

# Norway's Heureka-Moment?

---

Eirik Holmøyvik

2019-09-11T20:00:01

Norwegian elections are usually quite boring. While the government changes between different parties, the party structure has been remarkably stable for more than 80 years. And for decades, constitutional lawyers have been denied juicy electoral scandals. The electoral system runs smoothly without major hiccups. Monday's local election brought at last a glimmer of excitement for Norwegian constitutional lawyers.

## Riding on a wave of rural discontent

As to the [election result](#), it turned out to promise a slight shift in the political landscape which resembles the more vocal anti-establishment movements in Europe. The big losers in the elections were the traditional ruling parties, the Social Democrats dropping 8,2% to 24,8%, and the Conservatives, currently in government, dropping 3,1% down to 20,1%. The big winner was the centrist *Senterpartiet*, gaining 14,4% of the votes, up 5,9%. This agrarian and deeply EU sceptic party has re-branded itself as an anti-establishment party and surged forward on a wave of rural discontent with centralisation of public services like police, universities, and a deeply unpopular reform of the provinces and municipalities.

Another winner was a newly-formed protest movement against toll roads, which gained 2,4% of the national vote, despite only running in 11 of 356 constituencies. In Bergen, the second largest city in Norway, the protest movement received a staggering 16,7% of the votes, and is thus becoming a major force in the city's politics. In Stavanger, the fourth largest city, the protest movement gained 9,2%, and in the capital Oslo, it gained 5,9%. The issue of toll roads also dominated the electoral campaign. We can hear a faint echo of the French *gilets jaunes*. Yet Norway is still nowhere near the major disruptions of the established party systems we have seen in recent elections in Italy and France.

## An experiment gone wrong

In addition to the shift in the political landscape, the 2019 local election also raised the national attention to voter manipulation by means of social media and fake news. In countries like the US, the UK, and France, foreign interference has been the main source of concern in relation to fake news in election campaigns. In Norway, to everyone's surprise, the culprit turned out to be the public broadcaster NRK.

As part of the educational science show *Folkeopplysningen*, NRK [attempted to manipulate students](#) at a high school to vote for a specific political party in the non-official school election, which in Norway are commonly held before official elections. Using different social media outlets to pinpoint information to the high

school students, NRK subjected the unaware students to a mix of selective real and fake news with the intention to move them to vote for a specific party in the school election. While the experiment eventually failed to move the students, the aim was to demonstrate to young and old citizens alike the power of social media in manipulating political views.

The problem was that a number of the students affected were 18 years old and could vote in the actual local election. Given Norway's generous 1 month voting period before election day, these students could in principle have cast their vote before NRK called the bluff, and thus having their votes in the local election affected by the experiment.

While the students themselves praised the experiment as a great lesson learned, the public broadcaster NRK received much criticism from politicians and the media. However, legally speaking, NRK did no wrong. Norwegian election law does not regulate election campaigns at all, and the criminal code only penalises typical election fraud like buying and selling votes, preventing voters from exercising their right to vote, multiple voting, or manipulation of the election result. Influencing voters by means of social media, advertising, and other means, something which all political parties and candidates do in the election campaign, is perfectly legal and is considered part of the freedom of expression.

## **An overdue revision of the electoral law?**

Yet the experiment and the strong condemnation that followed raises the pressing question of how to regulate fake news and the use of social media as an exceptionally powerful tool of voter manipulation. This is a tricky issue. Legislators must balance freedom of expression with a number of legitimate aims for restrictions. One is the aim of providing a level playing field for political parties and candidates. Another is the aim of maintaining transparency in political advertising and campaign financing. A third is the aim of restricting the intervention of foreign media outlets in national elections (or, in Norway, your own public broadcaster).

Earlier this year, the Venice Commission published a [compilation](#) of national legislation and case law on the use of the internet and social media during election periods. The compilation shows that most European countries have no specific regulation of fake news and social media in the context of elections. Notable exceptions are Germany's 2017 NetzGD law and in particular France's 2018 law [combatting the manipulation of information](#). Whether or not this type of regulation is effective remains to be seen.

At the moment, Norway has hardly any regulation of campaign spending and of the use of the media in electoral campaigns. The only exception is a ban on political TV advertising and the European Court of Human Rights (ECtHR) [held](#) that its application was in violation of Article 10 of the European Convention on Human Rights (ECHR). The NRK experiment in the 2019 local elections may very well be the event that finally puts fake news and social media in elections on the legislative

agenda in Norway. If so, that would only be one of a number of regulatory items for the Norwegian parliament to address in relation to electoral law.

Norway is currently in the process of [revising](#) its 2002 election act in order to accommodate changes in the country's sub-administrative units ("fylke"), which also serve as constituencies. In addition to changes to the constituencies and the electoral model itself, the Norwegian government has indicated two important flaws in the existing election law.

One is the lack of an emergency clause in the event of natural disasters, terrorist attacks, or other extraordinary events interrupting the election and which requires it to be postponed or extended. Few countries have yet such emergency clauses in their election laws, but given the damage potential of cyber-attacks or massive disinformation campaigns in elections, it may be prudent to have one.

The other flaw in the current election law is the complaints and appeals procedure. Norway is one of a few European countries where parliament is the judge of its own election without any possibility of an appeal to a court or other judicial bodies. In 2010, Norway received strong criticism from the [OSCE/ODIHR and the Venice Commission](#), who concluded that the parliament did not meet the necessary requirements of impartiality and procedural guarantees for a fair and effective examination of election disputes. Later this year, the Grand Chamber of the ECtHR will hear the case of [Mugemangango v. Belgium](#), which presumably will decide whether or not parliament being the judge of its own elections is compatible with Article 3 of Protocol 1 of the ECHR. Regardless of the outcome in Strasbourg, Norway looks set to move election disputes out of the hands of parliament and into a judicial body.

*The author is a member of the commission tasked with drafting a new election law in Norway.*

