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**Background of the Judicial Process of "Coming to Terms with" the  
Buna/Monowitz Concentration Camp  
Possibilities, Problems, and Limits**

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**Norbert Wollheim Memorial**

J.W. Goethe-Universität / Fritz Bauer Institut  
Frankfurt am Main, 2010

## Allied Prosecution

On November 13, 1948, a good three months after the beginning of the trial of 24 board members and executives of the I.G. Farben conglomerate—one of the Subsequent Nuremberg Trials—Norbert Wollheim was cross-examined before American Military Tribunal VI.<sup>1</sup> Because the former Monowitz prisoner, in one of his affidavits, had previously stated that the foremen of Mannesmann Röhrenwerke, a Berlin-based manufacturer of seamless steel tubes, had treated their Jewish forced laborers for the most part with a certain sympathy and consideration, he now was requested to describe his experiences with the I.G. Farben personnel. Wollheim indicated that not only had the Farben people been heavily opposed to Jews and other concentration camp inmates, but they had even been chosen for work in Auschwitz for that very reason. Wollheim recalled one incident when several foremen, together with a kapo, had thrashed a Dutch Jew so badly that he died of his injuries. In response, the presiding judge asked whether Wollheim believed that the Farben management had instructed its employees or allowed them to beat concentration camp inmates to death. Wollheim's reply was that there had been no need for a specific directive, as all the prisoners, regardless of nationality or level of education, were beaten constantly. Finally the court asked whether he regarded this behavior as a consequence of National Socialist education. The witness did not deny that ideological indoctrination had played a role, but he further regarded the attitudes and mindsets of the perpetrators as at least equal in significance: "These persons knew that they could give free rein to their brutality, that they could play their game of the master race there, and that they were assisted in that from all sides, including the heads of the German state."<sup>2</sup>

This brief verbal exchange alone makes one thing clear: The endeavor of the Allies after 1945 to come to terms with the crimes in the German concentration and extermination camps by means of criminal prosecution not only was shaped

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1 Norbert Wollheim, hearing of witness, November 13, 1947. Archiv des Fritz Bauer Instituts, Nürnberger Nachfolgeprozess Fall VI, Prot. (d), reel 050, vol. 11a, pp. 3724–3742, or Prot. (e), reel 005, vol. 11, pp. 3700–3718; also in English translation in: "Extracts from the Testimony of Norbert Wollheim." In: *Trials of War Criminals before the Nuernberg Military Tribunals under Control Council Law No. 10*, vol. VII ["The Farben Case"] (Washington, DC: U.S. Government Printing Office, 1953), pp. 593–603.

by new principles of international law, but also was strongly influenced by its protagonists' horizons of experience, memories, and interpretations of history. Further, these proceedings were characterized by the fact that the aspiration of American justice to take a didactic approach to history and to "come to terms with" the history of the Third Reich through legal means collided head-on here with the insistence of the victim-witnesses on directly experienced "truth."<sup>3</sup> Against this background, the constraints on understanding were enormous on both sides. The judges did not show themselves to be consistently capable of appreciating the full extent of the lack of rights and the systematic brutality that had prevailed in those camps, and the survivors were unable to understand the meaning of certain inquiries made by the lawyers, aimed at proving or disputing the existence of causal relationships between the behavior of the accused and the phenomena of everyday life in the camps. Despite all the problems of understanding and the linguistic violations due to the challenges of translation, however, the Nuremberg Proceedings also offered a unique opportunity for historical clarification and learning: Thus the Americans in particular, through their commitment to the securing of evidence, created for the first time since the war's end a means of gaining extensive information about the exceptional mass crimes of National Socialism.<sup>4</sup> At the same time, the responsibility of individuals was put in concrete terms in the course of constitutional legal proceedings, whereby an effort was made to invalidate the apologetic catchword of German "collective guilt" that came into use following the war.<sup>5</sup>

The United States of America v. Carl Krauch, et al., also known as the I.G. Farben Trial, was the sixth in a series of twelve separate proceedings held by the

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2 Wollheim, hearing of witness, November 13, 1947, Prot. (e), pp. 3716–3717, or *Trials of War Criminals*, p. 602.

3 See Thomas Henne: "Zeugenschaft." In: Michael Elm / Gottfried Kössler, eds.: *Zeugenschaft des Holocaust. Zwischen Trauma, Tradierung und Ermittlung* (Jahrbuch des Fritz Bauer Instituts, vol. 11) (Frankfurt am Main/New York: Campus, 2007), pp. 79–91, here p. 83f.; Stephan Braese: "Juris-Diktionen." In: Stephan Braese, ed.: *Rechenschaften. Juristischer und literarischer Diskurs in der Auseinandersetzung mit den NS-Massenverbrechen* (Göttingen: Wallstein, 2004), pp. 7–24, here p. 7ff.

4 By now there is a great wealth of literature on "Nuremberg"; a concise overview of the Allied and U.S. punishment program is given by Annette Weinke: *Nürnberger Prozesse* (Munich: Beck, 2006).

5 On the theory of German collective guilt allegedly insinuated by the Allies, see Norbert Frei: "Von deutscher Erfindungskraft. Oder: Die Kollektivschuldthese in der Nachkriegszeit." In: Norbert Frei: *1945 und wir. Das Dritte Reich im Bewußtsein der Deutschen* (Munich: Beck, 2005), pp. 145–155.

Americans, without the involvement of the other Allies, after the end of the Nuremberg Trials of the major war criminals. The Subsequent Nuremberg Trials focused primarily on representatives of the German functional elites, including high-ranking ministry officials, military officers, physicians, bankers, and representatives of industry. The so-called trials of the industrialists or economic trials, of which the American prosecuting authority, the Office of the U.S. Chief of Counsel for War Crimes (OCCWC) initiated three altogether in the years 1947/48,<sup>6</sup> were the most controversial part of the American punitive program, because they were closely associated with the analyses of the Research & Analysis Branch of the Office of Strategic Services (OSS), which were critical of capitalism, and the decartelization and decentralization policies of the American occupying power in Germany, which rested on those analyses.<sup>7</sup> On the basis of the so-called four-pillars theory of the German emigré and political scientist Franz L. Neumann, the Military Intelligence Division of SHAEF, the Allied headquarters, began as soon as the early summer of 1945 to compile and distribute a list of “extremely dangerous” Germans, which also included several of the subsequently indicted I.G. Farben executives.<sup>8</sup> Soon thereafter, when the Western Allies—at this time still with an eye to the International Military Tribunal (IMT) employed in Potsdam and London—made the first arrests, this found the leadership of the

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6 These proceedings involved representatives of the giant concerns Flick, Krupp, and I.G. Farben, as well as the banker Karl Rasche; see Telford Taylor: *Die Nürnberger Prozesse. Kriegsverbrechen und Völkerrecht* (Zürich: Europa, 1951), pp. 78ff.; Donald Bloxham: *Genocide on Trial. War Crimes Trials and the Formation of Holocaust History and Memory* (Oxford: Oxford UP, 2005), pp. 38ff.

7 See Mark Spicka: “The Devil’s Chemists on Trial: The American Prosecution of IG Farben at Nuremberg.” In: *The Historian: A Journal of History* 61 (1999), pp. 865–882; Bernd Greiner: *„IG-Joe.“ IG Farben-Prozess und Morgenthau-Plan* (Frankfurt am Main: Fritz Bauer Institut, 1996); Peter Hayes: “Die IG Farben und die Zwangsarbeit von KZ-Häftlingen im Werk Auschwitz.” In: Hermann Kaienburg, ed.: *Konzentrationslager und deutsche Wirtschaft* (Opladen: Leske + Budrich, 1996), pp. 129–148; Frank Gausmann: “Vergangenheitsbewältigung durch Recht? Kritische Anmerkungen zur Anklagestrategie in den Nürnberger Industriellenprozessen.” In: Justizministerium des Landes NRW in Zusammenarbeit mit Villa Ten Hompel, eds.: *Leipzig – Nürnberg – Den Haag. Neue Fragestellungen und Forschungen zum Verhältnis von Menschenrechtsverbrechen, justizieller Säuberung und Völkerstrafrecht* (Geldern: JVA Geldern, 2008), pp. 48–65. On the decartelization of I.G. Farben, see also Peer Heinelt: “The Decartelization and Postwar History of I.G. Farbenindustrie AG.” Fritz Bauer Institut / Goethe Universität Frankfurt am Main: Norbert Wollheim Memorial, 2011, [http://www.wollheim-memorial.de/files/1067/original/pdf\\_Peer\\_Heinelt\\_The\\_Decartelization\\_and\\_Postwar\\_History\\_of\\_IG\\_Farbenindustrie\\_AG.pdf](http://www.wollheim-memorial.de/files/1067/original/pdf_Peer_Heinelt_The_Decartelization_and_Postwar_History_of_IG_Farbenindustrie_AG.pdf).

8 Ralf Ahrens: “Übergangsjustiz, Prävention und Pragmatismus: Die amerikanische Strafverfolgung von NS-Verbrechen und die Dresdner Bank.” In: Justizministerium des Landes NRW in Zusammenarbeit mit Villa Ten Hompel, eds.: *Leipzig – Nürnberg – Den Haag*, pp. 87–97;

corporations completely unprepared. Basically, there was a prevailing expectation among most of the German industrialists that the victorious powers would quickly realize their error and put the know-how of Germany's economic elite to work in the reconstruction process. In a mixture of condescension and a serious intention to cooperate, they tried above all to give the Americans suggestions with regard to the inevitable large-scale conflict with the Soviet Union, and for the rest invoked—as did I.G. Farben board member Georg August Eduard von Schnitzler—all the “good friendships all over the world” that the war had temporarily cut short.<sup>9</sup> Not until several months later, when it became clear that criminal trials of leading representatives of business would take place despite the failure of a second IMT, did these men begin to coordinate a joint defense strategy. Now there was also an intensified endeavor to find the resources needed to employ high-quality, experienced lawyers, by calling on German firms to make donations.<sup>10</sup> The undisputed centers of these activities were the “criminal wing” and the “witness wing” of the Nuremberg detention center, which gradually had been filling up with more or less prominent prisoners after the closing of the two special internment camps known as the “Dustbin” (Kransberg in the Taunus Mountains) and the “Ashcan” (Bad Mondorf, Luxembourg).<sup>11</sup>

Of course, the deployment of forced laborers and concentration camp prisoners in Buna/Monowitz and the related tie-in of I.G. Farben to the policy of “extermination through work” were treated in detail in the bill of indictment dated May 1947. Nevertheless, from the standpoint of the prosecuting authority, this topic had a lower ranking. Three causes can be singled out to explain this ranking. First, of decisive importance was the fact that the Chief of Counsel of the OCCWC, Telford Taylor, had assigned an antitrust expert from the milieu of former U.S. Secretary of the Treasury Henry Morgenthau Jr. to conduct the proceeding. Since the early 1940s, Josiah E. Dubois had been familiarizing himself

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Bernd C. Wagner: *IG Auschwitz. Zwangsarbeit und Vernichtung von Häftlingen des Lagers Monowitz 1941–1945* (Munich: Saur, 2000), p. 301.

9 Cited by Klaus-Dietmar Henke: *Die amerikanische Besetzung Deutschlands* (Munich: Oldenbourg, 1995), p. 488; in this regard, see also S. Jonathan Wiesen: *West German Industry and the Challenge of the Nazi Past, 1945–1955* (Chapel Hill: Univ. of North Carolina Press, 2001), pp. 53ff. and 68ff.

10 See Wagner: *IG Auschwitz*, p. 300; also Kim Christian Priemel: *Flick. Eine Konzerngeschichte vom Kaiserreich bis zur Bundesrepublik* (Göttingen: Wallstein, 2007), pp. 625ff. and 632f.

11 See Weinke: *Nürnberger Prozesse*, p. 33.

with the worldwide entanglements of I.G. Farben in the context of his work for the Legal Division of the Treasury Department and the U.N. Committee on Economic Warfare. As coauthor, with Morgenthau, of *Germany Is Our Problem*,<sup>12</sup> he argued for a break-up of the large corporations, the punishment of their top executives, and comprehensive reparations payments for the German and foreign victims.<sup>13</sup> A second reason was that the advocates of an occupation policy of retribution, such as was championed primarily but by no means exclusively by Morgenthau,<sup>14</sup> joined on one crucial point with the supporters of a reformist course, led by the previous U.S. chief prosecutor, Robert H. Jackson, and the New Dealers on Taylor's team: Both groups regarded the economic might of German industrial firms and their cooperation in the National Socialist armaments sector and war economy as the indispensable prerequisite for the outbreak of World War II.<sup>15</sup> Against this background, both aimed at using the trials of the industrialists to substantiate their socioeconomic interpretation of Germany's policies of expansion and exploitation on the basis of company records. In addition, there was a desire to make an active contribution to the prevention of warfare by punishing some of those responsible. A third factor was that the American prosecuting authority, because of the time pressure, which became increasingly intense in the second half of the year, was forced to give priority to the charge of a "conspiracy" to prepare for the war—a count that at this time had been researched with relative thoroughness but was deemed less than promising from a legal standpoint—while the unproblematic charges of "slave labor," "Aryanization," and "plundering of occupied territories" were treated more as marginal.<sup>16</sup>

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12 Henry Morgenthau Jr.: *Germany Is Our Problem* (New York: Harper and Brothers, 1945).

13 See Spicka: "Devil's Chemists," p. 872.

14 On the exploitation of the Morgenthau Plan for building a conservative view of history into U.S. policy toward Germany, see Jeffrey K. Olick: *In the House of the Hangman. The Agonies of German Defeat 1943–1949* (Chicago/London: Univ. of Chicago Press, 2005), pp. 29ff.

15 In contrast, Spicka attributes the economic thrust of the prosecution to differences of interpretation within the OCCWC; this opinion is not convincing, however, because Jackson had repeatedly stressed the necessity of industrialists' trials before his return to Washington and had also frequently given public support to the "four pillars" concept; see also Frank M. Buscher: "Bestrafen und erziehen. ‚Nürnberg‘ und das Kriegsverbrecherprogramm der USA." In: Norbert Frei, ed.: *Transnationale Vergangenheitspolitik. Der Umgang mit deutschen Kriegsverbrechen in Europa nach dem Zweiten Weltkrieg* (Göttingen: Wallstein, 2006), pp. 94–139, here p. 112.

16 See Spicka: "Devil's Chemists," p. 870; Gausmann: "Vergangenheitsbewältigung," p. 52.

Although it was clearly discernible ever since the IMT verdict of October 1946 that the courts would be willing to follow only to a very limited extent the prosecution's left-liberal interpretations of fascism and its concept of a conspiracy involving members of the military-industrial complex, this statement of facts ranked first in the indictment. Thus, under counts 1 and 5 ("crimes against peace"), the accused were charged with having participated in the preparation and waging, as well as the joint planning, of a war of aggression. Count 2, by contrast, covered the plundering of public and private property. The fourth count, membership in what the IMT had classified as a criminal organization, was directed primarily at the I.G. Farben executives who at that time had belonged to the SS and the *Freundeskreis Reichsführer SS*, a group of German industrialists controlled by Himmler. Count 3, however, was to prove decisive for the subsequent course of the proceedings: It decidedly had to do with the events in the Buna/Monowitz concentration camp and accused the defendants of participation in enslavement and in mass murder, constituting the element of "crimes against humanity."<sup>17</sup> Specifically, the firm's leadership was accused of having deployed at least 100,000 foreign workers, concentration camp prisoners, and prisoners of war in Auschwitz. In addition, the charge alleged that medical experiments had been conducted on the camp inmates, with I.G. Farben supplying a portion of the pharmaceutical preparations and chemicals for that purpose. In addition, Farben was said to have provided the Zyklon-B gas for the gas chambers.<sup>18</sup>

Like all the other American Subsequent Nuremberg Trials, "Case 6" also was based on the provisions of Control Council Law No. 10, dated December 20, 1945, and on Ordinance No. 7 of the Military Government of the American Zone, dated February 17, 1947. In terms of its basis in substantive law, the Control Council Law was guided by the London IMT Statute, while eliminating, however, the statute's implicit limitation of crimes against humanity to wartime. With regard to the issues of perpetration and forms of participation, the prosecution advanced the theory of involvement by virtue of management position ("Farben as an instrumentality"); that is, it was assumed—partly in overestimation of the

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17 See Wagner: *IG Auschwitz*, p. 300.

18 Case VI, Protocol of the Main Trial. Archiv des Fritz Bauer Instituts, Nürnberger Nachfolgeprozess Fall VI, Prot. (e), reel 002, vol. 1, pp. 164ff.; also in: *Trials of War Criminals*, vol. VII, pp. 51ff.

actually existing responsibilities and positions—that the defendants had used their jobs within the firm’s hierarchy to expand I.G. Farben and make it an instrument for Germany’s waging of war. Hand in hand with this went the opinion that crucial corporate decisions, such as the requisitioning of forced laborers and concentration camp prisoners, could have been initiated or prevented.<sup>19</sup>

While most leaders of industry had proved decidedly talkative in the first interrogations when it was a matter of their assessment of National Socialist economic policy, by way of contrast they initially were united in adopting a “noli me tangere” stance toward the topic of the deployment of forced labor.<sup>20</sup> Only after the submission of the indictment did a change occur, to the extent that the accused now redoubled their efforts to craft a defense strategy concentrating on rebuttal of the charges on count 3. Under the aegis of Fritz ter Meer, former chairman of the Technical Committee of I.G. Farben, the firm’s managers resorted, above all, to disclaiming any knowledge of the existence of the Auschwitz concentration camp at the time of the location decision. That was intended to give the impression that the availability of concentration camp prisoners or of Jews and Poles affected by resettlement had had no influence on the decision in early 1941 to erect a fourth production facility for Buna in Upper Silesia. In reality, however, it was ter Meer, former board member Otto Ambros, and Carl Krauch, General Plenipotentiary for Special Issues of Chemical Production and a good friend of Hermann Göring, who in February 1941 had suggested to the Commissioner for the Implementation of the Four Year Plan that the labor shortage could be alleviated in the course of a “comprehensive settlement program.”<sup>21</sup> In the style of the lines of defense that were road-tested by the defendants in the trial of the industrialist Friedrich Karl Flick (Case 5), which ended in December 1947, and the subsequent trial of Alfried Krupp von Bohlen und Halbach et al. (Case 10), a kind of “act of necessity” was alleged as well, with regard to the use of concentration camp prisoners and foreign workers. This deployment had been, they asserted, a compulsory measure decreed by the Reich leadership, which the businessmen

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19 Case VI, Protocol of the Main Trial, vol. 1, pp. 40ff.; also in: *Trials of War Criminals*, vol. VII, p. 14.

20 Henke: *Amerikanische Besetzung*, p. 494.

21 Cited by Sybille Steinbacher: *Auschwitz. Geschichte und Nachgeschichte* (Munich: Beck, 2004), p. 40.



could not refuse to accept unless they were willing to risk life and limb. In a certain contradiction to this was a pattern of argumentation developed earlier, during the Flick Trial, by the naval judge Otto Kranzbühler, who until October 1947 was the attorney of I.G. Farben board member Hermann Schmitz. Building on Kranzbühler's assumptions and referring to the works of the American legal scholar Ernst H. Feilchenfeld, special defense counsel Eduard Wahl sought to convince the court that the Hague Convention had been part of the nineteenth-century liberal blueprint for lasting peace, which had lost practical significance in the age of "total warfare" and its associated large-scale mobilization of civilians.<sup>22</sup> Through their aerial attacks on German civilians and the dropping of the atomic bomb, he argued, the Allies had put this principle into effect to a far greater extent than the Germans, whose compulsory recruitment of workers was induced solely by economic motives.<sup>23</sup> As the American prosecution counsel Telford Taylor rightly remarked in retrospect, this claim of justification was the key element of all subsequent disputes concerning the problem of forced laborers, because in light of the fact that the powerfully eloquent and politically well-connected Nuremberg lawyers had gotten their clients acquitted across the board on the charge of violation of international law, any subsequent backing down would have been tantamount to an indirect admission of guilt.<sup>24</sup> With regard to the question of personal responsibility on the part of the I.G. Farben executives, the defense attorneys came to the conclusion that mistreatment and lack of care could not be laid at the feet of the corporate leadership. Rather, these phenomena had been part of everyday life in camp and had taken place outside the field of vision and sphere of influence of the leadership. Making reference to the decentralized structures of the corporation, they also contended that the responsibility for this lay solely with the state institutions or with the plant managers and foremen working at the site.

Even before the beginning of 1948, it had become clear that the American public's support for the Nuremberg plan for punishment was beginning to crumble.

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22 See Priemel: *Flick*, p. 636.

23 *Trials of War Criminals*, vol. VIII, pp. 897ff.

24 Telford Taylor: "Foreword." In: Benjamin B. Ferencz: *Less Than Slaves. Jewish Forced Labor and the Quest for Compensation* [1979] (Bloomington: Indiana UP, 2002), pp. xvii-xx, here, p. xviii.

While a vast majority still had spoken out for the goals and methods of the policy vis-à-vis war criminals in early 1946, at the peak of the IMT, two years later this approval level had dwindled to a minority.<sup>25</sup> A decisive role in the gradual loss of confidence in the legitimacy of the subsequent proceedings was played not least of all by a number of influential American lawyers who voiced criticism, sometimes moderate, sometimes in polemical form, of the work of the prosecuting authorities. A kind of bursting of the dam for anti-Nuremberg agitation was brought about principally by the emotion-laden invective of Judge Charles F. Wennerstrum. Shortly before his return to the United States, the former presiding judge in the Hostage Trial (Case 7), in an interview with the pro-German *Chicago Daily Tribune*, referred to an "American sense of justice," which the prosecuting authorities allegedly had violated with their thirst for revenge and attempt to assess individual responsibility in the process. The Iowa Supreme Court judge also had a suitable rationale at hand: It was known, he said, that among Taylor's people there would be a number of lawyers, office employees, translators, and researchers who had acquired their American citizenship only in the past few years. These new inhabitants were, he added, quite obviously still cleaving to "Europe's feelings of hatred and prejudices."<sup>26</sup> With the anti-Semitic tone of his attack, Wennerstrum provided a model for all those for whom the Nuremberg Trials, for various reasons, had long been a thorn in the flesh. Ideological and lobby-specific motivations generally overlapped here. Thus Congressman George Dondero, a Republican from Michigan, who castigated the prosecutor Dubois as the exponent of a Jewish-Bolshevist revenge campaign against German soldiers and economic leaders, simultaneously also represented the interests of the Dow Chemical Company, a U.S. chemical giant that had cultivated close business ties with I.G. Farben before 1938.<sup>27</sup> As a result of the general shift in atmosphere, which was further fueled by the prolonged Berlin Blockade, the I.G. Farben defense attorneys increasingly got a second wind, while the attorneys for the prosecution found themselves more and more on the defensive. Even the presiding judge, Curtis Grover Shake, and his colleague James Morris, a judge on the North Dakota Supreme Court, soon made no secret

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25 See Bloxham: *Genocide on Trial*, p. 155; Buscher: "Bestrafen und erziehen," p. 101.

26 "Nazi Trial Judge Rips 'Injustice.'" In: *Chicago Daily Tribune*, February 23, 1948.

of their political views. For example, Dubois was told by Morris that the trial had long since become outdated as a result of the international political situation: "We have to worry about the Russians now; it wouldn't surprise me if they overran the courtroom before we get through."<sup>28</sup> Although the prosecutors had to fend off the objection, they were carrying the Soviets' water with their anti-German attitude, for the opposing party was treated with great courtesy. For example, convivial evenings in Nuremberg's Grand Hotel were common, with the wives of Morris and Shake dining with the lawyers and attorneys of the defendants in august company.<sup>29</sup>

On July 30, 1948, when the judges handed down their decision after 152 days in court, the rift caused by the Cold War and the associated struggles over interpretation came unmistakably to light. Case 6 ended in a debacle for the OCCWC, as all the defendants were acquitted of the charge of conspiracy. Only with regard to plundering and spoliation and the deployment of forced laborers did the court find 13 of them guilty, while it cleared 10 others of all charges (one defendant had been eliminated from the proceeding because of ill health). For proven responsibility for the deployment of prisoners in the Buna/Monowitz concentration camp, Fritz ter Meer, Otto Ambros, Heinrich Bütefisch, and Walther Dürrfeld were sentenced to between six and eight years. They also were the only ones who were not released immediately because of credit for time already served, but rather had to serve several years in prison as a result of the sentence. Decisive for their conviction on count 3 was the opinion of the judges that all four had actively sought the deployment of prisoners at that time, so that the justifying grounds of an "act of necessity," which the other defendants had alleged successfully, did not apply in their cases:

Auschwitz was financed and owned by Farben. [...] The Auschwitz construction workers furnished by the concentration camp lived and labored under the shadow of extermination. [...] The defendants most closely connected with the Auschwitz project bear great responsibility with respect to the workers. They applied to the Reich Labor Office for labor. Responsibility for taking the initiative in the unlawful employment was theirs and, to some extent at least, they must share the responsibility for mistreatment of the workers with the SS and the construc-

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27 See Bloxham: *Genocide on Trial*, p. 160.

28 Cited by Tom Bower: *Blind Eye to Murder. Britain, America and the Purging of Nazi Germany. A Pledge Betrayed* (London: Warner, 1997), p. 396.

tion contractors. The use of concentration camp labor and forced foreign workers at Auschwitz with the initiative displayed by the officials of Farben in the procurement and utilization of such labor, is a crime against humanity.<sup>30</sup>

In a dissenting opinion, Judge Paul M. Hebert contended that all the members of I.G. Farben's management board—15 men in all—ought to be sentenced for active participation in the use of forced labor, since it was they who determined the overall policy of the corporation on this issue:

The important fact is that the *Vorstand* [management board] willingly cooperated in utilizing forced labor. They were not forced to do so. The conditions at Auschwitz were so horrible that it is utterly incredible to claim that they were unknown to the defendants, the principal corporate directors, who were responsible for Farben's connection with the project. [...] Each defendant who is a member of the *Vorstand* should be held guilty.<sup>31</sup>

On the charges of sharing in the blame for medical experiments and the practice of extermination by supplying pharmaceuticals and poison gas, however, the court found them not guilty.

Both the reading of the verdict in the I.G. Farben Trial and especially the rendering of the verdict in the Krupp Trial the following day produced real "shock waves" among the leaders of industry and the business associations that were in sympathy with them.<sup>32</sup> Not only did it lead to the melting away of the painstakingly enhanced image apparently shaped in an almost three-year public relations campaign on both sides of the Atlantic, but in addition, the requirement that Krupp's assets be confiscated was perceived as an ominous warning signal, heralding the intention to proceed with the American decartelization and unbundling measures, despite the Marshall Plan. Now more than ever, the directors and managers concerned viewed the proceedings as mere proxy trials, which an out-of-control "Harvard mafia" had let the American occupation authorities in for. Thus reasoned, for example, August von Knieriem, I.G. Farben's former chief lawyer, who was acquitted of the charges against him, in a memorandum dated November 1948:

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29 Ibid.

30 *Das Urteil im I.G.-Farben-Prozess. Der vollständige Wortlaut mit Dokumentenanhang* (Offenbach am Main: Bollwerk, 1948), pp. 130–133.

31 Ibid., p. 61.

32 Wiesen: West German Industry, p. 97.

Where is the seat and what are the causes of this hatred? Jewish origin? Scarcely to be accepted; in the entire trial, no accusation of anti-Jewish involvement on IG's part, but on the contrary, plenty of material in another direction. Communist origin? Envy on the part of competitors? Presumably not decisive; dislike on the part of the Antitrust Division of the Department of Justice probably plays a role—in a territory where a large concern under fire is vulnerable, it wants to engage in exposés and make an example as a warning.<sup>33</sup>

Immediately after the conclusion of the industrialist's trials, a widespread campaign against the "injustice" in Nuremberg took shape, led by the attorneys and Theo Goldschmidt, the president of the Chamber of Industry and Commerce in Essen. In World War II, Goldschmidt was one of the owners of Degesch (Deutsche Gesellschaft für Schädlingbekämpfung, German Pest Control Corporation), which supplied the Zyklon-B to the extermination camps. A few months before the end of his term as OMGUS commander, Military Governor Lucius D. Clay was receiving requests and petitions almost daily, calling for a review and reversal of the verdicts. Grounds for such expectations were given not least of all by the U.S. Senate's decision in March 1949 to have the Dachau verdicts of the American military justice system reviewed by a commission under the leadership of Senator Raymond Baldwin, a Republican.<sup>34</sup> Now the West German press, which had reported critically on the proceedings ever since the beginning of the Flick Trial, also demanded a general stock-taking of the American program of retributive justice. The cues came primarily from the circle of the Nuremberg defense attorneys or from members of the *Heidelberger Juristenkreis* (Heidelberg Lawyers' Circle), which had been constituted in May 1949 under the leadership of Eduard Wahl, a former Farben defense counsel and later a CDU Bundestag member.<sup>35</sup> In view of the impending change from the military occupation authority to a newly constituted civilian High Commission, the Nuremberg verdicts were increasingly characterized as relicts of a past that had been overcome.

In a piece headlined "Rehabilitation and Revenge," for example, *Die Zeit* described the last two Nuremberg trials of industrialists as events at which "on the eve of a third world war, capitalists [sat in judgment] of capitalists, and anti-

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33 Cited by Gausmann: "Vergangenheitsbewältigung," p. 66 (original emphasis, AW).

34 See Norbert Frei: *Vergangenheitspolitik. Die Anfänge der Bundesrepublik und die NS-Vergangenheit* (Munich: Beck, 1996), p. 159f.

communists, of anticommunists.”<sup>36</sup> Such an apocalyptic tone, however, served only to warm up readers for an op-ed commentary on the verdict, reinterpreting the 13 convictions in Case 6 as an across-the-board acquittal of the first order. The Hamburg weekly devoted words of special praise to the prudent and intelligent way in which the presiding judge had conducted the trial. Shake, the writer said, had indeed recognized the “immense accomplishments” of I.G. Farben in the field of chemical research. Further, he had not allowed himself to be led by the prosecution to “smuggle” the concept of collective guilt into the proceeding again. Rather, it had been clearly emphasized in the verdict that I.G. Farben “had no knowledge of the criminal purpose for which the poison gases and certain vaccines it produced were intended in the concentration camps, that the employment of foreign forced laborers was not a product of the corporation’s own initiative, that the inhumane treatment of workers, where it did occur, was not premeditated, and that the proximity of the concentration camp was not a decisive factor in the choice of the construction site for the Buna plant.”<sup>37</sup> In contrast, the Krupp verdict, not least of all because of its unambiguous findings on slave labor, was subjected to scathing criticism. Not only did the verdict omit all mention of the Allied war against the German civilian population, the writer said, but the American court also failed to apply its own standards to occupation policies. Should the Krupp verdict ever attain binding force under international law, there surely would be no doubt that “much of what occurred in Germany following capitulation” had been “illegal and against international law.”<sup>38</sup>

### **Wave of Amnesty and Civil Actions**

In view of the outrage that sprang up in the Western zones of occupation against the I.G. Farben Trial and other trials of industrialists, it is not surprising that this proceeding failed to provide the impetus for an intensified endeavor among the indigenous population to come to terms with the Buna/Monowitz complex. While

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35 See Günter Buchstab: “Die Nürnberger Prozesse und der Heidelberger Kreis (1949–1955).” In: Günter Buchstab / Hanns Jürgen Küsters / Peter R. Weilemann et al., eds.: *Macht und Zeitkritik*. Festschrift für Hans-Peter Schwarz (Paderborn: Schöningh, 1999), pp. 61–74.

36 “Rehabilitierung und Rache.” In: *Die Zeit*, August 12, 1948 (<http://www.zeit.de/1948/33/Rehabilitierung-und-Rache>) (accessed on October 18, 2008).

37 Ibid.

38 Ibid.

the topic of the use of forced laborers and prisoners in the armaments-related sector of the National Socialist economy was almost completely neglected by the West German judicial process in the early years, a small number of judicial inquiries and court proceedings against the SS perpetrators did take place. The trials, however, did not focus on the events in the Buna/Monowitz camp, but had to do with killings that had occurred on the so-called death marches during the last phase of the war.<sup>39</sup> This finding, surprisingly, is true for the eastern zone of occupation as well, although there, unlike the situation in the West, Nazi trials involving economic crimes and an aggressive policy of dismantling persisted even after the founding of the state.<sup>40</sup> Because of the unclear body of source material and the absence of specialized historical research, however, only tentative and approximate assertions can be made at present with regard to the two German states.<sup>41</sup>

With the founding of the Federal Republic, the conflicts surrounding the legacy of Nuremberg shifted to a political and diplomatic level. In addition to John J. McCloy, the U.S. High Commissioner as of July 1949, Federal Chancellor Konrad Adenauer, too, now was urged by an increasingly self-assertive "amnesty lobby" to stand up for the convicted war criminals. As early as August 1948, only a few days after the passing of judgment in Case 6, Kranzbühler for the first time put out a few feelers with Adenauer on this matter, but at that time he still received an evasive reply. "Resentments on account of concentration camps" and "fear of the trade unions," kept the leader of the CDU from taking a stand against the "defamation of a class," the lawyer opined within the circle of his fellow campaigners.<sup>42</sup> About a year later, however, Adenauer did raise the topic of amnesty publicly, after all. On the occasion of his government policy statement, he made

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39 For example, the verdict handed down in 1953 by the LG Osnabrück regarding the SS roll-call leader Bernhard Rakers (Urteils-Nr. 340), in: Adelheid L. Rüter-Ehlermann / Christiaan F. Rüter et al., eds.: *Justiz und NS-Verbrechen*, vol. X (Amsterdam: Amsterdam UP, 1973), pp. 346–391. On the Rakers trial, see <http://www.wollheim-memorial.de/en/prozesse-gegen-bernhard-rakers-19521959>.

40 See Annette Weinke: *Die Verfolgung von NS-Tätern im geteilten Deutschland. Vergangenheitsbewältigungen 1949–1969 oder: Eine deutsch-deutsche Beziehungsgeschichte im Kalten Krieg* (Paderborn: Schöningh, 2002), pp. 68ff.

41 This applies also to the administration of law by the Supreme Court for the British Zone, whose judgments thus far have been the object of little systematic research; see Bernhard Diestelkamp: "Die Justiz nach 1945 und ihr Umgang mit der eigenen Vergangenheit." In: Bernhard Diestelkamp / Michael Stolleis, eds.: *Justizalltag im Dritten Reich* (Frankfurt am Main: Fischer, 1988), pp. 131–149.

a case for leaving behind the “confused times” and called in general for a “tabula rasa.”<sup>43</sup> McCloy, on the other hand, wanted first to wait for the results of the Peck Commission, which he had appointed, before concerning himself with the individual cases. In January 1951, when he announced his amnesty decisions to the prisoners in Landsberg, this no longer had any effect on the I.G. Farben executives, as they had already been released in the summer of 1950 or were awaiting release soon.<sup>44</sup> Nevertheless, the topic of the “industrial war criminals” (Theodor Heuss) was not exhausted even then, because the charges made in Nuremberg required a complete restoration of the corporation’s honor. Federal Minister of Economics Ludwig Erhard in particular now became one of the most influential advocates of the convicted German leaders of industry. The CDU politician, a convinced free-market liberal, indeed opposed the corporatism of Germany’s economic elites with decreasing success, but against this very background he spoke up for their swift and comprehensive rehabilitation.<sup>45</sup> Thus, in connection with the negotiations for the General Treaty, he proposed involving the recently released I.G. Farben executives, because German export interests otherwise would be threatened. In addition, he called for a change in the law of the Allied High Commission (AHC) forbidding convicted German war criminals from taking part in the running of the successor organization of I.G. Farbenindustrie AG, then in liquidation.<sup>46</sup> In April 1953, Adenauer raised these issues during a state visit in Washington.

At roughly the same time, a civil suit in Frankfurt am Main was approaching its culmination. It was to have a decisive influence on the future relationship between West German industry and its former workforce of prisoners. In November 1951, Norbert Wollheim, supported by his attorney Henry Ormond,<sup>47</sup> a lawyer who had emigrated from Germany in 1939, had sued the former chemical giant I.G. Farben AG in Liquidation, which was under Allied legal supervision, to

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42 Cited by Buchstab: “Nürnberger Prozesse,” p. 69.

43 Cited by Frei: *Vergangenheitspolitik*, p. 31.

44 Buscher: “Bestrafen und erziehen,” p. 108.

45 See Tim Schanetzky: “Unternehmer: Profiteure des Unrechts.” In: Norbert Frei, ed.: *Hitlers Eliten nach 1945* (Munich: dtv, 2003), pp. 95ff.

46 See Buchstab: “Nürnberger Prozesse,” p. 71.

47 On Ormond’s biography, see Dolf Weber: “Henry Ormond – ein juristisches Gewissen Deutschlands.” In: Klaus Reichert et al., eds.: *Recht, Geist und Kunst. liber amicorum für Rüdiger*



demand payment of damages for lost wages.<sup>48</sup> The suit amounted to nothing less than a test case, as this proceeding was intended to clarify for the first time in principle whether German firms had wrongfully enriched themselves from the manpower of the prisoners during World War II, so that the latter were entitled to assert claims to back pay. While people who were subjected to racial, religious, or political persecution by the Nazis were able, on the basis of the Allied reparations laws or the provisions of the Federal Supplementary Law (*Bundesergänzungsgesetz*, BErG) of 1953, to demand that the Federal Republic, as the legal successor of the Third Reich, pay damages to those who had incurred loss of life, injury to health, deprivation of liberty, loss of property and assets, and damage to professional or economic advancement, the vast majority of foreign civilian workers, POWs, concentration camp prisoners, and Jewish forced laborers in concentration camps had no claim pursuant to the BErG. This was explained first by the fact that the legislature did not view the forced labor as National Socialist persecution, but as a "war-related and strategically necessary measure."<sup>49</sup> Second, Ernst Féaux de la Croix, the Federal Ministry of Finance official in charge of reparations issues, had put a stop to all civil claims for damages by classifying the compensation for former foreign forced laborers as a legal issue that fell within the scope of general reparations claims. According to the stipulations of the 1952/53 Agreement on German External Debts (London Debt Agreement), however, these claims were regarded as either lapsed or temporarily suspended.<sup>50</sup>

When the 3rd Civil Chamber of the Frankfurt am Main Regional Court (*Landgericht*, LG) handed down its verdict in June 1953, the consensus on the policy for

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Volhard (Baden-Baden: Nomos, 1996), pp. 208–224, as well as the biographical article at [http://www.wollheim-memorial.de/en/henry\\_ormond\\_19011973](http://www.wollheim-memorial.de/en/henry_ormond_19011973).

48 A concise overview of this proceeding is given by Wolfgang Benz: "Der Wollheim-Prozess. Zwangsarbeit für die I.G. Farben in Auschwitz." In: Ludolf Herbst / Constantin Goschler, eds.: *Wiedergutmachung in der Bundesrepublik Deutschland* (Munich: Oldenbourg, 1989), pp. 303–326; also Joachim Rumpf: "Norbert Wollheim's Lawsuit against I.G. Farbenindustrie AG i.L." Fritz Bauer Institut / Goethe Universität Frankfurt am Main: Norbert Wollheim Memorial, 2010, [http://www.wollheim-memorial.de/files/1059/original/pdf\\_Joachim\\_Rumpf\\_Norbert\\_Wollheims\\_Lawsuit\\_against\\_IG\\_Farbenindustrie\\_AG\\_iL.pdf](http://www.wollheim-memorial.de/files/1059/original/pdf_Joachim_Rumpf_Norbert_Wollheims_Lawsuit_against_IG_Farbenindustrie_AG_iL.pdf).

49 Constantin Goschler: *Schuld und Schulden. Die Politik der Wiedergutmachung für NS-Verfolgte seit 1945* (Göttingen: Wallstein, 2005), p. 249.

50 Ernst Féaux de la Croix: "Schadensersatzansprüche ausländischer Zwangsarbeiter im Lichte des Londoner Schuldenabkommens." In: *Neue Juristische Wochenschrift* (1960), no. 50, pp. 2268–2271.

dealing with the past, which allowed no civil claims under the Civil Code, began to falter for the first time. After detailed evaluation of the records of the Nuremberg Trials, the judges found that the slave labor at the Buna plant construction site had been an intrusion into the plaintiff's life that had resulted in impairment of his health, and that this had been caused by the negligent conduct of the firm's management. Against this background, I.G. Farben was required to pay the sum of indemnity demanded, in the amount of DM 10,000, including interest. In stating the grounds for the judgment, the chamber did not fail to use plain language in addressing the witnesses summoned on behalf of I.G. Farben AG i.L. They had attempted, the court said,

to deny everything, to excuse themselves by alleging ignorance or lack of authority, or by making irrelevant theoretical remarks, or by retreating to ugly equivocations on the evidence of the misfortune and death of many thousands of people who were their employees, or even by making incomprehensible, at any rate inhumane, or even factually incorrect calculations.<sup>51</sup>

From all that, the judges concluded that an "appalling indifference" toward the "plaintiff and the imprisoned Jews" was to be ascertained, understandable only if one joined the plaintiff in assuming that the defendant at that time actually had not regarded Wollheim and all the other Jewish prisoners "to be full-fledged human beings toward whom a duty of care existed."<sup>52</sup> Note that this was a characterization referring to the conduct of the I.G. Farben management in the early 1950s!

The defeat apparently did not catch Farben's representatives off guard, because the notice of appeal was submitted to the higher court that same month. By the end of May, Walter Schmidt, the "liquidator" of I.G. Farbenindustrie i.L., who had been appointed by the Allies, explained the standpoint of German industry at a working session in the Federal Ministry of Finance. Basically, it was assumed—in denial of the findings of U.S. Military Tribunal 6—that the chemical giant and other large corporations had acted at that time only as "instruments of the

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51 Urteil im Wollheim-Prozess [verdict in the Wollheim suit], June 10, 1953. Hessisches Hauptstaatsarchiv Wiesbaden (=HHStAW), Abt. 460, Nr. 1424 (Wollheim v. IG Farben), vol. III, pp. 446–488, here p. 480. A copy of the verdict from the Archive of the Fritz Bauer Institut is available at [http://www.wollheim-memorial.de/files/1027/original/pdf\\_Urteil\\_im\\_Wollheim-Prozess\\_10.06.1953.pdf](http://www.wollheim-memorial.de/files/1027/original/pdf_Urteil_im_Wollheim-Prozess_10.06.1953.pdf).

52 Urteil im Wollheim-Prozess, June 10, 1953, p. 481.

state.”<sup>53</sup> The proximity of a concentration camp had not been a decisive factor in the choice of a location, it was alleged, nor had the firm had any influence on the allocation and treatment of the workers. This theory was linked with the not-altogether-implausible threat to withdraw support for the legislative procedure for the BErG, then near completion, and to hold the FRG liable for all indemnity payments still outstanding. In terms of public relations, too, the big guns now were brought out. In his PR piece *Nürnberg: Rechtliche und menschliche Probleme* (Nuremberg: Legal and Human Problems), published in 1953, the aforementioned August von Knieriem, now acting as chairman of I.G. Farben’s supervisory board, offered a theory already familiar from Nuremberg: He argued that the deployment of forced labor had been part of a “modern economic war” waged by both sides, and that certain older rules of international law had lost their significance against the background of this conflict.<sup>54</sup> By incorrectly drawing an analogy between Case 6 and the Wollheim Trial, a deliberate effort was obviously being made to arouse old resentments against “Nuremberg.” In the industry-related press, however, there were warnings of the unforeseeable consequences of the verdict, which allegedly could result in claims for compensation in the tens of billions of DM.<sup>55</sup>

When the matter entered the appeal phase in March 1955, the legal battle over compensation for the forced laborers had already shifted to some extent to an out-of-court level. Because of the sensational verdict in the trial court, the altogether unambiguous evidence, and the prospect of uncertain appeal proceedings and an anticipated loss of image in the United States—where the release of the sequestered foreign assets was just being decided in court—I.G. Farben AG i.L. had consented about a year previously to enter into negotiations with the Conference on Jewish Material Claims Against Germany (Claims Conference). After the Frankfurt/Main Regional Appeal Court (*Oberlandesgericht*, OLG) had advised both parties in October 1955 to reach an agreement, the FRG’s ambassador in Washington and the ministerial bureaucracy in Bonn also hastened to speak out in favor of such a solution. In defiance of the warning from the Federation of

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53 Cited by Benz: “Wollheim-Prozess,” p. 314.

54 August von Knieriem: *Nürnberg. Rechtliche und menschliche Probleme* (Stuttgart: Klett, 1953), pp. 469ff.

55 On the reaction in the press, see Benz: “Wollheim-Prozess,” p. 312f.

German Industries (*Bundesverband der Deutschen Industrie*, BDI) that a settlement would create a "dangerous precedent for the entire remainder of the economy,"<sup>56</sup> the political decision-makers had meanwhile arrived at the opinion that continuing with the proceeding would not only endanger the negotiations for return of the assets, but also harm foreign-policy interests.<sup>57</sup> Therefore, against the will of the company's shareholders, the leadership of I.G. Farben consented to an out-of-court settlement around the turn of the year 1956/57. Thanks to the mediation of Nahum Goldmann, the president of the Claims Conference, and the German Jewish banker Eric Warburg, the compensation agreement for the Auschwitz forced laborers was signed in February 1957. Of the DM 30 million scheduled, DM 27 million was paid out to the Claims Conference, while DM 3 million, administered by I.G. Farben i.L. itself, went to non-Jewish forced laborers. Moreover, on the side of industry, consent to this solution had been explicitly linked to the provision that this would entail no legal or moral obligations of any kind. That was intended to prevent other plaintiffs from approaching I.G. Farben AG i.L. with legal claims. However, it did not alter the fact that the agreement subsequently became the model for a number of similar agreements between large West German corporations and the Claims Conference. In light of the fact that these agreements to a large extent "were motivated by concrete concerns of the firms in question about public opinion abroad, especially in America, and about their own business interests," however, non-Jewish laborers remained largely excluded from such compensation payments.<sup>58</sup> With the exception of a single case (*Dr. Edmund Bartl v. Ernst Heinkel AG*), the courts, too, rejected all subsequent individual claims for back pay.<sup>59</sup> In the collective memory of West Germany's economic elites, the repudiation of a legal claim was equated with proven innocence. Therefore, I.G. Farben AG i.L. was not the only firm to take the point of view that all the payments rendered were attributable to humanitarian motives. In the international negotiations regarding the establishment of a compensation fund by German business, which were launched in 1999, the ne-

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56 Cited by Benz: "Wollheim-Prozess," p. 322.

57 On the intervention of the FRG, see Benz: "Wollheim-Prozess," p. 323f.; Goschler: *Schuld und Schulden*, p. 252.

58 Goschler: *Schuld und Schulden*, p. 251.

59 Ferencz: *Less Than Slaves*, pp. 174ff.

gotiators also clung to the defense against liability under criminal or civil law, but not to the rejection of guilt and responsibility that originally accompanied it.<sup>60</sup>

### **German-German Criminal Prosecution**

A new chapter in West Germany's prosecution of Nazi criminals was begun in late 1958 with the founding of the Central Judicial Administrative Office for the German States (*Zentrale Stelle der Landesjustizverwaltungen*, ZSL) in Ludwigsburg.<sup>61</sup> While investigations of Nazi crimes and war crimes had been rather sporadic and lacking in real vigor until then, systematic educational work now began, concentrated at first—in accordance with the legal and political mandate—on sites of crime outside the FRG and on crimes unrelated to the actual events of the war. Thus, for the first time after the war's end, the big concentration and extermination camps beyond the old borders of the Reich also attracted the attention of the prosecutors. By December 1958, only a few weeks after its founding, the ZSL was in contact with Hermann Langbein, the General Secretary of the International Auschwitz Committee in Vienna.<sup>62</sup> The former prisoner had previously urged the Stuttgart public prosecutor's office to take former SS-Oberscharführer Wilhelm Boger into custody.<sup>63</sup> In the spring of 1959, in cooperation with Langbein, the ZSL succeeded in tracking down other former members of the Auschwitz camp SS. At the same time, the Frankfurt/Main district attorney, Fritz Bauer, asked the German Federal Supreme Court (*Bundesgerichtshof*, BGH), to consolidate all the proceedings related to the Auschwitz complex under the office of which he was in charge. After three and a half years of elaborate investigations, the trial finally commenced in the Römer, Frankfurt's historic town hall, in December 1963.

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60 See Roland Bank: "The Role of German Industry: From Individual Criminal Responsibility of Some to a Broadly Shared Responsibility for Compensatory Payments." In: Herbert Reginbogin / Christoph Safferling, eds.: *Die Nürnberger Prozesse. Völkerrecht seit 1945*. Internationale Konferenz zum 60. Jahrestag (Munich: Saur, 2006), pp. 182–190.

61 Annette Weinke: *Eine Gesellschaft ermittelt gegen sich selbst. Die Geschichte der Zentralen Stelle Ludwigsburg 1958–2008* (Darmstadt: WBG, 2008), pp. 10ff.

62 See Rebecca Wittmann: *Beyond Justice. The Auschwitz Trial* (Cambridge, MA: Harvard UP, 2005), p. 62.

63 See Irmtrud Wojak: "Die Mauer des Schweigens durchbrochen. Der erste Frankfurter Auschwitz-Prozess 1963–1965." In: Irmtrud Wojak, ed.: *„Gerichtstag halten über uns selbst...“ Geschichte und Wirkung des ersten Frankfurter Auschwitz-Prozesses* (Jahrbuch des Fritz Bauer Instituts, vol. 5) (Frankfurt am Main/New York: Campus, 2001), pp. 21–42, here p. 22.

A few days before the proceedings began, the Secretariat of the SED Central Committee in East Berlin had decided to join the West German action, with an advocate for the subsidiary prosecution sent from the GDR.<sup>64</sup> The well-known SED attorney Friedrich Karl Kaul, a single practitioner,<sup>65</sup> was tasked with turning the Auschwitz Trial into a "tribunal to prosecute I.G. Farben, a corporation full of war criminals."<sup>66</sup> Behind this action was, first, a wish to present the GDR in a high-profile way as the true representative of the interests "of all antifascists and victims of Nazi terror."<sup>67</sup> Second, the SED leaders were pursuing the goal of using the trial, which had attracted worldwide notice, to draw attention to the long-reigning continuity of the elites in the FRG. Indeed, there were ample indications of this: For example, many seriously tainted Nazi functionaries who appeared as witnesses in the Auschwitz Trial were able to leave the Frankfurt courtroom as free men, thanks to the German-Allied Transition Agreement (*Überleitungsvertrag*) and the restrictive West German administration of justice.<sup>68</sup> The perpetrators from I.G. Farben's ranks, too, manifestly had no need to fear further prosecution. Thus, a few months after the beginning of the court case, a veritable scandal resulted when it became publicly known that Federal President Heinrich Lübke had awarded the Federal Cross of Merit to Heinrich Bütefisch, an I.G. Farben executive who was sentenced at Nuremberg, on the latter's seventieth birthday in February 1964.<sup>69</sup>

Emboldened by the Order of Merit incident, Kaul endeavored to introduce the topic of "I.G. Auschwitz" into the Frankfurt trial in two different ways. First, he

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64 See Weinke: *Verfolgung*, pp. 239ff.; Annette Roszkopf: *Friedrich Karl Kaul. Anwalt im geteilten Deutschland (1906–1981)* (Berlin: Berlin Verlag, 2002), pp. 241ff.

65 On Kaul, see Roszkopf: *Friedrich Karl Kaul*, as well as Annette Weinke: "Verteidigen tue ich schon recht gern ..." Friedrich Karl Kaul und die westdeutschen NS-Prozesse der 1960er-Jahre." In: KZ-Gedenkstätte Neuengamme, ed.: *Schuldig. NS-Verbrechen vor deutschen Gerichten* (Beiträge zur Geschichte der nationalsozialistischen Verfolgung in Norddeutschland, no. 9) (Bremen: Edition Temmen, 2005), pp. 44–57.

66 Cited by Wagner: *IG Auschwitz*, p. 316.

67 Ibid.

68 On problems of the administration of justice in dealing with Nazi crimes, see Michael Greve: *Der justitielle und rechtspolitische Umgang mit den NS-Gewaltverbrechen in den sechziger Jahren* (Frankfurt am Main: Lang, 2001), pp. 145ff.

69 As a result of the discussion in the press, Lübke summarily withdrew the honor and initiated an investigation of Bütefisch; see Florian Schmaltz: "Das historische Gutachten Jürgen Kuczynskis zur Rolle der I.G. Farben und des KZ Monowitz im ersten Frankfurter Auschwitz-Prozess." In: Wojak, ed.: *„Gerichtstag halten...“*, pp. 117–140, here pp. 128ff. See also the biographical article on Heinrich Bütefisch at [http://www.wollheim-memorial.de/en/heinrich\\_buetefisch\\_18941969](http://www.wollheim-memorial.de/en/heinrich_buetefisch_18941969).

requested permission to summon as witnesses a number of former Monowitz prisoners who held high positions in the GDR's party and state bureaucracy.<sup>70</sup> Second, he campaigned with the court for permission to enlist the services of a GDR historian, to be named by him, as an expert witness. After some back and forth, the jury court, under its presiding judge, Hans Hofmeyer, finally assented. Although the court was fundamentally anxious to exclude the I.G. Farben/forced labor deployment subject matter from the proceeding,<sup>71</sup> refusal to allow the GDR expert opinion easily could have been misinterpreted as expressing a manipulative understanding of history, in light of the fact that several West German historians were involved as experts, on Fritz Bauer's initiative. While Martin Broszat of Munich, a specialist in modern German history, had briefly touched upon the topic of the connections between prisoner labor and the plant location decision in his expert assessment,<sup>72</sup> the East Berlin economic historian Jürgen Kuczynski made this issue the focus of his remarks.<sup>73</sup> Making reference to documents from the I.G. Farben Trial, Kuczynski elaborated the reciprocal influence exerted by the arms industry and the SS, the associated escalation of labor deployment policy, and the involvement of the I.G. Farben executives in the "final solution." Despite, or most likely precisely because of, the explosive nature of these findings, the expert report was not discussed at the time in West Germany's chronicling of contemporary history.<sup>74</sup> A contributing factor was, not least of all, Kuczynski's sketchy knowledge of the documents from the American subsidiary proceeding, which were dissected with relish by the right-leaning defense lawyer Rudolf Aschenauer, who had been Heinrich Gattineau's attorney in Case 6.

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70 Among others, Erich Markowitsch (Minister for Industry) was appointed by Kaul.

71 See Christian Dirks: „Die Verbrechen der anderen.“ *Auschwitz und der Auschwitz-Prozess der DDR: Das Verfahren gegen den KZ-Arzt Dr. Horst Fischer* (Paderborn: Schöningh, 2006), p. 222.

72 Martin Broszat: "Nationalsozialistische Konzentrationslager 1933–1945." In: Hans Buchheim et al., eds.: *Anatomie des SS-Staates*, vol. II (Olten/Freiburg i. Brsg.: Walter, 1965), p. 412.

73 Jürgen Kuczynski: "Die Verflechtung von sicherheitspolizeilichen und wirtschaftlichen Interessen bei der Einrichtung und im Betrieb des KZ Auschwitz und seiner Nebenlager (Gutachten im 1. Auschwitzprozess vom 19.03.1964)." In: *Dokumentation der Zeit. Informations-Archiv* 16 (1964), no. 308, pp. 36–42.

74 Not until the 1990s did the role of the large companies under National Socialism become increasingly a focus of research; on the controversy surrounding the alleged textbook case of I.G. Farben, see Hayes: "IG Farben"; also Florian Schmaltz and Karl Heinz Roth: "Neue Dokumente zur Vorgeschichte des I.G. Farben Werks Auschwitz-Monowitz. Zugleich eine Stellungnahme zur Kontroverse zwischen Hans Deichmann und Peter Hayes." In: *1999. Zeitschrift für Sozialgeschichte des 20. und 21. Jahrhunderts* 13 (1998), no. 2, pp. 100–116.

During the trial in Frankfurt, the GDR authorities became aware that the former deputy SS garrison doctor at Auschwitz and camp physician for Buna/Monowitz had been practicing medicine in the province of Brandenburg for several years.<sup>75</sup> The discovery of Horst Sylvester Fischer proved to be a “first-rate propaganda gift,”<sup>76</sup> as his capture and subsequent conviction made it possible to realize in exemplary fashion the historical and political goals that the GDR linked with the subsidiary action in the first Frankfurt Auschwitz Trial. Thus the investigative organ of the Ministry of State Security (MfS), which was in charge of the Nazi investigations, conceived of Fischer’s trial from the very outset as a show trial for an international audience, in which, along with the individual guilt of the defendant, the responsibility of I.G. Farben was to be determined. Just like the GDR’s subsidiary action in the Frankfurt Auschwitz Trial, the proceeding also had an overriding function related to the political system: By having recourse to Allied international law—the application of which the FRG famously rejected until well into the 1990s<sup>77</sup>—and the use of the death penalty, which was abolished in the Basic Law (FRG constitution) of 1949, the East German state sought to demonstrate consistency and adamancy in dealing with Nazi criminals and war criminals. Although Fischer had stated in his first examinations that he had conducted no negotiations with I.G. Farben representatives, the MfS nonetheless built him up into a chief witness for the “I.G. Auschwitz” complex over the course of the trial.<sup>78</sup> In an elaborately staged propaganda show, which was presented simultaneously with the Fischer trial in the Supreme Court on Scharnhorststrasse in East Berlin, the defendant appeared to be the stooge of industrial “backers” in the sense of the Marxist theory of history. The taking of evidence, examinations of the witnesses, summations, and grounds for the judgment all focused on the complicity between I.G. Farben and the SS. On March 25, 1966, in accord with the determinations of the Socialist Unity Party (SED) and the MfS, the Supreme Court sentenced Fischer to death. Despite a clemency appeal addressed to Walter Ulbricht, the GDR’s head of state, by Lothar Kreyssig, head of the Action Re-

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75 On the Fischer case, see Weinke: *Verfolgung*, p. 246; Dirks: *Verbrechen*; also the articles on the Fischer trial at [http://www.wollheim-memorial.de/en/prozess\\_gegen\\_horst\\_fischer\\_1966](http://www.wollheim-memorial.de/en/prozess_gegen_horst_fischer_1966).

76 Dirks: *Verbrechen*, p. 190.

77 See Gerhard Werle: *Völkerstrafrecht* (Tübingen: Mohr, 2003), pp. 116ff.

78 See “Vertrag über Mord.” In: *Neue Zeit*, March 12, 1966.



conciliation Service for Peace (Aktion Sühnezeichen Friedensdienste) in April,<sup>79</sup> the sentence was carried out two months later in Leipzig. Symptomatic of the East German authorities' selective interest in clarification of the facts was their willingness to allow the investigations of others suspected of involvement on the Monowitz crimes to fizzle out. This discrepancy between the boldly represented will to prosecute and the cover-up of facts relevant to the prosecution was especially glaring in the case of the former head of the "Welfare Department" of I.G. Auschwitz, Martin Rossbach. Although Langbein repeatedly inquired about the progress of the investigation of Rossbach, the MfS leadership finally ordered the proceeding to be dropped for reasons of foreign policy.<sup>80</sup>

In the Federal Republic of Germany, too, the legal process of coming to terms with the Buna/Monowitz complex soon came to a standstill. After Gerhard Neubert, the SS medical orderly in charge of the Monowitz prisoner infirmary, had been sentenced in September 1966 to three and one-half years in prison, partly on the basis of the record of the interrogation of Fischer, then a detainee awaiting trial in East Berlin,<sup>81</sup>—a record that presented procedural problems—the Frankfurt public prosecutor's office once again opened an investigation of Otto Ambros, Walther Dürrfeld, Carl Krauch, and Max Faust. These and other proceedings against former prisoner functionaries at Monowitz, however, all ended without a decree with effect.<sup>82</sup> The same was true of the criminal investigations under way in Austria since the 1960s with regard to the crimes at Auschwitz-Monowitz.<sup>83</sup>

(Translated from German by Kathleen Luft)

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79 Lothar Kreyssig to Walter Ulbricht, April 20, 1966. Bundesarchiv Koblenz, N 1415, vol. 5.

80 On Rossbach, see Dirks: *Verbrechen*, p. 277; other instances of Auschwitz suspects who were not prosecuted are mentioned by Henry Leide: *NS-Verbrecher und Staatssicherheit. Die geheime Vergangenheit der DDR* (Göttingen: Vandenhoeck & Ruprecht, 2005), pp. 354ff.

81 See Weinke: *Verfolgung*, p. 225; Dirks: *Verbrechen*, p. 242; Werner Renz: "The Buna/Monowitz Concentration Camps in the Frankfurt Auschwitz Trials." Fritz Bauer Institut / Goethe Universität Frankfurt am Main: Norbert Wollheim Memorial, 2011, [http://www.wollheim-memorial.de/files/1069/original/pdf\\_Werner\\_Renz\\_The\\_BunaMonowitz\\_Concentration\\_Camp\\_in\\_the\\_Frankfurt\\_Auschwitz\\_Trials.pdf](http://www.wollheim-memorial.de/files/1069/original/pdf_Werner_Renz_The_BunaMonowitz_Concentration_Camp_in_the_Frankfurt_Auschwitz_Trials.pdf).

82 See Wagner: *IG Auschwitz*, pp. 319ff.

83 See Sabine Loitfellner: "Auschwitz-Verfahren in Österreich." In: Thomas Albrich et al., eds.: *Holocaust und Kriegsverbrechen vor Gericht. Der Fall Österreich* (Innsbruck: Studien, 2006), pp. 183–197; I am grateful to Sabine Loitfellner and Claudia Kuretsidis-Haider for providing leads to Austrian proceedings regarding Monowitz.