

“Tracing associations, revisiting nodes, assembling an Institute” – An introduction to the IISL Memory Papers



**Martin
Ramstedt***

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* Dr. phil. habil. Martin Ramstedt, Martin Luther University Halle-Wittenberg, Department for Anthropology and Philosophy, Institute for Social and Cultural Anthropology / Max Planck Institute for Social Anthropology in Halle, ‘Law and Anthropology’ Department, email: ramstedt108@gmail.com, ORCID: <https://orcid.org/0000-0002-1318-667>

Prologue

It gives me great pleasure to write this introduction to the IISL Memory Papers, contained in the first and second part of the present OSLS Special Issue. The papers have ensued from and expanded on the IISL Institutional Memory Lecture Series, an online series of talks I designed and moderated at the Oñati Institute from January 2021 to January 2022 in my capacity as Scientific Director (SD).¹ Due to multifaceted time constraints, the lecture series could only accommodate nine speakers, which tipped the balance in favour of scholars beyond their sixties and from the Anglo-European world who provided vivid and instructive testimonies of the past development of the IISL, covering a period of three decades. These testimonies and memories are accommodated in the first part of the special issue. In order to also accommodate voices from the IISL scholarly network extending beyond the Anglo-European orbit, I specifically solicited beginning and mid-career authors hailing from, or retaining strong connections with, societies in the global south to present their impressions, reflections, research interests and themes in the second part of the special issue.

The idea for launching an IISL Memory Lecture Series had impressed itself upon me for two compelling reasons. The more immediate one was the keen concern of how to ensure that the IISL would stay on the international agenda in the face of the ubiquitous lock-downs prompted by Sars-CoV-2/COVID-19 that were preventing international and national scholars from coming to Oñati in person. Given that the IISL is tucked away in one of the more remote valleys of the Basque Pyrenees (Euskadi), off the tracks of the highspeed railway network connecting the urban and academic centres of the Basque Country – Bilbao, San Sebastián, and Vitoria-Gasteiz –, I realised, on a rather visceral level, how difficult it was to maintain contact with “the world”. All three cities were basically over an hour away by bus which was furthermore not always operational during COVID. The feeling of being cut-off was compounded by the endless winter rains, which in a rural mountainous area can easily get to you even without bars and restaurants being closed in the evenings.

Less in the forefront of my mind, but equally cause for concern, were the many little signs which showed that the wind of change in the international academic landscape as well as in the Basque universities had been blowing past the Institute, leaving it to cope with dust of the times past. This dust had gathered silently and in conjunction with the drying-

¹ My term of office commenced in September 2020 and ended in September 2022.

up of the Institute’s financial resources in the wake of the Global Financial Crisis of 2007–2008. A major issue was the increasing digitalisation of the way we work, study, and do research today. Already before the Corona Crisis, that is to say, since the early years of the new millennium, the rapid digitisation of library resources all around the world had posed an increasing challenge to the IISL Library (e.g., Shaik 2015). Less and less visiting scholars seemed to want to come to Oñati for library research, while at the same time the libraries of the three major universities in the Basque region, i.e., the public University of the Basque Country, private Deusto University and Mondragon University, had been expanding their holdings well into the area of sociology of law. This was, to my mind at least, an indication for the growing acceptance and adoption of socio-legal topics, perspectives, and methodologies in these universities. The Corona Crisis gave the Institute the extra impetus to respond to the growing regional, national and international competition, by starting to offer its services online and to reflect on which topics, teachers, and teaching formats to include in its future Master programme.

The memory lectures seemed to provide an ideal space for reflection, and the IISL Administrative Team under the direction of Administrative Director (AD) Maite Elorza rose with flying colours to the challenge of having to host them digitally almost from scratch. That is to say, it was actually within a mere couple of months that the Institute went online, capable of hosting the courses of its Master programme in a hybrid format and the workshops, public talks and lectures, including the IISL Memory Lecture Series, completely in an electronic one.

Let me start with an account of my own journey to and experience in Oñati, in which I try to highlight perhaps hitherto unnoticed nodes and webs that have, from my point of view, been feeding into the assemblage that constitutes the Institute. This brings me back to the common purpose of all the papers that are collected here. The memories, reflections, and forays they contain should allow for the identity of the IISL to emerge. The French sociologist, anthropologist and philosopher Bruno Latour² rightly stressed the fact that difference makes identity (Latour 2005, 15–16, 22–23). Yet, the distinct identity of an Institute is collectively construed or, if we want to follow Latour, assembled. In other words, the IISL is a network, a traceable web of nodes, comprising collectives (groups and organisations) as well as individuals who have made certain experiences at, with, and through the Institute, while contributing to its assemblage, by making managerial, aesthetic and academic decisions, developing academic content, implementing routines

² Latour passed away on 9 October 2022 (Truong 2022; Maggiori 2022).

and procedures, and so forth (see Latour 2005, 65–67, 88–93, 132). That is to say, the Institute is not only a network of people, but also of buildings, the library, other assembled institutions (like the Basque Government, for instance, or the University of the Basque Country), as well as protocols (like the enrolment of students, or the appointment of the Institute’s leadership) and academic formats (such as the Master programme, lecture series, workshops, and conferences, etc.). All these components, actors and ‘actants’ in Latour’s nomenclature (Latour 2005, 9, 54–55, 72), are mediators in that they transform, translate, distort, and modify the meanings and experiences attributed to, or associated with the IISL. Both actors and actants are in fact components that may bind “the IISL” together, or unravel it.

If we want to support the Oñati Institute in its transition to a meaningful future, we need to inquire into the factors which have contributed to the binding, which have, in other words, caused actors to keep or renew their connection with and to the IISL. Particularly the memory papers of the first part give ample examples of the binding factors. At the same time, we have to inquire into why a certain connection was not made at certain times, or why it fell apart. I do not take on this responsibility here, though, as the IISL Memory Papers are meant to honour what has been achieved over the years, and to point a way into the future without any blame. That being said, we could ask ourselves how the Institute, as a mediating network (to stay in Latour’s parlance), has modified or possibly transformed, perhaps distorted, our notions of that assembled thing called ‘law’? I think, all papers give a helpful answer to that.

It is of course impossible to trace all the traceable associations and connections, including the frequent re-associations and re-connections, that have made the institute what it is today (e.g., Latour 2005, 7, 11, 108). I do feel encouraged by Latour’s words, though, that it is all “about how to study things (..), how to let the actors have some room to express themselves” (Latour 2005, 142). Let me therefore approach my part of our common task in this special issue, by taking some space here to describe the nodes and webs, through which I have formed my association with the Oñati Institute. I will then home in on some webs and nodes in the Basque Country that have co-constituted the IISL as network, and that have enabled me to at least partly realise two projects that have been close to my heart. Finally, I would like to introduce to you the authors and the topics of their respective papers. It should become clear in their respective accounts and analyses, why they so kindly accepted my invitation to contribute.

Journey to Oñati: Nodes and Webs

It was sometime in early 2013 when the Director of the newly established ‘Law and Anthropology’ Department at the Max Planck Institute for Social Anthropology (MPI) in Halle, Marie-Claire Foblets, introduced to her team a guest academic who had come to recruit a visiting professor for the course on ‘Law and Anthropology’ in Oñati’s 2013–2014 Master programme. The visitor was former SD Johannes Feest,³ whom Director Foblets knew well, it soon figured, from her own time teaching the ‘Law and Anthropology’ course at the IISL. Bertram Turner and I were the only two senior research fellows at the new department with enough relevant teaching and research experience to be amenable to Johannes’ proposition.

Turner and I had already been senior research fellows at the MPI Project Group ‘Legal Pluralism’, established and co-directed by the late Franz and Keebet von Benda-Beckmann upon invitation by the Max Planck Society. With many years of legal pluralism research at different universities in Switzerland and the Netherlands behind them, which had involved prolonged field trips to Malawi, Sumatra, the Moluccas, or Nepal, the two jurists-cum-legal anthropologists had been appointed by the Max Planck Society to pioneer and develop legal anthropology at its new institute in Halle. The latter had started operation in 2000, and the Project Group ran from the opening of the MPI in 2000 to 2012, the year of the von Benda-Beckmanns’ retirement.⁴

Under the leadership of the von Benda-Beckmanns, the research group succeeded in pooling research on the interaction and competition of plural normative orders from all around the world. Group members were thereby able to feed valuable insights into a wide range of topical discussions, such as the more normative debates on the power of law in a transnational world in general, and on global legal pluralism in particular (Benda-Beckmann *et al.* 2009; e.g., Schiff Berman 2012). Another area of involvement were the then topical discussions about the relationship between law and religion. Here, the group

³ Johannes Feest’s term of office as SD lasted from 1995 to 1997.

⁴ Franz von Benda Beckmann passed away rather suddenly in January 2013, after a brief cancer treatment. For an appreciation of his long and productive career, see for instance Melanie Wiber’s Editorial in the Special Issue on ‘Temporalities of Law’ of *The Journal of Legal Pluralism and Unofficial Law*, co-edited by Keebet von Benda-Beckmann, Martin Ramstedt and Melanie Wiber (<https://www.tandfonline.com/doi/abs/10.1080/07329113.2014.900237>; Wiber 2014). Keebet von Benda-Beckmann unexpectedly passed away on 5 October 2022, still active as a member of the Advisory Board of the Käte Hamburger Centre of Advanced Studies ‘Legal Unity & Pluralism’ at the University of Münster, Germany (<https://www.uni-muenster.de/EViR/en/kolleg/aktuelles/2022/20221014bendabeckmann.html>).

contributed analyses on the relationship between secular national and international law on the one hand, and religious law and indigenous law on the other (Benda-Beckmann *et al.* 2013). Yet another debate, in which group members intervened, concerned changing property relations under the condition of accelerating economic globalisation (Benda-Beckmann *et al.* 2006).

In terms of institutional associations, the group entered into close cooperation, above all, with the Commission of Legal Pluralism, which had actually been co-founded by Keebet von Benda-Beckmann in 1978, and of which she had been President from 1997 to 2003. Another major network to engage with was the Law and Society Association (LSA). Through their regular attendance of the LSA annual and global meetings, group members continued the von Benda-Beckmanns' longstanding involvement in the law and society movement. Originating in American law schools of the 1960s and stimulated by the social critique of the civil rights movement in the US, the law and society movement had, very much like its close ally, the Critical Legal Studies (CLS) movement, swiftly expanded beyond the law schools into the social sciences at large. In the event, it had very much embraced an empirical approach to law (e.g., Blocq and Woude 2018, 134–135), which in turn created an intrinsic link not only with legal sociology but also legal anthropology. The latter, which was not so conspicuous in the beginning, has actually become more and more visible and influential within the law and society movement over the years (Blocq and Woude 2018, 139). The von Benda-Beckmanns had followed this trajectory in their own careers and were now approaching the gap between law-on-the-books and law-in-action from a decidedly anthropological and legal pluralist perspective. A third institution the Project Group engaged with on a regular basis was the Association for Political and Legal Anthropology, a longstanding and well-reputed section within the American Anthropological Association.⁵

In Halle, the von Benda-Beckmanns created a vibrant academic ambience, with numerous international scholars (re)visiting the institute. One of the recurrent guests was the late Sally Engle Merry, Professor of Anthropology, Co-Director of the Center for Human Rights and Global Justice at New York University, and former President of both the LSA and the Association of Political and Legal Anthropology.⁶ Sally Merry had actually played an important role in the foundation phase of the Project Group and continued to support it as a member of the MPI's Advisory Board (Goodale 2021, 5).

⁵ See: <https://politicalandlegalanthro.org/>.

⁶ Sally Engle Merry passed away on 8 September 2021 (Goodale 2021; Griffiths 2021, 1250).

Jean Comaroff, Alfred North Whitehead Professor of African and African American Studies and of Anthropology, as well as Oppenheimer Fellow in African Studies at Harvard University, and John L. Comaroff, Hugh K. Foster Professor of African and African-American Studies and of Anthropology, as well as Oppenheimer Research Scholar at Harvard University and an Affiliated Research Professor at the American Bar Foundation,⁷ had likewise supported the von Benda-Beckmanns and their project from the very start. Both Comaroffs maintained their involvement, like Sally Merry, as Advisory Board members. It is worthwhile to note that all the three scholars, i.e., Jean and John L. Comaroff and Sally E. Merry, had been among the earliest members of the law and society movement, who had shown “a genuine interest in questions arising in the Global South” (Blocq and Woude 2018, 140).

Anne Griffiths, Professor for Anthropology of Law at the School of Law, University of Edinburgh, was another returning visitor and close collaborator. Like Keebet, Anne had been former President of the Commission on Legal Pluralism. And similar to Keebet, Anne had originally come to legal anthropology as a “black letter” lawyer and jurists. By the time of her involvement in Halle, she had already transformed into an accomplished and multifaceted field researcher, with an abundance of field experience in various parts of Africa and the US. Even prior to Marie-Claire Foblets’ arrival at the MPI, Anne Griffiths could have provided a link to Oñati, where she has, over the years, taught a variety of courses. The Project Group, however, focused completely on legal pluralism research in different Asian and African countries, which was at best a side issue in the IISL workshops and conferences at the time. So, no connection between Halle and Oñati was made as yet.

When the Project Group finally expired in 2012, it had succeeded in firmly establishing legal anthropology at the MPI. The next step consisted in the opening of a full-fledged ‘Law and Anthropology’ Department, for which the Max Planck Society could win Marie-Claire Foblets as Director. Marie-Claire had already visited the MPI prior to her appointment, when she had coordinated the ERC-funded RELIGARE project at her home university, i.e., the Catholic University of Leuven in Belgium (Foblets *et al.* 2014). Bertram Turner and I had, in turn, been invited to listen in at two of the RELIGARE workshops, and I to comment on the final report.

⁷ See: <https://aaas.fas.harvard.edu/people/jean-comaroff>, and <https://anthropology.fas.harvard.edu/people/john-comaroff>.

Marie-Claire Foblets' 'Law and Anthropology' Department finally closed the gap that had existed between Halle and Oñati in terms of research topics, methodologies, and networks of engagement. While empirical research was still carried out in non-European countries, the department now foregrounded issues relevant particularly to legal practitioners in Western liberal democracies, particularly European ones. It was when this shift had just been put in motion that Johannes Feest arrived at the MPI. Having studied law at the universities of Munich and Vienna, and sociology at the University of California at Berkeley, that is to say, at one of the world's best sociology departments, with ample experience in and of Oñati as SD, as visiting professor, and as workshop organiser and participant, Johannes was the perfect emissary for what he was about to propose. In the end, it was I who opted to take up Marie-Claire's mantle and to teach 'Law and Anthropology' in the upcoming IISL Master.

I understood from Johannes' brief account of the history of the Oñati Institute that it owed its foundation in 1989 to the fact that the Government of the Autonomous Basque Community⁸ had welcomed the joint proposition by representatives⁹ of the Research Committee for Sociology of Law (RCSL) within the International Sociological Association (ISA), on the one hand, and the Basque Director of the Laboratory of Sociology of Law in San Sebastián-Donostia, Francisco Javier (aka Kiko) Caballero Harriet, on the other, to establish an international educational institute for sociology of law in the Basque Country, in order to link Basque intellectuals to international academia, and to increase the visibility of the Basque Country on the international stage. At the time, i.e., in the late 1980s, Basque society was still recovering from the complete and devastating suppression of Basque language, customary law (*fueros*),¹⁰ and culture by the Franco regime (1939–1975), which had ensued with Franco's victory of the Spanish Civil War (1936–1939). The IISL came to be located in the Basque Country's oldest university, the scenic "University of the Holy Spirit", founded in Oñati as early as 1543 and functioning

⁸ The Statute of Autonomy of the Basque Country (Organic Law No. 3/1979) had been issued four years after the death of Franco in 1975, that is, ten years prior to the foundation of the IISL, inter alia granting the Autonomous Basque Community the right to use the Basque language (Euskera) as an official language alongside Spanish (Art. 6.1), to preserve, modify and develop the Traditional Regional Law and Specific Civil Law of the historical territories which make up the Basque Country (Art. 10.5), and to establish foundations and associations of an educational, cultural, artistic, or charitable character (Art. 10.13) etc. (see e.g., <https://www.boe.es/buscar/act.php?id=BOE-A-1979-30177>).

⁹ Vincenzo Ferrari, at the time Vice-President and subsequently President of the RCSL, was among the founders of the IISL and a member of its Governing Board from 1989 to 2002. See also his memory paper at the end of the first part of this Special Issue.

¹⁰ See e.g., Monreal Zia 2005.

as an academic institution until the mid-19th century (Guibentif 2000, 34–36; Ibarra Rojas 2014, 2–3; see also Whitfield 2015, 2–3). I later realised that Oñati’s old Sancti Spiritus University is indicative of a glorious past, when the town had apparently collected its own taxes, mobilised its own soldiers, and exercised its own law (e.g., Segovia 2017).

I also understood from Johannes that the students coming to Oñati Institute to attend its one-year Master typically had a human rights activist mind-set, no matter if they came with a first or even a second or third degree in law, or in another discipline within the social sciences. I was thrilled to teach at an institute that was home to a kind of “counter-culture of law”, to possibly misquote the title of Juhana Salojärvi’s review article on the Critical Legal Studies (CLS) movement (Salojärvi 2019).¹¹ The work of both Johannes Feest and Marie-Claire Foblets were, at least to my mind then, in many ways representative of this particular “counter-culture”.

As Head of the Prison Archive¹² at the University of Bremen, which he had founded in 1977 in his capacity as Professor of Law Enforcement, Corrections and Criminal Law at the University of Bremen, Johannes supported prisoners on a scale that far exceeded his formal duties. The Prison Archive is intended to serve as a kind of platform for prisoners to submit questions about the German prison system and to receive replies from competent volunteers. Johannes himself answered countless letters of inmates. He continued to vocally engage in academic and political discourse even after his official retirement in 2005. In recent years, he has gained some notoriety, at least in Germany, for his advocacy against prisons (see also Feest 2020).¹³

Marie-Claire Foblets, for her part, had practiced law for ten years with a law firm in Brussels that had specialised on migration and minority issue, before she started to teach, from 1991 onwards, social and cultural anthropology as Professor of Anthropology at Antwerp University. In 2008, she was appointed to a second professorship at the Catholic University of Leuven, where she directed the Institute for Migration Law and Anthropology, while continuing her duties at Antwerp University. Motivated by her professional and academic experience in Belgium, as well as by her research on

¹¹ Let us recall that the CLS paradigm brought together “social, political, and intellectual criticism” in a new legal philosophy, i.e., a kind of critical and sociologically informed jurisprudence, if you will, that was able to both empirically and theoretically engage the problems of quickly changing contemporary society (e.g., Salojärvi 2019, 3, 9, 15, 22–26).

¹² See: <https://strafvollzugsarchiv.de/ueber-uns>.

¹³ See, e.g.: <https://www.spiegel.de/panorama/justiz/johannes-feest-dieser-kriminologe-will-die-gefaengnisstrafe-abschaffen-a-e2edbcf4-2b2b-4bf1-a35c-c885877badec>.

Moroccan family law (Foblets and Carlier 2005), Marie-Claire has dedicated her work at the MPI to bringing anthropological insights, perspectives and approaches to legal education, so that legal practitioners will be better equipped to face salient legal issues, problems, and questions, such as “gender recognition for non-binary people, family disputes brought before international courts, non-majoritarian language use in administrative settings, forced migration, and the impact of climate change and infrastructural development on local communities worldwide” (Foblets *et al.* 2022, 911), and so forth. Central to the research programme of her department “(...) is the in-depth study of normative frameworks of different types – formal/informal; state/non-state; non-faith-based, etc. – as profound familiarity with and knowledge of these frameworks are necessary to properly apprehend and explain practices and regulations that are regulated by them” (Foblets *et al.* 2022, 913).

It is both humbling and instructive to recall that already back in the 1920s, a similar pedagogical mission geared to broaden legal education had been embraced by early representatives of legal realism (Salojärvi 2019, 32). The mission, in any case, is sadly as salient today as it was then, given the large number of intellectually emaciated law schools all around the globe that seem to teach law merely as an appendage to neoliberal economics. The *raison d’être* of the Oñati Institute of course also lies partly in its manifold contribution to deepening and broadening the education of legal practitioners. However, it is far greater than this. Providing a platform for interdisciplinary approaches to law, the IISL has helped reframing law, legal procedures, legal professions, legal cultures as objects of informed public scrutiny, which is a major ingredient of how modern democracies ensure their stability and continuation (Ibarra Rojas 2014, 2).

One of the assigned objectives of the Institute, right from the start, was to become an important mediator (in Latour’s sense) of debates and studies on Basque affairs. That being said, partly due to common language and historical relations, and partly because of the extensive scholarly network of the RCSL that has been able to attract people to Oñati, a large number of Latin American students and scholars have taken part in the various activities of the IISL, too. Their academic analyses, reflections and comments on Latin American affairs that have ensued from their participation in the IISL Master’s, IISL workshops and or IISL conferences, have meanwhile reached an extent that has arguably made the Oñati Institute a mediator of socio-legal studies on Latin American as well (Ibarra Rojas 2018, 589–591).

In Oñati

On my first stroll through Oñati in January 2014, it came to me that I must have a penchant for staunchly patriotic hill tribes. I had spent my adolescence and early adulthood among Bavarians as someone originally from the north of Germany, remaining permanently puzzled by the ostentatious displays of a seemingly deep sense of belonging I had frequently witnessed among them. Since 1986, I have been studying Balinese history, politics, and culture in the context of the wider precolonial, colonial and postcolonial Indonesian history. Bali is marked by a mountain range with several still active volcanoes that have made the interior exceptionally fertile, which is why the traditional Balinese royal houses and the bulk of the Balinese population have traditionally settled there, leaving the coasts less densely populated. Successfully evading both Christianisation and Islamisation, the Balinese succeeded in reframing their indigenous form of religion as “Indonesian Hinduism”, which is rather distinct from Indian varieties of Hinduism. It consists, in fact, of an extensive indigenous ritualism that classifies all Balinese who want to leave their island as ritually impure. There are apparently cultures that bind people to the land they were born to, while others seemingly don’t. At first glance, the Basques seemed to fit the first category. But the more I learned about Basque history, the clearer it became to me that the Basques are a people that straddle both categories. There had been Basques among the Spanish conquistadors right from the beginning of the Castilian colonisation of the Americas (e.g., Douglas 2005). Much more recently, that is to say, in connection with the “Basque Conflict”, many Basques had left their country, and Spain, for good, some because they were fleeing extortion schemes or death threats by the Basque separatist group Euskadi ta Askatasuna (ETA), some because they were persecuted by the Spanish or French police due to their involvement with militant nationalist Basque groups associated with ETA (Varona Martínez 2012, 205). We are, moreover, usually less aware that more than seventy members of Basque armed groups, who had fled to France, were deported to ten different countries in the Americas and Africa by the French Government in the 1980s. At the time, France was reticent to extradite them to Spain (Panisello Sabaté 2021).

Already on my first stroll through Oñati, I could not miss the numerous graffiti, calling for “independence”, commemoration of ETA members originating from Oñati, or freedom for ETA convicts in Spanish prisons. I encountered these graffiti on all kinds of walls – monastery walls, walls of public buildings as well as of private houses, bridge walls, and

so on. They loudly signaled to both outsider and insider that the Basque Conflict was far from settled, even though by January 2014, its violent part seemed to be over for good. Three years earlier, ETA had publicly announced that it would from now on abstain from all acts of violence. ETA's operational capacity had in fact been eroded since 2003, due to robust legal measures and tough police action. Moreover, since the Spanish General Elections of 2008, the vast majority of the politically heavily fragmented Basque society found itself united by a deep opposition to continuing violence, and militant nationalists realised that they needed to move beyond armed struggle, in order not to face complete delegitimization and political marginalisation. On 17 October 2011, the Aiete Conference in San Sebastián-Donostia, with international leaders under the chairmanship of UN Secretary General Kofi Annan, had finally succeeded in bringing about the definitive end of ETA's armed activities (Varona Martínez 2012, 206; Whitfield 2015; Aiertza Azurtza 2019, 31). However, since the Spanish Government of the Conservative Popular Party (*Partido Popular*, PP) refused to enter into any dialogue with Basque politicians around issues, such as ETA's disarmament, the situation of ETA prisoners, the return of exiles, or the question of dealing with the past (Aiertza Azurtza 2019, 6–7), many Basques supportive of the political mission of ETA remained seriously aggrieved.

As I was invited to teach the 'Law and Anthropology' course in the IISL Master's over four consecutive academic years, I revisited Oñati three times between February 2015 and March 2017 as teacher. Already in my very first year, I had a Basque student from Iparralde, i.e., the French part of the Basque Country, Ihintza Palacín Mariscal, who wrote for her final assignment an excellent essay on the cross-border cooperation between the French and the Spanish part of the Basque Country concerning the development of the Basque language, which she later expanded into a full-fledged PhD research at the European Institute University of Florence (Palacín Mariscal 2017). Also in the following years, I had the opportunity to learn so much from my Basque students about local issues and conditions relevant to socio-legal studies. It goes without saying that I have learned in equal measure from my students from other parts of the world, both as teacher and as supervisor.

Shortly after I had taught in Oñati for the fourth time, i.e., on 8 April 2017, ETA disarmed of its own accord, and a year later, on 3 May 2018, ETA completely dissolved its organisation, despite the fact that the PP Government in Madrid had rejected any dialogue around possible consequences the end of the Basque Conflict might bring. The dissolution of ETA left the radically nationalist Abertzale Left (*Ezker abertzalea*) as the only, by then expressly non-militant and hence legitimate political platform for Basques

harbouring pro-independence feelings. Its nationalism differs starkly from that of the Basque Nationalist Party (*Eusko Alderdi Jeltzalea/Partido Nacionalista Vasco*, PNV), which is of a predominantly Christian-democratic nature and has repeatedly condemned ETA's radical nationalism and violence. Alongside the social-democratic Socialist Party of the Basque Country (*Partido Socialista de Euskadi/Euskadiko Ezkerra*, PSE-EE), the PNV has been the most dominant party in the Basque Country. The Abertzale Left, which had played a positive role in the path towards peace the Basque society had embarked upon in 2008, had since the Aiete Conference joined forces with other left nationalist organisations, such as EH Bildu (*Euskal Herria Bildu*), a pro-independence political coalition which succeeded in gaining between 21 and 27 percent of the votes in the three consecutive Basque Parliamentary Elections of 2012, 2016 and 2020. After the dissolution of ETA, the issue of the 700 Basque prisoners, who had – some justly and some unjustly – been accused of being members of ETA or an organisation related to it, became foremost in the political agenda not only of the Abertzale Left, but of the PNV and a broad spectrum of other Basque organisations as well. The prisoners were dispersed over prisons in the far south of Spain, which was an extra burden for their families who had to travel around 900 km one-way by bus or car to visit them (Aiertza Azurtza 2019, 7–22, 27, 33–34).

In a tendentious article by journalist Mikel Segovia in *El Independiente* from 17 June 2017, I read that in Oñati the Abertzale Left had governed with an absolute majority in the local 2012–2016 legislature, and that it had been re-elected in the current one (Segovia 2017). The article then went on insinuating that non-Basque speakers would be immediately marked as outsiders by Oñati's Euskera-speaking native citizenry. The popularity of the Abertzale Left and the allegedly pervasive use of the Basque language in Oñati was finally linked to a pitiful story about the dreadful isolation, all the members of the local division of the Guardia Civil and their families would have to suffer. A citizen of Oñati, however, explained to me that many among Oñati's population would not be able to speak Basque, and that those with the linguistic skill to do so, would often choose to speak Spanish together.

Segovia's article in the *El Independiente* portrayed Oñati as a staunchly patriotic small town. The allegation that ETA had in fact emerged, with the support of many a Basque cleric, in a seminary of the Basque “Communist Church” (*Iglesia Comunista*) at the Franciscan monastery of nearby Arantzazu seemingly supports this narrative (Baeza

López 1995).¹⁴ This underscores the need for the Institute to help diminish ideologically tinted allegations, by fostering socio-legal research on what is actually going on in town and environs. A good example of how salient societal issues have been broached in various activities of the IISL was the in-person workshop on ‘Youth Violence: De-escalation Strategies and Socio-Legal Responses’, convened by Murray Lee, Asher Flynn, and Mark Halsey in July 2019 (Lee *et al.* 2021). Despite the fact that the workshop only presented cases from Anglophone countries, the analyses advanced in the workshop proceedings remain pertinent for the many cases of *kale borroka* (“street fights”), committed by radicalised Basque youth throughout the Basque Country, Navarra and Iparralde from the 1990s onwards. These cases reportedly lessened considerably in the early 2000s and seemed to have stopped completely after ETA had publicly professed abstaining from all kinds of violence. However, the Basque Daily *Deia* reported on 1 July 2020 that over the past weeks 82 acts of severe vandalism had been committed against premises of certain political parties, including the PNV and the PSE-EE, as well as against banks and museums in the Basque country, which would attest to a resurgence of *kale borroka* in relation with the hunger strike by ETA prisoner Patxi Ruiz in May and June 2020.¹⁵ Therefore, the importance of research on de-escalation strategies for Basque society has not diminished.

By the time I returned to Oñati as SD at the beginning of September 2020, my own plans for intellectual pursuits as Ikerbasque research professor were geared towards a deeper inquiry into the development of transitional justice approaches in the post-conflict Basque society. Joxerramon Bengoetxea had actually just published his article on ‘The Unique Basque Peace Process: Linking Basque and European Generations for Global Transitional Justice’ in the Oñati Socio-Legal Series, in which he cogently argued that the process of transitional justice in the Basque Country had remained incomplete, or unachieved, because it had only been unilaterally pursued by Basque civil society, both in the País Vasco and in Iparralde, while the Spanish Government had failed to offer an “inclusive agenda on memory and narratives of the conflict capable of delivering truth and reconciliation” (Bengoetxea 2020, 584). Spain as well as France had in fact rejected to adopt transitional justice as official policy, denying that there had been a Basque Conflict to begin with. Another reason why conflict still continues in the minds of many

¹⁴ See also Johannes Feest’s contribution to this special issue. I had the pleasure of exploring Arantzazu for the first time in May 2014, when I lodged in one of the local hotels on the occasion of my participation in the 25th IISL Anniversary conference.

¹⁵ See: <https://www.deia.eus/politica/2020/07/01/rebrote-kale-borroka-salda-82-4695645.html>.

Basques is that post-Franco Spain has solely focused on the victims of ETA terrorism, whereas it has entirely failed to recognise the victims of the violence of Francoist paramilitary groups, let alone the manifold human rights infringements the Franco regime had committed in the Basque Country and beyond (Bengoetxea 2020, 587, 596–602; see also Escudero 2014).

The failure of Spain to grant local constituencies, like the Autonomous Basque Community, a true transitional justice process, reminded me of the failure of all plans for transitional justice in post-Suharto Indonesia. For many years, I had studied the transition of Indonesia from the Suharto dictatorship to an Islamic liberal democracy in the wake of the 1997/1998 Asia Crisis, which arguably bears some similarity to Spain’s own transition from the religiously tinted Franco dictatorship to a secular liberal democracy. While efforts to implement transitional justice processes in Indonesia had failed for reasons I cannot go into here, a profound law and governance reform, involving a far-reaching decentralisation process that afforded regions with largely homogenous ethnic groups a high degree of autonomy (Holtzappel and Ramstedt 2009), had in the cause of the two decades of the new millennium succeeded in bringing about an impressively stable constitutional democracy and social peace, with the majority of the population expressing contentment with the decentralised nature of the Indonesian state as it is (Ramstedt 2019, 309–310).

Social conflict among different factions of the multi-ethnic and multi-religious Indonesian population is frequently resolved through traditional means of conflict resolution, rather than official legal institutions. I was therefore not surprised when I learned in a long exchange with Gema Varona Martínez (Permanent Senior Researcher at the Basque Institute of Criminology, IVAK)¹⁶ in November 2020 that there had been Basque efforts to apply restorative justice to cases of severe violence in the prison of Nanclares, shortly after ETA had publicly announced its future abstinence from any acts of violence. It had in fact been the Berriztu Educational Association that had implemented restorative approaches in the Nanclares prison between 2012 and 2019, in which 79 people had participated (Varona Martínez 2012, 205; Borra 2022; see also Bullain 2014). As a criminologist specialising in victimology, Gema herself had already early on reflected on the conditions under which restorative justice approaches might be fruitfully applied in

¹⁶ Gema is also an alumna of the IISL Master’s, an internationally acclaimed victimologist, and a frequent visiting professor in the Institute’s Master programmes.

cases of ETA terrorism (Varona Martínez 2012; see also Pascual Rodríguez and Ríos Martín 2014).

Things had been taken to the next level, when in June 2018 Mariano Rajoy, the Spanish President appointed by the PP, had received a vote of no-confidence in the Spanish Parliament and had had to step down. The same legislature had then appointed Pedro Sánchez, hitherto Secretary General of the Spanish Socialist Workers' Party (*Partido Socialista Obrero Español*, PSOE), as President, inter alia with the support of the PNV and EH Bildu.¹⁷ Soon afterwards, Sánchez had announced the need of a policy change concerning ETA prisoners, hinting at the possibility of a prisoners' transfer to penitentiary institutions in the Basque Country (Aiertza Azurtza 2019, 39). Finally, it was the new PNV-led Basque Government, formed after the Basque General Elections of 12 July 2020, that was authorised by President Sánchez to manage the transfer of ETA prisoners from their original places of incarceration in the Autonomous Community of Andalusia to the Basque prisons Basauri, Zaballa and Martutene (Aizpeolea 2022), a process that was supposed to start in October 2021.

The actual task of managing the prisoner transfer was assigned to the Department of Justice. It was fortunate that Vice Minister of Justice, Ana Agirre, finally accepted the role of President of the IISL Governing Board shortly after the commencement of my own term of office, because there had been some discussions in the new Basque legislature on whether the Department of Education, Culture and Language Policy of the Basque Country should take over the responsibility for the Oñati Institute, which threatened the IISL with losing important connections to Basque legal practitioners and policy makers. Once, Ms. Agirre had accepted the presidency, she also appointed Eugenio Artetxe Palomar, Director of Justice in the present Basque legislature, to the IISL Board. As Mr. Artetxe Palomar has been very much involved in the management of the transfer of ETA prisoners to penitentiary centres in the Basque Country, I approached him with the suggestion to organise two workshops, a national and an international one, on the topic of restorative justice in prisons. Through the mediation of AD Maite Elorza, I had already been able to solicit the cooperation of Roberto Moreno Álvarez (Coordinator of Justice, Prisoners and Victims in the Ararteko, the Basque Ombudsman Office in Bilbao), whose experiences with the implementation of restorative approaches at the Nanclares prison ("Vía Nanclares") as a member of the previous Basque government were invaluable. Thankfully, we could also recruit victimologist Gema Varona Martínez to our team, as

¹⁷ I was invited to informally attend a meeting of EH Bildu in Bilbao at the end of 2021, which I did.

she had written various analytical comments and reflections on the engagement of restorative approaches in Nanclares. Eugenio Artetxe Palomar graciously accepted my proposition and took on the additional responsibility of representing the Basque Government in our project, which would provide not only the necessary funding but also the contacts to all the Basque stakeholders, whom we would have not been able to reach on our own.

This was particularly crucial for our organisation of the national “workshop” on restorative justice in prisons that took place on 8 October 2021 at Bizkaia Aretoa in Bilbao. We decided to convene the gathering not in the classical structured panel discussion format. Instead, we organised three dialogue circles, facilitated by Idoia Igartua from the Basque Institute of Criminology (IVAK), and Alberto José Olalde from the Department of Sociology and Social Work at the University of the Basque Country, who are both experienced mediators and restorative justice facilitators. Each circle had different participants who, from their respective angles, gave input intended to help the respective representatives of the Basque Government decide whether restorative approaches could indeed be beneficially implemented in Basque prisons. The urgency of the topic was highlighted by the fact that not only Vice Minister of Justice Ana Agirre joined the event for the whole day but also Minister of Justice, Beatriz Artolazabal, attended most of it. The ETA prisoners’ transfer had actually started just several days prior to our event. Meanwhile, a large number of the designated prisoners had already arrived in their places of destination. The Basque Government of Lehendakari (President) Íñigo Urkullu (PNV) had in fact already announced that it would promote post-sentence restorative justice for ETA prisoners, the semi-freedom of prisoners, and their reintegration into Basque society. This had roused concern among victims and victims’ associations, as well as opposition from two conservative Spanish parties, i.e., the PP and the national-conservative Vox Party, which accused Urkullu of proposing a penitentiary model in favor of ETA (Aizpeolea 2022).

Participants of the dialogue circles included two victims of violent crimes, representatives of victims’ organisations, representatives of the direction of the three Basque penitentiary centres, and further representatives of the Basque Government, such as Monika Hernando Porres, Director of Human Rights, Victims and Diversity; Jaime Tapia Parreño, Magistrate and Adviser to the Department of Justice for the Definition of the “Basque Penitentiary Model”; and Nacho Martínez, Coordinator of Restorative Justice Services.

One of the victims present at our dialogue circles was actually Maixabel Lasa, the widow of Juan Maria Jáuregui Apalategui, who had been assassinated by ETA on 29 July 2000 in a bar located in his home town, Tolosa. At the time, Jáuregui Apalategui had been on holiday in Tolosa, as he had moved to Chile, where he had become Manager of the Aldesa Company. In his youth, he had participated in the armed struggle against Franco and had even for a short period of his life joined ETA. He soon decided to abandon all militancy, though, and became a member of the Basque Socialist Party, in the capacity of which he was eventually appointed as civil Governor of Gipuzkoa.¹⁸ His widow Maixabel later participated in a restorative dialogue in Nanclares with one of the assassins of her husband, Ibon Etxezarreta. At the time of our event on 8 October 2021, a film was shown in cinemas all over the Basque Country that dramatized her “story”. The title of the film, made by the director Icíar Bollaín, was “Maixabel: Una Historia Real”, and the two protagonists, Maixabel and Ibon, were portrayed by the two actors Blanca Portillo and Luis Tosar. The film was also shown in Oñati, where the graffiti had incidentally multiplied in connection with the issue of the ETA prisoners’ transfer.¹⁹

At the end of our third and last dialogue circles in Bizkaia Aretoa, all doubts on the part of Government representatives, victims and victims’ organisations seemed to have been dispelled. Basque Minister of Justice Beatriz Artolazabal and Vice Minister of Justice Ana Agirre publicly committed to strategically integrating the various practices, which had already been implemented in the Basque Country without a common standard, into the Basque Penitentiary Model. Soon afterwards, the Basque Government published its 50 pages long ‘Strategy Plan for Restorative Justice in the Basque Country 2022–2025’.²⁰ It in essence rests on the following three pillars: (1) to facilitate access to restorative processes regardless of the type of crime committed, i.e., regardless of its seriousness; (2) to develop minimum quality standards; and (3) to promote its knowledge among citizens (see also Borra 2022). On 5–6 May 2022, we (i.e., Roberto, Gema, and I) convened our international workshop on ‘Restorative Justice in Prisons’, in a more classical format, again in the Bizkaia Aretoa. Shortly before the actual start of the workshop, the Basque Minister, Vice Minister, and Director of Justice gave a press conference, which made public the cooperation between the IISL and the Basque

¹⁸ See also: <https://mapadelterror.com/victims/juan-maria-jauregui-apalategui/>.

¹⁹ Shortly after the event, I by chance encountered Maixabel again in the old part of Bilbao. We exchanged only a few friendly words, but the encounter has stayed in my memory ever since.

²⁰ *Propuesta de Estrategia de Justicia Restaurativa en Euskadi 2022-2025*; see: <https://www.justizia.eus/documentacion/2022/estrategia-vasca-de-justicia-restaurativa-2022-2025/webjusoo-contentgen/es/>.

Government on the issue of the implementation of restorative justice in Basque prisons. The speakers²¹ invited to the workshop consisted almost exclusively of practitioners-cum-theoreticians of restorative justice in European penitentiary systems. The discussion part of the workshop, attended by all the representatives of the Basque government and Basque penitentiary centres who had already been present in the three dialogue circles, as well as the two victims and the respective victims’ organisations, was set up as a ‘world café’,²² in order to ensure maximum exchange between speakers and audience.

In loose connection with our preparation of the two workshops, I paid an official visit to the directors of two relevant institutions in Vitoria-Gasteiz, i.e., the Sancho el Sabio Foundation, instituted in 1964 as a library and documentation centre of Basque history and culture,²³ and the Memorial Centre for the Victims of Terrorism,²⁴ inaugurated by the Spanish Ministry of Home Affairs in 2021. It became immediately clear that the latter was tasked to present the Spanish Government’s view of ETA in the context of the heightened debates around the afore-mentioned Basque Government policies vis-à-vis ETA prisoners. I would like to mention an additional institution, i.e., the Iura Vasconiae Foundation dedicated to the study of the history of Basque law and autonomy,²⁵ with which I entered into collaboration, in order for the IISL to fulfil its role as a platform for research on Basque issues, in this case to connect local research on Basque Law to international debates. With two academic members of the IISL Governing Board, Itziar

²¹ The speakers, apart from Gema, Roberto and I, were: Alberto Rodríguez i Rodríguez, representing the Programme for Restorative Justice of the Justice Department of Catalunya; our two facilitators from the 8 October 2021 dialogue circles, Alberto José Olalde Altarejos and Idoia Igartua Laradogoitia; Antony Pemberton from the Netherlands Institute for Crime and Law Enforcement and the Leuven Institute of Criminology; Bart Claes from the Department for Restorative Justice and Penitentiary Studies at the University of Applied Sciences in Avans, the Netherlands; Brunilda Pali from the University of Louvain; Kimmet Edgar from the British Prison Reform Trust; Guido Bertagna, an Italian Jesuit priest and restorative justice facilitator in Bergamo; Gustav Tallving, Executive Director of the European Organisation of Prison and Correctional Services (EuroPris); Jorge Elías Ollero Perán, Director of the Service for Penal and Restorative Justice at the Government of Navarra; Michal Peno from the Faculty of Law and Administration, Szczecin University; Rocío Nicolás López, Social Educator with expertise on restorative justice in cases of sexual violence from Complutense University in Madrid; Susanne Karstedt, RCSL Board Member and Professor of Criminology and Penal Justice at Griffith University, Australia; and last but not least Timothy Chapman, President of the European Forum for Restorative Justice and visiting professor at the University of Strathclyde and the University of Sassari, with 25 years of experience working in the Probation Service in Northern Ireland.

²² The world café was moderated by Paqui Bonachera, Advisor to the Judiciary in Andalusia and a restorative justice facilitator with extensive national and international experience.

²³ See: <https://www.sanchoelsabio.eus/en/>.

²⁴ See: <https://museovt.com/en/>.

²⁵ See: <https://www.iuravasconiae.eus/>.

Alkorta Idiakez and Joxerramon Bengoetxea, being also esteemed members of the Iura Vasconiae Foundation, a first joint symposium on ‘Legal Consciousness, Pluralism and Cultural Identity Formation of Basque Laws from a Historical, Comparative and European Perspective’ could take place at the IISL on 28 June 2022. It received much positive feedback from all its participants.

Co-assembling the Institute: A brief introduction to the different voices

It is high time now to turn to the different voices that accepted my invitation to co-assemble the Oñati Institute through their own memory papers. As I had been so inspired by Pierre Guibentif’s historiography of the development of the IISL from the time of its inception to the end of Pierre’s term as SD (Guibentif 2000), I was overjoyed when he agreed to join our IISL Memory project, despite the fact that he was holding major responsibilities within the Programme Committee preparing the 2022 LSA Global Meeting in Lisbon, and that Pierre was therefore labouring under severe time constraints.²⁶ In his memory paper, he thankfully sums up major events he reported in his not easily accessible publication from 2000 and continuous with his personal historiography on pertinent developments that testify to the Oñati Institute having grown into an ‘institution’ of supra-regional importance, which pioneers ‘world society’ at eye level. His contribution is followed by the detailed testimonies of Mavis Maclean and Teresa Picontó Novales on the institutionalisation of research on family law and family policy at the IISL and in Spain respectively. Teresa Picontó also shares with us memories of her joint path in the field of sociology of law with her late Basque husband Manuel (“Manolo”) Calvo García, born in the village of Aretxabaleta in the Province of Gipuzkoa in 1956, who passed away on 21 June 2020.

Manolo Calvo was SD of the Oñati Institute from 2002 to 2003, but he actually supported the development of the IISL in numerous ways before and after his term of office, which

²⁶ Ulrike Schultz joined the same Programme Committee as President of the RCSL, which was a major partner organisation of the 2022 LSA Global Meeting, and I in my capacity as SD of the Oñati Institute as well. That being said, Pierre Guibentif took on major responsibilities within the Committee not only as Vice President of the RCSL but as former Professor and researcher at the ISCTE-University Institute of Lisbon, a position that he had held before he transitioned to his present position as Co-Director of the Maison des Sciences de l’Homme in Paris-Saclay.

several contributions in this Special Issue testify to. Manolo Calvo spent a major part of his career as full Professor of Philosophy and Sociology of Law at the University of Zaragoza, where his wife also became full Professor of Philosophy of Law in March 2021. In 2022, the Oñati Community launched its Manolo Calvo-Prize for outstanding students of the IISL Master’s. The latter is incidentally accredited, since 2008, at the Law Faculty of the University of the Basque Country, due to the successful intervention of Joxerramon Bengoetxea during his term of office as SD (2005 to 2007).

Teresa Picontó’s paper is followed by three testimonies of scholars representing “activist” voices in the IISL network. The first testimony is offered by current President of the RCSL Ulrike Schultz, who has written an engaging history of her personal trajectory as a female socio-legal scholar, thereby illustrating key points of Critical Legal Feminism (see also Hunter 2019). The second testimony is by Johannes Feest, whose reflections on his experiences as a penologist in the Basque Country over a period of more than two decades include an account of the time in Oñati, when ETA was still palpably active. It thus provides an important supplement to my account in the previous paragraph. The third activist voice is William (Bill) L.F. Felstiner’s narration of his humanitarian aid activities in Chad, offering priceless insider lessons to those who want to follow in his footsteps.

The first part of the Special Issue ends with Vincenzo Ferrari’s thorough discussion of some of the changes that have occurred in the field of sociology of law between 1989 and today. Identifying promising lines of future socio-legal research, his contribution is best placed at the interface of the first and second parts of the present publication. Susanne Karstedt’s valuable reflections on all the memory papers of the first part support my view of Vincenzo Ferrari’s analysis as a perfect segue to the second.

The second part actually starts with Myrta Morales-Cruz’s personal testimony on her experience of the IISL Master’s some years back (see also Morales-Cruz 2012). Her account is likely to resonate with the memories of a whole range of other IISL alumni, particularly alumni from Latin American countries, many of whom have meanwhile, like Myrta, matured into proficient promoters of socio-legal scholarship in their respective societies. Like various other IISL alumni, Myrta recently returned to Oñati as a visiting professor in the Master’s herself. Matías Cordero is a further case in point. His memory paper illustrates the manifold ways the IISL can help innovative researchers writing from the margins to successfully advance new approaches in and to the sociology of law – in Matías’ case to children’s rights and childhood studies. Another ground-breaking

approach – here to contemporary legal pluralism – is offered by John Woodlock, who has also come back to Oñati as a visiting teacher. His in-depth discussion of the different regulations licensed aircraft maintenance engineers have to negotiate, highlights their law-making capacity as both “arbitrators of safety and authors of law”.

The papers by Cansu Bostan and Ratno Lukito shed light on unofficial or semi-official normative arrangements in two very different regions outside of Europe from equally innovative perspectives. While Cansu is an alumna of the IISL Master’s, who recently reconnected with Oñati as a visiting scholar, Ratno Lukito had no connection with the Institute prior to his participation in the IISL Memory project. In her analysis of the competitive normative framing of a cemetery for “martyrs” of the Kurdish Freedom Movement in Northern Kurdistan by the local government, on the one hand, and human rights lawyers, on the other, Cansu Bostan analyses, from a Foucauldian perspective, the subjectivities produced by the diverging truth regimes, in which the respective normative framings are embedded. Ratno Lukito’s paper, focusing on a discussion of the recent increase in *misyar* marriages in Indonesia (and other parts of the Muslim world), cannot be called a memory paper. It rather fulfils the function of pointing to a form of socio-legal scholarship which is decidedly underrepresented at the Oñati Institute. The paper in fact critically discusses, from a classical *fiqh* point of view, the status of *misyar* marriages in Islamic marriage law against the backdrop of rapidly changing Muslim societies. In contrast to regular marriages, husband and wife do not share the same roof in *misyar* arrangements, nor is the husband required to financially support his “wife”. Equally rare, at least in European socio-legal studies, is Lionel Zevounou’s critique of French law and French legal education from the perspective of Critical Race Theory (CRT). At the end of his paper, Lionel Zevounou, who spent several weeks in Oñati as visiting scholar during the Corona Crisis, calls for a greater influence of the scholarship developed at the IISL in recent years in French law faculties.

The second part concludes with reflections by Swethaa S. Ballakrishnen, who was recognised as an Honorary Mention of the Adam Podgorecki-Prize in 2020. They appreciate in the new perspectives offered by the papers of the second part a shared path dependence on the IISL as “a hub for creating extraordinary dialogue about socio-legal studies”.

At this point, I would like to express my sincere gratitude to all contributors of this Special Issue!

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