

## Bernardi should have resigned his Senate seat: here's why

Written by Narelle Miragliotta, Senior Lecturer in Australian Politics, Monash University

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Cory Bernardi speaks to the media after announcing he had quit the Liberal Party. AAP/Mick Tsikas

Senator Cory Bernardi's decision to [quit the Liberal Party](#) comes as no surprise to most political observers. For quite some time, and certainly since Malcolm Turnbull's elevation to the Liberal leadership, Bernardi's resignation from the party was always a distinct possibility.

However, his decision to quit the party without resigning from the Senate has sparked (the inevitable) condemnation from his former party colleagues. While he might well be feeling "reluctant and relieved", [many Coalition MPs are savage about this decision](#) .

### The perils of ratting out the party

Parties have little mercy for those in their ranks who quit the party but continue to occupy their seat in parliament. Such persons are often decried as "deserters" or "rats".

In this case, the displeasure with Bernardi runs even deeper. From the Liberal Party's perspective, it believed it had gone to some lengths to accommodate some of the senator's policy concerns. Yet the efforts to appease Bernardi ultimately proved insufficient to prevent him from tendering his resignation only seven months after the federal election that granted him a six-year Senate term.

On a more practical level, Bernardi's resignation makes an already complex Senate even more so for the Turnbull government. Once the vacancies triggered by [Rod Culleton](#) and [Bob Day](#) are filled, Bernardi will be among a 21-strong cross bench. The Turnbull government's numbers have been reduced to 29 senators, 10 votes short of the 39 it needs to transact most business in the chamber.

High-profile, senior Liberal Party ministers, such as [George Brandis and Christopher Pyne](#) , have argued that Bernardi should resign as senator to give rise to a [casual vacancy](#)

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The problem for the Liberals is that Bernardi does not believe he is under any particular obligation to do this. For Bernardi, the decision to resign from the Liberal Party is [a matter of principle](#), and therefore justified and imperative.

In constitutional terms, Bernardi is not obliged to quit the Senate just because he has resigned from the Liberal Party. The party can do little to force his hand, except to hope that he might eventually fall foul of the Constitution's various [eligibility requirements](#) to serve in the federal parliament. This would be unlikely.

### Should Bernardi resign on ethical grounds?

While there is no constitutional basis for Bernardi to resign from the chamber, there is a compelling ethical case for him to do so.

Before I outline my reasons, I must clarify the scope of my claim. First, the argument is not directed exclusively at Bernardi. This is an argument that should apply to any senator who quits his or her party, short of reasons of their party imploding, or being fired by the party.

Secondly, this argument is not one that I would extend to members of the House of Representatives who resign from their party. It is particular only to party defections when the member was elected in a seat through proportional representation.

My argument is essentially tied to two particular features of the Senate electoral system: the statewide basis of that system and group ticket voting. In combination, these elements greatly heighten the importance of the party label to the electoral success of major party candidates.

The statewide basis of the electoral system creates a geographical obstacle for all but a rarefied group of candidates to build a sufficiently strong personal mandate to secure a Senate quota. For this reason most independent candidates choose to contest lower house electorates rather

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than nominate for the Senate, where campaigning is conducted over a much wider, often more diverse electoral terrain.

Group ticket voting has further elevated the importance of the party label to the election of Senate candidates. Known colloquially as “above the line” voting, it allows parties to predetermine their preferred order of election of their candidates. While voters are permitted to vote for any candidate in any order that they wish, most do not. Only a very small proportion of voters cast their vote within the party list.

The combination of these features of the Senate electoral system means that most major party senators would struggle to make a convincing case that they were elected on the basis of personal appeal and support.

If we use Bernardi as the case in point, of the 345,767 votes cast for the South Australian Liberals at the 2016 election, he attracted just 2,043 of the first preference vote. Bernardi's re-election had almost nothing to do with his personal vote and almost everything to do with the Liberal Party label and the favourable number two Senate spot that South Australian party officials awarded him on the party's ticket.

Established parties can legitimately claim, therefore, that the single most decisive factor that accounts for the election of their senators is the power of the party label. For this reason, senators who quit their party under the current rules should feel compelled on ethical grounds to resign their vacancy, so that the democratic will of the party's supporters is fulfilled.

*Narelle Miragliotta does not work for, consult, own shares in or receive funding from any company or organisation that would benefit from this article, and has disclosed no relevant affiliations beyond the academic appointment above.*

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