

An hourglass graphic with a globe in the top bulb and another globe in the bottom bulb. The top bulb is dark blue, and the bottom bulb is light blue. The hourglass is light gray. The globe in the top bulb is dark blue, and the globe in the bottom bulb is light blue. The hourglass is centered on the page.

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Senate Executive Business and the Executive Calendar

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May 19, 2008

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In Article II of the Constitution, which addresses the executive branch, the Founding Fathers assigned certain duties exclusively to the Senate. Among these obligations is providing “advice and consent” to treaties and nominations. As the pertinent part of Article II states:

[The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint [high government officials.]

In effect, the Senate acts in a unicameral capacity when it is engaged in “executive business”—so-called because the Senate and the chief executive are constitutionally involved in considering treaties and nominations.

The Senate has responsibilities under both Article I (outlining legislative prerogatives) and Article II of the Constitution. As a result, the upper body handles legislative and executive business differently. Legislative business concerns measures and matters associated with the Senate’s lawmaking responsibilities under Article I; executive business, as mentioned, consists of treaties and nominations. Some of the difference between the two types can be illustrated by defining *executive calendar*, *executive journal*, and *executive session* and then by discussing how treaties and nominations are handled by the Senate.

Executive Calendar and Executive Journal

The Senate maintains a separate *Executive Calendar* upon which treaties and nominations are placed when they have been reported from committees. (Legislative business is assigned to the Calendar of Business). The Executive Calendar is printed and distributed separately to Senate offices when there is business on it. The Senate also keeps a separate *Executive Journal*—as distinct from the Legislative Journal—for recording executive session proceedings.

Executive Session

Business on the Executive Calendar is considered in executive session. Typically, the Senate will go back and forth during a work day between legislative and executive sessions to handle matters on the two calendars. Legislative business is not considered in executive sessions, nor is executive business handled in legislative sessions. On occasion, when the Senate is in legislative session, it will act by unanimous consent on nominations “as in executive session.”

The common practice of the Senate is to convene in legislative session each day. However, either by motion or unanimous consent, the Senate will resolve into executive session to deal with executive business. Under Senate Rule XXII, the motion to go into executive session (or return to legislative session) is nondebatable. Once in executive session, the first item on the Executive Calendar is automatically before the Senate. If the majority leader decides to call up a different matter from the Executive Calendar, his motion to proceed is debatable. Precedent, however, provides a way to obviate the possibility of having extended debate on the motion to proceed to a treaty or nomination. When the majority leader offers the nondebatable motion in legislative session to resolve into executive session, he will specify in that motion that the Senate will consider a certain matter in executive session. That matter is then the pending business in executive session once his motion is agreed to, thus eliminating the need for a debatable motion to proceed. To be sure, the treaty or nomination itself is subject to extended debate.

Treaties and Nominations

Treaties are typically referred to the Foreign Relations Committee, with Senate Rule XXX governing many treaty procedures. For instance, from the days of our early Presidents, treaties negotiated by the White House have been submitted to the Senate with an “injunction of secrecy.” Rule XXX stipulates that the Senate may remove this secrecy injunction at any time, which it commonly and regularly does by unanimous consent when the treaty is ordered to be printed and referred. Most of the time the Senate considers treaties in open session, but there are occasions when secret sessions are held to discuss classified information. Unlike nominations or regular legislation, treaties do not die at the end of a Congress. A good example is the Genocide Treaty, which was submitted by President Truman in 1949. Thirty-seven years later, it was finally ratified in 1986 by the required two-thirds vote of the Senate.

Presidential nominations are referred to the appropriate committee of jurisdiction. (Senate Rule XXXI regulates many of the proceedings on nominations.) Some committees process thousands of nominees while others consider only a small number. Once the nominations are taken up in executive session, they require approval by a majority vote of the Senate. Under Senate Rule XXXI, the presiding officer asks: “Will the Senate advise and consent to this nomination?” Nominations must be acted on in a session or they die, and, as Rule XXXI states, they must “again be made to the Senate by the President.” Under the Constitution, Presidents “shall have Power to fill up all Vacancies that may happen during the Recess of the Senate.”

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