

Regulating election polls

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The fear of undue influence on voters is the reason why many democracies have discussed and quite a few have decided to regulate the publication of election polls. The controversy around election polling shows that several difficult questions arise. Do polls really influence voting behaviour? Is a total or partial ban on election polls compatible with basic democratic principles such as the freedom of the press? Could a national embargo on the publication of polls really be effective in a world of Internet and global media?

The impact of opinion polls: theory and evidence

Early in the history of mass surveys both scholars and politicians started to worry about their possible effects. This might be the social science equivalent to the Heisenberg uncertainty principle: measuring public opinion would change public opinion. A pioneer team of election researchers found evidence for a bandwagon effect: electoral behaviour was obviously influenced by perceptions of the likely winner (Lazarsfeld et al. 1944).

The theoretical problem was solved by Herbert Simon, who came up with a mathematical demonstration of how self-correcting polls could be designed (Simon 1954). As long as the voter reaction function is known the published figures might be adjusted so that the subsequent voter opinion would match the initially observed values. But since the exact voter reaction is never known, Simon's proof remains elegant but useless.

The measurement of polling effects is problematic since there are several theoretical ways in which the publication of a poll can change a voter's electoral choice. The famous underdog effect assumes that a political party or candidate gains by a positive polling trend. But there are other hypothetical effects than this simple version of the spiral of silence theory (Noelle-Neumann 1982). One should add that there might also be important indirect effects, linking polling results with voter reaction via the impact upon party strategies, media bias and other channels.

This variety of hypothetical effects, and an abundance of experimental as well as non-experimental empirical data, have lead some observers to completely discard the problem of possible effects: 'As a whole, the effects remain first of all minimal and secondly they can be seen as completely harmless' (Donsbach 2001).

Obviously many different factors determine why and how people vote, and no one would argue that opinions polls are a major cause. But there is strong evidence that opinion polls under certain circumstances might in fact influence election results (Holmberg and Petersson 1980; Petersson and Holmberg 1998). One important example is proportional election systems with a threshold limit, such as Germany, Poland, Denmark, and Sweden. Surveys show that tactical voting, that is whether or not to support a party close to the barrier for parliamentary representation, is partially based on media reporting of poll data.

Although there is some empirical support for polls influencing elections the normative conclusion is not obvious. In an open society with freedom of speech there are many examples showing how citizens are influenced by different kinds of information. The publication of economic forecasts sometimes have a tremendous impact on consumers and investors. Political opinion data might help voters who want to use their vote for tactical purposes (Särilvik 1971).

Regulatory policies

A study from 1997, commissioned by international polling organizations, found that 30 of 78 countries had some kind of embargo concerning publication on or prior to election days. In 9 cases the embargo applied to the election day only (Røhme 1997).

One of the most restrictive regulation of polls in a democracy was introduced in France in 1977. The law made it illegal to ‘publish, disseminate or comment’ on opinion polls during the week preceding an election. The law did not prohibit actual polling, but tried to shield voters from knowing the results. The law also contained rules on the publication of polls between elections. Any publication of a poll must include information about the identity of the polling organization, sample size and time of fieldwork.

Over the years the law became more and more inefficient. Polling before the election continued, but the results were restricted to political insiders. The general public was not given access to the polls, except via foreign media and the Internet. The constitutionality of the law was also questioned. Finally, the law was changed (Law 2002-214). The embargo was reduced from one week to two days. Polls can now be published freely, except on election day and the day preceding the election.

The modification of the French legislation indicates a growing consensus in Europe. Election polls are more frequent than ever and concerns about their detrimental effects are often voiced. However, legislation is not seen as the main instrument. Many countries primarily rely on the self-regulation of media institution and continuing public debate to raise general awareness about the limitation of opinion polls.

The Council of Europe, with its 45 member states, has discussed the need to harmonize national legislation about election polls, but refrained from doing so. Instead in 1999 The Council of Europe in issued a recommendation concerning media coverage of election campaigns (R (99) 15).

The Council of Europe recommendation underlines both the independence of media and the responsibility of media professionals. Opinion polls are mentioned in section III.2:

Regulatory or self-regulatory frameworks should ensure that the media, when disseminating the results of opinion polls, provide the public with sufficient information to make a judgement on the value of the polls. Such information could, in particular:

- name the political party or other organisation or person which commissioned and paid for the poll;
- identify the organisation conducting the poll and the methodology employed;
- indicate the sample and margin of error of the poll;

- indicate the date and/or period when the poll was conducted.

All other matters concerning the way in which the media present the results of opinion polls should be decided by the media themselves.

Any restriction by member States forbidding the publication/broadcasting of opinion polls (on voting intentions) on voting day or a number of days before the election should comply with Article 10 of the European Convention on Human Rights¹, as interpreted by the European Court of Human Rights.

Similarly, in respect of exit polls, member States may consider prohibiting reporting by the media on the results of such polls until all polling stations in the country have closed.

These non-binding rules could be considered as a set of generally accepted standards in today's Europe. Legislative regulation might be accepted to protect the election day itself, but should otherwise be kept at a minimum.

References

Council of Europe, Recommendation R (99) 15, <http://cm.coe.int/ta/rec/1999/99r15.htm>

Donsbach, W., 2001. *Election Polls? Normative and Empirical Arguments for the Freedom of Pre-Election Surveys*, The Foundation for Information, ESOMAR.

Holmberg, S., and Petersson, O., 1980. *Inom felmarginalen. En bok om politiska opinionsundersökningar*, Publica, Stockholm.

Lazarsfeld, P. F., Berelson, B., and Gaudet, H., 1944. *The People's Choice. How the Voter Makes up his Mind in a Presidential Campaign*, Duell, Sloan and Pearce, New York.

Noelle-Neumann, E., 1982. *Die Schweigespirale. Öffentliche Meinung: unsere soziale Haut*, Ullstein, Frankfurt a.M. [1984, *The Spiral of Silence: Public Opinion, Our Social Skin*, University of Chicago Press, Chicago.]

Petersson, O., and Holmberg, S., 1998. *Opinionsmätningarna och demokratin*, SNS Förlag, Stockholm.

¹ Article 10 states that:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Röhme, N., 1997. *The Freedom to Publish Opinion Polls. Report on a Worldwide Survey*, The Foundation for Information, ESOMAR.

Simon, H. A., 1954. 'Bandwagon and underdog effects in election predictions', *Public Opinion Quarterly*, 18, 245–253.

Särlvik, B., 1971. 'Yttrande', *Valbarometern. Ett radionämndsärende*, Sveriges Radios Förlag, Stockholm.