

# A penologist in the Basque Country: Reminiscences by Johannes Feest



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## Introduction

When I was asked to suggest a title for my paper, I immediately thought of something along the lines of “An American in Paris”, or perhaps even “Alice in Wonderland”. In my case the distinctively Basque town of Oñati was Paris, often paradise, but also wonderland. The main problem for me to decide was: how to introduce myself in this context. And why as a “penologist”? I could have said “A German in Oñati”, as most oñatiarras<sup>1</sup> probably saw me (but I saw myself rather as an Austrian or, more to the point, Bohemian, and in the context of very rural Oñati certainly as a bohemian). I could have chosen “a sociologist of law”, since my first publications on the German high courts and my very fruitful connection to the Center for the Study of Law and Society in Berkeley would have fitted that description, but that was a long time ago. Over the many years that I had spent at the University of Bremen, I had become a criminal law professor, “social science integrated” (in the US terminology), with special interest in prison law and prison reality. Therefore, I finally settled on “penologist”, meaning a “professor of pain” in the words of Nils Christie, one of my academic heroes.

But how did this get me to Oñati and the International Institute for the Sociology of Law? Early in my academic life, I had been part of a group of young German-language sociologists of law (including Wolfgang Kaupen, Wolfgang Stangl, and Erhard Blankenburg in particular). I went to meetings of the Research Committee on the Sociology of Law and met Renato Treves as well as Adam Podgorecki and other luminaries. And my first publication in English appeared in one of the first issues of the *Law and Society Review*, published by the Law & Society Association.

Yet after my appointment at the University of Bremen I had to concentrate on my teaching of criminal law. As a consequence, I had stopped going to socio-legal conferences, let alone to remote, almost mythical places like Oñati. Fortunately, one of the founding fathers of the institute, Volkmar Gessner, had joined me at my university in Bremen. And in 1993, he invited me to teach in the Oñati Master’s program, which he had very much created and organized himself. At the time, the title of that program was “Global Legal Interaction – a Social Science Perspective” and while he himself was teaching “Cross-Border Legal Interaction”, he asked me to teach the corresponding “Criminal Justice Reactions to Cross-Border Illegal Interaction”. I accepted and that made all the difference. I loved the place, the atmosphere, the food and the surrounding nature. At

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<sup>1</sup> An oñatiarra is a citizen of the town Oñati.

the end of my first course, my mainly Latin-American students, some of whom still had difficulties speaking and writing in English, told me: “now you need to learn Spanish!”

One year later Volkmar asked me to apply for the directorship. The competition was strong. However, when Klaus Röhl and Bill Felstiner decided to drop out of the race, I got the job (and started to learn Spanish).

## **What can a penologist do at the IISL?**

In Oñati, I decided to stay away from my home university, my own research interests and to concentrate on the unique project of this institute. I felt that it should not become reduced to an institute for comparative law nor to an international institute for criminology (things that do exist elsewhere anyway). And for myself I saw a chance to immerse myself in truly socio-legal work, even if research was not on the agenda of the IISL. What I found was quite promising in these respects; let me briefly go through the different parts of that agenda.

## **The IISL and its activities**

### **Workshops**

Workshops had been the starting point for the Oñati IISL. The Scientific Director has had an important role in selecting the workshops, at least for the duration of the two years of his or her term of office. I also inherited the program of a workshop selected by my predecessor, Roberto Bergalli, and administered by Serena Barkham Huxley. Serena left the IISL after the first year of my term of office. She was replaced by Malen Gordoia, who continues the great work until now. The workshops bring in the best of foreign scholars and I was able to renew my contacts with some of my old friends from the Research Committee and from the Law & Society Association, as well as making many new ones. My own contribution was the acquisition of funds for a series of workshops on

“Changing Legal Cultures”, which I organized together with Erhard Blankenburg, Volkmar Gessner and David Nelken.<sup>2</sup>

## **International IISL Master’s in the Sociology of Law**

A Master’s program had been developed and launched by Volkmar Gessner, in order to fill the winter period, when workshops were deemed less feasible. Susana Arrese was administering the program from the start, in addition to her work as secretary to the Scientific Director. From the beginning the curriculum consisted of a very good mix of different fields of socio-legal studies, while any fixation on positive law was and is out of the question. While the teachers came from all over the world, scholarships for the students came from the Spanish government. Therefore, I found a predominance of students from Latin America, Spain and the Basque Country. In my second year as a director, we had the first student from Cuba, Roberto Lastre, but also the first student from the United States, Todd Benson. It was only later that students from Africa were able to attend, on the basis of scholarships installed by Bill Felstiner (saving on the professors’ remunerations).

## **Publications**

In those early years the publications ensuing from the workshops were produced in-house and hardly ever reached the market i.e. the book-stores and libraries. Together with José Antonio Azpiazu, I was able to interest publishers, both in London and in Madrid, to take over the work of printing and distribution. Later this was perfected by Bill Felstiner in conjunction with Terry Haliday, by making it a refereed series, both with Hart Publishing in Oxford and Dykinson in Madrid.

## **Library**

The library, wonderful as it was and is, had some definite tendencies away from what I considered a truly socio-legal orientation. The great Andre-Jean Arnaud had planned every detail of the Institute, including the library, which he organized into seven areas of socio-legal studies. These areas can still be seen as a valid outline for the sociology of law in the widest sense. But in the years after his directorship, an additional “general”

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<sup>2</sup> This represented also my own modest return to the sociology of law, with publications in English (1997, 1998, 1999, 2001, 2004), Spanish (1999) and German (2000).



area (“Zero”, according to the IISL Library arrangement system) was introduced. Most Scientific Directors had not been overly concerned with what went on downstairs (Vincenzo Ferrari was an exception, but he came too late to change that). Therefore, the very able librarians downstairs, at the time Sole Aguirre and Elvira Muñoz, who were not specialists in socio-legal studies, though, were very much left to their own devices. On my arrival I found a substantial section of purely legal books that kept continually growing, probably because of demands from the Master’s students. And there was at least one other section that I considered weeds in the socio-legal garden: all sorts of semi-academic books about crime, mafia and the like. I tried to oppose these unseemly developments. But, at the time, there was enough money to buy all the books in the world as long as there was enough room in the shelves. Years later, when the shelves overflowed and the money dried out, I was called back repeatedly (by the then Scientific Directors Sol Picciotto and Vincenzo Ferrari) to weed out the unnecessary books and to promote stricter policies of acquisition. Meanwhile, however, the budget had decreased dramatically, creating new problems for the future of the library.

## Funding

Scholars from all over the world, when coming to Oñati, regularly asked the question who was paying the bill for all these activities. Usually, their first guess was the European Union and they were surprised to learn that almost everything was financed by the Basque government. This led to the next question: why would the Basque government do that? At the time, the best guess was that founding an international institute in this remote area was an attempt to counteract the bad image for the Basque country caused by the ongoing terror perpetrated by ETA. We need to remember that ETA was founded in Arantzazu, just above Oñati (Baeza 1995). But the creation of the Institute was much more than just a public relations effort, it was an attempt to open a window to the world, to let in some “fresh strong air” (as visualized by the poster of a conference organized by the IISL and the Justice Department of the Basque government in the year 2000) or, in other words, new ways of thinking about society, democratic governance and the role of law therein.<sup>3</sup>

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<sup>3</sup> Tamayo Salaberria 2001. The picture for the poster (an open window to the Concha in San Sebastian) was painted by José Manuel Ábalos.

## Challenges

When I arrived, I also found some organizational problems and staff conflicts at the Institute, but it was possible to solve these problems, with the invaluable help of Mavis Maclean as president and Bill Felstiner as secretary of the Research Committee (and the additional assistance of José Ramón Recalde, then president of the Governing Board of the IISL). The road seemed free to continue with the good work of the IISL.

## What can a penologist observe while living in Oñati?

From the early days of my stay in Oñati, I developed an intense interest in the **system of social control** in the Basque country. My everyday experience of living in Oñati showed me a network of tight informal social control based on family, church and (increasingly) the *Ikastolas*.<sup>4</sup> Everything seemed to proceed in peaceful ways and there were hardly any signs of crime or delinquency. All foreign visitors admired the way parents (mainly women) and children assembled in the late afternoons at the Plaza de los Fueros, where the children could play undisturbed by car traffic and the adults could sip their café con leche. Then I learned about *cuadrillas*<sup>5</sup> and *sociedades gastronómicas*.<sup>6</sup> Obviously, these were mechanisms to extend informal social control, but they also functioned as safety valves to alleviate the pressure of informal social control (on children and husbands).

I could go on to describe many more features of this seemingly peaceful system: fiestas, introduced in the mornings by the sound of the *txistularis*<sup>7</sup> walking thru all the streets; yearly competitions with juries deciding in public about the best cheeses, the biggest mushrooms etc. By the way, Oñati was always perfectly clean, already in the morning after such events.

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<sup>4</sup> An *ikastola* is a type of primary and secondary school in the Basque Autonomous Community, in Navarre and (to a much lesser extent) the French Basque Country. Originally, when Basque was not an official language, they were the only schools in which pupils were taught either entirely or predominantly in the Basque language. Nowadays, all schools in the Basque Country teach only, or predominantly, in Basque.

<sup>5</sup> A *cuadrilla* is in Basque culture a group of friends, that know each other from early youth and stay in contact for the rest of their lives. Usually, they get together at least once a week in the local bars.

<sup>6</sup> *Sociedades gastronómicas* are gastronomic societies, see further down below.

<sup>7</sup> A *txistulari* is the player of the *txistu*, a kind of fipple flute that has become a symbol for Basque revival. Txistularis usually play the flute with one hand and the drum with the other hand.

My best guides to all these features of Basque everyday life were the taxi driver Gregorio Lasagabaster (when he drove me from the airport in Bilbao to Oñati), and IISL Administrative Director José Antonio Goyenaga (on our trips to the authorities in San Sebastian and in Vitoria-Gasteiz). And there were, of course, the other members of the staff, like José Antonio Azpiazu, with whom I traveled to Barcelona and Madrid, and who was the first to invite me to a Txoko.<sup>8</sup> However, for me as a Scientific Director without a firm grasp of the local and national languages, the Director's secretary, Susana Arrese, was a constant and indispensable help.

It was only much later that I got acquainted with people from the local community. As a matter of fact, I was invited by my Spanish language teacher, Belén Goñi, to join a group of oñatiarras for long walks in the surrounding mountains, or even in Navarra and in the part of the Basque Country, which belongs to France (i.e., "Northern Basque Country"). This reminded me of something I had learned from Eve Darian-Smith, one of the master's teachers, who told me about her research in Kent, where the local people once a year walk along and around the city limits to symbolically re-affirm their territorial rights (Darian-Smith 2002). In a somewhat similar, fashion my Basque friends were reaffirming their connection to their home land, a seemingly friendly and non-violent "soft" form of nationalism. I have stayed in touch with them ever since and met them whenever I came back to Oñati for Board Meetings or other official occasions.

At that point, the penologist was in some danger of falling into the trap of romanticizing the Basque situation. In the terminology of anthropologists, I had to beware of "going native". But there were already signs that not everything was as harmonious as it had seemed on first view:

- There were posters and leaflets almost everywhere demanding that the Basque prisoners be brought back closer to their homes. But that seemed only fair to the penologist, who had been making that same argument in the context of German prisons.
- From time to time I could hear (from my rooms in the Residencia) the slogan "PNV español", shouted by radical Basque nationalists, denouncing the ruling Basque Nationalist Party as "Spanish", obviously the worst epithet they could think of.

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<sup>8</sup> A *txoko* (in Spanish *sociedad gastronómica*), is a typically Basque type of closed gastronomical club where men come together to cook, eat and socialize. Women and other family members as well as friends can be occasionally invited.

- The penologist also saw, near the Antigua Universidad,<sup>9</sup> a prison-like building surrounded by barbed-wire fences. When he asked what it was, it turned out to be barracks of the Spanish Guardia Civil. The officers of the Guardia Civil were fenced-in for their own protection. And they were forbidden to visit local bars or restaurants.
- There was a case of arson in a nice, simple restaurant I often went for lunch with the administrative director. The restaurant was the *Batzoki*, which also served as headquarters of the PNV. It was then closed to the public.
- From time to time, ETA demanded that all shops remained closed as a sign of protest. And all shop-owners obeyed. It was unclear, though, whether they did so out of fear or in agreement with ETA's demands.
- In the many bars of Oñati, there was always music and lively talk, but no heated political discussion (as there would be in Germany on the traditional "Stammtisch", i.e., the regulars' table); it dawned on me only much later, that supporters and victims of ETA shared the same bars, but did not share a common discourse. Maybe some of them had friends or relatives incarcerated as Etxarras, i.e., members of ETA, while others had suffered from the violence or extortions of ETA. This amounted to a culture of silence.
- While I did not learn much about the conflict from my local friends, I was introduced to some of the background by reading (on the prompting of one of the librarians) Bernardo Atxaga's book "Esos cielos" ("Those Skies"). It describes the long journey by bus of a Basque woman released from prison in Catalonia, where she had served a sentence for political activities. Back home public condemnation was awaiting her for having renounced her former political views. By describing the atmosphere in that bus, Atxaga paints a vivid portrait of the atmosphere of that time and of the Basque conflict. I have become a reader of Atxaga's work ever since.

When friends in Germany asked me at the time whether I was not afraid about the ETA terror, I told them that I felt completely safe in Oñati (since I saw myself "in the eye of the hurricane"). And I pointed out that killings by ETA seemed to happen exclusively outside the Basque Autonomous Province, at any rate outside of Oñati. Today I know that this was not true. Wikipedia now has a long list of ETA killings that shows that they took place

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<sup>9</sup> The *Antigua Universidad* aka *Universidad Sancti Spiritus*, is the oldest university in the Basque Country. Built in 1540, by bishop Rodrigo Mercado de Zuazola, it houses today the International Institute for the Sociology of Law.



from the beginnings also in the Basque Country.<sup>10</sup> But the victims were almost exclusively Spanish military officers and members of the Guardia Civil (presumably not much of a concern for Basque nationalists). While, at the time, I had not much of a chance to find out the full truth about the killings, I was aware of extortions directed against Basque industrialists, who were asked to pay “revolutionary taxes”.

Such a case was the abduction of the Basque industrialist José Maria Aldaya in May 1995. Every day, when I listened to the morning news on the Basque radio, it was announced how many days he was kept by ETA at an unknown location. When he was finally freed in April 1996, he had spent 341 days in captivity. As we later learned, he was kept in a cabin three and a half meters long, one meter wide and two meters high. This place was closed, it had no window and only one light bulb.

Before Aldaya’s liberation, in February 1996, a killing by ETA took place in San Sebastian, which made a big impression at the IISL. The victim, Fernando Múgica Herzog, was a lawyer from San Sebastian, a socialist and brother of a former Basque Justice Minister. And only days after Múgica, Prof. Francisco Tomás y Valiente was killed in his office at the Universidad Autónoma de Madrid. He was an Ex-President of the Spanish Constitutional Court and a great friend of the IISL. It was my sad duty to send condolences to the families.

Still closer to me as penologist was the killing of Francisco Javier Gomez Elósegui, a prison psychologist from Martutene prison in San Sebastian. I learned about it immediately, since one of my students, who knew him, received the message of this murder by phone, and I still remember her horrified face. Only recently I learned from one of her recent publications that he was only one of altogether four staff members of that prison that became victims of that “conflict” (Varona 2020, 13–14).

## The “Basque Conflict” at the IISL

How was the impact of all this on the academic work at the institute, you might ask? Not much, I am afraid, but at least some. During my stay at the institute, we had three

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<sup>10</sup> [https://es.wikipedia.org/wiki/Anexo:Asesinatos\\_cometidos\\_por\\_ETA\\_desde\\_la\\_muerte\\_de\\_Francisco\\_Franco](https://es.wikipedia.org/wiki/Anexo:Asesinatos_cometidos_por_ETA_desde_la_muerte_de_Francisco_Franco)

workshops dealing with aspects of the ongoing “conflict”. All of them required a certain amount of diplomacy on the part of the Scientific Director.

Fernando Reinares (then Distance University) chaired a workshop on “European Democracy against Terrorism” (May 1996), with some of the foremost international scholars on the subject. During this meeting, a controversy irrupted that involved scholars connected to the institute. José Ramon Recalde, president of the governing board of the institute, offered a reading of terrorism different from that of Roberto Bergalli, my predecessor as Scientific Director. That said, these conflicting views were discussed in the usual academic fashion, even though only Recalde contributed his paper to the ensuing publication.

Only a month later, Juan Dobón (Buenos Aires) and Iñaki Rivera (Barcelona) presented a workshop in the Spanish language on “Secuestros Institucionales y Derechos Humanos: la Cárcel y el Manicomio” (Institutional Kidnappings and Human Rights). An interesting and lively workshop on prisons and psychiatric detentions as cases of “institutional kidnapping”. I remember, however, that I felt the need, in my introductory words, to mention non-institutional kidnappings (i.e., by ETA). That was not taken up, though, either in the discussion of the workshop, or in the publication.

Most interesting and eventful for me was the third workshop, which took place in the spring of my second year. Marco Mona, head of the Association for the Prevention of Torture, presented a workshop on “Prevention of Torture in Southern Europe”. Part of the background was, that the Spanish government had refused to publish the report of the European Committee on Torture (CPT), because it included accusations of torture inflicted on presumed members of ETA. Among the participants were Prof. Rod Morgan (University of Bristol), the author of important works on torture and an assessor for the CPT. Another prominent person among the participants was Arnaldo Otegi, lawyer and parliamentarian for Herri Batasuna, the so-called “political arm” of ETA. He was later imprisoned for supposed contacts to ETA, but at the end became an important figure in the peace process.

A few days before the workshop, a young member of the Ertzaintza, the Basque police came and wanted a list of the workshop participants. We told him that we could not do that. He warned us that there might be demonstrations and even disruptions of the workshop. Nevertheless, all went well, without any disruptions. Yet when, at the end of the workshop discussions, we emerged through the main entrance of the Antigua Universidad, we found (in plain sunshine) a large group of people. They turned out to be

relatives of those Basque prisoners, who were incarcerated far from their homes in various parts of Spain. What followed were friendly and interesting discussions between the workshop participants and these relatives, mostly mothers and grandmothers of prisoners. For the first time, the IISL found itself in the middle of the Basque conflict. We felt lucky that we had managed to preserve an academic and at the same time humanist image.

Still, just before the end of my time as Scientific Director, the Basque conflict came much closer to my sheltered life in Oñati. When the prison guard José Antonio Ortega Lara was freed in July 1997, after 532 days in captivity, it turned out that he had been kept all this time in nearby Arrasate/Mondragon. Among the people involved in this crime was the fiancée of a waitress I had often talked to in one of the local restaurants. I never saw her again.

Only days after this turn of events, ETA renewed its demand to bring their prisoners back to the Basque country by abducting a young conservative politician, Miguel Ángel Blanco. This time, however, ETA did not risk another long-term captivity of their prey, but gave the government 16 hours. When their demands were not met, they executed Miguel Angel Blanco. This caused an unusual commotion in Basque society. In Oñati, a small group of people had assembled every week in front of the City Hall, in a silent protest against ETA. On the morning after this cold-blooded murder, many people from the community joined them at the Plaza de los Fueros, including the complete staff of the institute.

## **A participant observer at the IISL**

Let me try to summarize my experience as a penologist turned participant observer. When I came to the IISL, I was quite unprepared for the job as a scientific director: I spoke hardly any Spanish and no Basque at all and I had no administrative experience. I was plunged into a situation I had not expected, almost like Alice in Wonderland. And my experience as a penologist did not help, at least not at the time. Still, I was ready and open for experiencing a new world. And a new world it was, at least in two respects.

One was Basque culture and society (including the seemingly endless internal conflict). And another world came to Oñati from the outside in the form of junior and senior scholars, many of whom stayed for only a few days, but some considerably longer

(especially the students). Therefore, my role was on the one hand that of a participant observer of the Basque world, and on the other hand that of an interpreter of the situation to the foreign guests.

In the aftermath of the Basque Conflict, there were good and bad news. The bad news was that ETA in the year 2000 shot and almost killed the former president of the IISL Board, José Ramón Recalde. He survived, maimed and incapacitated. The good news was that ETA announced a final ceasefire in 2011 and dissolved in 2018. The IISL became an ideal place to accompany, in academic workshops with international participation, the ensuing processes of transitional justice.

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