

Forgiveness as a legal condition: A study of the uses of forgiveness in the Basque conflict

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Abstract

In contemporary society, forgiveness has emerged in the public sphere in unprecedented ways: The contexts in which it is invoked have multiplied, and it is no longer regarded solely as a private act. Instead, forgiveness is now understood as a means to address past wounds, acknowledge victims' suffering, and foster coexistence in societies marked by violence. Forgiveness thus represents a way of responding to harm, traditionally understood as distinct from and opposed to the punitive-legal framework. This article examines a specific effort to integrate forgiveness within legal logic. In 2003, the Spanish Penal Code introduced an explicit request for forgiveness to victims of terrorist crimes as a condition for sentence reduction. Through the study of this scenario, the paper explores how forgiveness has been employed by Spanish legislation in the context of the Basque conflict, highlighting the paradoxes that arise when it is framed within a punitive logic. Particular attention is given to the tension between the probatory demands placed on forgiveness and its inherently unverifiable nature. The article also analyzes the purported value of forgiveness as moral reparation for victims, emphasizing their lack of active participation in the process. Additionally, the role of forgiveness in restorative experiences within the Basque context is considered. Lastly, the article reflects on the tensions and contradictions that arise when forgiveness is shaped by probatory and procedural logics—paradoxes that cannot be fully understood without acknowledging the uncertainty and incalculability of forgiveness.

Keywords

Paradoxes of forgiveness, legal system, (post-)conflict Basque context

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Introduction

Driven by gradual efforts to redefine moral, political, and legal parameters since the second half of the twentieth century, forgiveness has come to occupy a prominent place in public discourse.¹ More or less explicitly, forgiveness is now positioned as a central concept in contemporary debates regarding social justice, particularly in key efforts towards achieving victim-sensitive forms of justice and structuring coexistence in societies that have been deeply torn by violence (De Warren, 2014, 2020; Minow, 1998).

Accounts of forgiveness tend to focus on its functions, conditions, and purposes; however, a consensus regarding its most essential determinations is yet to be reached. Scholars have put forward various arguments about the necessary conditions for forgiveness, its requisite steps, or its normative aims. Another, highly debated issue is whether the notion of forgiveness should be understood as properly situated in an order that is different from that of retributive law (Griswold, 2007). If so, we might then distinguish two heterogeneous forms of response to harm, only one of which would be retributive. Thinkers like Paul Ricoeur (2004) have argued that the institutionalized version of such retributive justice in legal systems amounts to a formalization of the punitive logic of revenge, which remains violent at heart. Forgiveness, then, would be described as non-retributive and as making space for relations that are not encompassed by the paradigms of reciprocal harm or proportional punishment.

If it is heterogeneous from retributive logics in that sense, forgiveness would thereby be irreducible to legal formalization. But what relation can there be between forgiveness and law? Indeed, forgiveness does not follow the rigid and normative responses to harm typically deployed by legal systems. The latter are based on proportionality and seek to restore transgression through mechanisms of compensation or reparation, whereas forgiveness introduces disproportionality. The law proceeds through calculation and systematicity, while forgiveness is predicated on the irreparability of harm. Juridical norms aspire to iterability and predictability, but an act of forgiveness is singular and unpredictable, it is something that cannot be counted on or required. We might think that certain actions—confession, regret, or an explicit request—can facilitate forgiveness, but we cannot expect for it to be automatically granted by fulfilling a procedure. This is why forgiveness is said to go beyond the logic of compensation and to challenge the order of causes and effects ('Forgiving—as Hannah Arendt (1958: 241) argued—is the only reaction that does not merely re-act but acts anew and unexpectedly, unconditioned by the act which provoked it'). Moreover, while the law pursues the restitution of harm in normative terms, forgiveness seems to point towards transformative possibilities that exceed the juridical, since it is not about settling a debt or reinstating an external balance, but about reconfiguring the social fabric as such.

Now, if we define forgiveness by differentiating it from the legal logic of retribution, we come against a paradox: Differences notwithstanding, forgiveness also plays a role in the political-juridical realm, and its uses have been shaped by its functions within that realm. Since Ancient Greece, responses to crime contemplate forgiveness as a factor, in the form of clemency; more recently, forgiveness has been introduced as an exceptional mechanism in processes of social normalization that call on acts of pardon or

amnesty, wherein forgiveness is framed in a specifically juridical sense. On the other hand, many experts posit an essential connection between forgiveness and regret (notably Konstan [2010], a good exponent of the dominant trend) and accordingly embed the notion within the logic of personal transformation or rehabilitation in a way that complies with social reintegration as the aim of ordinary justice. Since the late twentieth century, forgiveness has come to play a decisive role in political transitions. In the context of transitional justice we find two mottos: ‘forgiveness and reconciliation’, which affirms that forgiveness contributes to the aim of social reconciliation, and ‘no forgetting and no forgiveness’, which rejects it as enabling impunity and posits truth, reparation, and non-repetition as requirements for justice. Likewise, forgiveness plays a role in the incipient project of restorative justice, which seeks to acknowledge the victims by promoting interpersonal paths for developing new relational frameworks.

The more we emphasize their divergence, the more we are called upon to make sense of the relation between the orders of retribution and forgiveness. Only this will allow us to understand the place or function of forgiveness in the public realm, and its potential points of articulation with the juridical field and the institutional structures whose task it is to foster justice and coexistence. Now, my point of departure in this essay is the claim that the discussion will remain unproductive as long as it is structured in terms of arguments for the inclusion or exclusion of forgiveness from the juridical realm. Instead, we must explore the complex and extremely ambiguous interaction between the two, since this intersection is precisely the locus of paradoxes that require us to think beyond any simple dichotomy of inclusion and exclusion.²

It is easy to see that forgiveness currently operates both within and without the juridical realm, from which it is often both included and excluded. For instance, in Spain’s Penal Code—as in many others—a victim’s granting of forgiveness may exempt an offender from penal responsibility in cases that can only be prosecuted by motion of the party—if this happens, the law will pull back, although this is not always the case: A recent reform of the Penal Code explicitly emplaces forgiveness³ in the framework of the fight against terrorism, requiring as a condition for reduced sentences an explicit request for forgiveness addressed to the victims, which is interpreted in this context as an ‘unequivocal’ renunciation of terrorist activity on the part of the offender. As I see it, this is a good example of the kind of paradoxes that push us to think beyond the dichotomy, and I would like to examine it in order to work towards a more complex understanding of forgiveness and its socially desirable forms.

In the following pages, then, my aim is to analyze how the notion of forgiveness has been used by the Spanish legislation in the context of the Basque conflict, and to examine the paradoxes that arise when this notion is framed within a punitive logic. I take this context—the Basque conflict—to be particularly instructive, inasmuch as it places us within the kinds of post-conflict processes wherein forgiveness has been assigned a significant task that is as explicit as it is paradoxical, both in the juridical realm and—more complexly and controversially—in social space. As I will explain in more detail, in 2003 the Spanish legislation introduced the explicit request of forgiveness addressed to the victims as a condition for the reintegration of convicted terrorists. My analysis will show that this condition fulfils two functions: First, it is interpreted as proof that convicted terrorists

have renounced their views and are therefore rehabilitated; second, it is assumed to act as moral reparation to the victims. However, we will see that the first, probatory function is undermined by the fact that forgiveness is unverifiable, while the second, reparatory function disregards the relationality of forgiveness. Delving into this context will thus require us to engage directly with the paradoxes produced by efforts to inscribe forgiveness within either punitive or restorative legal regimes. My conclusion will be that the place of forgiveness within normative or institutional frameworks is neither stable nor clearly delimited, and that efforts to overdetermine the concept—to rigorously fix its conditions, procedures, or goals—run against a possible understanding of forgiveness as opening towards the reconfiguration of relations.

Accordingly, this study combines two complementary approaches. First, it adopts a philosophical perspective inspired by continental thinkers such as Jacques Derrida and Hannah Arendt, who conceive forgiveness within the existential dimension of human life—marked by uncertainty, fallibility, and incalculability—and within the broader field of coexistence. This approach provides conceptual tools that allow us to mark the emergence of paradoxes and tensions in discourses on forgiveness. However, I will not venture too deep into the philosophy of forgiveness; instead, I will apply this broad philosophical orientation to examine the socio-legal context of forgiveness in the Basque conflict, considering how the notion is put into play in legislation, judicial rulings, and social responses (without addressing its normative legitimacy). This will allow me to register tensions and ambiguities and to show how my case study reflects current uses of the notion of forgiveness within a range of contexts and logics, from institutional punishment to efforts to reconstruct coexistence beyond mere punishment.

Building on this methodological framework, this essay seeks to contribute to contemporary studies on the uses of forgiveness, specifically those that investigate the complex interplay between forgiveness and punishment. It does so by examining its implementation in the Basque conflict and the surfacing of its inherent contradictions in this specific context.

The context for forgiveness as a condition in Spanish legislation

In 2003, Spain approved the Organic Law 7/2003, whose main goal was to guarantee that individuals convicted of serious crimes connected to terrorism and organized crime will effectively serve their full sentences.

The law was published alongside a text that explained its motivations; that text claimed that the new measures were introduced in response to a social demand for increased protection against extreme forms of criminal activity (Boletín Oficial del Estado, 2003). After acknowledging that flexibility in sentence completion was entailed by the fundamental penitentiary principles of reintegration and reeducation, it argued that it was nonetheless necessary to prevent an instrumentalization of these legal mechanisms. This accounted for a set of modifications to several articles of the Penal Code, directly designed to create more stringent conditions for access to penitentiary benefits and minimize reduced sentences.⁴

One component of this new set of measures was a first in the Spanish legislation: The modified versions of article 90 of the Penal Code and article 72 of the General Penitentiary Organic Law now stated that convicts must explicitly ask for forgiveness as a condition to obtain penitentiary benefits. More specifically, the new text stated that individuals convicted of terrorism or organized crime could only gain access to the ‘third degree’ (also known as the open regime) if they fulfilled supplementary conditions that justified a ‘positive forecast of social reintegration’. This forecast is thought to be justified by ‘unequivocal signs’ that the convicts have renounced terrorist activities and by their active collaboration with the authorities. To this end, they were expected to submit an ‘explicit statement of repudiation of their criminal activities and an explicit request for forgiveness addressed to the victims of their crime’.

These changes had a notable impact on a particular set of convicts: Members of ETA (Euskadi Ta Askatasuna, ‘Basque Country and Freedom’), a terrorist group that self-described as a ‘revolutionary socialist organization for Basque national liberation’.⁵ ETA was formed in 1959, during Franco’s dictatorship, and its stated aim was to achieve independence for the Basque Country; towards the end of the dictatorship, the Spanish State introduced an amnesty policy that promised political forgiveness in the form of closure and forgetting; some ETA members agreed, but others continued to use violence and in fact took it even further. ETA was responsible for 854 deaths over its life-span;⁶ its tactics included explosive attacks, assassinations, and kidnappings intended to pressure the Spanish and French governments in order to attain its political goals. In spite of several negotiation attempts and ceasefires, ETA continued to stage attacks until 2011, when it issued a statement claiming that it would definitively put an end to armed activities; in 2018 remaining ETA members officially dissolved the organization, surrendered their weapons, and issued a statement assuming responsibility for the suffering they had caused and asking their victims for forgiveness, using conspicuously ambiguous wording (only some of their victims were described as innocent) (ETA, 2018).⁷ In 2003, when the Penal Code was modified, ETA was still active and more than 500 former members were interned in Spanish prisons.

Since the context of violence and victimization was still considerably complicated at the time, the decision to demand that ETA members ask their victims for forgiveness had profound political and social implications, and gave rise to various interpretations as to its reach and meaning.

On the one hand, it could be interpreted as a reparatory measure: It asked offenders to acknowledge the harm they had caused and their victimization of others, and thereby opened the path towards symbolic reparation, both for the victims and for society in general. However, this request for forgiveness was also framed as a direct condition for access to penitentiary benefits and could thereby be viewed through an utilitarian lense, as a potential currency through which to advance towards parole. But there were other possible interpretations: Perhaps the condition was rather a tool whose purpose was to hinder or deny access to penitentiary benefits under the argument that the wording of a convict’s request for forgiveness was inadequate. Under this reading, forgiveness—the very notion that was expected to make space for less- or non-punitive mechanisms—was being used to strengthen the punitive logic of justice.

The expression and implementation of forgiveness as a condition

The legal text defines the explicit request for forgiveness as proof that the convict has renounced the 'ends and means of terrorist activities', and justifies this condition by positing that it correlates to a positive forecast of resocialization. Presumably, the request for forgiveness entails that convicts have assessed their actions critically and acknowledge that they have harmed others. The relation between the 'reintegration forecast', the convict's 'unequivocal signs' of renunciation, and an 'explicit request for forgiveness' is explained as follows:

[I]n the case of individuals convicted of terrorist crimes [...] it will be understood that there is a forecast of social reintegration when the convict shows unequivocal signs of having renounced the ends and means of terrorist activity and has also actively collaborated with the authorities [...], proof of which may take on the form of an explicit statement of repudiation of their criminal activities and renunciation of violence, an explicit request for forgiveness addressed to the victims of their crime, and technical reports that prove that the inmate has truly severed ties with the terrorist organization and the environment and activities of illegal associations and collectives that surround it.

Over the past decade, several legal scholars have observed that this criterion has been applied quite strictly, at least until mid-2022.⁸ According to a study by Alicia Gil (2021), failure to fulfil the condition of requesting forgiveness has been regularly quoted as the reason for denying penitentiary benefits, not only in cases in which the request was not issued, but also in cases in which it was deemed to be insincere or fraudulent.

After examining several judiciary decisions, Gil established the two reasons most frequently provided by the courts to invalidate forgiveness requests: Firstly, the perception that the request is motivated by an interest in receiving penitentiary benefits; and secondly, the fact that the inmate submitted a letter that is identical to others sent by previous inmates—so-called 'type letters' (Lazaro, 2021)—which led the court to question its authorship and therefore its authenticity.⁹ As Gil points out, it is worth keeping in mind that in legal contexts it is customary for letters to be written by lawyers, who often follow standardized formats. The fact that such formats are regarded as suspicious in these cases indicates that the courts are applying a contrast between formal writing and another, rather confessional form of writing that can convey a subjective experience. Clearly, the latter is regarded as implicit in the condition. We should also note that Government advisors on penitentiary policy and prosecutors have explained that these letters must avoid stereotypes (they should not be 'type letters') and should moreover be written 'by hand' (Asociación de Víctimas del Terrorismo, 2024).

The courts also rejected as inadequate or fraudulent letters that used generic expressions of regret or failed to use the term 'forgiveness' addressed directly and specifically to the victims (these are described as 'equidistant letters', thought to suggest a moral neutrality [Asociación de Víctimas del Terrorismo, 2024]). According to these criteria, an admissible letter must be more than a mere request for forgiveness; as stated by several court decisions, the request must be explicit, singular, disinterested, and sincere.

The unverifiability of forgiveness

These modifications radically reformulate how an inmate's expressions of acknowledgement or regret can be evaluated in the penal realm, and in that respect they are exceptional.¹⁰ Such expressions are typically treated as reasons for granting penitentiary benefits or as mitigating factors—that is, as mechanisms that allow offenders to improve their conditions both before and after sentencing. However, when they are framed as conditions by the legal text, requests for forgiveness become mandatory; their role is thereby rendered considerably more complex and paradoxically unclear: The sole request for forgiveness is insufficient, since the way in which it is expressed must be interpretable as an 'unequivocal sign' that the convict has renounced terrorist activities.

The request for forgiveness is thereby inscribed in a probatory logic based on the criterion of sincerity. The request is not assessed as proof of an objective truth, but of an internal truth: An inward disposition, specifically a change of convictions. This order of truth is in fact unverifiable, which gives rise to an inherent ambiguity. As several authors have argued, there is no way to verify utterances by a subject regarding their convictions, which can be manipulated and may be unstable over time (Griswold, 2007)—in a drastic formulation, it has been stated that 'forgery would be immediately and fatally contemporaneous with the presentation, the putting into presence of forgiveness. A forgiveness that *presents itself* (forgiveness requested or granted) and says 'here I am' would already be a forgiveness contaminated by the said forgery' (Derrida, 2022). For that reason, the value of a request for forgiveness is rather that of a commitment whereby a subject binds him or herself to his or her words (Cassin, 2004).

If a request for forgiveness is inevitably ambiguous and its sincerity cannot be confirmed, an effort to attribute an authenticity to such a request can only fail. This circumstance is compounded in the Spanish legal context by the fact that the request is explicitly described as a condition to gain penitentiary benefits. Several law scholars have advanced different lines of argument in the same direction: Either forgiveness has here been embedded within an inadequate framework, or else its true purpose is different from its stated purpose, since it is clearly not a tenable form of proof and it makes no significant contribution to the process of social reintegration.

The criminologist Gema Varona (2017) argues that this penitentiary policy deploys a utilitarian understanding of forgiveness (and, by extension, of victims and victimizers). Varona claims that forgiveness should instead be aligned with the principles of restorative justice (voluntariness, the centrality of the victims, acceptance of responsibility) and its transformative effects. Gil (2021) argues that the condition should be removed or, at least, adapted to the terms of restorative justice, since its current form reflects a retributive approach directed at fully served sentences rather than resocialization. Gil also notes that resocialization is thereby being replaced with the unfeasible task of verifying that the inmate's convictions have in fact changed. She concludes that the purported verification of authenticity is not in fact a test of sincerity, but is rather designed to extract an expression of regret that can be interpreted as a moral defeat,¹¹ which runs against efforts to re-signify convicts as persons who are separate from their crime—in other words, it undermines resocialization.

Along the same lines, authors coming from diverse perspectives agree in saying that forgiveness is unverifiable and resists integration into the juridical apparatus because its truth is simply not empirical. For this reason, a request for forgiveness cannot be regarded as conclusive evidence of a genuine change of convictions within the requesting party, and attempts to assign it such a function confine it to an ambiguity that is inherent to the act as such, by virtue of which it can always be interpreted in one sense or the other.

Authors such as Martha Nussbaum (2016) argue that forgiveness is about trust and commitment, not about verification; it is not meaningful by virtue of being proven, but as an act of promising whose fulfilment can never be fully guaranteed or definitively sealed. This means that the kind of relation that forgiveness can establish is of a different kind: Is never certain and reaches no culmination through utterance, it requires and entails uncertainty, unpredictability, and fallibility.

If there is a dimension of forgiveness that resists and contradicts its interpretation as a predictable, certain, and definitive act, then efforts to assess a request for forgiveness under the standards of the judicial system are not only impracticable but may lead to a complete rejection. Recent statements confirm this: Victims' collectives have denounced some of these letters as a mockery and demand other unequivocal signs that the inmates now condemn their previous doings; political actors, in turn, criticize the fact that by introducing the request for forgiveness as a condition for access to the open regime, the victims are being asked for an 'act of faith'. Within this probatory framework, the request for forgiveness cannot fail to disappoint those involved, because it is being asked to function as a proof or a guarantee.

Forgiveness to the victim

Another particularly problematic aspect of this use of forgiveness concerns the role of the victims. According to the legal text, the explicit request for forgiveness must be specifically addressed to the victims of the crime, which means that generic references are deemed to be insufficient; in fact, when a request fails to clearly name the victim, it is typically rejected. Although at first sight what is being demanded is for the request for forgiveness to be a personal action, this condition has met with considerable criticism.

On the one hand, some experts (Nistal Burón, 2015) have argued that, if we consider the juridical framework and recent regulation concerning victims' rights—such as the Law on the Standing of Victims of Crime, which came into effect in 2015—we should be struck by the fact that the Penal Code modifications do not in fact require the victims to be notified that a forgiveness request has been addressed to them. Apparently, this omission is being dealt with by the Basque Government's agency of penitentiary policy, which has promised to explore this possibility. This procedure would comply with a statement by the National Courts's prosecutorial office, which holds that this 'is a problem to be solved, since a request for forgiveness that does not reach the victim is an incomplete request' (Efe, 2024). On the other hand, Varona (2009) warns of a further repercussion: From the victimological point of view, if the victims receive a request for forgiveness addressed specifically to them, but are not offered a way to voice their opinion, the

mechanism may well cause a 'secondary victimization' by disregarding their agency and capacity to reply.

The problematic implications of this approach clearly undermine the relationality of forgiveness. Even if a request for forgiveness is unilateral, those who have been harmed must be involved either directly or indirectly. If their potential reply is excluded or disregarded, it is assumed to be irrelevant—a line is drawn to separate the act of asking for forgiveness, on the one side, and the addressee's possibility or desire to hear this request, on the other. But what can such a request mean if it remains detached, at least in principle, from its reception or acknowledgement by an addressee? The fact that we can ask this question is an indication that the role of forgiveness in these sections of the Spanish Penal Code is not relational: The perspective is different here, since the significance of the request for forgiveness is not co-constituted by the person who has been harmed, but by a third party that, in this case, is an institutional subject.¹²

The fit between forgiveness and the framework of penal justice can thus be described as paradoxical in two senses: The latter interprets the former as proof of a change in the subject, but such a change is unverifiable; but it also interprets it as a reparatory action (a moral reparation of the victim) in a way that is rather incompatible with the framework of ordinary justice, where penal procedures are regarded as interactions between the State and the offender.

It is worth noting that reparations (especially moral or symbolic reparations) are not quite at home within the penal logic. Many scholars have argued that forgiveness is better situated in spaces that are supplementary or alternative with regard to ordinary penal justice, and comprehensive studies with ETA victims (Varona, 2017) established that 'restorative justice, as understood today, is the most coherent theory, in keeping with the interests of both victims and offenders, by which to account for the value of apologies and forgiveness' (Varona, 2017).

Forgiveness in restorative justice

In the past few decades, many have argued that punitive justice, which focuses on criminals and their punishment, should make room for other ways of dealing with the harm caused by crime and encompass reparatory processes that involve the victim, the victimizer, and society. This line of thought is both theoretical and practical and has been categorized in various ways, each of which carries particular nuances in focus and aim: Restorative justice, reparative justice, reconstructive justice, transitional justice, and others.¹³

The practice that has been juridically favoured thus far within the framework of ordinary justice as a complementary path to the penal process falls under the category of restorative justice. Forgiveness is often invoked in this and other models that introduce complements or alternatives to conventional, retributive justice directed towards equivalent or proportional harm. The link between non-punitive justice and forgiveness is even closer when the former goes beyond mediating between individuals who have suffered personal and direct damage, as it does in the context of comprehensive transitional processes, some of which rely on mechanisms such as truth commissions, international

courts, collective reparation programmes, etc. The assumption is that, within these reconciliatory processes, forgiveness can contribute to rebuilding or healing the social fabric, or even to restoring national unity.¹⁴

There are studies that extol the benefits of forgiveness to the reconstruction of fractured societies, since it can put an end to the cycles of revenge and separation that rip communities asunder and thus restore coexistence (Helmick and Petersen, 2001). Then again, other studies question the efficacy of political and juridical measures based on the principle of forgiveness (Bentley, 2016; Trouillot, 2000) with the argument that these initiatives may derail transitional processes by awarding an unjust impunity, perpetuating or reinforcing power hierarchies, or covering up wider injustices that are rendered invisible by the veil of forgiveness.

The core concern, beyond the polemic between these two sides, comes into view once we examine what the foundational texts of restorative and reparative justice have to say about forgiveness: In fact, these texts do not name it as a principle and they explicitly reject the notion that forgiveness should be the motor of social reconstruction—as Zehr (2002) succinctly put it, ‘forgiveness or reconciliation is not a primary principle or focus of restorative justice’. According to De Greiff (2008), there is also no role for forgiveness as a descriptive or normative criterion in the context of Reparation Studies, and organizations like the United Nations do not list it among their fundamental principles when they outline the guiding purposes of transitional processes. This is not to say that these scholars and institutions reject or disregard the practice of forgiveness (it is undoubtedly important to those who participate in such processes), but we can take it as a reminder to be wary of common misconstruals of its role within restorative frameworks: It is often thought that forgiveness is crucial to the passage from retributive to restorative justice, and ordinary rhetoric assumes that forgiveness and restorative justice go hand in hand, but the fact is that its place within that framework remains uncertain. As Bessone (2025) points out, we should not presuppose forgiveness as a normative principle or as an end that teleologically structures restorative processes, since this would distort the latter. However, we can posit forgiveness as a result—even a desirable result—of the process.

The Basque restorative encounters

Let us now see how these discussions have played out in the Basque context. At some point, a group of ETA inmates publicly broke ranks with the Basque Prisoners Collective; they issued a group statement, many also issued individual statements of regret and desire for forgiveness, and they claimed to be intent on offering some form of reparation to the victims. As a result, the Basque Government’s agencies for the victims of terrorism and penitentiary institutions (with support from Spain’s then-socialist central Government) sponsored a pioneering series of restorative encounters. A total of fourteen encounters was held in a context that was situated on the margins of the penitentiary regime. Former ETA members and their victims or their relatives met for one-on-one interviews, assisted by a mediator who was responsible for setting things up.

Although by then the request for forgiveness had already been incorporated by the judicial logic as a condition, the notion of forgiveness was not conceived as a point of departure or an aim of the programme. However, it was certainly a lived concern during the encounters. In one of the testimonies compiled in a book-length record, one inmate explains that his aim was indeed ‘to ask to be forgiven for an unforgivable crime’ (Pascual Rodríguez et al., 2015). In contrast, another contributor, this time a victim, does not mention forgiveness and its restorative potential as central, but speaks instead of acknowledging the victimizer’s process and interprets the effects of the encounter as a passage from the individual to the political (as a contribution to peace and coexistence).

In a commemorative publication about this experience signed by two other participants—a victim and victimizer—we see how a particular way of connecting forgiveness and reparation can attain something that had remained beyond the reach of formal justice in the Basque case:

[W]e should not overlook the fact that, for the victim, this was the first time in more than thirty years that someone ‘from that world’ had asked for forgiveness for the murder of their father and for all the damage caused to their family. Since the penal justice system did not involve itself with this case, restorative justice has allowed the victim to become involved in a personal process to heal the damage caused by the crime and pave the way for a moral reparation. Whether forgiveness is granted or not is a question to be resolved exclusively within the private and intimate sphere: It is in the victim’s power and it is their privilege. Formal justice—which, let us remember, did not take on this murder case—cannot and should not break into this dimension. (García Arrizabalaga and De Luis Astarloa, 2021)

These encounters were not known to the public until some time later, since the organizers estimated that the project would only work out under very discrete conditions. After the fact, however, they organized major public acts of conciliation that ratified the political and social significance of these encounters between victims and victimizers, which was not restricted to the private sphere.

The programme was cut short after a new Government introduced a turn in penitentiary policy; Spain’s Ministry of the Interior continued to promote other ‘reparatory encounters’, but their conception was different: This was a victim-led initiative, whereas the former had been inmate-led, and professional facilitators were no longer involved. Forgiveness was now introduced as a fundamental notion, as stated in point 5.2 of the programme’s justificatory text:

The current legislation assigns juridical effects to requests for forgiveness addressed to their victims by inmates convicted of terrorist crimes [...]. Therefore, the Penitentiary Administration must arbitrate procedures to ensure that, if it is admissible to the victims, requests for forgiveness by willing convicts may be addressed to them. To that end, the program promotes encounters whose purpose is to comply with this legal requirement. It will always be up to the victim (the person who was directly harmed or someone close to them) to agree to participate in one of these encounters. Likewise, the convict who asks for forgiveness must be the material author or direct accomplice of the crime that caused the harm. (Ministerio del Interior, 2012)

This new approach was criticized by some of those who promoted and participated in the first restorative encounters (Urkijo et al., 2012), but it was also questioned by other victims, who stated that forgiveness was useless—and perhaps even a distraction—as long as the inmates refrained from effectively collaborating with justice authorities, specifically by shedding light on unclear facts and naming other terrorist accomplices. In the words of one of these victims:

They want to confuse our brains and our minds with conversations about forgiveness and repentance ... What is really comforting to all victims is knowing the truth about who killed our relatives, and that these murderers are convicted and punished according to their crimes. (Martínez, 2012)

To other victims, the expectations raised by the possibility of being asked for forgiveness and meeting the victimizers suggest other types of question:

What if I get a letter? What if I am invited to meet with some inmate? This is certainly upsetting to me and it makes me restless. Right now I am unable to say what I would do if I had to confront such a situation. I also don't feel the need to be asked for forgiveness. But who knows if, as this intimate and personal process evolves, I might react differently in the future if that were to happen. (Buesa, 2019)

This brief compilation of testimonies demonstrates that the involved parties, both the victims and the victimizers, espouse a wide range of stances regarding the role of forgiveness in reconstructing relations. Clearly, there is no consensus, neither among those who are directly implicated nor within institutions. Some claim that forgiveness must be an element in the process, perhaps even a crucial element, but others reject mechanisms that they perceive as conducive to impunity. Some relatives of murder victims explain that it is not their place to forgive, and that for this reason this is not a viable alternative. Others prefer to avoid the term 'forgiveness', for various reasons, but remain firmly committed to the notion that the victimizers should have an opportunity to begin again and thereby contribute to the goal of reconciliation.

This plurality of meanings and positions reflects a diversity of experiences, but it also illustrates the kind of discrepancies that plague the concept of forgiveness when we attempt to clarify its connotations and aims. These tensions are compounded by the subsequent expectations and the performative coding of the acts of asking for forgiveness or granting it, which typically reduce them to the fulfilment of a requisite or a norm (I am referring here to the rituals and the social, cultural, or moral expectations that determine its recognizability as an act of forgiveness). In such a context, it makes sense to ask: What, then, is the most adequate place for forgiveness? Does it still make sense to position it as an element in such complex scenarios, charged with such different sensibilities?

Where is forgiveness?

My analyses show that forgiveness is a complex concept traversed by multiple tensions. The attempt to introduce it as a legal condition in Spain's penal justice system frames the

explicit request for forgiveness as an institutional demand and thereby transforms it into a punitive tool determined by probatory logic. A gesture that has been traditionally understood as voluntary is being embedded within a strict normative framework that sets its conditions of possibility and fulfilment. This provokes several paradoxes, since a desire for forgiveness is inherently unverifiable and acts of requesting and granting forgiveness are relational, secret, unpredictable, and grounded on the singularity of the subjects that they seek to bring into relation. The normative stabilization of forgiveness within legal or institutional contexts is a project that risks neutralizing precisely the very components of the notion—trust, commitment, openness towards the other—that cannot fail to produce tensions once they are folded into the juridical framework.

Forgiveness resists overdetermination in the form of excessive regulation; it resists being conditioned or defined under the strict frameworks set by institutional, normative, or juridical logics. My analysis of its place within restorative justice frameworks confirms this. Although there is a tendency to posit an affinity between the concept of forgiveness and the model of restorative justice, the leading theorists of restorative justice argue that it is risky to position that concept as the point of departure or the explicit aim of the process. If we view forgiveness as a goal to be attained, the process might become a choreography whose participants feel compelled to comply with normative expectations. If they are subjected to a logic of fulfilment (moral, political, religious, etc.), the gestures of asking for forgiveness or granting it are deprived of their potency and open unpredictability.

I suspect that just such overdetermination has led many people to associate forgiveness with impunity, forgetting, or even a form of moral punishment, rather than with notions of openness, unpredictability, or fallibility. In view of this, we may want to rethink forgiveness as a gesture of resistance: Resistance to functionalization and resistance to normative capture. To further unfold this dimension of the concept, we should underscore the fact that forgiveness has no stable position within institutional or legal frameworks, but instead can be said to constitute itself as a non-place. This is not to say that forgiveness is or should be place-less: Its place is rather unverifiable, unassignable, and, in that sense, unavailable. Forgiveness, we might say, is existentially meaningful *because* it is a non-place; this is why acts of forgiveness place us in contact with what is uncertain, incalculable, and unpredictable in human relations, and this is why forgiveness proves disappointing when it is understood or instrumentalized as a proof or a guarantee.

Thus understood, we cannot deploy forgiveness as a means by which to attain a closed resolution. We cannot expect an act of forgiveness to bring a conflict to an end. Instead, forgiveness opens an indeterminate space that interrupts the logic of resolution and challenges expectations of closure. Acts of forgiveness are not culminations, they are openings: They make it possible to redefine or reconfigure human relations, but they offer no guarantee and display no horizon of indubitable fulfilment. If we understand them in this way, we see that actions of overcoming, restoration, or reconciliation need not be oriented towards a definitive closure or a conclusive transaction. We can also think them, perhaps no less paradoxically, as practices that resist any such closure.

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Notes

1. Appeals to the notion of forgiveness are now regularly heard in conversations about several social and political issues, to the point that ours has been defined as the 'age of apologies' (Political Apologies, n.d.; Zoodsma and Schaafsma, 2021).
2. Several scholarly works have emphasized the need to address this complex interplay between forgiveness and punishment within the institutional context of law. I find the following two references particularly relevant here: Nayfeld et al. (2025) and Smith (2014).
3. I use 'forgiveness' instead of 'apology' to emphasize the term introduced in the Spanish Criminal Code, which specifically refers to *perdón* rather than *disculpas*. While in English one usually *apologizes for something* and *grants forgiveness*—thus marking the two opposite directions of the gesture—one can also *ask for forgiveness*. Since this essay aims to analyze the relational nature of forgiveness, it seems more appropriate to maintain a single term. There are also further reasons for this choice: The term 'apology' is often associated with a discursive act and thus situates us within a communicative, rather than a moral sphere; in the case under study, however, we are not merely concerned with an enunciative act of apology, but with something more complex—a plea for inner transformation—which places us closer to forgiveness as a moral concept. Lastly, I prefer the term 'forgiveness' to 'apology' because I am also interested in the connection between forgiveness and the unforgivable—'forgiveness forgives only the unforgivable', as Jacques Derrida wrote (2001). With this connection in mind, I take my argument to contribute to a line of philosophical thought that distinguishes forgiveness, which pertain to grave wrongs, from apologies, which pertain to minor offenses and whose aim is simply to restore normality.
4. To be specific, the following modifications are worth noting: article 36 introduced a 'security period', entailing that inmates convicted of grave offenses must have served half of their sentence before being considered for any reduction; article 76 raised maximum sentence fulfillment limits; article 78 established that penitentiary benefits should be calculated according to the full original sentence; articles 90 and 91 establish new conditions for access to parole in order to heighten juridical security; article 93 established that inmates who do not comply with parole regulations must complete the remainder of their sentence without discounting the time spent on parole; and new sections added to article 72 of the Organic Law 1/1979, a

- set of general penitentiary regulations, set new requisites for accessing the ‘third degree’ (also known as the open regime) if there is a favorable forecast of social reintegration for the inmate.
5. For an introductory but rigorous perspective on the so-called ‘Basque conflict’, see Whitfield (2014).
 6. According to a report by the Ministry of the Interior’s General Directorate of Support to the Victims of Terrorism.
 7. In my view, it would be useful to take a closer look at this text’s statements on responsibility, victimization, and possible paths towards overcoming and reconciliation.
 8. In 2022, the presence of new magistrates in the National Court rearranged the balance of views and introduced a radical shift in how these conditions were to be interpreted. Until then, that court had systematically refused to reconsider decisions by the Central Penitentiary Surveillance Court, which reviews release requests, in cases in which the inmates had not fulfilled the condition of addressing an explicit (and sincere) request for forgiveness to the victims. We find a new approach in a court order from June 2, 2022, pertaining to one of these cases and signed by the progressive judge De Prada: ‘It is stated that the inmate failed to submit a written text voicing regret and requesting forgiveness from the victims, but this is in no sense a legal condition to obtain penitentiary benefits, and it could only be assessed at this time not as an obligation but as indicative of a good penitentiary evolution, which can also be inferred from other elements’. This shift has been reported by the news media, who have also covered the ensuing debate between the National Court and the Prosecution Ministry. See Cadena SER (2022) and Guadilla (2022).
 9. We should note that the practice of submitting these letters increased considerably in 2014, after the EPPK (Euskal Preso Politikoen Kolektiboa, “Collective of Basque Prisoners”) issued a statement on December 28, 2013, authorizing its members to comply with current penitentiary legislation (EPPK, 2013). This led many to suspect that the purpose of these requests for forgiveness was simply to comply with legal conditions as instructed by EPPK guidelines.
 10. The contrast comes plainly into view if we examine the extensive literature on the role of regret in the legal context, and particularly in Spain’s Penal Code; see Serrano (2023).
 11. In the context of the Basque conflict, the meaning of terms like ‘forgiveness’ and, especially, ‘regret’, has acquired unique connotations. The figure of the ‘*arrepentido*’ (the ‘repentant’) is perceived as deeply suspicious, and based on such perceptions it is now common to distinguish between a moral regret—when the offender acknowledges having caused harm and is willing to offer reparations—and a political regret, when the individual experiences ideological change. See Terradillos and Gabilondo (2016).
 12. Historians of forgiveness argue that its interpretation as an interpersonal exchange (among ‘men’) stems from a specifically modern construction of objectivity. According to David Konstan (2010), there are no traces of this version of the concept in Greek or Roman antiquity, or the Old or New Testaments, and its current meaning emerged only a few centuries ago, with the arrival of a new, modern understanding of the ‘self’ introduced by Hegel. In the traditions of Western thought, forgiveness is essentially constituted by notions of transcendence and vertical hierarchy: the granter of forgiveness is a third, sovereign party whose actions are unconditioned. Therefore, this juridical construction is not as alien to forgiveness as it may seem; we might say that the horizontal understanding of forgiveness stems from a rather recent reinterpretation of the concept; although the logic of sovereignty remains

operational in many cases, we are working our way towards a non-hierarchical understanding of forgiveness.

13. These diverse categorizations entail equally diverse nuances and aspirations that turn out to be quite relevant, since they often establish critical demarcations with the principles and goals of neighboring categories. Restorative justice seeks to repair the damage caused by a crime or injustice, and its focus is to encourage participation from the victims, the offenders, and the community in a joint search for solutions; its main practice is mediation in cases of minor offenses and interpersonal violence, or in community conflicts; it prioritizes material and symbolic reparations over punishment; and its aim is to restore relations. Recently, several penal justice systems have attempted to incorporate complementary restorative justice programs alongside ordinary processes. Transitional justice is generally defined as a set of judicial and non-judicial measures whose purpose it is to deal with massive human rights violations in contexts of political transition; its scope is wider and its aim is to attain 'truth, justice, reparation, and non repetition', which contrasts with the more individualized approach of restorative justice. Reparative justice critically challenges the foundations of both restorative and transitional justice; its aim is not simply to restore an order that existed before a particular transgression, but rather to interrogate the political and moral legitimacy of that past order; reparation is thus not understood here as the restitution of a prior order, but as an assessment in light of a criterion of justice. Reconstructive justice is not a field of study as such; the notion was introduced by Jean-Marc Ferry and developed by Paul Ricoeur (2004), who argues that we must redirect the focus of reparation away from the law (as in the system of retribution), the victim (as in the system of revenge), and the accused (as in the system of rehabilitation, whose therapeutics hark back to Plato's *Gorgias*, according to Ricoeur), and towards the organicity of the ties that bind human communities.
14. Sandrine Lefranc (2002) explains the prevalence of forgiveness in political discourses around restoration and reparation, where it is closely aligned with the notion of reconciliation. In her study of what she describes as a 'politics of forgiveness' in efforts to deal with the legacies of the Southern Cone dictatorships of Argentina, Chile, and Uruguay, Lefranc describes how, under the influence of archbishop Desmond Tutu and the influx of religious language into juridical and political discourse, forgiveness and reconciliation were blended to produce an inseparable couple. Lefranc's account allows us to develop an analysis of how contingencies and conjunctions can determine the functionalization of forgiveness, and it is particularly suitable to the study of transitional politics (which enjoys a great deal of attention in both academic literature and the news media), especially during the late 1990s (notably around 1998, when South Africa's truth and reconciliation commission published its report).

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