

INTRODUCTION



Three grim dons, whose reputation
Rests on mass extermination
Stake their claim for chemistry:
Freedom and Democracy.

—Bertolt Brecht, *The Anachronistic Procession or
Freedom and Democracy*

Shortly after the end of World War II, in August 1945, the Swiss historian Herbert Lüthy complained that German guilt—collective guilt, even—was discussed “so much and in such an undifferentiated manner.” Perhaps this was the case, thought Lüthy, so that there would be no need for discussion of definable, differentiated, and gradated responsibility: “In the moral slurry that is being created, the specific responsibility of those who made Hitler’s power possible is sinking into happy oblivion.” In the best-case scenario, those who had gotten their hands dirty—“the ostensible protagonists of the Third Reich”—would be brought to justice. But the “beneficiaries and the clients” of the Nazi regime—“the bankers and *junkers*, the coal and steel lords, the chemical and electricity magnates”—would remain, according to Lüthy, “discreetly in the shadow of the tribunals against those fellow travelers who were caught.”¹

A prominent representative of private industry, Gustav Krupp, was set to be tried at the International Military Tribunal (IMT) in Nuremberg. Krupp was too sick and too afflicted by dementia, however, to represent himself before the court, and did not have to stand trial.² Plans were made for a second international military tribunal at which his son Alfried and a number of the managers at I. G. Farbenindustrie AG were to be put on trial. The trial did not take place, however. Instead, in twelve subsequent trials in Nuremberg, the Americans tried various representatives of the Third Reich’s elite officials. Along with officials from various ministries, members of the judicial system, high officers of the Wehrmacht, doctors, and multiple different SS organizations, leading representatives of the German major industry sector were charged in three different

trials: Alfried Krupp and Friedrich Flick as owners of their respective companies, some of their top managers, and twenty-four of the top managers at I. G. Farbenindustrie AG.³

I. G. Farbenindustrie AG was officially founded on December 9, 1925, with the signing of the merger agreement between the German chemical companies Bayer, BASF, Hoechst, Agfa, Griesheim-Elektron, Weiler-ter Meer, Cassella, and Kalle. On July 5, 1945, the management and control of the company and its assets were taken over by military officials in the US occupation zone. With the Allied Control Council Law No. 9 of November 30, 1945, I. G. Farben, or I. G., as it was referred to in abbreviated form, was confiscated, and the decision was taken to dissolve it. Though the history of the chemical company only spanned twenty years, I. G. Farben is still present in collective memory. The company was famous for its exceptional capacity for innovation and its wide range of products: dyes, pharmaceuticals, synthetic fibers, rubber, magnetic strips, fuels, and much more. I. G. Farben is best known to this day, however, for its disreputable connection with the policies of the Third Reich. In the twelve years of the Nazi regime, its management was not only “entangled” in the crimes of the Nazi regime; it was actively involved in them. I. G. Farben represented—and still represents—not just autarky and rearmament, but also exploitation and the horrors of Auschwitz.

This association exists despite the fact that the National Socialists had expressed disfavor toward the chemical company as “Jewish” or “international” as late as the early 1930s, not least for having quite a number of managers and supervisory board members who were Jewish or of Jewish heritage.⁴ Starting in 1933, however, the company leadership quickly and willingly adapted to the conditions of the Nazi regime. Herbert Marcuse, one of the founders of the Frankfurt School, noted this in late November 1943 in a report for the American intelligence services: “The only large German trust which, at the end of the Weimar Republic, could still be considered as antagonistic to the Nazi regime, the I. G. Farbenindustrie, came into the Nazi camp shortly after 1933.”⁵

For Telford Taylor, chief counsel of the American prosecution for the subsequent trials in Nuremberg, the trial against the managers of I. G. Farben was of particular importance. He described it as one of four key trials of the Nuremberg project, along with the Krupp trial, the Wilhelmstrassen trial, and the trial against the high command of the Wehrmacht.⁶ The I. G. trial was clearly given a very important role at the time. As James Morris, one of the judges of the trial, wrote in mid-September 1947 to a US congressman, “This case is considered second in importance only to that of the International Trial of Goering and the other top Nazis.”⁷

In May 1947, Taylor submitted an indictment against twenty-four high-level managers at I. G. Farben to the responsible military authority; the indictment was against the chairman of the supervisory board, all nineteen members of the board

of directors, and four directors. The indictment contained five counts: Under count I, all managers were accused of having planned, prepared for, and carried out wars of aggression. Under count II, they were accused of war crimes and crimes against humanity for having participated in the plunder and spoliation of public and private property. Under count III, they were charged with having committed war crimes and crimes against humanity for having participated in the enslavement of the civilian population and concentration camp inmates, the use of prisoners of war in violation of international law, experiments on human beings, and the mistreatment and murder of human beings. Under count IV, three managers were accused of being members of a criminal organization, the SS. Under count V, all managers were charged with having taken part in a conspiracy to commit crimes against peace.

The trial *The United States of America v. Carl Krauch, et al.* began in late August 1947 before US Military Court VI against only twenty-three defendants, since one was seriously ill and his trial was separated from the others. The court consisted of three judges and one substitute judge: the presiding judge, Curtis Grover Shake (former judge of the Indiana Supreme Court), the aforementioned James Morris (judge of the North Dakota Supreme Court), Paul Macarius Hebert (dean of the law school of Louisiana State University), and Clarence F. Merrell, a lawyer from Indiana, as substitute judge.⁸

The taking of evidence was completed by mid-May 1948. The judgment was finalized in late July 1948. In it, all three judges acquitted all twenty-three managers of counts I and V, though Judge Hebert submitted separate reasoning for his consent in a concurring opinion. The three managers charged under count IV were also unanimously acquitted. Ten managers were acquitted of all counts by the majority of the judges. Thirteen managers were sentenced by the court to between eighteen months and eight years under counts II and III, though Judge Hebert submitted a dissenting opinion on count III. Those managers who were directly involved in the construction of the I. G. Farben factory in Auschwitz received the severest sentences.⁹ Thus the trial against the twenty-three managers of I. G. Farben ended in the criminal conviction of thirteen defendants—among them all the top leaders of the company.

It is not particularly surprising that the court was criticized by the defendants and their counsel. They complained in particular of a supposed “victors’ justice” on the part of the Americans. Heinrich Gattineau, one of the directors of I. G. Farben who were charged at the time, later wrote that the defense counsel had been “at a serious disadvantage.” By his estimation, the judges had acquitted all the defendants of counts I, IV, and V, but under counts II and III, “a few problematic sentences” had been handed down. Because the concentration camp inmates in Auschwitz had, according to Gattineau, “benefited from the company’s social services,” one could not speak of it as “enslavement.” He also claimed that I. G. Farben had not stolen or plundered; he claimed

that the defendants had been sentenced “just because they were members of the supervisory board of a foreign company.”¹⁰ Other former managers at I. G. Farben, such as August von Knieriem and Wolfgang Heintzeler, largely shared Gattineau’s assessments.¹¹

However, due to the fact that the sentences were mild in comparison to those of most of the other Nuremberg trials, representatives of the prosecution also sharply criticized the judgment. After the judgment was issued, Telford Taylor remarked that the evidence against the managers at I. G. had been “the strongest of all the industrialist trials,” but that it had “made little impression on two of the judges.”¹² Josiah DuBois, the lead prosecutor in the I. G. trial, expressed his frustration about the judges and the judgment in especially strong tones in a book published in 1952: “The sentences were light enough to please a chicken thief, or a driver who had irresponsibly run down a pedestrian.”¹³

With this appearance of a failed trial, it seems fitting that Judge Morris himself, who played a significant role in formulating the majority decision of the court, wrote to Judge Hebert after his return to North Dakota in mid-September 1948 that he was back at his desk at the supreme court “and should, therefore, not have too much time to let my mind dwell on the Nurnberg nightmare.”¹⁴

Why, one asks, were the trial and the judgment clearly a negative experience, a “nightmare,” even, for the majority of those involved? Why was it that the trial was seen negatively and continues to be seen negatively into the present day? What was it that went “wrong” at the time? Did the trial perhaps fall short owing to the biases of the majority of the “prairie judges,” as they were disparagingly called?¹⁵ Or did the prosecution perhaps botch the trial through lack of skill or through ideological zeal?¹⁶

In order to seek an answer to these questions, this book focuses on the I. G. Farben trial, including its prehistory, its progression, and the history of its reception. Particular attention is paid to the actors immediately involved in the trial. In addition to understanding their actions, the aim is to describe their goals and values to the extent possible. As Niklas Luhmann wrote in his book *Legitimation durch Verfahren* [Legitimation by Procedure], the fact that a court procedure has an uncertain outcome—rather than resembling the “ineluctable course of a ritual”—is one of its defining characteristics, and even serves as its “motor” and legitimating factor.¹⁷ Consequently, the criminal proceeding against the managers of I. G. in this study will be understood as a trial that was open ended and whose outcome was uncertain—which requires that all the different phases of the trial be described in chronological order, without focusing exclusively on certain phases, arguments, or narratives.¹⁸

With that in mind, this study will unfold as follows: after the introduction, there will be a discussion of the prehistory of the trial and its legal foundations. This includes the debates that took place between 1942 and 1945, first in London, then in the United States, about how to address German war crimes,

as well as the debates that led to the establishment of the IMT and the subsequent trials in the different military zones. Following this, the indictment and the establishment of the court will be addressed. The direct actors in the trial will be introduced—that is, the prosecution, the defendants with their counsels, and the judges. The subsequent chapter portrays the trial process, including the opening arguments and the explanation of the indictment, the reply of the defense, and, finally, the arguments of both sides. The judgment and its justification are then assessed in further detail, including both the majority opinion and the minority opinion. Next, the posthistory of the trial is addressed: the results of the judgment and how the prosecutors, the judges, the defendants, and the defense counsels all responded to the judgment. The final chapter analyzes and evaluates the trial and the judgment.

Except for the contextualizing overview of I. G. Farben added to this edition, the history of the I. G. Farben company itself is not addressed in great detail in this book since the focus of the description is not the company but the trial in Nuremberg.¹⁹ Nor does the study focus in great detail on the charge of experiments on humans in the various concentration camps, since this charge did not play the role in the trial that one might have expected in light of the monstrosity of the crimes.²⁰ However, the victims, even if they were assigned only a secondary role in the trial, are omnipresent in the book as the trial was meant to bring justice to them.

The state of the academic literature related to the themes addressed by this study is excellent. In addition to a large number of descriptions of the IMT in Nuremberg, recent years have seen a thorough academic assessment of the subsequent trials, including the trials of the industrialists.²¹ Three essential recent studies deserve particular mention: Kevin Jon Heller's work on the legal aspect of the subsequent trials, Hubert Seliger's dissertation on the defense counsels in Nuremberg, and finally Kim Priemel's overall presentation and interpretation of the Nuremberg trials in their entirety.²² Recent anthologies about the Nuremberg trials published jointly by Alexa Stiller and Kim Priemel also deserve mention.²³

The I. G. trial in specific is addressed by a number of journalistic, historical, and legal works of various levels of quality. In his aforementioned 1952 book, Josiah DuBois published his view of the I. G. trial from his point of view as former chief prosecutor. In the late 1970s, Joseph Borkin, a former employee of the Antitrust Division of the US Justice Department who had worked for the US prosecution in Nuremberg after the war, published a widely acclaimed book about the chemical company, which he described as his "Moby Dick." In it, like DuBois, he criticized the trial, the judgment, and the judges.²⁴ In 1981 the journalist Tom Bower picked up rumors published by the society reporter Drew Pearson alleging that Judge Shake had fraternized with the German defense counsels and that Judge Morris's wife had had close contact with the wives of I. G. managers standing trial.²⁵

Josiah DuBois's and Joseph Borkin's negative assessments of the judges and of the judgment in the I. G. trial were taken up by the majority of historians, jurists, and journalists, in some cases even incorporating the rumors published by Tom Bower. In fact, DuBois and Borkin are often the primary authors they cite. In general, there is a tendency in the literature to yield to the temptation to continue the I. G. trial—most recently the work of Diarmuid Jeffreys, on the side of the prosecution, and Frank Gausmann, on the side of the defense.²⁶

The archival sources on the trial are also very rich. It was possible to review the trial records and numerous documents connected to the trial, located in Frankfurt, at the Fritz-Bauer-Institut. It was also possible to study the Allies' records on the trials and the papers of defendant August von Knieriem in Germany, in the Federal Archive at Koblenz. The Nuremberg State Archive holds extensive and informative records on the war crimes trial, including records from the defense counsels. The company archives at Bayer, BASF, and Hoechst (now Sanofi) provided helpful information on the defendants and defense counsels. I also consulted the papers of defendants Eduard Wahl (Archive of the Konrad-Adenauer-Stiftung), Hermann Heimerich (City Archives Mannheim), Friedrich Wagner (City Archives Ludwigshafen), Friedrich Drischel (Baden-Württemberg Archives, Freiburg), and Herbert Nath (private papers, Munich/Grünwald).

For the prosecution, I consulted records in the National Archives, Washington, DC, as well as the papers of Telford Taylor (Columbia University), Drexel Sprecher (John F. Kennedy Presidential Library), Belle Mayer Zeck (Harvard University, also online), and Emanuel Minskoff and Benjamin Ferencz (United States Holocaust Memorial Museum). I also studied an interview with Josiah DuBois (Truman Presidential Library, online), and carried out a personal interview with Professor Sally Falk Moore (Harvard University), who was a member of the prosecution. With regard to the judges, I consulted the very informative papers of James Morris (North Dakota State Archives in Bismarck). The papers of Paul M. Hebert (Louisiana State University) are available online, but the documents are, in many cases, undated. With regard to Curtis G. Shake, I had access to transcripts of interviews with him (Indiana State Library) as well as a few copies sent to me from his papers (Vincennes University, Indiana).

Notes

1. Lüthy, "Die Verheerungen des Krieges," 76. The poet Bertolt Brecht was not the only one who agreed with Lüthy's assessment. His poem, quoted above, states further: "Next to celebrate the Night / Of the Long Knives, comes a tight / Knot of men who loudly call / For another free-for-all.—Then the faceless trust directors / Those men's patrons and protectors: / Pray, for our arms industry / Freedom and Democracy!" (Brecht, *Poems 1913–1945*, 410–11).

2. Neave, *Nuremberg*, on Alfried and Gustav Krupp see 32–33, also 54: “Gustav [Krupp] was discovered at his hunting lodge. Since the beginning of 1945, he had been unable to feed himself. He could say nothing but ‘Donnerwetter!’ Allied doctors declared him to be suffering from softening of the brain.”
3. Priemel and Stiller, *NMT*; Ueberschär, *Der Nationalsozialismus vor Gericht*.
4. Hayes, *Industry and Ideology*, 65–66, 90–94.
5. Laudani, *Secret Reports on Nazi Germany*, 74–91; Marcuse, “German Social Stratification,” quote from 81.
6. Priemel, *The Betrayal*, 274.
7. State Archives/State Historical Society of North Dakota, Bismarck, MSS 10154, James Morris Papers, Box 1, Folder 1: Morris to Charles R. Robertson, September 15, 1947 (hereinafter: James Morris Papers).
8. *The Judgement in the Farben Trial*, x–xii, 1–2, 9–17; *Trials of War Criminals*, vol. VII, 1–9.
9. *The Judgement in the Farben Trial*, xv, 2–3, 133–134; Taylor, *Final Report*, 195–201; Morris, “Major War Crimes Trials in Nurnberg,” 97–109, here 100–102.
10. Gattineau, *Durch die Klippen des 20. Jahrhunderts*, 198, 202–203.
11. See von Knieriem, *Nürnberg. Rechtliche und menschliche Probleme*, who states, however, on 515 and 543, that the tribunal had been relatively fair to the defendants in the I. G. trial; Heintzeler, *Der rote Faden*, 81–108; Heintzeler, *Im Jahrhundert extremer Turbulenz*, 114–40.
12. Taylor, “Nuremberg Trials. War Crimes and International Law,” 314–15.
13. DuBois, *The Devil’s Chemists*, 338–47, quote from 339.
14. James Morris Papers, Box 1, Folder 2: Morris to Hebert, September 13, 1948.
15. Cf. Oberndörfer, “Recht und Richter: Verfahrensrechtliche Aspekte der Nürnberger Prozesse,” 525–46, here 537–38; cf. Abelshauser, “Rüstungsschmiede der Nation? Der Kruppkonzern im Dritten Reich und in der Nachkriegszeit 1933–1951,” 267–472, here 466: he speaks of “American provincial judges” who were “not living up to” their tasks.
16. Cf. Gausmann, *Deutsche Großunternehmer vor Gericht*, 239–49; see by contrast Bush, “New Dealer, Flüchtlinge und Radikale? Die Nürnberger Ankläger im Profil,” 577–81.
17. See Luhmann, *Legitimation durch Verfahren*, 40, 114–16; cf. also Heinemann, “Rasse, Lebensraum, Genozid. Die nationalsozialistische Volkstumspolitik im Fokus von Fall 8 der Nürnberger Militärtribunale,” 100–26, here 104–106, who, along with Luhmann, sees court proceedings as an “ambivalent communication process.”
18. Brünger, *Geschichte und Gewinn*, 57–94: sees the I. G. trial, for instance, in the light of counteracting narratives.
19. On the history of I. G. Farben in the Third Reich, see, in particular, Hayes, *Industry and Ideology*. A problematic account (as it is in some cases apologetic) is Plumpe, *Die I. G. Farbenindustrie*; on individual I. G. factories, see Wagner, *IG Auschwitz*; Stokes, “From the IG Farben Fusion to the Establishment of BASF AG (1925–1952),” 206–361; Lindner, *Inside IG Farben*.
20. On this, in particular, see Weindling, *Nazi Medicine and the Nuremberg Trials*; Lindner, *Inside IG Farben*, 307–36.
21. Weindling, *Nazi Medicine and the Nuremberg Trials*; Earl, *The Nuremberg SS-Einsatzgruppen Trial*; Hébert, *Hitler’s Generals on Trial*; Maguire, *Law and War*. Specifically on the Flick trial, see Jung, *Die Rechtsprobleme der Nürnberger Prozesse*; Drecoll, “Flick vor Gericht: Die Verhandlungen vor dem alliierten Militärtribunal 1947,” 559–645; Frei et al., *Flick*, 401–41; Priemel, *Flick*, 616–49.
22. Heller, *The Nuremberg Military Tribunals*; Seliger, *Politische Anwälte?*; Priemel, *The Betrayal*.
23. Priemel and Stiller, *Reassessing the Nuremberg Military Tribunals*; Priemel and Stiller, *NMT*.
24. Borkin, *The Crime and Punishment of I. G. Farben*, ix—preface; on the judgment, see 149–56.
25. Bower, *Blind Eye to Murder*, 357–58.

26. Similar to DuBois, *Devil's Chemists*; and Borkin, *Crime and Punishment*: Boll, "Fall 6: Der IG-Farben-Prozeß," 133–43; Bush, "The Prehistory of Corporations and Conspiracy in International Criminal Law: What Nuremberg Really Said," 1094–1262, here 1213 (also footnote 445) and 1219; Greiner, *Die Morgenthau-Legende*, 384–91; Jeffreys, *Hell's Cartel*, 378–402; Heller, *The Nuremberg Military Tribunals*, 94–96. Critical of the prosecution: Hayes, "IG Farben und der IG Farben-Prozeß: Zur Verwicklung eines Großkonzerns in die national-sozialistischen Verbrechen," 99–121; Spicka, "The Devil's Chemists on Trial: The American Prosecution of I. G. Farben at Nuremberg," 865–82; Stokes, *Divide and Prosper*, 54–55, 151–54; Lindner, "Das Urteil im I.G.-Farben-Prozess," 405–33. A more critical and even polemical interpretation with respect to the prosecution is the previously cited dissertation by Gausmann, *Deutsche Großunternehmer*, which speaks disparagingly of "Morgenthau Boys" and their supposed "naive political Messianism"—see inter alia 137–39, 283–84. At best a low level of understanding is shown by Hörner, *Profit oder Moral*. From a legal perspective, see Jeßberger, "Die I. G. Farben vor Gericht: Von den Ursprüngen eines 'Wirtschaftsvölkerstrafrechts'," 924–32. A very critical perspective on the I. G. trial from a point of view critical of capitalism is Baars, "Capitalism's Victor's Justice? The Hidden Stories Behind the Prosecution of Industrialists Post-WWII," 163–92.