could in future fulfil' (para 15). In essence these supplemented the roles performed by the Commons: deliberation, scrutiny, enhanced legislative efficiency and effectiveness through introducing, revising and amending legislation. Because these supplemented rather than supplanted the roles of the Commons, the government believed that, in the absence of a consensus on composition, it should concentrate its efforts upon making the Lords work effectively in the performance of its existing roles (HL 155/HC 1027 2003:para 14).

The government, faced with a lack of consensus, had in Lord Falconer's (Lord Chancellor, and the Secretary of State for Constitutional Affairs) words: 'two stark choices: do nothing or seek to move forward where we can' (CP 14/03 2003:foreword). In choosing the latter option the government made two controversial announcements and initiated, subsequently, two 'consultation' processes. The first announcement came in June 2003 and proposed the removal of the Law Lords (the Appellate Committee) and the creation of a new Supreme Court for the United Kingdom (see Chapter 6). In opening the consultation process, the government made clear its intention to 'put the relationship between the executive, the legislature and the judiciary on a modern footing' (CP 11/03 2003:10). What was also clear was that other constitutional changes—devolution to Wales, Scotland and Northern Ireland (see chapter 5), the passage of the Human Rights Act 1998 (see chapter 6) and the growth of judicial review (see chapter 6)—had been the major precipitants of this reform rather than Lords' reform as such.

The second announcement came in September 2003 and proposed the abolition of the remaining hereditary peers and the creation of a statutory Appointments Commission (CP 14/03 2003:para 23). In the absence of agreement on how to implement further reform, the government claimed that it 'should consolidate the reforms which have already been made' (CP 14/03 2003:para 23). In March 2004, in the face of continuing disagreement about even this consolidationist proposal, the Secretary of State for Constitutional Affairs acknowledged that it was 'abundantly clear' that a Lords Reform Bill, to remove the remaining hereditary peers and to create a statutory Appointments Commission, would not be passed by the Upper Chamber. 'In these circumstances', Lord Falconer announced that, 'there is no point in committing further legislative time to this issue at this stage', but also promised that the government would 'return to it in our manifesto for the next election' (Department for Constitutional Affairs 2004).

Indeed, one former adviser to the Leader of the House, Meg Russell (2003:311), maintained that even in the penumbra of the debacle of the February 2003 vote there were sufficient grounds to argue that 'the House of Lords might in important ways be considered already reformed'. But Russell's case was made on the basis that the Lords already had adequate powers, that its composition remained distinct from that of the Commons and that its 'perceived legitimacy' had increased sufficiently for it to exercise its existing powers more effectively. On the issue of perceived legitimacy Russell (2003:316) claimed that the most 'obviously illegitimate group—the hereditaries—had for the most part been removed; and that the resultant change in party balance 'may have acted to further boost the public's perceptions of the legitimacy of the chamber as it is now' (2003:317). But this supposition finds no empirical substantiation in Russell's article, and indeed it runs counter to the fundamental, historical and institutional logic of representative government in the UK that legitimacy derives from the electoral process. This was acknowledged by both proponents and opponents of a reconstituted House of the Lords. Indeed, throughout, the government's case had been based upon its fundamental belief in:

> the Commons as the pre-eminent chamber, . . . we do not wish to undermine that pre-eminence or make any proposal that would achieve an equivalence between the Commons and the Lords. Anything that makes the House of Lords more representative, more democratic, more legitimate, is likely to produce some shift in the relative position of the House of Lords. What we must take care to do is not to achieve a second chamber which over a period of time would seek parity with the Commons and perhaps not even stop at parity. (Robin Cook, HC 494–II 2002:Q194)

In this statement legitimacy is linked to democratic processes of representation and democracy (through competitive elections). An un-elected chamber did not become any more legitimate (in representative democratic terms) simply by being the default option in the debacle of the government's attempted second phase of reform.

'Proper role and functions'

If little consensus was evident about the future composition of the Lords, there was more common ground upon the 'proper role and functions' of the upper chamber. The extent of this agreement could be gauged from

the Wakeham Commission Report (see Cm 4534 2000), the Joint Committee's Reports (see HL 17/HC 171 2002:paras 9–10; 19–24; HL 97/HC 668 2003:paras 18–19), and the government's white papers and consultative documents (Cm 4183:chapter 7, paras 7–18; Cm 5291 2001:paras 19–24; CP 14/03 2003:paras 2–3). It was agreed that the primary roles of the Lords were to hold ministers to account, to deliberate on public issues, and to scrutinize and amend legislation. Of these, 'the most important role of the Lords is to be a revising chamber for legislation' and a chamber which would provide a 'distinctive perspective, and not simply duplicate the work of the Commons' (CP 14/03 2003:para 3).

In practice, over half of the time of the Lords (60 per cent in 2002–03) is devoted to processing legislation. Given that the House of Lords 'is one of the busiest Parliamentary chambers in the world' (House of Lords 2003: para 4)—sitting for 174 days in 2002–03 (12 days more than the Commons) and on average for seven hours a day—the importance of legislative work to the internal schedule of the second chamber is beyond doubt. Equally, the number of bills processed by the Lords is impressive in quantitative terms. In session 2002–03, for example, 33 government bills and 13 private members bills received Royal Assent. Ten of these bills were introduced directly in the Lords. On average, one-third of public bills are introduced in the second chamber, and 'recent Governments of all political complexions would not have been able to achieve their legislative programmes without this facility' (HL 97/HC 668 2003:para 18).

A total of 9,659 amendments were tabled to the government bills in session 2002–03, of which 2,925 were accepted. Some 207 amendments were put to a vote, of which 83 were lost by the government. Indeed, bargaining and disputation on the most contested amendments has been a characteristic feature of the 'interim House'. A vivid illustration of this process occurred at the end of the 2001–02 session when, on the very last day of the session in November 2002, 13 public bills received Royal Assent. Four controversial bills were still being debated by the two Houses days before, and in two cases (Animal Health, and Nationality, Immigration and Asylum), just hours before the end of the session. Ultimately, the passage of these bills was secured only after a number of compromises by the government. Indeed, in the case of the Anti-Terrorism, Crime and Security Bill the government suffered 13 defeats and the bill was passed only after the Home Secretary had been forced to make 'a humiliatingly large number of concessions' (Cowley and Stuart 2003:195). In November 2004 five bills received their royal assent on the last day of the parliamentary session after disputation between the two chambers. The Hunting Act 2004, which banned fox hunting in England and Wales, was only passed using the provisions of the 1949 Parliament Act (see above).

Most of the amendments tabled in the Lords are moved by the government itself, though a sizeable proportion are in response to comments made by non-government Members. Moreover, of the non-government amendments made, ministers are more prone to respond positively than they would be in the Lower House. Indeed, this revising function, of submitting government legislation to a 'second look', is one that is central to the case for the retention of a second chamber. As Norton argues (2004:438): 'It is not a function that the House of Commons can carry out, since it is difficult if not impossible for it to act as a revising chamber for its own measures; that has been likened to asking the same doctor for a second opinion'.

The Lords also has a significant role in scrutinising secondary legislation. The House has procedures whereby all bills are examined initially by the Delegated Powers and Regulatory Reform Committee 'to report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny' (HL 9 2003:para 4). For each bill the relevant government department provides written evidence to the Committee about the provisions for delegated legislation and why such provisions are necessary. The Committee then advises the House on the appropriateness of such provisions and draws attention to so called 'Henry VIII' powers (under which primary legislation may be amended or repealed by subordinate legislation without further parliamentary scrutiny). Notably there is no corresponding scrutiny process in the Commons. There is no Commons' committee dealing with delegated powers in primary legislation.

There is, however, a corresponding Commons' Committee dealing with regulatory reform proposals. Both Houses consider whether such proposals meet the technical requirements of the Regulatory Reform Act 2001, especially whether the government is entitled to do what the order proposes, that adequate consultation has taken place, and that the order removes a burden without removing 'any necessary protection'. In 2001–02 the Lords' Delegated Powers and Regulatory Reform Committee considered powers in 55 bills, and in 2002–03 in 57 bills; and reported, respectively, on eight and 16

sets of government amendments. The government 'almost invariably accepts' the recommendations of the Committee (HL 9 2003:para 29). Indeed, the Committee has 'earned a formidable reputation as a watchdog over the use of ministerial power' (House of Lords 2004:7)

The capacity of the Lords to 'hold the government to account' is enhanced by the expertise and experience brought by its members to deliberation and scrutiny. In the less partisan setting of the Lords, the range of professional occupations represented in the chamber allows for more detailed examination of the technical details of policy than is often evident in the House of Commons. Similarly, extensive expertise is displayed in the upper chamber's investigative committees, such as the European Union Committee and the Science and Technology Committee, as well as in other ad hoc committees such as those dealing with Stem Cell Research and Animals in Scientific Procedures in session 2001–02. In this respect the Lords (through its different composition) supplements, rather than replicates, the expertise and experience brought to bear in the consideration of public policy; and proponents of an unelected second chamber consider this a positive virtue of the present House of Lords.

The monarchy

The final stage of the legislative process in parliament is the royal assent, whereby a bill is accepted with the words '*La Reyne le veult*'—the Queen wills it. These words still symbolize the fact that the UK remains a constitutional monarchy. The crown symbolizes the fusion of the legislature and the executive. The history of the UK demonstrates the pivotal position of the monarchy in melding the institutional relationship between parliament and the executive into 'parliamentary government'. On the one side, as noted earlier in this chapter, parliament was convened initially to grant supply and offer support to the monarch (as the formal and functional executive of the state). As parliament sought to enhance its control over the monarch, so the monarch—in deciding major matters of policy—became simultaneously more dependent upon a group of 'privy councillors', part of whose responsibilities was also to mobilize support for these policies within parliament. Moreover, by the 17th century, there was a developing expectation that such councillors would sit in the House of Commons rather than in the Lords

and would seek election to the lower house. In this manner, a process of the institutionalization of executive responsibility to the legislature was initiated in tandem with a responsibility of the legislature to support and control the executive. The necessity for the executive to evolve methods for retaining parliamentary support was simply heightened by the constitutional settlement of 1689.

If 1689 defined the relationship between parliament and the 'executive' (as embodied in the monarch), the years thereafter witnessed the gradual redefinition of the relationship between the executive and parliament through the constitutional disembodiment of the monarch. Stated at its simplest, a transfer of executive power was made from the individual person of the monarch to the collective entity of 'ministers of the crown'. Ministers, as leaders of political parties, ultimately came to hold office, not at the discretion of the monarch, but at the discretion of voters and to be responsible, in a staggered relationship, to parliament and to the electorate (see chapter 4). In this process, the crown was effectively short-circuited from the flows of institutional power in a 'democratizing' UK state.

The question is frequently raised: 'Given that the powers of the crown have almost wholly passed to the government, what then is the role of the monarch? (Norton 2004:368). The answers neatly divide those who wish to consign the monarchy to the 'living dead of the constitution' (Kingdom 2003:347) and those who identify continuing and important symbolic and representative roles for the monarch. The latter roles include: representing the UK as head of state as a 'symbol of the nation'; setting standards of citizenship and family life; acting as a focal point of national unity; symbolising continuity through the performance of ceremonial duties (for example, opening parliament and awarding honours); and even preserving Christian morality as supreme governor of the Church of England (see Norton 2004:368–76; Johnson 2004:57–76). While supporters of a constitutional monarchy maintained that Queen Elizabeth II had performed these duties assiduously, and so sustained the credibility of the monarchy into the 21st century, more sceptical observers cautioned that 'it is only by accident that the present Queen [has been] able to do this' (Blackburn and Plant 1999:142). As Blackburn and Plant (1999:142) proceeded to note: 'If we want a head of state who can symbolise the whole nation, or at least a majority in it, then this is probably a stronger argument in favour of an elected head of state than an hereditary one'. Taken to its extreme this view underpins the