led to calls for clarity and order (e.g. Institute for Government, 2011), and prompted the Liaison Committee’s demands for a tri-partite system of scrutiny (detailed above). It is clear that the evolution of pre-appointment scrutiny has therefore been affected by an inflationary dynamic, whereby reforms conceded in one area have rapidly spilled over into demands for similar measures elsewhere. Nonetheless, when the reforms are taken together, it is possible to identify the emergence of a ‘ladder of legislative scrutiny’, whereby a wider range of appointments have been subject to further forms of oversight (table 2, below).

Table 2: The Ladder of Legislative Scrutiny

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The underpinning principle of all rungs of this ladder is that pre-appointment scrutiny should test an appointee’s competence and independence, rather than challenge a minister’s decision. However, as this section will demonstrate, since 2009 pre-appointment scrutiny has deviated from this narrow remit as select committees have become increasingly willing to publicly challenge the appointment of the Government’s preferred candidate (activism). This has resulted in further unintended consequences, as select committees have failed to focus solely on independence and professional competence and have instead engaged in political point-scoring (aggression). In turn, the highly public and increasingly partisan nature of pre-appointment scrutiny (re-politicisation) has acted as a deterrent to involvement in public life, and risks negatively impacting on attempts to improve the diversity of public appointments (deterrence). In turn, this has promoted critical questions regarding the role and rationale of an extra layer of inherently political scrutiny within an otherwise independently regulated process (added-value).

Activism

At the time of writing, a total of 64 pre-appointment hearings with 66 candidates (including one re-appointment to the Office of Budgetary Responsibility) have been held. Until 2009, select committees endorsed the government’s (in parlance of pre-appointment hearings) ‘preferred candidate’ without exception. Yet since 2009, an increasing number of candidates have divided committees or been rejected outright, as detailed in table 3 below. Whilst the rate of rejection constitutes a small proportion of all select committee recommendations, this does constitute a more assertive phase of select committee activity, who – as successive governments have reiterated – are not expected to challenge a minister’s decision. Cabinet Office guidance simply states that the purpose of hearings is to enable committees to take evidence from the Government’s preferred candidate, and that applicants for posts suitable for hearings must be made aware prior to applying. Nonetheless, there has emerged a disjuncture between applicants’ understanding of the rationale and format of pre-appointment hearings and the way in which hearings subsequently proceeded. One stated that ‘from the head-hunters right the way through... it was made clear to candidates that the select committee did not have a right to veto. It was a confirmatory hearing for the secretary of state’s preferred candidate’ (interview, 29 August 2013); and another described how the hearings had been portrayed as a ‘bit of a rubber-stamping because [in] the main interview [they] had said that they were recommending me’ (interview, 9 September 2013). This misunderstanding has also
engendered indignation on the part of parliamentarians. Reflecting on Professor Malcolm Grant’s appearance before the Health Committee, for example, those members of the select committee who refused to endorse his appointment complained that the candidate ‘demonstrated an assumption that his appointment was already confirmed’ (Calkin and Golding, 2011).

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Table 3: Pre-appointment rejections and divisions

Aggression

Focusing on the rate of rejection alone therefore fails to adequately capture the political dynamics at play, and the broader ramifications of introducing a form of legislative oversight within a highly adversarial polity. As one MP noted, ‘[t]here’s no doubt that pre-appointment hearings seem to have changed. It seems to reflect a sense of frustration on the part of select committees that they feel they should have more power but that is just coming across as... well, rudeness really’ (interview, 28 June 2013). Whilst Cabinet Office guidance stated that questioning should remain focused on ‘the professional competence and personal independence of the candidate’ (Cabinet Office, 2009, p. 12); a detailed analysis of pre-appointment hearing minutes of evidence indicates a qualitative shift in the tone and nature of hearings, which are replete with examples of committees engaging in inappropriate, even aggressive, cross-examination. The PASC, for example, subjected Sir William Shawcross to questions that bore little relevance to the public appointment in question, including his views on the war in Iraq (HC 351-II, 2012, Q. 189). Moreover, this hearing degenerated into an embarrassing and highly political exchange, with members of the committee arguing with the Chair: ‘I am sorry we did not have a pre-appointment hearing for you’, one member told the Chair. ‘We would not have chosen you’ (HC 351-II, 2012, Q. 189). Similarly, the Treasury Select Committee, widely regarded as an exemplar of best practice, has become more personal and aggressive in its post-appointment hearings. The comment by one MP, for example, that he found Dame Clara Furse’s performance in front of the Committee ‘amazingly unimpressive’ (HC 224-I, 2013, Q. 34) was covered in both the national and international media.

(Re-)politicisation
Reflecting on this increased assertiveness, many interviewees expressed serious concerns about the politicised nature of hearings. One appointee described hearings as little more than 'an opportunity for them to gallop their political steeds around the room' (interview, 29 August 2013); and a committee clerk noted, 'several committees seem to have forgotten the unwritten rule about good manners and a narrow focus' (interview, 27 June 2013). The rejection of Dr Maggie Atkinson as Children's Commissioner in 2009 was cited by many interviewees as a critical example of the way in which good manners have been set aside in favour of political game-playing: 'Maggie Atkinson got caught up in a battle between [Gordon] Brown and [Ed] Balls for the leadership of the Labour Party', one MP noted. 'It had very little to do with her CV or performance' (interview, 18 October 2012). Indeed, as table 3 above suggests, appointments in the fields of health and education have attracted the greatest degree of political controversy, prompting parliamentarians to divide along traditional party lines. The Secretary of State for Health's preferred candidate as Chair of the NHS Commissioning Board, Sir Malcolm Grant, was asked by one Labour member 'other than being married to a GP and having a medical school, what have you done that involves you in any way that demonstrates your passion about the NHS?', before the member intimated that his nomination a result of favour by health ministers (HC 1562-ii, 2011). Similarly, Dominic Dodd, the Secretary of State's preferred candidate as Chair of Monitor was subject to sustained questioning (again, by a Labour member of the Committee) regarding his views on private healthcare and criticised for holding a senior position in Marakon Associates – a private sector consultancy firm with interests in private healthcare – despite the fact Mr Dodd left the company over a decade prior (HC 744, 2013, Qs 10-17).

**Deterrence**

Immediately after their introduction on a pilot basis, then Commissioner for Public Appointments, Janet Gaymer, counselled against the formal adoption of pre-appointment hearings on the basis that they would politicise the appointments process, and render well-qualified individuals reluctant to apply (HC 152, 2008). Such warnings were later reiterated by interviewees. One appointee stated that 'if [hearings are] used as a political battleground then good people will not come forward to take these jobs' (interview, 6 September 2013); and another declared that 'I do know of people who have withdrawn from such roles because they didn't enjoy being used as a political football' (interview, 13 September 2013). Similar concerns
were publicly expressed when the Secretary of State for Justice, quietly withdrew his support for Diana Fulbrook after a negative report from the Justice Committee; a move that was considered by The Times (30/08/11) as almost guaranteed to ‘deter potential applicants from within the [probation] service applying for the job.’ Reflecting on the increasingly partisan and adversarial nature of hearings, one senior civil servant suggested that they would be ‘incredibly daunting’ to someone ‘who is not part of that world’ (interview, 10 April 2013); and one MP noted that:

What we seem to be doing is creating a new form of patronage that is even more exclusive than the old forms because you have to be able and willing to survive a select committee hearing that is increasingly adversarial. That might be fine if you are schooled in Westminster survival strategies and have the skin of a rhino but this serves to narrow the pool of candidates (interview, 23 October 2012).

Evidence suggests that such a deterrent effect has begun to emerge. One select committee member confided that the withdrawal of Dame Janet Finch as preferred candidate for the Chair of the Statistics Authority was a direct result of the hostile line of questioning that she endured regarding her personal credibility, wherein the Chair of PASC went so far as to ask: ‘I have to ask you the absolute shocker of the question, which is that, if this Committee were to recommend against your appointment, it is in fact still the Government’s prerogative to appoint you anyway. Would you accept the appointment on that basis?’ (HC 1261-i, 2011, Q. 129). Similarly, a Freedom of Information request submitted to the Department of Health confirmed that Dominic Dodd ‘formally withdrew his interest in the post [Chair of Monitor] following the decision of the Select Committee not to endorse his appointment.’ It is clear, therefore, that pre-appointment scrutiny has resulted in an anticipatory effect, as in both instances each candidate withdrew before the sponsoring minister publicly responded to the committee’s recommendation.

Reflecting on such risks, a former select committee chair wondered if ‘we weren’t in danger of creating another old boys network’, which also reveals the effect pre-appointment scrutiny on the diversity of public life. One private recruitment specialist revealed that:

Finding good people to apply for these posts was hard enough already, particularly when trying to find candidates from under-represented social
groups... Now we have this new stage and its high-risk, high-politics and hard to predict and people don’t like that (interview, 20 May 2013).

Indeed, several interviewees suggested that increasingly aggressive hearings had led to a gender bias: ‘can it be a coincidence that women make up the minority of senior public appointments but three of the four rejections by select committees?’ (interview with MP, 11 September 2013). Evidence paints a mixed picture. Under the Coalition, the proportion of women being appointed to public bodies has risen from 36.4% in 2010 to 39% in 2013 (OCPA, 2013, p. 17). Yet previous research (Flinders, Matthews and Eason, 2011, 2012) has underlined a range of constraints on, and barriers to, greater diversity in public life, specifically the way in which the at times tribal culture of Westminster politics can be daunting to those not imbued with such norms. Indeed, OCPA’s recent annual report reveals that in relation to the most senior chair appointments, only 20% of applications received are from women (OCPA, 2013, p. 21). Such incidences therefore carry the potential to undermine the fragile progress made in recent years in terms of improving the diversity of life; and the loss of so many high-profile female appointees will affect progress against the Coalition’s own aspiration of opening-up public life to previously under-represented groups.

**Added-value**

Taken together, the four pressures set out above flow into a wider issue regarding the ‘added-value’ of pre-appointment scrutiny. The independent system of regulation, overseen by OCPA, had already generated complaints about inflexibility and complexity, which led to its fundamental review in 2012. And yet the relationship between the systems of regulation and scrutiny – one independent, one legislative - has drifted without explicit consideration of the inter-relationships or interface between these two systems. This might reflect the fact, as one senior Cabinet Office official put it, that ‘[t]he Prime Ministers’ [Gordon Brown’s] announcement in the House was the first we’d heard of the plan... it all came as a complete shock!’ (interview, 20 February 2012). The addition of a highly politicised final stage of pre-appointment scrutiny to an essentially depoliticised public appointment process is therefore arguably anomalous. Moreover, several interviewees expressed important concerns regarding the lack of expertise on the part of parliamentarians to assess the professional competence of candidates. One appointee asked ‘[t]hey are not trained in employment process, they do not have the
right to hire you or fire you and therefore why would they have the right of veto? (29 August 2013); and another stated that:

What worries me is that it was so amateurishly done... One of the things that really stood out was how ill-prepared they were, how little they knew about me, how little they knew about the appointments process. One wondered if they had been briefed at all (interview, 13 September 2013).

Indeed, one appointee highlighted the ‘mismatch’ between a transparent and merit-based public appointments process and the existence of a final layer of pre-appointment scrutiny, asking ‘At that point you have to say just what is the role?’ (interview, 17 September 2013). This sense of ‘mismatch’ undoubtedly stems from tensions between government and Parliament, and the competing dynamics that have shaped the scrutiny of executive patronage; and again underlines the challenge of inculcating a merit-focused model of legislative scrutiny within a power-hoarding majoritarian democracy.

IV. Concluding Remarks and Comparative Relevance

The research presented in this article demonstrates that the balance of power in relation to ministerial patronage has drifted in the UK from reactive ‘fire alarm’ oversight to a more proactive and formalised ‘police patrol’ model of scrutiny. At first glance, the incentives for members of the House to engage in the scrutiny of public appointments may appear unclear, not least because the vast majority of hearings supported the government’s candidate, and only once, in the case of Diana Fulbrook, has the minister withdrawn support following a negative committee report. Indeed, in relation to the overwhelming majority of appointments, select committees have not been granted formal veto powers: voice has been increased, not choice (i.e. pre-appointment hearings are not intended to replicate US-style confirmation hearings). However, this simplistic interpretation neglects the deeper but less visible impact of these reforms. As one former senior civil servant noted, ‘I know they’re not formally confirmatory hearings, but in fact if a committee says they’re not in favour of a person, then that would be the end.’ This argument was widespread amongst interviewees who generally felt that select committees had become de facto veto players due to the impact a negative report would have on the credibility of the appointee and the appointing minister, which was played out in relation to the appointments of Diana Fulbrook, Dame Janet Finch and Dominic Dodd. ‘It would be
ridiculous’, as one former Minister noted, ‘for anyone to want to try and get someone through who was not head and shoulders above the bar.’ The introduction of pre-appointment hearings has therefore brought with it a strong anticipatory effect or preventative influence that permeates the whole appointments process. Pre-appointment scrutiny therefore constitutes a ‘silent revolution’, as the ‘buckle’ or the ‘efficient secret’ of executive-legislative relations (i.e. the convention of individual ministerial responsibility) has been broken, whilst attracting little academic or public comment. With the benefit of hindsight it was not the Treasury Select Committee’s decision in 1998 to introduce informal ‘confirmation hearings’ that proved the critical ‘crack’ in the constitutional structure – or, for that matter, Gordon Brown’s 2007 decision to introduce a formalised system of pre-appointment hearings – as these measures emphasised voice. The ‘game changer’ – to use the Liaison Committee’s phrase (HC 1230, 2011, para. 49) – was the introduction of ‘double-locking’ by the Coalition Government in relation to specific appointments, which equipped parliamentarians with a formal choice. This is therefore difficult to reconcile with the British political tradition, and the UK can be characterised as ‘Wash-minster’ hybrid, existing somewhere between presidentialism and parliamentarianism. The House of Commons is being drawn into the business of governing (i.e. choice), rather than just scrutiny (i.e. voice), evolving rapidly from a reactive to proactive legislature in relation to ministerial patronage.

This momentum shows little sign of slowing, and developments in the UK are therefore of comparative significance, as and no other parliamentary democracy has evolved so far towards a congressional model of ‘advice and consent.’ Moreover, its findings chime with longstanding debates about the legislative oversight of political patronage in the context of presidentialism. In the US, the findings of the independent review of the appointments process (Twentieth Century Fund, 1996) were later reiterated by several scholars, including Aberbach and Rockman (2009), who demonstrate that the complexity of the appointments process, the activism of Congress, and the political polarisation that often occurs across the separate branches of government have served to congest the system and encourage executive gaming (e.g. making non-vetted appointments during the recess period). It is therefore clear that dilemmas regarding the appropriate trade-off between legislative scrutiny and executive patronage are highly contested in parliamentary and presidential systems alike. In turn, the lessons of this article are of relevance to the many states throughout the world that are making the transition from spoils-based to merit-based
systems of public life (see Merilee, 2012). Indeed, the greatest significance of the UK case is the way in which recent reforms have blurred the traditional distinction between parliamentarianism and presidentialism, or at the very least, between the US ‘veto style’ and UK ‘scrutiny style’ models of legislative oversight. Pre-appointment scrutiny in the UK was never intended to replicate the US ‘veto style’ model, and was predicated on *voice*, rather than *choice*. Yet, the way in which the system has been allowed to drift towards a proactive police-patrol runs counter to these intentions. These developments also run counter to the ‘mirroring principle’, which predicts that ‘within a given legislature, the distribution of legislative influence tends to mirror the external checks and balances in the polity as a whole’ (McCubbins, 2005, 123). The introduction of legislative powers such as double-locking have increased the number of veto points and in turn risked the gridlock and inertia more typically associated with presidential systems. Whilst at present no other parliamentary system has introduced such powers (the Procedural Affairs Committee in Ontario, for example, rejected a US-style legislative veto as incompatible with cabinet government), it is crucial that such risks are recognised. Indeed, within the US there has been decisive reaction against the congested and politicised appointments process, reflected in Obama’s ‘government of many czars’, which has been interpreted as an attempt by the President to recapture control by circumventing the machinery of congressional scrutiny in order to place trusted allies in key administrative positions (Saiger, 2011).

This point brings this article full-circle and back to the distinction first noted in the opening paragraph between ‘patronage as corruption’ and ‘patronage as governance’; and to arguments concerning the use of patronage as a critical way of forming low-cost, high-trust relationships between politicians and officials in a context of an increasingly complex and fragmented institutional architecture. Calls to further restrict executive patronage, for example by removing entirely the power of selection from minister’s hands (as advocated in Canada by Aucoin and Goodyear-Grant, 2002) arguably fail to appreciate not only the potential that patronage provides in terms of executive control, but the way in which a direct relationship between minister and appointee prevents blame-shifting. Put slightly differently, removing ministers from the appointments process risks them being accountable for individuals they had no role in appointing – exactly the sort of ‘lame duck’ appointees that the UK government cautioned against in its attempts to resist pre-appointment scrutiny. And yet as the arguments of many interviewees suggest, the potential of patronage as a tool of governance is under threat by excessive regulation and acerbic
scrutiny. These risks have been played out in the US, where congressional committees have a longstanding reputation for questioning that can be intrusive, embarrassing and sometimes irrelevant to the appointee’s suitability for a specific post; and whilst over 97 percent of presidential appointments receive Senate approval (Bell, 2002, p. 590), many candidates simply drop out of the process before being formally rejected (Aberbach and Rockman, 2009, p. 45). As this article has clearly demonstrated, such risks have begun to emerge in the UK as the increasingly partisan and combative nature of pre-appointment hearings has prompted the withdrawal of candidates from the appointments process. This raises fresh questions about how to balance the centripetal thrust of delegation with the centrifugal logic of political accountability.
References


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Tables

Table 1: Models of Legislative Oversight

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Table 2: The Ladder of Legislative Scrutiny

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