

Constitutional Implications of the Campaign against Nuclear Power (November 3, 1976)

Abstract

A liberal commentator reflects on the ironies of a citizens' movement that worked against the decisions of democratically elected bodies. He criticizes the costly use of force to put down the protests and urges politicians to take more seriously the activist segment of the population that opposed nuclear power.

Source

Nuclear Power Divides a State Based on the Rule of Law

The term “nuclear fascism” has been around for some time. It has not made its way into public discussion yet because only very few people have any idea what it means. You can get a sense of its meaning from the conflict over the construction site at Brokdorf on the lower Elbe River.^[1] The deployment of hundreds of police officers with gas masks, dogs, and water cannons, the bulldozers closing up the ranks, and the unrolling of barbed wire entanglements left a lasting impression on anyone who saw the special report by NDR television on Sunday evening. But most important was not the action at dawn, when—after the Bundestag election—a surprise raid outmaneuvered the citizens' initiatives after the sudden issuance of a construction permit with instructions for the immediate execution of a project that has been controversial for years. Even more significant were the mass psychology of the accompaniment and the self-assured interplay of the power company, the state government, the security organs, and the police. They were all well-informed and could prepare themselves accordingly.

The plan of action is similar to the one used at Wyhl.^[2] Concerned or affected citizens raise objections to the planning approval procedure: in Brokdorf there were more than 20,000. Complaints are also filed in court. The residents are then invited to hearings at which police presence assures the necessary atmosphere. In Brokdorf, the hearings were organized in such a way that—according to a member of the television film crew—the people from Dithmarschen^[3] had their say on one day, but the experts they invited testified on another. That made it possible to treat the former group as ignorant in nuclear matters, and the latter as uninvolved outsiders. In the meantime, the permitting procedures by the government in Kiel continued, strictly according to the rules of the constitutional state and without the involvement of the Landtag (state parliament).

Its involvement is not required, as the responsible social minister [Karl-Eduard] Claussen explained. Questions regarding nuclear power plants are to be treated by the executive alone, has no interlocutor—apart from industry—unless citizens' initiatives are formed. But these are treated as non-legitimate. The constitutional state does not legally acknowledge them. Or to be more precise: there is no room for them in the law and order state [*Gesetzes- und Verordnungsstaat*]. And even if the Basic Law guarantees that all Germans have the right to assemble peacefully and unarmed, there is no government that is in any way required to pay attention to such assemblies.

Instead, the steadfast organized communists attend to them. They mingle as small groups among thousands of demonstrators of all kinds. The press office of the Northwest German Power Plant could thus easily announce that the demonstration was “organized well in advance” by militant communists. And the security organs promptly determined that there were 150 communists among 5,000 demonstrators: Even their distancing themselves from these activists didn't help the spokespeople of the

nonviolent “Lower Elbe Environmental Protection Citizens’ Initiative”—a pastor from Bremen and a local farmer (CDU). The power plant corporation announced that its security measures were justified in view of the radicals and because the citizens’ initiative had lost control of the protest, and that from now on they were expected to only employ means compatible with the constitutional state based on law and order in their fight. Meanwhile the ditch around the construction site was widened to eight meters and barbed wire was spread out “to protect children playing.”

The effort to defend the construction site has so far cost two million marks. These will one day be added to the many millions in investments for the first construction phase. This sum of money will carry weight if a court has to rule on complaints or if authorities have to decide whether or not the next construction phase can begin. Such policies of *fait accompli* and the millions that have been poured into concrete, policies that first exploit the rule of law in all its instances and then render it impotent, are what call the citizens’ initiatives to action. The Wyhl case has shown how hard it is for them to fight the courts for a little more leeway in the face of governments addicted to industrialization, business-smart electricity companies, and unions intoxicated by the prospect of job creation.

If there are communists among the demonstrators, companies and authorities like to take this as an opportunity to discredit a democratically permitted expression of opinion without further argument. First, it should be asked if communists in our country represent the legendary sourdough that—added in small amounts—makes any protest action by assembled democrats irrelevant. Minister President [Gerhard] Stoltenberg told the state parliament in Kiel they could be pleased that the police action at dawn near Brokdorf secured the rule of law.

If heads of governments—in the face of unrest among their constituencies due to the threat posed by the unknown consequences of the construction of a nuclear power plant—can come up with nothing better than this naïve celebration of the rule of law, then it is high time for the parliaments to finally secure more rights in the question of nuclear power. The people are no longer so simple-minded that they will continue to listen to fairy tales about the threatening scarcity of energy while the chemical industry declares its disinterest in the question of storing radioactive waste, the electricity companies feel no responsibility, and the governments continue to do nothing but threaten a ban on permits for additional nuclear power plants.

NOTES

- [1] North German site (in Schleswig-Holstein) for the construction of a nuclear power plant—eds.
- [2] South German site of the first anti-nuclear power protests—eds.
- [3] The region in which Brokdorf is located—eds.

Source: Christian Schütze, “Kernkraft spaltet den Rechtsstaat,” *Süddeutsche Zeitung*, November 3, 1976. Republished with permission.

Translation: Allison Brown

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