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Enlightened remembering and the paradox of forgetting: from Dante to data privacy

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ABSTRACT

This paper adopts a law and humanities-based methodology to critique the binary distinction between remembering and forgetting that often features in law and policy. Using the right to be forgotten as a case study, the paper argues that such a distinction conceals the many ways that remembering and forgetting are intrinsically connected. In particular, a binary distinction understands forgetting as *not remembering*. But forgetting can also take the form of *enlightened remembering*: a deliberate choice to think differently about the past, an attempt to remember it in more positive or constructive ways. Drawing on insights from Dante's *Divine Comedy*, the paper pursues a normative argument about the value of enlightened remembering and then assesses the implications for legal discourse.

KEYWORDS Right to be forgotten; right to forget; remembering and forgetting; law and literature; Dante

Introduction

Since antiquity, educators and philosophers have sought to cultivate the capacity to remember as a skill or art, an *ars memoriae*.[1] In contrast, forgetfulness has almost always been considered a defect or a fault.[2] The general tendency to treat remembering and forgetting as binary opposites, the former understood as good and the latter bad, features prominently in legal discourse. Most obviously, perhaps, accurate remembering is understood as essential to the pursuit of justice. Justice is clearly not served if the politico-legal system forgets, marginalizes or fails to take seriously

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[1]Harald Weinrich, *Lethe: The Art of and Critique of Forgetting* (Steven Rendall tr, Cornell University Press 2004) 9.

[2]Gunnthorunn Gudmundsdottir, *Representations of Forgetting in Life Writing and Fiction* (Palgrave MacMillan 2017) 7.

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victims and the wrongs they have suffered. For this reason, the right of access to justice and procedural justice or due process are considered sacrosanct values in legal systems founded on the rule of law and human rights.[3] Moreover, remembering in the pursuit of justice is a core element of legal procedure and process. In criminal and civil trial courts, we expect defendants, claimants, and witnesses to rely on their memories to provide accurate and truthful accounts of what really happened. When memory fails or when witnesses provide otherwise inaccurate accounts, the very integrity of the proceedings is put into question.[4]

Another way that the binary distinction between remembering and forgetting finds expression in legal discourse is in the operation and theory of precedent. First, though precedent plays a more formal role in common law legal systems, courts in civilian legal systems also draw and build on previous decisions when producing their judgments.[5] In seeking to persuade a court that it should decide a case in one way or another, it is in lawyers' interests to remember rather than forget, to be as familiar as possible with the previous decisions of the courts. Second, legal theorists have sometimes depicted precedent as a sort of 'repository' of memories of the community.[6] This is certainly true of the classical common law theorists with Blackstone, for example, describing the common law as the 'accumulated wisdom of the ages'.[7] But it is also true of more contemporary theorists such as Ronald Dworkin, for whom, as Postema explains, law is 'the political memory of a community, the moral record of its members' common life'.[8] For these reasons and more, 'the explicit training in and historical practice of law' has always been presented 'as a discipline of memory', as Goodrich puts it.[9]

But remembering and forgetting cannot be so easily disentangled. Schudson observes that '[e]very memory is also a forgetting since it is choosing of what, among a multitude of possibilities, to keep in mind'.[10] This is true

[3]See Francesco Francioni (ed) *Access to Justice as a Human Right* (Oxford University Press 2007); Jeremy Waldron, 'The Rule of Law and the Importance of Procedure' (2011) 50 Nomos 3; Lawrence Byard Solum, 'Procedural Justice' (2004) 78 Southern California Law Review 181.

[4]Cf Jerome Frank, *Law and the Modern Mind* (Coward-McCann 1949) x.

[5]J. Schumann, 'Precedents – A Question of Memory' in Amalie Frese and Julius Schumann (eds), *Precedents as Rules and Practice* (Nomos 2021) 157.

[6]Gerald J. Postema, *Bentham and the Common Law Tradition* (Clarendon Press 1986) 66. For Oliver Wendell Holmes, '[t]he law is the witness and external deposit of our moral life'. Oliver Wendell Holmes, 'The Path of the Law' (1997) 110(5) Harvard Law Review 991, 992.

[7]Postema, ibid 63 quoting Blackstone (1 Comm. 442).

[8]Gerald J. Postema, *Legal Philosophy in the Twentieth Century: The Common Law World* (Springer 2011) 445. On the similarities between Dworkin and the classical common law theorists, see Dan Priel, 'Making Sense of Nonsense Jurisprudence' (2020) Osgoode Legal Studies Research Paper, Available at SSRN: <https://ssrn.com/abstract=3696933> accessed 24 February 2023.

[9]Peter Goodrich, *Law in the Courts of Love: Literature and Other Minor Jurisprudences* (Routledge 1996) 114.

[10]Michael Schudson, *Watergate and American Memory: How We Remember, Forget, and Reconstruct the Past* (Basic Books 1992) 220 quoted in David Lowenthal (1993) 'Memory and Oblivion' (1993) 12(2) Museum Management and Curatorship 171, 171.

of every practice, including legal practice. For instance, judges use formal methods in their reasoning to establish which cases, among a multitude of possibilities, they must follow, and which can be ignored or glossed over.[11] These methods are acts of both legal remembering *and* forgetting. Even those cases that may have attracted public attention at the time they were decided – perhaps *especially* those cases if the reasoning proved legally or politically controversial – can quickly fade into legal oblivion if, in future cases, judges determine that these previous cases must be distinguished from the facts before them, or overruled.

In insisting on a binary distinction between remembering and forgetting, the many ways they are reciprocally intertwined remain concealed, something that has been highlighted by St Augustine,[12] Martin Heidegger[13] and others.[14] Moreover, we reinforce the notion that forgetting can be understood only in negative terms and, if we stick to this narrative in legal discourse, we might reach the conclusion that law should never forget.

But as Schlink argues, 'there is no either-or. Both to remember and to forget are intrinsic to the law'.[15] Indeed, once we look past the simplistic binary distinction between remembering and forgetting, we see that law forgets or, perhaps more accurately, law makes space for forgetting,[16] in ways that cannot be described as negative or destructive.[17] One example is the right to be forgotten in data protection law. Consider a situation where intimately private information about an individual finds its way online and goes 'viral'. As a result, the individual or 'data subject', as the data protection lawyers put it, is embarrassed or humiliated and has grounds to request that this material be erased under the right to be forgotten. The individual who successfully invokes this right will hope that others will eventually forget about the personal information that has appeared online i.e. that his past will *be forgotten* by others. At the same time, he may hope that the successful invocation of the

[11] See, in this context, Timothy Schwarz, 'Cases Time Forgot: Why Judges Can Sometimes Ignore Controlling Precedent' (2007) 56(5) Emory Law Journal 1475.

[12] Augustine, *The Confessions of St Augustine* (Edward Pusey tr, Dent 1970) 218.

[13] Martin Heidegger, *Being and Time* (John Macquarrie and Edward Robinson trs, Blackwell 1978) 389.

[14] See, for example, Marc Augé, *Oblivion* (Marjolijn de Jager tr, University of Minnesota Press 2004) 14 ff; Bradford Vivian, *Public Forgetting: The Rhetoric and Politics of Beginning Again* (Pennsylvania State University Press 2010); Christine Abbt, 'Forgetting: In a Digital Glasshouse' in Florent Thouvenin and others (eds), *Remembering and Forgetting in the Digital Age* (Springer 2018).

[15] Bernard Schlink, *Guilt about the Past* (Beautiful Books 2010) 56.

[16] The use of the term 'space' (or 'breathing space') in this paper is inspired by Julie Cohen's work on privacy: Julie Cohen, *Configuring the Networked Self* (Yale University Press 2012) 149.

[17] For influential scholarship arguing that not all forms of forgetting or forgetfulness should be understood in negative ways, see, *inter alia*, Jean-François Blanchette and Deborah Johnson, 'Data Retention and the Panoptic Society: The Social Benefits of Forgetfulness' (2002) 18 The Information Society 33; P. Connerton, 'Seven Types of Forgetting' (2008) 1(1) Memory Studies 59; Viktor Mayer-Schönberger, *Delete: The Virtue of Forgetting in the Digital Age* (Princeton University Press 2009); Aleida Assmann, *Formen des Vergessens* (Wallstein Verlag 2016); David Reiff, *In Praise of Forgetting: Historical Memory and Its Ironies* (Yale University Press 2016).

right may allow him to *forget* the past too.[18] But, if we understand forgetting as *not remembering*, even the most effective enforcement of the right to be forgotten cannot guarantee that others – and perhaps especially the individual himself – will indeed forget. In fact, in many cases, the more accurate way to describe what happens in situations like this is to say that people may eventually learn to 'come to terms with' and 'move on' from a difficult or troublesome experience in the past. Here, forgetting takes the form of *enlightened remembering*: a deliberate choice to think differently about the past, an attempt to remember it in more positive or constructive ways.[19]

The paper pursues a normative argument, emphasizing the value of enlightened remembering for the individual. It adopts a law and humanities-based methodology, turning to Dante Alighieri's *Divine Comedy (La Divina Commedia)* as a source of inspiration and a spur to further reflection.[20] Perhaps because it usually understood as a religious poem, seeking to impart theological lessons, the *Divine Comedy* features rarely in legal scholarship (or any form of scholarship about law for that matter), at least in the English-speaking world.[21] But this view of the *Commedia* does not take account of its profound impact on culture, especially on literature and the arts from the nineteenth century onwards.[22] More to the point, the poem reveals insights about the relationship between remembering and forgetting in the pursuit of a worthwhile life, insights that remain as relevant today as when Dante wrote the poem in the early fourteenth century. This might seem like an extraordinary claim but the remarkable thing about Dante, or his 'greatness', as the editors of a recently published book have put it, 'lies in the ways in which … he situates himself always in "our" present – the present of reading'.[23] Before we move on to Dante, however, we must first set out what this paper means by 'forgetting'.

[18]The difference between interests in forgetting and being forgotten by others has been discussed in the literature. See, for instance, Antoinette Rouvroy's paper, '*Réinventer l'Art d'Oublier et de se Faire Oublier dans la Société de l'Information? Version augmentée*' as cited and further discussed in Bert-Jaap Koops, 'Forgetting Footprints, Shunning Shadows. A Critical Analysis of the "Right to be Forgotten" in Big Data Practice' (2011) 8(3) SCRIPTed 229 <http://script-ed.org/?p=43> accessed 24 February 2023. The importance of being able to forget in the digital environment was one of the underlying themes of Mayer-Schönberger's book, *Delete* (n 17). Elsewhere, Mayer-Schönberger explains that this book '[argues] for forgetting not only because others may access my past, but because it can even be problematic when I access my own past': Viktor Mayer-Schönberger, 'Remembering (to) Delete: Forgetting Beyond Informational Privacy' in Thouvenin and others (n 14) 119.

[19]Cf. Weinrich on 'enlightened forgetting' (n 1) chapter 4.

[20]Dante Alighieri, *The Divine Comedy* (Robin Kirkpatrick tr, Penguin Books 2012).

[21]Exceptions include: James Boyd White, 'Free Speech and Valuable Speech: Silence, Dante, and the Marketplace of Ideas (2004) 51(3) UCLA Law Review 799; Justin Steinberg, *Dante and the Limits of Law* (University of Chicago Press 2013); David Gurnham, 'Hell has no Flames, only Windows that won't open': Justice as Escape in Law and Literature' (2019) 13(2) Law and Humanities 269; Diego Quaglioni, 'The Law' in Manuele Gragnolati, Elena Lombardi and Francesca Southerden (eds), *The Oxford Handbook of Dante* (Oxford University Press 2021).

[22]Robin Kirkpatrick, 'Introduction' in Dante (n 20) xxxvii.

[23]Manuele Gragnolati, Elena Lombardi and Francesca Southerden, 'Introduction', in Gragnolati, Lombardi and Southerden (eds), (n 21) xxxi.

From forgetting as not remembering to forgetting as enlightened remembering

Throughout history, politico-legal systems have regularly designed and employed what Paul Ricœur calls 'institutionalized forms of forgetting'.[24] Apart from the right to be forgotten, examples include amnesties,[25] laws on spent convictions,[26] bankruptcy laws[27] and statutes of limitations.[28] At first glance, at the heart of each of these areas of law are questions about what, when and how best to remember and forget in the pursuit of social cohesion and, at least in some cases, individual wellbeing.

One way, then, to understand laws such as these is to say that they encourage forgetting on the part of the community. However, writing about the right to be forgotten, Jones is critical about the 'word choices' of 'forgetting' and 'oblivion' as they apply in this context.[29] She argues that 'their negative connotations do no favors to the underlying values they intend to protect', insisting that what is really at stake here is a 'larger cultural willingness to allow individuals to move beyond their personal pasts, a societal capacity to offer forgiveness, provide second chances and recognize the value of reinvention'.[30] For these reasons, Jones prefers the term 'digital redemption' rather than 'forgetting' or 'oblivion'.

Another criticism of the use of the language of 'forgetting' in this context is that forgetting is usually easier said than done. Challenging the dominant socio-cultural narrative that remembering is always better than forgetting, Nietzsche argues that we should seek to overcome the habit of 'cling[ing] relentlessly to the past'[31] and engage in more ruthless forms of forgetting.[32] On his account, history must serve life and when history is of no use to the

[24]Paul Ricœur, *Memory, History, Forgetting* (Kathleen Blamey and David Pellauer tr, University of Chicago Press 2004) 452.

[25]The amnesty, from the Greek *amnēstia*, meaning 'forgetfulness' has a long legal history. See, inter alia, Kaja Harter-Uibopuu and Fritz Mitthof, *Vergeben und Vergessen? Amnestie in der Antike* (Holzhausen 2013); Lowenthal 'Memory and Oblivion' (n 10); Ross Poole, 'Enacting Oblivion' (2009) 22 International Journal of Politics, Culture, and Society 149; Vivian, *Public Forgetting* (n 14) 43 ff.

[26]Section 4 of the UK's Rehabilitation of Offenders Act 1974, for instance, allows for certain categories of criminal conviction to become spent so that the ex-offender is not required to disclose details of the conviction, save in specific situations outlined in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.

[27]In the laws of bankruptcy, we encounter references to 'being forgotten'. In *R (Balding)* v *Secretary of State for Work and Pensions* [2007] EWHC 759 (Admin), Davis J at [48] discusses the policy 'underpinning' s 281 of the Insolvency Act (1986), which releases bankrupt persons from all of their debts. Davis J explains that the policy here is to 'wipe the slate clean and, broadly speaking, enable the bankrupt to make a fresh start'.

[28]Florent Thouvenin and others, 'Part II Normative Concepts of Information Management' in Thouvenin and others (eds), *Remembering and Forgetting in the Digital Age* (n 14).

[29]Meg Leta Jones, *Ctrl+Z: The Right to be Forgotten* (New York University Press 2016).

[30]Ibid 12 and 11.

[31]Friedrich Nietzsche, 'On the Uses and Disadvantages of History for Life' in Daniel Breazeale (ed), *Untimely Meditations* (Reginald John Hollingdale tr, Cambridge University Press 1997) 61.

[32]Paul De Man, 'Literary History and Literary Modernity' (1970) 99(2) Daedalus 384, 388.

present we must learn to live 'unhistorically'.[33] Otherwise the past risks becoming 'the gravedigger of the present'.[34]

But how realistic is the ruthless forgetting that Nietzsche advocates? After all, we cannot will ourselves to forget nor can we force others to do same. No law or any other form of coercion or medical treatment can definitively ensure that a person will forget. Witnessing his wife's descent into madness because she cannot forget the evil misdeeds they have committed, Macbeth pleads with her doctor:

> 'Canst thou not minister to a mind diseased,
>
> Pluck from the memory a rooted sorrow,
>
> Raze out the written troubles of the brain
>
> And with some sweet oblivious antidote
>
> Cleanse the stuffed bosom of that perilous stuff
>
> Which weighs upon the heart?

The doctor replies to Macbeth:

> Therein the patient
>
> Must minister to himself.[35]

The patient must minister to himself, yet, at the same time, he cannot will himself to forget. In fact, scientific studies have shown that the more actively one tries to forget something, the more likely it is that it will stick in the memory.[36]

It is not always possible to simply forget, to have episodes from the past fade into oblivion, never to be remembered again. This type of forgetting, *forgetting as not remembering*, might occur when law carves out space for forgetting, but it is less likely to happen in a spontaneous way when the memories concern difficult or painful episodes from the past.[37] In these cases, how can we speak in any meaningful way about law making space for forgetting?

We arrive at the answer by rejecting the binary distinction between remembering and forgetting and reminding ourselves that '[t]o forget is

[33]Nietzsche (n 31) 59.
[34]Ibid.
[35]Macbeth 5.3:39–46.
[36]See Daniel Wegner and David Schneider 'The White Bear Story' (2003) 14(3/4) Psychological Inquiry 326. In the legal context, see Linda Demaine 'In Search of an Anti-Elephant: Confronting the Human Inability to Forget Inadmissible Evidence' (2008) 16(1) George Mason Law Review 99.
[37]Of course, it is also true that particularly painful or traumatic memories may be repressed as Sigmund Freud famously discusses. This observation further demonstrates the complexity of the relationship between remembering and forgetting.

to think otherwise'.[38] So understood, we can propose that another form of forgetting (or remembering) is *forgetting as enlightened remembering*: a conscious choice on the part of an individual or the community to think differently about the past, to attempt to remember it in a more positive or constructive manner.[39] Understanding enlightened remembering as a form of forgetting in this way would also appear to address Jones' concerns that the 'negative connotations' associated with the language of forgetting and oblivion mean that inadequate expression is given to the values of redemption, forgiveness and reinvention that are at the foundation of laws such as the right to be forgotten. Indeed, thinking differently about the past in the way enlightened remembering requires should not be understood as an attempt to rewrite the past, rather, drawing on Charles Taylor, it is an attempt to 'redeem' it, to learn from it and to integrate it into 'a life story which has sense or purpose'.[40] Several philosophers and theorists have shown an interest in or discussed this approach (or at least an approach that emphasizes the importance of exercising careful judgement when attempting to remember the past). These include, alongside Jones, Volf on 'remembering rightly';[41] Kierkegaard on 'remembering poetically';[42] Assmann on 'constructive' and 'therapeutic' forgetting;[43] Kant on 'judicious memory';[44] Carter Snead on 'remembering fitly and truly';[45] and both Margalit's and Minnow's conceptions of forgiveness.[46]

The right to be forgotten: creating space for forgetting

Forgetting, then, should not only be understood as not remembering rather we can also conceptualize it as enlightened remembering, at least in some situations. It is against this background that we move on to our case study: the right to be forgotten in data protection law. Before we begin our analysis

[38]Goodrich (n 9) 127.
[39]*Cf.* Weinrich on 'enlightened forgetting' (n 1) chapter 4.
[40]Charles Taylor, *The Sources of the Self: The Making of Modern Identity* (Harvard University Press 1989) 50–51, quoted by Miroslav Volf, *The End of Memory: Remembering Rightly in a Violent* World (Wm B Eerdmans Publishing Co 2006) 184.
[41]Ibid.
[42]Søren Kierkegaard, 'Either/Or, A Fragment of Life' in Howard Hong and Edna Hong (eds), *The Essential Kierkegaard* (Princeton University Press 2000) 56.
[43]Assmann (n 17) 57–66.
[44]Weinrich (n 1) 71 cites Kant's *Anthropologie* (especially the section 'Zum Gedächtnis') and Kant's essay 'Über Pädagogik'.
[45]O. Carter Snead 'Memory and Punishment' (2011) 64(4) Vanderbilt Law Review 1195.
[46]For Margalit, forgiveness is *both* a voluntary decision or 'policy' to think differently about the past *and* a matter of 'overcoming resentment and vengefulness, of mastering anger and humiliation'. See Avishai Margalit, *The Ethics of Memory* (Harvard University Press 2002) 201–7. For Minnow, forgiveness is a 'conscious, deliberate decision to forgo rightful grounds for grievance against those who have committed a wrong or harm'. See Martha Minnow, 'Forgiveness, Law and Justice' (2015) 103(6) California Law Review 1615, 1618.

of our case study, it will be helpful to provide some context by situating the right to be forgotten within the broader fields of privacy law and theory.

By 'privacy law', we mean that 'hodgepodge' of various statutes, common law actions and equitable remedies that safeguard privacy interests to one degree or another.[47] The most prominent of these, in the English context at least, are the tortious action for misuse of private information and data protection law (see the General Data Protection Regulation (GDPR) and the Data Protection Act (2018)).[48] Of the various definitions of privacy,[49] this paper prefers a conceptualization of privacy that results from a synthesis of Jeffrey Reiman's and Julie Cohen's work.

For Reiman, the idea of privacy is closely intertwined with the idea of personhood, and we can better understand this connection and its full significance by recognizing that privacy is a social practice. He explains:

> *Privacy is a social ritual by means of which an individual's moral title to his existence is conferred*. Privacy is an essential part of the complex social practice by means of which the social group recognizes – and communicates to the individual – that his existence is his own. And this is a precondition of personhood.[50] [emphasis in the original]

Personhood does not merely consist of the individual announcing his uniqueness to the world or exercising 'control' or 'self-determination' as an 'autonomous' individual, even though it is sometimes presented in this way. It further requires respect or acknowledgement on the part of others.[51] But 'acknowledgment' here means something more fundamental than simply recognizing that somebody else physically exists. Following Reiman, we are referring to a 'complex social practice', made up of a rich array of social norms, within which society acknowledges the moral personhood of the individual and, so acknowledged, the individual has the legitimate expectation that 'his existence is his own'. Only then is it possible to speak of control, autonomy and self-determination, as they are conceptualized by liberal theory.

Within this complex social practice, privacy norms play an especially important role since they help create the 'condition of privacy', described by Cohen as 'breathing room for socially situated subjects to engage in the

[47] Chris Hunt, 'The Common Law's Hodgepodge Protection of Privacy' (2015) 66 University of New Brunswick Law Journal 161.

[48] See, *inter alia*, Thomas Bennett and Daithí Mac Síthigh, *The Campbell Legacy: Reflections on the Tort of Misuse of Private Information* (Routledge 2017); Fiona Brimblecombe and Helen Fenwick, 'Keeping Control of Personal Information in the Digital Age: Efficacy and Equivalence of Tortious and GDPR/DPA Relief?' (2022) 13 Law Quarterly Review 456.

[49] For an excellent analysis and attempt to find coherence in various essentialist definitions, see Bert-Jaap Koops and Maša Galič, 'Unite in Privacy Diversity: A Kaleidoscopic View of Privacy Definitions' (2021) 73 (2) South Carolina Law Review 465.

[50] Jeffrey Reiman, 'Privacy, Intimacy, and Personhood' (1976) 6(1) Philosophy & Public Affairs 26, 39.

[51] Consider in this context Fichte and Hegel on 'recognition' (*Anerkennung*). See generally Robert Williams, *Recognition: Fichte and Hegel on the Other* (SUNY Press 1992).

processes of boundary management through which they define and redefine themselves as subjects'.[52] Breathing room is generated when, as Reiman puts it, 'other people are deprived of access to either some information about you or some experience of you'.[53]

The community accepts that the individual must be allowed to enjoy the condition of privacy in certain contexts and, as we have seen, acknowledging this right is an important signal to the individual that her existence is her own. But the condition of privacy is fundamental for human dignity and personhood also because it creates breathing space for forgetting, in both forms considered in this paper: forgetting as not remembering and forgetting as enlightened remembering. To illustrate this point, we now turn to the right to be forgotten as it has been developed in data protection law.[54]

The term 'right to be forgotten' is used interchangeably with both the 'right to erasure' under Article 17 GDPR and the 'right to request delisting' identified by the Court of Justice of the European Union (CJEU) in the 2014 *Google Spain* case.[55] Subject to certain exceptions, Article 17 GDPR provides for a *right to erasure* of personal data on distinct grounds.[56] To the extent that the data controller is required to 'erase' any personal information it holds about the data subject, we might say that the data subject is exercising her right to be forgotten. Complete erasure of information, however, is easier said than done in situations where the personal data is circulating online and perhaps impossible in those cases where the information has gone 'viral'.[57] Moreover, even for those who have not experienced fame or notoriety online, there are unique privacy-related concerns associated with search engines. Using the right search terms, an internet user can collect in one place various pieces of information about others. Of course, the data subject might not be perturbed about the availability of each distinct piece of information on source websites (in any case, the availability of such information might be

[52] Julie Cohen, 'Surveillance versus Privacy: Effects and Implications' in David Gray and Stephen Henderson (eds), *The Cambridge Handbook of Surveillance Law* (Cambridge University Press 2017) 458.

[53] Jeffrey Reiman, 'Driving to the Panopticon: A Philosophical Exploration of the Risks to Privacy Posed by the Highway Technology of the Future' (1995) 11(1) Santa Clara High Technology Law Journal 27, 30.

[54] For scholarship that pays close attention to the 'forgetting' aspect of the right to be forgotten, see, *inter alia*, Paulan Korenhof, 'Forgetting Bits and Pieces: An Exploration of the "Right to be Forgotten" as Implementation of "Forgetting" in Online Memory Processes' (2013) TILT Law & Technology Working Paper No. 4/2013 <https://ssrn.com/abstract=2326475> accessed 27 February 2023; Patrick O'Callaghan and Sylvia De Mars, 'Narratives about Privacy and Forgetting in English Law' (2016) 30 (1–2) International Review of Law Computers and Technology 42.

[55] Case C-131/12 *Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González* (13 May 2014). Sometimes known as the 'right to be delisted' or the 'right to be deindexed', the 'right to request delisting' is perhaps a more accurate way to describe the right in question. The European Data Protection Board uses this terminology. See *Guidelines 5/2019 on the criteria of the Right to be Forgotten in the search engines cases under the GDPR (part 1)* <https://edpb.europa.eu/our-work-tools/our-documents/guidelines/guidelines-52019-criteria-right-be-forgotten-search-engines_en> accessed 27 February 2023.

[56] The grounds are set out in Article 17(1). The exceptions are set out in Article 17(3).

[57] *Cf.* Article 17(2) GDPR.

justified on the grounds of freedom of expression or information). However, the user of a search engine can patch together such a wide variety of sources that he can, in many cases, create extensive profiles of the private lives of others, collecting information not just about their present activities but also all sorts of information from the past.[58]

It is in this context that a so-called *right to request delisting* was identified by the CJEU in the *Google Spain* case. Interpreting the provisions of the Data Protection Directive 1995,[59] the Court found that search engines were data controllers and this meant that data subjects had the right to request search engines to erase search results (containing personal data) that were 'inadequate, irrelevant or no longer relevant, or excessive in relation to the purposes of the processing at issue carried out by the operator of the search engine'.[60] While the successful invocation of the right to request delisting does not necessarily mean that the personal data in question is deleted from the source websites, it does mean that the data is not as easily accessible as it once was. This may provide a degree of privacy protection that that is 'good enough' for the data subject.[61]

By 'right to be forgotten', then, we mean the right to erasure under Article 17 GDPR *and/or* the right to request delisting, as the specific manifestation of the right to erasure in the search engine context.[62] This right allows the individual to seek erasure or delisting of personal information online, information which may be of an embarrassing nature or so outdated that is has become nobody's business but her own. In having personal information erased, or at least made more difficult to access, the right to be forgotten surely increases the chances that others will eventually forget about the personal information in question. But successful invocation of the right also sends a signal to the community that this is not just ordinary information rather this is information that *ought* to be treated differently. So, in those cases where the community continues to remember the information, successful invocation of the right encourages the community to practice enlightened remembering.

Alongside these more obvious external effects of the right to be forgotten, successful invocation of the right also has potential internal effects. In knowing that personal information is not as easily available to others as it once was, the individual may feel that she has been given a chance to 'melt into the shadows of obscurity',[63] if that is what she so wishes. In time, this may lead to a situation where she no longer remembers the

[58]On this point, see Mayer-Schönberger (n 17) 123 ff. See also *Google Spain* (n 55) [80].
[59]Specifically, Article 12 (right to rectification/erasure) and Article 14 (right to object).
[60]*Google Spain* (n 55) [94].
[61]Paul Ohm, 'Good enough Privacy' (2008) *University of Chicago Legal Forum*: Article 2 <https://chicagounbound.uchicago.edu/uclf/vol2008/iss1/2/> accessed 27 February 2023.
[62]It is now accepted that Article 17 GDPR provides a legal basis for the right to request delisting. Article 21 (the right to object) provides an additional legal basis. See EDPB Guidelines 5/19 (n 55), 4–5.
[63]*Briscoe* v *Reader's Digest Association*, 4 Cal. 3d 529, 539, 93 Cal. Rptr. 866, 873 (1971).

information in question and the fact that it was in the public domain in the first place. But even if she continues to remember, the legally induced breathing space created by the right to be forgotten may allow her to engage in enlightened remembering, come to terms with the past and move on.

What all of this means is that the right to be forgotten, to repeat Reiman's idea, provides a signal to both the individual and the community that this person's existence is her own. So understood, her dignity or personhood is respected: not only does this signal convey that she is being (or at least ought to be) treated as a full member of the human community, but it also supports her exercise of normative agency, providing her with a chance to leave the past behind and attempt 'self-definition' or 'self-discovery'.[64]

Enlightened remembering in Dante's *Divine Comedy*

We now turn to Dante's *Divine Comedy*, a poem which, among its many uses, spurs reflection about forgetting as enlightened remembering.[65] Dante, the pilgrim, (and likely Dante, the poet, too)[66] found himself lost in a 'dark wood' midway through his life.[67] He meets Virgil who then leads him on a journey to the depths of Hell (*Inferno*) before climbing the mountain of Purgatory (*Purgatorio*). Virgil then leaves Dante and another guide, Beatrice, leads Dante to Paradise (*Paradiso*), a journey upwards, past the Sun and to the stars. Dante's journey is a transformative one, in which he gradually learns more about himself and the human condition, including the nature of free will and how we can use our reason to live more virtuously and, therefore, flourish as human beings.[68] Kirkpatrick explains Dante's journey in the following way:

> As the *Inferno* demonstrates, Hell is the condition of those who refused in the course of their lives to free themselves from destructively self-imprisoning appetites. The *Purgatorio* and *Paradiso* proceed to investigate how wide the field of human possibilities might be if people set their minds upon the *pursuit of rational freedom*. Dantean reason, therefore, is concerned less with the production of logically valid assertions than with *the search for what is truly good*.[69] [Emphases added]

[64]On the Kantian idea of dignity as treating each person as 'a full member of the human community', see Ronald Dworkin, *Taking Rights Seriously* (Gerald Duckworth & Co Ltd 1977) 198. 'Normative agency', as Griffin understands it, is 'our capacity to choose and to pursue our conception of a worthwhile life': James Griffin, *On Human Rights* (Oxford University Press 2008) 44. On 'self-definition' and 'self-discovery', see Beate Roessler, *The Value of Privacy* (Policy Press 2005) 146.

[65]Previous scholarship has explored the theme of forgetting as it is developed in the *Commedia*. See, for example, Weinrich (n 1) 24–38; Volf (n 40) 135–51; 175–76; Kevin Grove, 'Becoming True in the Purgatorio: Dante on Forgetting, Remembering and Learning to Speak' in Leonard DeLorenzo and Vittorio Montemaggi (eds), *Dante, Mercy, and the Beauty of the Human Person* (Cascade Books 2017).

[66]Dante wrote this work in exile, having been forced out of his native Florence.

[67]*Inferno* 1:3 in Dante (n 20).

[68]Kirkpatrick, 'Introduction' ibid.

[69]Ibid xxvii.

As we shall now see, for Dante, the poet, a form of forgetting achieved through enlightened remembering is integral to this pursuit of rational freedom and the search for what is truly good.

At the very beginning of his journey, Dante, the pilgrim, faces the gates of Hell in Canto 3. There he reads an inscription on the gates that describes the *Inferno* as a place of 'everlasting pain' yet a place that was created by God, in all his wisdom and love, to pursue justice.[70] The most famous line from this inscription is *Lasciate ogne speranza, voi ch'intrate*, famously translated as 'Abandon all hope, ye who enter here'.[71]

It is the absence of hope that is one of the most striking aspects of the journey through the *Inferno*.[72] This is especially noticeable when one contrasts the *Inferno* with *Purgatorio* where the hope of salvation provides motivation and impetus to the 'shades'[73] who are seeking to climb that mountain.[74] As Dante, the pilgrim, and his guide, Virgil, venture deeper into *Inferno*, Dante, the poet, depicts shades who are often literally but certainly metaphorically 'stuck', no longer able to undergo personal and spiritual change or transformation.[75] This, according to Barolini, neatly sums up Dante's vision of Hell.[76] She explains:

> Hell is precisely a condition in which the soul is permanently oneself as on earth: unrepentant and unameliorated, with no hope of change or growth. … This is Hell: to be stuck with oneself. … If the motto of the sinners here is that they are now what they always were, then in effect these sinners create their own Hell.[77]

In the very deepest pit of Hell, the shades are almost completely unable to move, trapped in a lake of ice while Lucifer remains fixed in a block of ice, '[locked] in his own frozen prison'.[78]

The traditional way to explain the spiritual, intellectual and sometimes even physical paralysis of the shades in *Inferno* is to say that they did not seek God's grace before death and must now suffer the consequences:

[70] Ibid, *Inferno* 3:1–9.
[71] Dante Alighieri, *The Inferno* (John Ciardi tr, Signet 1954), Canto 3:9. There is some uncertainty as to who first used this form of words in the English translation. A search of Google Books reveals an 1814 translation by the Rev. H.F. Cary who writes 'All hope abandon, ye who enter here'. See *The Vision, or, Hell, Purgatory, and Paradise, of Dante Alighieri* (Taylor & Hessey 1814).
[72] On this point, see David Davies, 'Lecture on Purgatorio Canto 12', *Baylor's Honor College 100 Days of Dante Course* (2021–2022) <https://100daysofdante.com/canto-videos-listing/> accessed 27 February 2023; Vittorio Montemaggi, *Reading Dante's Commedia as Theology* (Oxford University Press 2016) 211–12.
[73] *Ombre*, generally translated as 'shades', is the term used by Dante to refer to the beings in *Inferno* and *Purgatorio*.
[74] David Davies, 'Lecture on *Purgatorio* Canto 12', *Baylor's Honor College 100 Days of Dante Course* (n 72).
[75] Rachel Teubner, 'Lecture on *Inferno* Canto 14', ibid; Teolinda Barolini, 'Inferno 14: Sunt lacrimae rerum' in *Commento Baroliniano, Digital Dante* (New York: Columbia University Libraries, 2018) <https://digitaldante.columbia.edu/dante/divine-comedy/inferno/inferno-14/> accessed 27 February 2023.
[76] Barolini, '*Inferno* 14', ibid at [17].
[77] Ibid at [18]–[20].
[78] Brian Williams, 'Lecture on *Inferno* Canto 34', *Baylor's Honor College 100 Days of Dante Course* (n 72).

they are now stuck in the 'banal monotony' of Hell, unable to change or develop as beings.[79] But another way to put this is to say that the paralysis is connected to the shades' inability to unburden themselves of their pasts.[80] Throughout *Inferno*, the fate of the shades is to repeatedly face their *contrapasso* or 'counter-suffering', a retaliatory form of punishment, which means the shades can never forget the sins for which they are being punished.[81] But the shades' preoccupation with their pasts means they do not just obsess about their sins, rather they sometimes bring happy memories to mind too. Remembering happy times while stuck in Hell is especially painful. As Francesca laments in Inferno Canto 5, '[t]here is no sorrow greater than, in times of misery, to hold at heart the memory of happiness'.[82]

Understood in these terms, there is no hope in *Inferno* because the shades are unable to move on from the past and, as a result, are unable to undergo the personal transformation that is possible when we can free ourselves of the burdens of the past. Nietzsche would say that we can relieve ourselves of these burdens only if we choose to live unhistorically. But, for Dante, this transformation is possible only when we come to terms with the past and remember it in more enlightened ways.

For Dante, in the words of TS Eliot's poem, *The Dry Salvages*, 'the way up is the way down'.[83] he goes down to the very depths of Hell before he can come out the other side. As Dante climbs *Purgatorio*, viewing the human condition through the prism of the seven capital vices, he learns more about how living virtuously can create order out of disorder and set us on the path to freedom, out of the dark wood in which we may find ourselves.[84] At the very summit of *Purgatorio*, in his interactions with Beatrice, Dante undergoes a crucial stage of his personal and spiritual transformation, described by some as a conversion.[85] After he has shown contrition for and confessed his sins, Dante is taken to bathe in two rivers which flow from the same divine source. The first is the River *Lethe*, known since ancient times as the river of oblivion, which 'take[s] the memory of sin away'.[86] The second is the River *Eunoe*, which Kirkpatrick translates as the river of 'happy thinking and remembrance',[87] drinking from which '[restores] … all good done'.[88] The combined effect is that

[79]Kirkpatrick, 'Introduction' (n 20) xxx.
[80]David Davies, 'Lecture on Purgatorio Canto 12', *Baylor's Honor College 100 Days of Dante Course* (n 72).
[81]For example, as Kim explains, the contrapasso of the lustful, who 'allowed their passion to overwhelm their rationality' when alive, is to be flung around in a whirlwind for the rest of eternity. See Jane Kim, 'Lecture on Inferno Canto 5', ibid. See also Weinrich (n 1) 36.
[82]Dante (n 20), *Inferno* 5: 121–23.
[83]Brendan Case, 'Lecture on Inferno Canto 26' in *Baylor's Honor College 100 Days of Dante Course* (n 72). For Case, TS Eliot's line 'offers a lovely one-line summary of the Inferno's plot'.
[84]Brian Williams, 'Lecture on *Purgatorio* Canto 17', ibid.
[85]Grove (n 65) 55–59.
[86]Purgatorio 28:128 in Dante (n 20).
[87]Kirkpatrick, 'Notes to Purgatorio' in Dante (ibid) 591.
[88]Ibid, *Purgatorio* 18:129.

Dante, as 'Lord of himself',[89] is now able to remember in an enlightened way: following a long journey of self-discovery and reflections on what it means to be human, Dante can now remember his past in a more poetic way, to borrow Kierkegaard's expression.[90] A true personal and spiritual transformation is now possible, meaning Dante is full of hope, as revealed in the final lines of the *Purgatorio*:

> I came back from that holiest of waves
>
> remade, refreshed as any new tree is,
>
> renewed, refreshed with foliage anew,
>
> pure and prepared to rise towards the stars.[91]

Assessing the implications for legal discourse

What do these insights from the *Divine Comedy* mean for the analysis in this paper? One of the core insights is that those who are weighed down by their pasts find themselves in a hellish situation.[92] In Dante's *Inferno*, the shades figuratively (and, sometimes, even literally)[93] carry the burden of their pasts, destined to remember their sins for the rest of eternity. Unable to forget, there is no prospect of change or personal development. Hope has long since deserted them; they are forever stuck with themselves.[94]

The personal and spiritual transformation Dante, the pilgrim, experiences at the summit of *Purgatorio* would not have been possible had he been unable to forget. Dante experiences a 'total renewal';[95] he is 'remade' and now enabled to 'rise towards the stars'. The capacity to forget, then, is of existential importance. To have at least some chance of thinking differently about ourselves, we need to be able to move on from the difficult episodes of the past. Forgetting gives us the chance to start again.

However, it must be stressed that the forgetting Dante, the pilgrim, experiences is not the ruthless sort advocated by Nietzsche. Dante bathes in *both* the *Lethe* and the *Eunoe*, but only after he shows contrition for and confesses

[89] Ibid, *Purgatorio* 27:142.
[90] As Montemaggi explains: 'Following immersion in Lethe and Eünoè what changes is not what one remembers but the way in which one remembers it'. Montemaggi (n 72) 171. See also Grove (n 65) 61–63.
[91] Purgatorio 33: 142–45 in Dante (n 20).
[92] Consider, in this context, Gurnham's analysis of metaphors of physical encumbrance and escape as they find expression in law. See Gurnham (n 21).
[93] Consider, for example, *Inferno* 23, where shades are wearing robes of lead.
[94] Barolini (n 75).
[95] 'Only by forgetting', as Gadamer puts it, 'does the mind have the possibility of total renewal, the capacity to see everything with fresh eyes, so that what is long familiar fuses with the new into a many leveled unity'. Hans Georg Gadamer, *Truth and Method* (Joel Weinsheimer and Donald Marshall trs, Bloomsbury 2013) 15.

his sins. The remaking of Dante is not a consequence of the erasure or even repression of his past but results from his coming to terms with it and thinking about it differently, in a more enlightened way. Dante may have forgotten the intricate details of the sins of his past, but he is happier and freer because he has nonetheless learned from them. His journey, with its trials and tribulations, has provided him with essential insights about vice and virtue. As a result, he learns more not just about himself and his relationship with others but also, more fundamentally, he comes to better understand 'the flourishing that occurs when the possibilities latent in human nature are most fully exercised'.[96] Against this instructive background, Dante can acknowledge and show contrition for the errors of his past in a genuine way.[97]

It hardly needs to be pointed out that the *Commedia* is also an invitation to the reader to embark on a similar journey of self-discovery or 'spiritual pilgrimage' as some scholars have described it.[98] For Boyd White, the *Commedia* 'calls upon you to be present at the deepest place in your own imagination, as one person and mind engaged with another, facing the great question of the meaning of this or that human life, of human life itself'.[99] The reader who embarks on a journey with Dante in this way, can, like Dante, seek to come to terms with the difficult aspects of her past. If she succeeds in remembering these episodes in an enlightened way, the past can no longer define her or weigh her down; rather, what she has learned from reflecting on her past will provide her with rich and authentic opportunities for self-definition, possibilities for new departures in her relationships with others in the community and, thus, the chance to flourish as a human being.[100]

To return to our case study in this context, it might be argued that some of the language associated with the *right to be forgotten* does not seem very apt. The very idea of a 'right to erasure' in the GDPR, for instance, suggests that the past can in fact be erased. But as Giddens emphasizes:

> [t]he individual's biography, if she is to maintain regular interaction with others in the day-to-day world, cannot be wholly fictive. It must continually integrate events which occur in the external world, and sort them into the ongoing "story" about the self.[101]

An individual cannot erase the past or pretend that something never happened for that would be a fiction. But she can seek to exert some control

[96]Kirkpatrick (n 20) xxxvii.
[97]On this point, see Volf (n 40) 138.
[98]DeLorenzo and Montemaggi (n 65) x.
[99]Boyd White (n 21) 807.
[100]See also Volf (n 40) 83 on the effects of 'truthfully remember[ing] a wrong suffered', the memory of which 'we have integrated … into our life story … '.
[101]Anthony Giddens, *Modernity and Self-Identity: Self and Society in the Late-Modern Age* (Polity Press 1991) 54.

over the various information flows that shape her identity and 'sort them into an ongoing "story" about [her]self'. Ruthless forgetting, of the sort envisaged by Nietzsche, requires us to tell a brand new story about the past but, if we practice enlightened remembering, it means that we seek to retell the old story in a more poetic way. Consider, in this context, the words of the French philosopher, Paul Ricœur:

> the promise of an historical event is always more than what was actually realised. There is more in the past that what happened. And so we have to find the *future of the past*, the unfulfilled potential of the past.[102]

The right to be forgotten is just one example of a law that carves out breathing space for enlightened remembering – both on the part of the community and on the part of the individual or data subject – so that we can find the future of our pasts. In this way, if not in any other, we may be able to successfully 'forget', to come to terms with the past and move on.

If this is so, then an intriguing question arises: if there is a right to be forgotten, should there not also be a right to forget?[103] In his novel *Ignorance*, Milan Kundera attempts to contemplate the sheer horror of an existence in which one is unable to forget. Kundera writes that a person who is unable to forget or perhaps, to put it in the terms used in this paper, a person who lacks the breathing space to engage in enlightened remembering, 'would be nothing like human beings: neither his loves nor his friendships nor his angers nor his capacity to forgive or avenge would resemble ours'.[104] This is because forgetting is 'part of the essence of man'.[105]

If forgetting is part of the essence of what it means to be human, then it surely follows that restricting the breathing space for forgetting – whether that is forgetting as not remembering or forgetting as enlightened remembering – may amount to an affront to human dignity or personhood.[106] On the one hand, the principle of equality is undermined when, without good reason, the breathing space is restricted for some people but not for

[102]Paul Ricœur, 'Imagination, Testimony and Trust: A Dialogue with Paul Ricouer' in Richard Kearney and Mark Dooley (eds), *Questioning Ethics: Contemporary Debates in Philosophy* (Routledge 1998) 14 quoted in Garrett Sullivan, *Memory and Forgetting in English Renaissance Drama* (Cambridge University Press 2005) 132.

[103]Scholars have invoked the idea of a 'right to forget' in different contexts ranging from neuroethics to urban studies. See, for example: Jason Hill, *Becoming a Cosmopolitan: What it Means to be a Human in the New Millennium* (Rowman & Littlefield 2000) 4; Christoph Bublitz and Martin Dresler, 'A Duty to Remember, a Right to Forget? Memory Manipulations and the Law' in Jens Clausen and Neil Levy (eds), *Handbook of Neuroethics* (Springer 2015); Antoon De Baets, 'A Historian's View on the Right to be Forgotten' (2016) 30(1–2) International Review of Law, Computers & Technology 57, 58; Miroslaw Sadowski, 'City as a Locus of Collective Memory: Streets, Monuments and Human Rights' (2020) 40(1–2) Zeitschrift für Rechtssoziologie 209, 231.

[104]Milan Kundera, *Ignorance* (Linda Asher tr, Faber & Faber 2002) 123.

[105]Ibid.

[106]Here the paper follows Dworkin's account of human dignity, as elaborated by Guest: it 'consists of two principles: a right to respect as an equal and a right to ethical independence'. See Stephen Guest, *Ronald Dworkin* (3rd edn, Stanford University Press 2013) 11.

others. On the other hand, the principle of ethical independence is at stake since, as we have explored in this paper, having the chance to forget is essential if we are to enjoy the freedom to make decisions about how we will live today and into the future. If we were unable to forget, our decision-making would be encumbered by the weight of the past,[107] or, perhaps worse still, like the shades at the very bottom of Hell, we would be frozen into inaction, completely lacking the ability to make meaningful decisions and choices, forever defined by our pasts. Though it is not listed in any international human rights treaties or national bills of rights, it is against this background that the idea of a 'right to forget' as a human right begins to take shape, a right that could perhaps be understood as complementary to the right to be forgotten.

Conclusions

This paper has sought to critique the binary distinction between remembering and forgetting, the former understood as invariably good and the latter as always bad. In particular, it has argued that law plays an important, if sometimes overlooked, role in ensuring that the individual has sufficient breathing space to engage in forgetting, something that is essential to human dignity or personhood. 'Forgetting' here should not be understood solely as not remembering rather, as Dante shows us, it sometimes takes the form of enlightened remembering.

In pursuing this argument, it would of course be a mistake to gloss over the many ways that law practices destructive forgetting.[108] Throughout history, as Kundera acutely observes, 'the struggle of man against power [has been] the struggle of memory against forgetting'.[109] This was true of the memory sanctions of antiquity as well as more recent examples of totalitarian regimes seeking to rewrite history.[110] Even today, in legal systems founded on the rule of law and human rights, when law expressly denies justice to those who are deserving of it or when law stays silent in the face of perversions of justice, we might say that law is seeking to forget in determinedly negative or destructive ways.

But just because law forgets in such destructive ways, it does not follow that law cannot forget (or remember) in more constructive or enlightened

[107]Mayer-Schönberger (n 17) 123.
[108]Ricœur (n 24) 442.
[109]Milan Kundera, *The Book of Laughter and Forgetting* (Aaron Asher tr, Faber & Faber 1982) 3.
[110]On memory sanctions, see Harriet Flower, *The Art of Forgetting: Disgrace, and Oblivion in Roman Political Culture* (University of North Carolina Press 2006). For more recent examples, see Antoon de Baets, 'The Year Zero: Iconoclastic Breaks with the Past' (2014) 13 Annales Universitatis Paedagogicae Cracoviensis. Studia Politologica 3; Carter Snead (n 45) 1238–39. We even find examples of memory laws with this tendency in modern democratic systems. Gutman and Tirosh provide examples of attempts at 'forced forgetting' in Israel. See Yifat Gutman and Noam Tirosh 'Balancing Atrocities and Forced Forgetting: Memory Laws as a Means of Social Control in Israel' (2021) 46(3) Law & Social Inquiry 705.

ways. This paper has highlighted one example of a law that can make space for enlightened remembering but law and policy can also encourage this practice in other settings. Consider transitional justice interventions such as truth and reconciliation commissions, to take just one example.[111] This paper has not considered some of the complex questions that emerge in this context, especially those questions about the relationship between forgetting and forgiveness.[112] However, at the very least we can say that in shifting our perspective, in looking beyond the binary distinction that says remembering is always good and forgetting is bad, we begin to see other legal and political possibilities. So understood, we can conclude that law ought not only be a discipline of memory, but lawyers may sometimes need to practice the art of oblivion too.[113]

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[111]See generally Roman David, 'What We Know About Transitional Justice: Survey and Experimental Evidence' (2017) 38(S1) Political Psychology 151.

[112]See Margalit (n 46); Minnow (n 46); Martha Minnow, *When Should Law Forgive?* (W. W. Norton & Company 2019); Ricœur, *Memory, History, Forgetting* (n 24); Schlink (n 15). For an interesting discussion about the relationship between forgiveness and forgetting in the context of the right to be forgotten, see Jones (n 29) 12–21.

[113]*Cf.* Umberto Eco, 'An Ars Oblivionalis? Forget It!' (1988) 103(3) Publications of the Modern Language Association of America 254.