from media coverage). As the Hansard Society (HC 1168 2002:8) noted, the public perception is largely of confrontational clashes between party MPs engaged in 'squabbling' and 'arguing', and the Society concluded more generally that: 'It may be that debates are no longer suitable for today's politics. In an era of soundbite politics and 24 hour news, the idea of debating a single issue for six hours is alien to most MPs and their electorate' (Hansard Society 2001:51). However, there are some notable occasions when parliamentary debates do register more positively with the public, as with the debate on 'Iraq and Weapons of Mass Destruction' held when MPs were recalled from their summer vacation on 24 September 2002. A year earlier, the House had been recalled three times immediately after the events of 11 September 2001 (14 September, 4 and 8 October 2001) to debate international terrorism and the attacks in the USA on the World Trade Centre and the Pentagon and the responses to these terrorist attacks. Certainly, the debates on waging war in Iraq in March 2003 attracted widespread and intensive media and public attention. This debate also provided a vivid example of how debate may 'serve to challenge, in a public way, the policies and actions of the Government and to put forward alternative suggestions which, in turn, are subject to challenge' (HC 333 2003:para 4).

Legislative institution

Every Act of Parliament starts with the words:

> Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows . . .

The significance of this preamble is that it makes explicit that laws are made *collectively* by parliament. However, as noted above, traditionally parliament—although nominally a legislature (literally a 'maker of law')—served not to 'make' statutes but rather to consent to, and authorize the executive's legislative proposals. Parliament's legislative role was thus conceived in terms of amending, improving and authorising laws by allowing for scrutiny and for the expression of public opinion to be brought to bear in the process. Hence, the primary 'legislative' function of parliament came to be the legitimation of government legislation. The 'democratic' credentials of the legislative process rest, therefore, upon the mechanisms by which public influence, control and scrutiny are exercized. Within the Commons the protracted five-stage process—of first and second readings, committee and report stages, and third reading of bills—is a procedural reflection of the importance accorded to legitimization (see Box 2.2).

Certainly much of the time of both the Lords and the Commons is spent in processing legislation. In session 2002–3 some 490 hours, or approximately 38 per cent of the time of the House, were expended on the consideration of bills (House of Commons 2004). Most of this time, in turn, was devoted to the consideration of government legislation (public bills), with non-government bills (private members bills) accounting for only about 19 per cent of the time spent on legislation as a whole.

According to the Modernisation Committee: 'the core of parliamentary business is making law' (HC 1168 2002:para 25). Yet, within the collective institution of parliament some institutional elements are more important than others. Thus, the Commons is pre-eminent over the Lords, and within the Commons the government is pre-eminent within its own party and over other parties. Moreover, when 'making' law, it is the executive that formulates and initiates legislation, controls the processing of legislation, and determines the ultimate outputs of that process:

> Once Bills are formally introduced they are largely set in concrete. There has been a distinct culture prevalent throughout Whitehall that the standing and reputation of Ministers have been dependent on their Bills getting through largely unchanged. As a result there has been an inevitable disposition to resist alteration, not only on the main issues of substance, but also on matters of detail. (HC 190 1997:para 7)

As the Modernisation Committee proceeded to note, a major factor sustaining the current mode of processing legislation (and also of constraining procedural change) was the 'culture of the House' (HC 190 1997:para 17). Notably absent from this culture are 'those values enhancing detailed scrutiny and criticism of executive actions by Parliament as a collectivity . . . the idea of "Parliament" as a political force, or as a whole, is therefore simply a myth. Parliament in this sense simply does not exist' (Weir and Beetham 1999:376). Yet it is only if these ideas are treated seriously (and they have to be treated seriously in terms of legitimation) that the time spent by the Commons in processing legislation makes much, or any, sense.

BOX 2.2 Legislative process in the House of Commons

Draft Bill Scrutiny: According to the Modernisation Committee pre-legislative scrutiny 'provides a vehicle for the careful, planned consideration of bills before they reach the floor of the House' (HC 1222 2003:para 15; see also HL 173 2004:paras15–28). In which case, the Modernisation Committee attached the 'highest importance' to such scrutiny and willingly endorsed it as a 'core task' of Select Committees (HC 1168 2002:paras 28–9). Indeed, the active engagement of select committees at a pre-legislative stage had been an aspiration of parliamentary reformers since the inception of departmental committees some two decades earlier. Only gradually did this aspiration become reality—with government departments increasing the numbers of draft bills from 18, between 1992–1997, to 42, between 1997 and 2004. (The Queen's Speech in November 2004 announced a further eight draft bills). In addition to scrutiny by Select Committees, draft legislation may also be considered by joint committees of both Houses, including the Joint Committee on Human Rights. Despite this increased activity, however, the extent to which legislation is shaped 'decisively' by parliamentarians remains indeterminate (see HC 558 2003:paras 31–6).

First Reading: marks the formal introduction of a bill. The title of the bill is read out, a notional day for a 'Second Reading' is named, and the bill is ordered to be printed. The first reading stage is merely a formality with no debate and no decision recorded.

Second Reading: the principles of the bill are debated (normally either half a day or a full day is scheduled for debate, though constitutional bills may be scheduled for two or more days). Some non-controversial bills are dealt with in a second reading committee. Second reading debates tend to be wide ranging. The opposition may table a 'reasoned amendment' at this stage. This allows the reasons why the opposition objects to the bill to be stated (but is not technically an amendment to the bill itself). Only three times in the past century has a government lost a vote on second reading (1924, 1977 and 1986). As Norton (2004:405) observes 'a government sometime loses the argument but not usually the vote'.

Committee Stage: Once approved in principle at second reading the bill is sent to committee for detailed scrutiny. There are three choices of committee. First, and most frequently, bills are considered in standing committees. Although the word 'standing' seems to indicate some permanence to these committees they are constituted afresh for each different bill. At any one time there may be five or more separate committees examining separate legislative proposals. The membership of each committee is appointed for the duration of the consideration of each bill, and

continues

Box 2.2 continued

usually ranges from 16 to 30 members (with 18 being the average membership). Most importantly membership reflects proportionately the party composition of the Commons as a whole. In turn the procedures adopted in committee reflect the adversarial divide of the chamber. While the purpose of committee stage is to enable legislation to be subjected to detailed clause-by-clause scrutiny, and where appropriate to amendment, the organizational rules and the norms of MPs serving on these committees militate against effective scrutiny. Thus, as Griffith (1974:38) observed in his seminal study, much of what takes place during committee is an extension of the adversarial conflict in the chamber and 'there is little or no intention or expectation of changing the bill. The purpose of many Opposition amendments is not to make the bill more generally acceptable but to make the Government less acceptable'. Some 30 years ago Griffith observed that 70 per cent of amendments moved in committee came from opposition members, yet only eight per cent of these were accepted (compared to a success rate of 99.9 per cent for ministerial amendments). The figures have not changed much over time (see Rush 2005:183–4).

Very occasionally a bill may be considered by a Special Standing Committee. These committees were designed 'to encourage more informed discussion on Bills which were not highly politically controversial' (HC 190 1997:para 9) and allowed for limited investigation of the issues before detailed consideration of each clause. While the Modernisation Committee favours greater use of such committees they continue to be used rarely. In its first parliament the Labour government committed only one bill—the Immigration and Asylum Bill in session 1998–99—to a special standing committee, and in the 2001 parliament the Adoption and Children Bill was referred to such a committee.

Bills may also be referred to a select committee. Apart from the Armed Forces Bill which is published every five years and which is considered by a specially constituted select committee, there have only been isolated occasions when other bills have been sent to select committees. In sessions 2000–01 and 2001–02, for example, the Adoption and Children Bill was sent to an *ad hoc* select committee (but the committee did not complete its consideration of the bill before the 2001 general election and, thereafter, the measure was sent to a special standing order committee in the new parliament (see above)).

An alternative to sending a bill 'upstairs' (committees have met traditionally in rooms situated along second and third floor corridors) is to consider the bill in the Commons' chamber in a Committee of the Whole House. Such committees are used primarily for bills of constitutional significance, such as the House of Lords Bill 1998–99 and the Scotland Bill 1997–98, or for part of the annual Finance Bill, or for other measures requiring rapid processing, such as the Anti-Terrorism, Crime and Security Bill 2001 or the Northern Ireland Assembly Elections Bill 2003.

Report Stage: All bills, except those unamended by a Committee of the Whole House and which proceed directly to third reading, return to the floor of the House

continues

Box 2.2 continued

for 'consideration'. At this stage, further amendments may be made by members who were not directly involved in the committee stage. Primarily, however, the Report Stage presents another opportunity for the government to make last-minute amendments, or to reverse changes made at committee stage.

Third Reading: marks the final stage of the Commons' process before it is sent to the House of Lords for its consideration of the bill. In essence it provides the opportunity to take an overview of the bill after amendment. Third Reading Debates are normally very short and no further amendment of the bill may be made at this stage.

The results of this extensive process of legislative scrutiny are, however, normally and overwhelmingly predictable. Governments get their way and do so increasingly on schedule (see Table 2.3)

TABLE 2.3 Success Rates of Public Bills

	Government bills introduced	% Successful	Private member's bills introduced	% Successful
1992–3	52	100.0	157	10.5
1993–4	25	100.0	106	13.8
1994–5	38	94.9*	104	14.5
1995–6	43	100.0	80	17.5
1996–7	37	100.0	69	21.7
1997–8	53	98.1	134	6.0
1998–9	31	87.1**	93	7.5
1999–00	40	97.5	97	5.2
2000–01	26	80.7***	61	0.0
2001–02	39	100.0	109	6.4
2002–03	36	97.2****	93	14.0

*One bill withdrawn and one hybrid bill 'carried over'
**One bill carried over under new procedure
***Short session due to General Election
****Two bills carried over
Source: House of Commons Sessional Returns

Since session 1997–98 most major public (government) bills have been subject to 'programme motions' that provide a timetable for each bill in an attempt to encourage more balanced consideration of its contents. The initial experiment was designed to seek cross-party agreement, through the usual channels, about the amount of time to be spent after second reading in the various stages of the bill (for details see HC 190 1997, HC 589 2000, Blackburn and Kennon 2003:314–16, HC 325 2004). Enthusiasm for programme motions failed to gain momentum and, indeed, appeared to be faltering as their number declined from 11 in 1997–98 (in addition there were three guillotines, where time is allocated by the government without prior opposition approval), four in 1998–99 (11 guillotines), and four in 1999–2000 (eight guillotines). In these circumstances, the Modernisation Committee reviewed the programming of legislation and proposed, in the face of opposition from the Conservative members of the Committee, the introduction of a new sessional order to allow for the programming of most government bills. In session 2000–01, 20 out of 21 Bills were programmed without consensus. In the new parliament revised sessional orders were adopted and, by mid-2004, 67 out of a total of 84 bills had been programmed (HC 325 2004:para 6).

The significance of programming was neatly summarized by Sir Alan Haslehurst (Chairman of the Ways and Means Committee):

> If the basic idea behind the concept of programming has been to achieve balanced consideration of legislation, progress to date can frankly and brutally be described as nil. . . . What has happened as a result of recent changes is that the Government gets its legislation with less delay and Members go home earlier. (HC 1168 2002:Appendix 42, para 22)

Haslehurst's plea was that legislative scrutiny could be improved only if government and opposition 'abandon their entrenched positions'. In 2004 the Procedure Committee expressed a similar opinion:

> We believe that, if programming were used as originally envisaged by the Modernisation Committee, namely only when there is cross-party agreement, it would have the potential to be a more effective way of considering, and improving, legislation, and we regret that it has come to be seen as the same as the guillotine, though more widely applied. (HC 325 2004:para 18)

The Procedure Committee recommended a change in the sessional orders to allow programming motions to be used routinely only if there was

cross-party support, otherwise the government would have to justify such a motion in debate (HC 325 2004: para 18). In its response, the government pointed to the 'strong political pressures' militating against likely consensus: 'While the Opposition may be willing to adopt a pragmatic approach in informal negotiations through the usual channels, it would be very difficult for it to sign up publicly to a programme for scrutiny of a Bill to which it is opposed in principle' (HC 1169 2004:para 3). In these circumstances, the government proposed a motion to incorporate programming within the Standing Orders of the House and, in doing so, pointed out that some 70 per cent of programme motions had been achieved consensually in the preceding session (HC Debates 26 October 2004 vol 425: col 1309). Nonetheless, many MPs feared that significant portions of major Bills would continue to 'leave this House . . . unexamined and not discussed, which means that the Government [would not have] been held to account' (Sir Patrick Cormack, HC Debates 26 October 2004 vol 425: col 1310).

Delegated legislation

> It would be inaccurate to suggest that the bulk of the laws under which the British people now live have been subject to searching Commons scrutiny . . . This is due [in large part to] the government's increasing tendency to promote Bills which delegate secondary law-making power to ministers through the mechanism of 'regulations' or 'statutory instruments'. (Loveland 2003:132)

Delegated legislation (also referred to as secondary or subordinate legislation) takes several different forms, the most important of which are Statutory Instruments, and Deregulation and Regulatory Reform Orders. Such legislation allows for the provisions of an Act of Parliament to be changed, or brought into effect, without having to pass a new law. On average each year some 1,500 statutory instruments are laid before Parliament (see HC 48 2000:para 25), but this is only about half of the annual output (estimated to be around 3,000 by Beetham et al (2002:141)). Much delegated legislation, therefore, is not considered by Parliament and, in fact, some instruments are not even printed (see Blackburn and Kennon 2003:346).

Of those Statutory Instruments that do reach Parliament only about 15 per cent require approval before they become law (through an 'affirmative procedure'). The vast majority of such instruments are subject to a 'negative procedure' whereby they come into force on a specified date unless a motion for annulment is passed. Even when such a motion is tabled it is at the discretion of the government as to when and where the instrument is debated and voted upon (in a standing Committee on Delegated Legislation, or on the Floor of the House). In either location 'the government is able to prevent criticism of its delegated legislation despite the fact that statutes provide formally for such criticism' (Blackburn and Kennon 2003:488).

Not surprisingly, the system for scrutiny of delegated legislation is widely condemned as 'woefully inadequate' (HC 300 2000:para 24) or 'palpably unsatisfactory' (HC 152 1996:para 1, HC 48 2000:para 53). Of no less surprise is that the Procedure Committee has proposed reform of the scrutiny system of delegated legislation three times in recent years (in 1996 [HC 152 1996]; 2000 [HC 48 2000] and 2003 [HC 501 2003]). Equally unsurprising is that the governments of the time, Conservative in 1996 and Labour in 2000 and 2003 have been hesitant in their responses. The 1996 proposals were not implemented, and the Labour government, in 2002, stalled consideration of the issue (HC 1168 2002:para 53), and, in 2003, remained unwilling to introduce a sifting committee in the Commons as suggested by the Procedure Committee (HC 684 2003:Annex A).

Remedial orders

A new variant of delegated legislation known as 'remedial orders' was introduced in the Human Rights Act 1998. Such orders provide ministers with a procedure to amend primary legislation when a court has ruled that an Act of Parliament is incompatible with the European Convention of Human Rights (see chapter 6). Two types of remedial order are noted in the 1998 Act. A non-urgent procedure requires a draft order to be introduced but can only be 'made' after approval by affirmative resolution of each House. After a period of 60 days in which representations can be made, the draft order is scrutinized by the Joint Committee on Human Rights, and then requires approval by resolution of each House. In urgent cases, under a 'fast track' procedure, an order may be made with immediate statutory effect, but the order ceases to have effect unless approved by affirmative resolution of each House within 120 days (for details see HL 58/HC 473 2001). The first, and only, remedial order to be made in the first four years of the operation of the Human Rights Act, was introduced in 2001 and amended the Mental Health Act 1983.

Legitimation

The time spent on debate and the processing of legislation is frequently derided as a 'waste of time'. Certainly, in terms of observable influence upon public policy, the Commons in its collective guise as deliberator and legislator is a remarkably ineffective institution. But despite this, the emphasis upon deliberation and the careful processing of legislation remains of axiomatic importance in sustaining the legitimacy of public policies. As argued elsewhere, and at length, there is no other institution in the UK with the formal capacity to confer such legitimation (see Judge 1990:18–44; Judge 1993: Judge 1999; Judge 2004). It is in this sense that, 'as the body accepted by both mass and elites for legitimating measures of public policy, Parliament is a powerful body' (Norton 1993a:145).

Scrutiny/control institution

Parliamentary questions

In the 1997–2001 parliament ministers were required to answer on average 40,000 questions in each session (see Table 2.4), and cumulatively had to be present in the chamber to answer questions for over 500 hours in that period. With each oral question costing on average £345 and each written question £148 to answer (as at April 2004, see HC Debates 19 January 2005: col 986W), and with the total costs of administering the questions system estimated at over £8 million per session (see HC 622 2002:para 20, Cm 5628

TABLE 2.4 Replies to Questions appearing in Hansard and indexed in POLIS

Type	1997–98 n	1998–99 n	1999–00 n	2000–01 n	2001–02 n	2002–03 n	Total 1997–2003 n
Oral	8,132	4,774	5,343	2,591	6,392	6,272	33,504
Written	51,451	31,649	36,067	16,687	67,651	51,614	255,119

Source: House of Commons Sessional Information Digests 1997–2003
N.B. *oral replies include supplementary answers/POLIS doesn't record all written answers (multiple questions on same topic may have been recorded as one answer)*

2002:para 4), then, if 'some members view [Question Time], especially Prime Minister's Question Time, as a farce' (Norton 2004:409), it is an expensive farce.

But, as with so many of the proceedings in the House of Commons, questions are an institutional reflection of the formal interinstitutional relationships between legislature and executive as well as of informal intrainstitutional partisan relationships.

As a procedure, questions developed initially 'as an irregular form of debate' (House of Commons Information Office 2004:2). They were a relatively informal means of asking ministers to account for their actions. Indeed, questioning remains a relatively informal procedure as it is only partly regulated by Standing Orders, and Question Time itself is not recorded in the Votes and Proceedings or the Journal (HC 622 2002:para 7). The rules governing questions were subject, between 1945 and 2003, to no less than 13 select committee enquiries and consequent constant procedural tinkering. Nonetheless, despite substantial procedural change, the practice and purpose of questioning 'is not in essence different' from the immediate post-war period (House of Commons Information Office 2004:3). The purpose remains the same: 'to press for action or seek information' (Principal Clerk HC 622 2002:para 28). Or, in a more elaborate formulation, to bring particular issues to the attention of ministers, to obtain information about ministerial activities not previously on the public record, to require ministers to defend their positions in a public and critical forum, to press for governmental action, and to subject government as a whole to 'critical interrogation' (Norton 1993b:198). In other words, questions serve as a means of securing ministerial accountability. There are five basic types of questions. Oral questions are asked and answered on the floor of the House. Written questions are the most numerous, and receive written responses—the texts of which are published in Hansard. Prime Minister's questions are directly targeted at the PM and range cumulatively and widely over all aspects of government policy. Urgent questions (known before 2002–03 as Private Notice questions) raise matters of immediate public importance. Finally, in January 2003 a new form of question time was held for the first time in Westminster Hall. This involved ministers from a number of government departments answering 'cross-cutting' questions about their 'joined-up' responsibilities (see chapter 4). Four such cross-cutting sessions are to be scheduled each parliamentary year.

One positive assessment of the value of questions was offered by Tony Wright, Chairman of the Public Administration Committee, who emphasized in the House: 'We know that parliamentary questions are a vital instrument in the hands of Members of Parliament. In fact, written questions are probably the most vital instrument of sustained accountability that Members of Parliament have' (HC Debates 21 March 2002:Col 137WH). (When combined with provisions of the 1998 Data Protection Act and the Freedom of Information Act 2000 written questions can be used effectively to secure the release of information previously withheld by departments (see HC 136 2002:para 6)). In addition, the government, when withholding information requested in questions, has agreed that it will cite the relevant exemption in the *Code of Practice on Access to Government Information* 'this is to ensure that Ministers cannot evade accountability by hiding behind vague phrases such as "not normal practice to provide this information" when they refuse to answer' (HC 136 2002:para 3)). Similarly, the government rates questions as a 'highly effective means of holding the Executive to account' (Cm 5628 2002:para 2). Yet the effectiveness of questions in attaining their purpose remains open to dispute. MPs collectively are generally a little less generous in their assessment than the government. For example, only 43 per cent of a sample of 167 MPs in 2002 rated oral questions as 'very' or 'quite' effective'; though 60 per cent believed written questions to be 'very' or 'quite' effective' in fulfilling the purpose of holding the executive to account (HC 622 2002:Annex B). Cynics beyond the House of Commons might want to discount, or at least deflate, these assessments still further (for reasons see below) but ultimately, and residually, there is an institutional significance attached to the procedure of questions that cannot be discounted.

First, there is the symbolic significance of questions in that ministers are routinely subject to appear before MPs to account for the actions of their departments. Ministers know that they will normally be required to answer questions for the best part of an hour once a month. Second, and perhaps more importantly, civil servants and agency officials also know this to be a fact too (see chapter 4). Equally the prime minister knows that for at least two hours a month he or she will have to answer questions in the House. The PM presently answers questions at 12 noon for half an hour on Wednesday afternoons.

The fact that Tony Blair as prime minister arbitrarily adopted the new timing, moving from two 15 minute slots on Tuesdays and Thursdays without prior consultation within the House, both points to the relative informality of the procedure itself as well as to a belief that the PM was attempting to manipulate the procedure to his own partisan advantage. Indeed, the reform of Prime Minister's Questions reveals both the centrality of the principle of ministerial accountability—in the acceptance that the highest minister in the land must attend parliament—but an equal and countervailing acceptance that the PM will seek to minimize partisan embarrassment in so doing. The institutional precept of the open scrutiny of the executive by the legislature is inverted by the partisan precept that the former should be shielded from (and 'closed' to) the effects of partisan cross-examination in the House. While-ever it is accepted as 'inescapable' that questions, particularly oral questions 'will in many cases be employed for essentially party-political purposes' (HC 622 2002:para 30) then there is every prospect that despite procedural changes—to shorten the deadlines for notice, to introduce electronic tabling, to enhance the topicality and relevance of question time, to curb long and rambling questions and more particularly ministerial replies (see HC 622 2002:33–8)—the partisan techniques of shielding ministers from penetrating scrutiny will continue to be deployed. Planted questions, sycophantic questions, syndicated questions, sympathetic supplementary questions, and organized pre-briefing sessions of backbenchers by frontbenchers and whips have all been used as partisan devices to protect government ministers, as party politicians, from embarrassment by opposition MPs, who are also acting as party politicians. In this process the interests and norms and values of party as an organization override the interests and norms and values of parliament as an institution. This is one of the fundamental paradoxes at the heart of the institution of parliament (see Judge 1993:197–216).

Select Committees

> [T]here is more to life, in terms of ministerial accountability, than parliamentary questions alone. Questions and answers are integral to the accountability process, but they are not the only way in which Members may request information from the Government. . . . the Select Committee system offer[s] other means. (Christopher Leslie, Parliamentary Secretary, Cabinet Office, HC Debates 21 March 2002:col 173WH)

The then Leader of the House, Robin Cook, went one step further than his junior ministerial colleague and maintained that: 'Departmental Select

Committees are the most developed vehicle through which MPs can carry out detailed scrutiny of Government Policy and Ministerial Conduct' (HC 440 2001:para 5).

Departmental select committees are of relatively recent origin. Created in 1979 they operate alongside two other types of select committees. The first, often referred to as investigative committees, include the Public Administration, Public Accounts, European Scrutiny, Regulatory Reform, and Environmental Audit Committees. These committees monitor particular areas of governmental activity and produce concise, regular reports. The second type of committee deals with 'internal matters' of the Commons—and includes the Administration, Catering, Modernisation, and Standards and Privileges Committees. There is a third type of 'joint committee' of both Houses, the most visible examples of which are the Human Rights Committee, the Joint Committee on House of Lords Reform, and the Statutory Instruments Committee.

The sheer number and proliferation of committees in recent years in the House of Commons reflects the general observation that 'Committees are, by broad consensus, among the most significant internal organizational features of modern parliaments' (Strøm 1998:55). Yet, historically, for the reasons noted above, 'the British Parliament has always been a chamber-oriented institution. Though it has . . . variously made use of committees the emphasis has always been on the chamber' (Norton 1998:143). Nonetheless, by the late 1990s, Norton (1998:151) maintained that, as a result of the developing committee system, the Commons 'was more specialised and institutionalised than ever before in its seven century existence'. But this was not saying much in comparison with most other western parliaments (see Bergman et al 2004:172–3).

At the very time, in the early 1980s, that the system of departmental select committees was being introduced some commentators pointed out that the reasons why the House had displayed a traditional resistance to a systematic division of labour, and why the impact of the new system was likely to be constrained in the future, reflected three central elements of the organizational and normative systems of the UK's legislature. These were identified by Judge (1981) as the adversarial nature of partisan competition, the conjunction of executive and House leadership roles, and the weakness of supportive theories of representation in the House. In particular Judge noted that, 'the normative system of the House, as with any other dominant value system, reflects the predilections of the most powerful actors and supports the existing distribution of power: in other words, the norms, aspirations and practices of most backbenchers are defined by reference to the executive' (Judge 1983:190; 1993:215).

Nonetheless, in 1979 the introduction of a new system of 14 departmentally-related select committees was heralded as a new dawn in the relationship between the executive and legislature (St John Stevas HC Debates 1979 vol 969 col 35). The new system followed a report from the Select Committee on Procedure in 1978. This Committee openly avowed that its aim was to strike a new balance in the relationship between the executive and the legislature. Indeed, the Procedure Committee had a grand vision which started from an appreciation that: 'The essence of the problem . . . is that the balance of advantage between Parliament and Government in the day-to-day working of the constitution is now weighted in favour of the Government to a degree which arouses widespread anxiety and is inimical to the proper working of our parliamentary democracy' (HC 588 1978:viii) And which finished with the belief that: 'a new balance must be struck . . . with the aim of enabling the House as a whole to exercise effective control and stewardship over Ministers and the expanding bureaucracy of the modern state for which they are answerable, and to make the decisions of Parliament and Government more responsive to the wishes of the electorate' (HC 588 1978:viii).

Now it should be made clear that neither the Procedure Committee of 1978, nor the then Leader of the House, Norman St. John Stevas, countenanced a redistribution of decision-making power to the House. Instead the ability—the power—of the Commons to scrutinize and so to influence the executive was to be enhanced. It was realized at the time that if 'the impact of a committee on central government is a self-inflicted blow' (Study of Parliament Group 1976:37), then only a restatement of the powers of the new committee system would increase the masochistic tendencies of governments. To this end the Procedure Committee recommended, amongst other things, that select committees should be empowered to order the attendance of ministers to give evidence, to order the production of papers and records by ministers, to require government observations to be produced within two months of the date of publication of a report, and to set aside eight days per session for debates on committee reports. Moreover, a challenge to executive normative ascendancy in the House was posed by

proposing the payment of chairmen of select committees. This was believed to be 'both desirable for its own sake, and could also provide some element of a career opportunity in the House not wholly in the gift of the Party Leaders' (HC 588 1978:lxxix). Thus, for all that the Procedure Committee sought to present its proposals as an evolutionary change, the radical threat to executive hegemony was apparent in its report (see Judge 1981:192).

In 1979 this challenge was implicitly recognized by the government in its careful circumscription of the powers of the new committees: their chairmen were not to be paid; the power to compel the attendance of ministers was denied; no time limit was specified for the submission of departmental observations nor were eight days set aside for the discussion of committee reports. It is against these restrictions that the committees have chafed ever since.

The continued significance of these restrictions featured in two major internal reviews of the committee system (HC 19 1990 and HC 300 2000). While both internal reviews concluded respectively that there was 'no doubt' that the post-1979 system was 'a success' (HC 19 1990:para 357; HC 300 2000:para 4), both recognized that the 'success was not unalloyed' (HC 300 2000:para 6). In making suggestions to 'make the system more effective and independent; to make it a better scrutineer of Government' the Liaison Committee revisited several of the proposals made some two decades earlier by the 1978 Procedure Committee.

Like its predecessor in 1978, the Liaison Committee in 2000 recognized that any reform proposals needed to be made in the context of the 'realities' of parliamentary life. Pre-eminent amongst these realities was the fact that 'Ministers are also Members of Parliament, and are sustained in office by Parliament' and that 'party loyalty and organisation . . . structure the way in which Parliament and its institutions work' (HC 300 2000:para 9). Yet, having recognized these realities, the Committee's report acknowledged that executive dominance and party control were precisely the main constraints upon the effective operation of the committees. Thus, it was 'wrong that party managers should exercise effective control of select committee membership' (para 13) and hence a new 'non partisan' nomination system should be adopted (para 15). Equally, the dominant conception of a parliamentary career in terms of 'ministerial office', and the fact 'that able and effective select committee members—and sometimes even Chairmen—are so easily tempted by the lowliest of government and opposition appointments'

(para 29), had both to be conceded and yet counteracted. The Committee recognized that: 'We must be realistic about this; many Members understandably aspire to be Ministers' (para 29), but concluded (as indeed had the Procedure Committee nearly a quarter of a century earlier) that one way to redress the imbalance—between the attractiveness of executive and parliamentary positions—was to build an alternative career-path based on committee service which was to be acknowledged at its peak in the payment of committee chairs.

The Government's reply was rapid and rejected virtually every recommendation made by the Liaison Committee. The Committee found the reply: 'both disappointing and surprising':

> We found it disappointing because our proposals were modest . . . And we found it surprising that a Government which has made so much of its policy of modernising parliament should apparently take so different a view when its own accountability and freedom of action are at issue. (HC 748 2000: para 3)

Yet such a response should come as no surprise to readers of this book in view of the analysis outlined above.

Perhaps more of a surprise was that, within 11 months of the Liaison Committee's report, many of its recommendations were adopted by the Modernisation Committee and, in turn, accepted by the House itself. The circumstances under which this apparent reversal occurred are not the major concern here, other than to note four interconnected factors. First, of some significance, was the contemporaneous publication of two influential external reports by the Norton Commission (2000) and the Hansard Society (2001)—both of which stressed the centrality of departmental select committees to the effective scrutiny of executive actions. Second, the intermeshing of external and internal reformist arguments and personnel proved to be important (and was acknowledged by, amongst others, the chairman of the Liaison Committee, Robert Sheldon, (HC 224 2002:ev21; see also Kelso 2003:59). A third contributing factor was the miscalculation of party managers in seeking to prevent the reappointment of two outspoken Labour Committee chairpersons (Donald Anderson and Gwyneth Dunwoody) at the start of the new parliamentary session in July 2001. And, fourth, and of crucial importance, was the appointment of a 'modernising' Leader of the House, Robin Cook, who was committed to accelerating the reformist dynamic within the Commons (see Cook 2003).

The Modernisation Committee published its Report on Select Committees in February 2002 (HC 224 2002). Although it made 22 recommendations—including a change of title of investigatory committees to 'scrutiny committees', an agreed statement of core tasks, the employment of specialist support staff, a standard committee size of 15, the revamping of reports, and the possibility of all committee reports being debated in Westminster Hall—the main proposals of interest for present purposes were those dealing with the appointment of committee members and the payment of committee chairs.

The Modernisation Committee recommended that appointment should be the responsibility of a 'Committee of Nomination'. This meant that while 'it is natural that the selection of nominations to the places allocated to each party should in the first instance be conducted within that party', ultimately appointments would be confirmed by an impartial Nominations Committee (HC 224 2002:paras 7–23). The Modernisation Committee also recommended that 'the value of a parliamentary career devoted to scrutiny should be recognised by an additional salary to the chairmen of the principal . . . committees [both 'scrutiny' and 'investigatory']' (HC 224 2002: para 41).

In the event, in a vote in the House of 14 May 2002, MPs accepted most of the package of reforms recommended by the Modernisation Committee but ultimately voted against (209 vs 195) the creation of an independent Nominations Committee. During the vote one Labour MP, Gordon Prentice, asked the Speaker if 'on a free vote, is it in order for the Government Whips to point to the No Lobby saying "PLP this way"?' (HC Debates 14 May 2002 vol 385 col 720). After the vote, several MPs more directly attributed the defeat to the influence of both sets of whips (see *The Guardian* 15 May 2002:9; *Daily Telegraph* 15 May 2002:10; Kelso 2003:65–6). And it was left to Tony Wright (Chair of the Public Administration Select Committee) to ask ruefully, 'Where were the massed ranks of parliamentary reformers . . . [the motion] was lost, and it was lost because all the whip fraternity organised to vote it down, and the forces of progress, where were they?' (quoted in Kelso 2003:66). Indeed, failure to curb the control of party managers over the appointment process has implications for the other parts of the package. Kelso, for example, notes that members of the All-Party Group for Parliamentary Reform were worried that the payment of committee chairs in the absence of an impartial Nominations Committee might be 'used by the whips' offices as a sweetener for compliant MPs seeking placement on particular select committees, and potentially render those committees less powerful than before the reforms were proposed'. Precisely these fears were articulated in October 2003 when the decision was taken to pay select committee chairmen an additional salary of £12,500 (see for example HC Debates 30 October 2003: cols 449–50; 455; 459; 475–8).

There were 18 departmental committees in existence in 2004 (see Table 2.5). These shadowed the major departments of state and hence were subject to reorganization in the wake of departmental restructuring (as occurred with the creation of the Office of Deputy Prime Minister in May 2002, and the Department for Constitutional Affairs in June 2003). Standing Order 152 states that the role of departmental select committees is 'to examine the expenditure, administration and policy of the principal government departments'.

TABLE 2.5 **Departmental Select Committees**

Name of Committee	Principal government departments concerned	Members
1 Constitutional Affairs	Department of Constitutional Affairs	11
2 Culture, Media and Sport	Department for Culture, Media and Sport	11
3 Defence	Ministry of Defence	11
4 Education and Skills	Department for Education and Skills	11
5 Environment, Food and Rural Affairs	Department for Environment, Food and Rural Affairs	17
6 Foreign Affairs	Foreign and Commonwealth Office	11
7 Health	Department of Health	11
8 Home Affairs	Home Office	11
9 International Development	Department for International Development	11
10 Northern Ireland Affairs	Northern Ireland Office	13

continues

Table 2.5 continued

Name of Committee	Principal government departments concerned	Members
11 Office of the Deputy Prime Minister: Housing, Planning, Local Government and the Regions	Office of the Deputy Prime Minister	11
12 Science and Technology	Office of Science and Technology	11
13 Scottish Affairs	Scotland Office	11
14 Trade and Industry	Department of Trade and Industry	11
15 Transport	Department for Transport	11
16 Treasury	Treasury, Board of Inland Revenue, Board of Customs and Excise	11
17 Welsh Affairs	Welsh Office	11
18 Work and Pensions	Department for Work and Pensions	11

According to the Liaison Committee: 'The work of select committees tends to be seen by government as a threat rather than as an opportunity' (HC 300 2000:para 56). That this threat is still perceived by ministers and officials confirms the continuing strength of an 'executive mentality' (see Judge 1981; 1990; 1993; Flinders 2002:27). Equally, under the leadership of the House by Robin Cook, there was a positive attempt to emphasize the 'opportunities' afforded by select committees. There is no doubt that committees have increased the flow of information about executive activities both in the collection and dissemination of that information, that they have enhanced the information networks linking parliament and organized publics, and that they have subjected government policies to more rigorous scrutiny than before. Equally, there is no doubt that MPs believe that select committees were 'far and away the most effective way in which Parliament held Government to account' (Hansard Society 2001:43). Indeed, 84 per cent of the 179 MPs in the Hansard Society's (2001:131) survey rated select committees as 'effective or very effective' in securing information and

explanation from the government. Moreover, there is strong external support for the views that 'the departmental committees introduced in 1979 have been a major success' (Norton Commission 2000:29), 'a successful innovation' (Hansard Society 2001:), and are 'Parliament's most effective device for holding government to account' (Wright 2000:218). This matches the House's own assessments that the committees have 'made notable contributions to parliamentary and public debates' (HC 224 2002:para 3), and that generally they have 'shown the House of Commons at its best: working on the basis of fact, not supposition or prejudice; and with constructive co-operation rather than routine disagreement' (HC 300 2000:para 5).

But each of these favourable assessments is tempered by recognition that the actual 'success of the committee system is limited' (Hansard Society 2001:29), and that in 'terms of parliamentary scrutiny they represent the classic half full, half empty bottle' (Norton Commission 2000:29). The annual reports from the departmental committees provide an insight into the practical limitations encountered by select committees (for an overview see HC 590 2002; HC 588 2003, HC 446 2004). While much reformist attention has been focused on enhancing the operational capabilities of committees (through more staff, more resources, more coordination, more coherence in structure, increased size, better reporting etc), the major impediments of party competition and executive dominance (and associated norms) still remain as significant obstacles to sustained and rigorous scrutiny. These impediments shone through the evidence provided by the Leader of the House, Peter Hain, to the Liaison Committee in October 2004. On the positive side, the government expressed its willingness to revise the advice provided to civil servants on 'providing evidence and responding to select committees' to make clearer the presumption in favour of attendance, provision of information and cooperation, as well as encouraging 'departments to be proactive in providing relevant information and documents to Committees' (HC 1180 2004:Q1). Yet on the specific issue of select committees gaining access to civil service 'advice to ministers', Hain sought to justify the non-disclosure of such advice by invoking the principle of ministerial accountability (see chapter 4):

> Officials have a relationship with Ministers where we are the ones who are publicly accountable and they are the ones who professionally advise in accordance with the traditions and the rules of the Civil Service . . . because if I take a decision that one of your Select Committees thinks is wrong, or any

of my ministerial colleagues, then we [ministers] are the ones who should be answerable; that is the principle of ministerial accountability. (HC 1180 2004: Q5–6)

The House of Lords

The UK Parliament represents a form of 'asymmetric bicameralism' (Patterson and Mughan 2001:41) where the upper chamber, the House of Lords, is subordinate to the lower chamber, the House of Commons. Unlike other asymmetric systems (France, Ireland, Japan, Poland, and Russia) in which the Upper House is not only called a Senate but has restricted legislative powers or simply advisory powers, the House of Lords 'remains an anachronism' (Patterson and Mughan 2001:44) in performing a substantial legislative function.

If the House of Lords replicates the legislative role of the Commons, as indeed it does in its five stage processing of legislation—through first reading, second reading, committee stage, report stage and third reading—then the most fundamental question is why have a second chamber at all? Indeed, critics have never tired of citing Abbe Sieyes words from the 18th century that 'if a second chamber dissents from the first, it is mischievous; if it agrees it is superfluous'. The answer to this fundamental question can be found, however, in three of the themes of this book: in history, in interinstitutional interactions, and in ideas and 'social understandings' about the roles of political institutions.

History

As noted in chapter 1, history is a powerful variable explaining modern institutional form, and especially in revealing the 'path dependent' nature of formal political institutions. Historical institutionalists maintain that initial institutional choices and structures become self-reinforcing over time. Certainly, the existence and modern role of the Lords makes little sense without some understanding of its historical development.

The House of Lords has its origins in the Anglo-Saxon *Witenagemot* and the *Curia Regis* (Court of the King) in the 12th and 13th centuries. Both the Lords Temporal (the magnates, the great earls and barons with their private armies) and the Lords Spiritual (the archbishops, bishops and abbots who represented the church as the major landowner of the time) were needed by monarchs for consent to, and authorization of, their policies. As noted earlier, the 'Commons' (the representatives of cities and counties) were later summoned to Parliament. Initially, however, they were not allowed to speak in the presence of their more powerful feudal superiors. For this reason the Commons began to meet separately and, ultimately, after 1377 to elect a 'Speaker' to speak on their behalf to the monarch. Thus, by the end of the 14th century, a two chamber parliament had emerged with each House exercising a 'definite power' and each with a recognized 'legitimacy' (Shell 2001:8). From the 14th century members of the House of Lords received individual summonses to attend (with the emerging presumption that such summonses would be subject to the principle of hereditary succession). Those summonsed attended as 'Peers'—as nobles of equal status. They were men of property and power in their own right and served not as 'representatives' in the sense increasingly adopted in the Commons (see above). Indeed, as Norton (2004:431) notes: 'Any sense of representativeness was squeezed out' and 'the lack of any representative capacity led to the House occupying a position of political—and later legal—inferiority to the House of Commons'. While this might be true at an individual level, collectively, however, the Lords represented the interests of property, land and privilege and acted as 'an institution independent of the crown, one representing property over and against the community as a whole' (Shell 2001:9). In fact, the dominance of this notion of the collective representation of landed, aristocratic interests was to last well into the 19th century. However, as the principles of liberal democratic representation were asserted incrementally after 1832, and as the legitimatory defence of the non-democratic, heredity basis of representation in the Lords was undermined, so the wider institutional role of the Lords came increasingly into question.

Throughout its history the composition of the Lords has been inextricably entwined with its institutional role. Before examining this fundamental linkage it is worth noting the impact that its composition has had upon its internal organization and procedures. Given the principle of the equality of its members—of nobility sharing the same essential privileges—the Lords was 'uniquely in the world amongst legislative chambers—a self-regulatory body' (Wheeler-Booth 2001:82). This meant that the Lords has 'never delegated its powers to regulate its own proceedings to any other authority'