

Impoverished and Incarcerated: The Ethics of Converting Fines into Community Service

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Many countries in Latin America regulate the “conversion” of fines into prison sentences. Fines require the convicted person to pay a specified amount as determined by the criminal sentence. If the fine is not paid within the established period, the individual may face imprisonment for a duration ranging from six to eighteen months. However, some countries have introduced alternatives to prevent the incarceration of individuals who cannot afford to pay.

When a person is sentenced to pay a fine but lacks the resources to do so, the court may first attempt to satisfy the penalty through the seizure of assets, wages, or other income. If this proves ineffective, the court may convert the fine into community service, requiring the convicted person to perform unpaid work for the benefit of the community or individuals in need. To avoid imprisonment, the individual must agree to and fulfill certain obligations. This conversion system inherently involves accepting that community service is a form of punishment.

However, treating community service as a sentencing measure raises several concerns. First, it is essential to examine the objectives, functions, and limitations of community service in particular, especially when assessing its necessity and proportionality. Second, the justification for imposing such a penalty warrants scrutiny. In the context of severe socioeconomic inequality, does the state have the moral standing to compel convicted individuals to work without compensation? If the state itself contributes to unemployment, thereby violating a fundamental right, how can it justify administering such penalties?

In this paper, I will answer both these questions in the negative, and advocate for alternative approaches. I argue that the state lacks the moral standing to impose community service as a punitive measure. Instead of punitive community service, states should focus

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on offering convicted individuals meaningful opportunities for reparation and restitution that align with justice and equity.

I. Community Service as Alternative to Imprisonment

Typically, fines require the payment of an amount specified by the criminal sentence.¹ If the convicted individual fails to pay the fine within the established period, they may, in many Latin American countries, face imprisonment for a term ranging from six months to a year and a half.

In Chile, if a person cannot pay a fine, the court can, with their prior agreement, convert the penalty into community service.² Should the individual reject this option, they may be sentenced to imprisonment, calculated as one day for every third of a UTM (monthly tax unit)³ in the amount of the fine. The community service alternative requires the individual to perform unpaid work benefiting the community or people in need. The Chilean Penitentiary Administration coordinates these efforts, often in partnership with public and private non-profit organizations. The service is capped at eight hours per day, with one day of work required for each third of a UTM in the fine. The convicted person retains the right to terminate the community service at any time by paying the remaining balance of the fine. The hours they have already worked are credited toward the total amount owed, effectively reducing their debt.

However, if certain conditions are violated, the court may revoke the community service sentence and change it to confinement using the same scheme. This confinement cannot exceed six months, and may be imposed in the following circumstances: 1) failure to report to the Penitentiary Administration without justification; 2) unjustified absences from work for at least two days; 3) performance significantly below the minimum required standards; 4) repeated failure to comply with instructions from workplace supervisors.⁴

In Argentina, the process is more complex due to differences in legislation. According to the Criminal Code (art. 21), the amount of an imposed fine is based on general factors as well as the offender's individual economic situation. If the fine is not paid within the specified timeframe, the individual may be imprisoned for up to one and a half years. Before imposing a prison sentence, the court will first try to collect the fine from the offender's assets, salary, or other income. The offender may also be permitted to settle the fine through unpaid community work. Article 64 (Criminal Code) introduces an additional provision: a criminal case involving a fine can be resolved at any stage of the investigation—if the trial has not yet begun—through voluntary payment of the minimum fine and compensation

¹ See generally Ivó Coca-Vila, What's Really Wrong with Fining Crimes? On the Hard Treatment of Criminal Monetary Fines, 16 *Crim. L. & Phil.* 395 (2022).

² Código Penal (Criminal Code) art. 49 (Chile).

³ The UTM (Unidad Tributaria Mensual) is tied to the Consumer Price Index and is used as a tax measure. See Servicio de Impuestos Internos, Diccionario básico tributario contable (<https://perma.cc/LK2A-Y66W>).

⁴ Código Penal art. 49(6).

for damages caused by the crime. Once the trial has started, the offender must pay the maximum fine and repair the damages. In addition, the court may implement alternative sentencing measures, such as intermittent imprisonment or semi-detention, with the consent of the convicted person.⁵

Chile's regulations are explicit in their intent: they prioritize financial restitution. Argentina appears to offer additional alternatives but, in practice, the outcomes are similar. Both countries, through distinct mechanisms, effectively impose punishment for nonpayment of debts—an approach prohibited by law.⁶ This contradiction highlights a deeper issue: these regulations, under the guise of justice, perpetuate systemic inequalities in a region already plagued with stark disparities. The most troubling aspect is that these measures allow individuals to work off their fines in societies where economic inequality is pervasive.

But is community service merely an alternative to punishment—or does it represent something far more insidious? To answer this, we must first examine the punitive imposition of community service within the context of a communicative theory of punishment.

II. Community Service as Punishment: A Communicative Approach

A traditional perspective on community service positions it as an alternative to imprisonment, primarily justified by practical considerations.⁷ In this context, unpaid community work serves as a tool to address the global problem of severe overcrowding in detention facilities like police stations and prisons. Overcrowding often leads to degrading conditions that violate prisoners' rights, reflecting a failure of the state to ensure humane treatment. Detainees are frequently exposed to significant dangers that threaten their lives and physical integrity. However, beyond its role as an alternative to imprisonment, community service could be conceptualized in a different way.

According to Antony Duff, conceiving of punishment as a mode of rational communication (primarily with the offender) stems from a more general conception of law, and of how a state should treat its citizens: that it should treat and address its citizens as rational, responsible agents.⁸ He claims that in the context of the criminal law, censure can be communicated by the formal conviction which follows proof of guilt in a criminal trial, or it can be communicated by a system of purely symbolic punishments, which are burdensome or unwelcome solely in virtue of the censure which they communicate. It can also be communicated by the kind of “hard treatment” punishments that characterize our existing penal

⁵ Ley de Ejecución de la Pena Privativa de la Libertad (Law on the Execution of the Sentence of Deprivation of Liberty) arts. 35-37 (Argentina).

⁶ In fact, it is prohibited by human rights treaties ratified by both countries. See, e.g., American Convention on Human Rights art. 7(7) (“No one shall be detained for debt.”) & International Covenant on Civil and Political Rights art. 11 (“No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.”).

⁷ See, e.g., Julian Roberts & Loretta Stalans, *Restorative Sentencing: Exploring the Views of the Public*, 17 Soc. Sci. Rsch. 315 (2004).

⁸ R.A. Duff, *Punishment, Communication and Community*, in *Debates in Contemporary Political Philosophy: An Anthology* 387 (Derek Matravers & Jonathan Pike eds., 2003).

systems: punishments—for example, imprisonment, fines, compulsory community service—which are (at least typically) burdensome or unwelcome independently of their condemnatory meaning.⁹ With respect to community service, the imposition of such a punishment and the requirement that offenders undertake these hours of burdensome work communicate to offenders the community's formal judgment that they have committed a serious wrong for which they must make reparation. The hours of work provide a structure that can make them focus their attention on their crime and its implications (especially when the nature of the work is related to the character of the crime) and can thus help induce or strengthen a repentant understanding of the crime as a wrong against their community. This burdensome work can also be seen as a material and forceful expression of the apology that they owe to those whom they wronged—to the direct victim of their crime, if there was one, and to the wider community whose values they flouted.

The point of the community service is not to make material reparation for the material harm, if any, that the crime caused (although it could sometimes include such material reparation). It is rather to make moral reparation for the wrong that was done, not via a verbal apology, but through a burdensome penance which can do justice to the seriousness of the wrong.¹⁰ Duff argues that we can understand the community service's purpose by seeing it as a public form of the kind of reparation to which victim-offender mediation can lead. This meaning is most obvious when the work that offenders are required to undertake has some clear relation to the nature of their offense, as when a community service order imposed in a damage case requires the offender to repair the effects of his or others' acts of damage or otherwise improve the local environment. In these cases, the community service order imposes a rich and substantive censure that emphasizes the nature and implication of the offender's wrongdoing by confronting them with the damage done and the work involved in making it good. It says to them, in effect, "Look what you have done!" It also constitutes an apologetic reparation that they are now required to make to the community that they wronged in order to reconcile themselves with their fellow citizens. If the offender accepts their punishment on these terms, it becomes a sincere expression of their apologetic recognition of the wrong they have done, and an implicit commitment to avoid such wrongdoing in the future. By their acceptance of this punishment and by making this reparation and commitment, they reconcile themselves with their fellow citizens. Even if the offender does not accept their punishment as a mode of reparation, however, the punishment nevertheless encourages them to face up to the wrong they have done. Just as it may be appropriate to accept another's formal apology without inquiring into its sincerity, their fellow citizens should accept that in completing the community service order, they have sufficiently apologized for their crime.¹¹

⁹ *Id.* at 389.

¹⁰ R.A. Duff, *Penance, Punishment and the Limits of Community*, 5 *Punishment & Soc'y* 300 (2003).

¹¹ R.A. Duff, *Punishment, Communication, and Community* 105 (2001).

I sympathize with Duff's proposal and have defended a version of communicative punishment in other contexts.¹² But are these claims applicable in a society marked by social injustice, where individuals may, for instance, be unemployed? In such cases, does the state have the moral authority to compel a convicted person to perform unpaid labor as a punitive measure? If the state itself is responsible for the lack of employment, thereby infringing on a fundamental right, what justification does it have to impose this form of punishment?

III. Does the State Have Standing to Punish in Contexts of Social Injustice?

In contexts of inequality, such as in Chile and Argentina, the state lacks the moral standing to impose community service as a punitive measure. Instead, states should offer convicted individuals alternative forms of reparation and restitution. If someone in a moral community violates the fundamental terms of their membership, the purpose of expressing blame is to deliver justice appropriate to the seriousness of the offense. An offense obliges others in the community to partially suspend the attitudes of goodwill, respect, and consideration that would otherwise be extended. However, this change in attitude must be proportionate to the magnitude of the wrongdoing.¹³ Nevertheless, there are limits to blame. In this regard, the other community members must also have moral standing to impose blame on the wrongdoer. According to many philosophers, two primary conditions can undermine an individual's moral standing to hold others responsible: hypocrisy and complicity.¹⁴ Hypocrisy (often referred to as "tu quoque") occurs when the blamer has committed the same type of wrongdoing as the blamed. In such cases, the blamer forfeits their moral standing to criticize. For instance, if I accuse a close friend of dishonesty while having been dishonest with them in the past, my friend could reasonably argue that I am not in a position to question their honesty, since I have failed to uphold the same standard in our relationship.

¹² See Gustavo A. Beadé, *The Voice of the Community in the Criminal Justice System: Democratic Participation in Prosecution*, 64 *How. J. Crime & Just.* 358 (2025).

¹³ However, this does not need to be related to excluding moral wrongdoers from the political community. Cf. Christopher Bennett, *Penal Disenfranchisement*, 10 *Crim. L. & Phil.* 411 (2016); Andrew Altman, *Democratic Self-Determination and the Disenfranchisement of Felons*, 22 *J. Applied Phil.* 263 (2005); Mary Sigler, *Defensible Disenfranchisement*, 99 *Iowa L. Rev.* 1725 (2014); Günther Jakobs, *Terroristen als Personen im Recht?*, 117 *Zeitschrift für die gesamte Strafrechtswissenschaft* 839 (2005); Günther Jakobs, *On the Theory of Enemy Criminal Law*, in *Foundational Texts in Modern Criminal Law* 415 (Markus D. Dubber ed., 2023); but see Gustavo A. Beadé, *Disenfranchisement as Distancing from Offenders?*, 42 *Crim. Just. Ethics* 238 (2023).

¹⁴ See, e.g., Victor Tadros, *Poverty and Criminal Responsibility*, 43 *J. Value Inquiry* 391 (2009); R.A. Duff, *Blame, Moral Standing and the Legitimacy of the Criminal Trial*, 23 *Ratio* 123 (2010); Benjamin Yost, *Standing to Punish the Disadvantaged*, 17 *Crim. L. & Phil.* 711 (2023); Gary Watson, *A Moral Predicament in the Criminal Law*, 58 *Inquiry* 168 (2015); but see Nicola Lacey, *Criminal Justice and Social (In)Justice*, in *Structural Injustice and the Law* 168 (Virginia Mantouvalou & Jonathan Wolff eds., 2024); Rocío Lorca, *Excusing Unjustified Punishment: On Doing Criminal Justice in Unjust Societies*, 1 *Mod. Crim. L. Rev.* 50 (2024); Javier Cigüela Sola, *Crimen y Castigo del Excluido Social: Sobre la Ilegitimidad Política de la Pena* 264-68 (2019); Matt Matravers, *"Who's Still Standing?" A Comment on Antony Duff's Preconditions of Criminal Liability*, 3 *J. Moral Phil.* 320, 330 (2006); Stephen P. Garvey, *Guilty Acts, Guilty Minds* (2020).

Complicity arises when the blamer is partially responsible for the wrongdoing, either as an accomplice or an instigator. In this scenario, the blamed could challenge the blamer's authority by asking: "How can you condemn me when you bear some responsibility for the actions you now criticize?" If the blamer's involvement significantly limited the blamed's alternatives or contributed to the wrongdoing, their moral standing to express blame is undermined.¹⁵ Discussing the imposition of community service as a form of punishment requires analyzing the issue of moral standing not only from an interpersonal perspective but also from an institutional one, as the state acts as the blamer in the context of the criminal justice system. However, these contexts are fundamentally the same. Contrary to critics who downplay the significance of moral blame,¹⁶ the analogy between interpersonal moral blame and criminal justice is robust.¹⁷ State punishment is inherently grounded in moral blame. Morality, particularly moral blame, is too complex to rely (only) on what the law says. The moral debate does not oversimplify the full range of practice of moral discourse; rather, it illuminates the origins of our right to impose punishment and the moral reasons for doing so. Moreover, the two conditions that undermine moral standing, hypocrisy and complicity, are invaluable for understanding the state's limitations in contexts of social injustice. Beyond the interpersonal examples often cited by proponents of moral standing analyses, a critical question arises: do "we" as a society possess the moral standing to condemn a particular defendant's conduct through the courts? As Duff observes, individuals who have been not only unfortunately disadvantaged but unjustly excluded from many of the opportunities and benefits enjoyed by others may resort to criminal acts in pursuit of modest improvements to their unjust circumstances. Duff contends that in such cases, there is a genuine question of whether "we"—those comfortably included in the social and economic structures that perpetuate these injustices—have the moral standing to condemn such individuals. If we, as members of the community, benefit from or are passively complicit in these unjust systems, then the moral standing of the courts to judge and punish such conduct is also called into question.¹⁸ An inquiry into the moral standing of the state must look at its responsibilities to its citizens.¹⁹ It is possible to attribute responsibility to the state for creating, through its omissions, the conditions that leave individuals economically and socially excluded.

¹⁵ I developed this idea in Gustavo A. Beade, *Who Can Blame Whom? Moral Standing to Blame and Punish Deprived Citizens*, 13 *Crim. L. & Phil.* 271 (2019).

¹⁶ Nicola Lacey & Hanna Pickard, *Why Standing to Blame May Be Lost but Authority to Hold Accountable Retained: Criminal Law as a Regulative Public Institution*, 104 *The Monist* 265 (2021); Göran Duus-Otterström & Erin I. Kelly, *Injustice and the Right to Punish*, 14 *Phil. Compass* e12565 (2019); Erin I. Kelly, *The Limits of Blame* (2018); Rocío Lorca, *Punishing the Poor and the Limits of Legality*, 18 *Law Culture & Human.* 424 (2022).

¹⁷ See Lacey & Pickard, *supra* note 16, at 275.

¹⁸ Duff, *supra* note 8, at 401; see also Roberto Gargarella, *Penal Coercion in Contexts of Social Injustice*, 5 *Crim. L. & Phil.* 21 (2011); Beade, *supra* note 15.

¹⁹ But see Andreas von Hirsch, *Punishment, Penance and the State: A Reply to Duff*, in *Debates in Contemporary Political Philosophy*, *supra* note 8, at 408, 418-19; see also Eugenio Raúl Zaffaroni, *En Busca*

For decades, many governments in Latin America have implemented economic policies that disproportionately harm the most disadvantaged groups. As a result, citizens have faced limited access to employment, basic services, and essential social rights such as health, education, and housing.²⁰ Over the last fifty years, these conditions have worsened, primarily due to the actions—or inactions—of successive governments. The precariousness of these communities is exacerbated when governments fail to deliver on promises to address these deficits. If the state seeks to criminalize offenses arising from these conditions, individuals accused of such crimes could justifiably argue that the blame lies with the state. It is the state's policies, unfulfilled promises, and violations of basic rights that have forced them into circumstances where committing crimes—particularly the types of offenses often penalized with community service—becomes a means of survival.²¹ This is why the state is complicit in these situations.

Complicity is easily demonstrated in these contexts and may serve as the strongest argument against the state's moral standing to criminally blame and punish offenders. However, hypocrisy is also relevant in analyzing the state's moral standing. In contexts of social injustice, a state that imposes punishments like community service acts hypocritically since it penalizes offenders while simultaneously accepting, without question, the “bad luck” that initially placed them in such dire circumstances. Are those born into extreme disadvantage required to endure their plight without protest as others are?

This argument assumes that all citizens have a moral duty to comply with the law. It suggests that while some may protest and commit crimes, others in similar situations abide by the rules despite enduring identical hardships. Consequently, those who accept their punishment are framed as genuinely seeking reconciliation with their victims and the political community. However, this narrative is far from reality. Faced with the threat of imprisonment, offenders are likely to accept any alternative that spares them incarceration—this is not self-reform but a survival mechanism. When the offender has no viable alternative but to accept punishment, they are not necessarily showing true repentance and desire to reconcile with the community. Moreover, the state uses offenders as a means to fulfill its own responsibilities, by imposing unpaid labor instead of providing gainful employment. It is unacceptable for a state that fails to provide adequate employment opportunities to punish its citizens with unpaid labor. When the state does not address or mitigate poverty and inequality, punishing individuals who commit crimes out of necessity

de las Penas Perdidas (1989); David O. Brink, *Fair Opportunity & Responsibility* (2021).

²⁰ See, e.g., *The Latin American Casebook: Courts, Constitutions, and Rights* (Juan F. González Bertomeu & Roberto Gargarella eds., 2016); *Transformative Constitutionalism in Latin America: The Emergence of a New Ius Commune* (Armin von Bogdandy et al. eds., 2017).

²¹ However, what happens if the state does not make any commitment to fulfilling social rights? What happens if a government attempts to limit the responsibilities of the state, ignoring the tragic consequences this could generate? I am inclined to argue that the state has a fundamental moral obligation to improve its citizens' lives. In this regard, the argument stands.

perpetuates these injustices. Such actions represent not only an unjust form of punishment but also an effort to maintain systemic inequality.

While it is true that individuals in a democratic society bear various duties and obligations, the state also has responsibilities. Foremost among them is the obligation to ensure the well-being and equality of all citizens. When the state fails to meet these fundamental requirements, it undermines its moral standing to punish those living in unjust circumstances. Punishing disadvantaged groups while justifying the punishment by pointing to the compliance of others is hypocritical. The issue is not that some citizens operate outside the law; rather, it is the state itself that violates the law by failing to meet the basic needs of its people. The state lacks the moral standing to use community service as punishment for crimes committed in societies marked by social injustice. The state is complicit in the conditions that lead citizens to commit these crimes and acts hypocritically when imposing punishment under such circumstances. However, the imposition of community service (i.e., unpaid labor) as punishment raises further concerns. First, in contexts of social injustice where employment opportunities are scarce for offenders (and others), why should they be required to serve their sentence through unpaid work? Second, what happens if a convicted person eventually secures stable employment? How can they simultaneously fulfill the requirements of their sentence and meet the demands of their paid job? Are they expected to work more than 10-12 hours a day? This type of punishment imposes an undue burden on offenders, undermining the intended purpose of communicating censure. Instead, it risks violating offenders' human rights and becomes a disproportionate form of punishment which therefore fails to effectively convey censure.

If, as in Argentina and Chile, the state offers community service as an alternative to imprisonment for someone without a paid job, it exposes its failure to provide basic necessities to its citizens. On the other hand, if community service is imposed on someone who already has a paid job, it becomes a disproportionate punishment and a violation of human rights. Forcing individuals to work beyond the hours permitted by labor laws only further highlights the state's culpability.

IV. The Effective Communication: The Alternative of Public Apologies

According to Andreas von Hirsch, punishment conveys blame by imposing deprivation ("hard treatment") on the offender.²² He argues that deprivation serves as the vehicle for expressing blame. However, he rightly questions: why rely on this vehicle rather than expressing blame purely in a symbolic fashion?²³ For instance, Duff contends that the hard treatment component of penal sanctions can be explained in reprobative terms. He views the deprivations involved in punishment as a form of secular penance, integrating them into the broader framework of moral censure.²⁴

²² von Hirsch, *supra* note 19, at 418-19.

²³ *Id.* at 408.

²⁴ See Ambrose Y.K. Lee, *Defending a Communicative Theory of Punishment: The Relationship between*

Communicative punishment implies a respect for autonomy that will preclude any attempt to force a citizen to change his moral attitudes, or to bring about such a change by any means other than those of rational moral persuasion—it precludes both the coercion and the manipulation of attitudes or beliefs.²⁵ Again, according to Duff, the aim of communicative punishment is to induce an appropriate change in the offender’s attitudes and dispositions. That change must ultimately be one that the offender himself brings about, because he sees it to be necessary—the aim is not merely “reform” but self-reform. Although punishment is, obviously, coercive, what it should aim to force on the offender is not the desirable change in his attitudes, dispositions and future conduct, but the awareness that his community thinks such a change necessary. He is forced to hear the punitive message: but it must be up to him whether or not he accepts that message and the opportunity for repentance and reconciliation which his punishment provides.²⁶ However, this option is not truly available in the contexts of social injustice described above.

While I have argued that, in contexts of social injustice, the state cannot impose punishment in the form of community service, I firmly believe that offenders should be held accountable and engaged in a communicative process to reflect on their actions. This is not a call for the abolition of punishment, but rather for a different approach to accountability. Censure and blame for prohibited conduct are fundamental acts that occur when someone is called to account in a criminal trial.²⁷ A trial provides an opportunity for defendants to acknowledge their mistakes and clarify their intentions. It allows them to assume responsibility for their actions and confront the witnesses and victims of their offense. In this accountability process, it is essential to listen to what the accused has to say. Institutional arrangements must enable this participation, ensuring it is not limited to a binary declaration of guilt or innocence. A person accused of a crime may offer an excuse or justification, explaining what they did and why. Part of the community’s obligation when holding individuals accountable is to remain open to hearing their perspective before imposing punishment. In a democratic context, one of the purposes of punishment is to reintegrate the individual into the community. The aim should be to rehabilitate individuals who have made mistakes as quickly as possible. To achieve this, it is necessary that the offender actively contributes to reconciliation with the community. We must try to recover an individual who made a mistake as quickly as possible.²⁸

Apologies play a crucial role in this process and can serve as the first step toward meaningful reconciliation. Apologies are an appropriate response to wrongdoing, and when

Hard Treatment and Amends, 37 *Oxford J. Legal Stud.* 217 (2017).

²⁵ See R.A. Duff, *Trials and Punishments* (1986).

²⁶ Duff, *supra* note 8, at 397.

²⁷ See R.A. Duff et al., *The Trial on Trial* (Volume 3): *Towards a Normative Theory of the Criminal Trial* 127 (2007); R.A. Duff, *The Realm of the Criminal Law* 201-14 (2018); R.A. Duff, *Criminal Law, Civil Order and Public Wrongs*, 7 *Law Ethics & Phil.* 233 (2019); Gustavo A. Beade, *Should Public Blame Replace the Criminal Trial?*, 7 *Law Ethics & Phil.* 221 (2019).

²⁸ Gustavo A. Beade, *Disenfranchisement as Distancing from Offenders?*, 42 *Crim. Just. Ethics* 238 (2023).

sincerely offered and well-received, they can be pivotal in addressing the harm caused. Expressing remorse does not mean erasing the crime or pretending it did not happen. Rather, an apology allows the accused to recognize their role in causing harm and to acknowledge their violation of the community's norms. An apology may involve more than words. It can include actions such as providing restitution to the victim for what was lost or engaging in acts that demonstrate remorse and a commitment to change. Taking such steps shows a degree of regret and signals the accused's intention to avoid repeating their harmful behavior.²⁹ In this way, apologies can contribute to repairing relationships and fostering the reconciliation necessary for reintegration into the community.³⁰

V. A Public Conception of Apologies: A Brief Overview

Implementing a formal role for apologies in the criminal context raises several challenges. First, apologies must be directly related to the offense committed. Proportionality should also be considered to assess the severity of the harm caused and determine what actions are necessary to make amends. Apologies should be understood within the specific circumstances of the case. For example, the approach to apologizing for a theft may differ significantly if the offense occurred in a context of extreme poverty. Apologies, therefore, require a personal dimension that goes beyond mere gestures of courtesy in routine relationships. They must take into account the victim's experience and the harm they endured. It is also crucial to clarify what the apologizer is willing to do to remedy the situation, as this will ultimately reflect the sincerity of their apology. In this way, apologizing can carry significant symbolic value for the victim and address several important aspects of repentance and reconciliation.

On one hand, an apology signals that the offender recognizes (in the sense of acknowledging, not necessarily fully assuming) that their conduct was reprehensible. It demonstrates an understanding of the harm caused and serves as a symbol of regret. On the other hand, apologies can act as a positive signal for the future, indicating that the offender is willing to engage in reparative actions and commit to behavioral improvement—an important step in taking responsibility. In a public conception of apologies, it is essential to include the community to which the offender belongs, i.e., the apology should be made to the community at large. A genuine apology involves a level of personal reflection that reflects repentance and the principles of communicative punishment. If reparation is one of the aims of state punishment, then the goals of reparation and reconciliation which are central to communicative theories provide a fitting theoretical framework for understanding the role of apologies.

Apologies occupy an ambiguous space within criminal law. They are, in the first place, highly personal expressions of acknowledgment and regret, yet they also carry

²⁹ Christopher Bennett, Punishment as an Apology Ritual, in *The New Philosophy of the Criminal Law* 25 (Chad Flanders & Zachary Hoskins eds., 2016).

³⁰ Nicholas Tavuchis, *Mea Culpa: A Sociology of Apology and Reconciliation* (1991).

broader social meaning when delivered publicly. In criminal proceedings, apologies have the potential to repair relational harm, affirm the dignity of victims, and contribute to the moral reform of offenders. They may also play a communicative role, reinforcing social norms and re-establishing trust within the community. Despite this potential, their role in formal legal contexts remains limited, and attempts to institutionalize them face significant challenges.

A. The Reparative Value of Public Apologies

At the interpersonal level, apologies address the immediate harm suffered by victims.³¹ By acknowledging wrongdoing, expressing regret, and demonstrating respect, the offender begins to restore the victim's reputation and mitigate feelings of humiliation, resentment, or distrust. When integrated into criminal proceedings, apologies take on a public dimension. In this regard, public apologies extend these effects to the community. They both "set the record straight" by clarifying responsibility and, at the same time, provide evidence of moral improvement, thereby repairing not only the offender-victim relationship but also the broader social context damaged by the offense.

This broader reach is particularly relevant when the harm goes beyond the immediate victim of the offense. Many offenses—such as those involving discrimination or gender-based violence—convey a symbolic message of disrespect that affects others who share the victim's characteristics. In such cases, apologies do more than make amends to one individual; they also reaffirm the equal standing of similarly situated individuals within the community.

Despite these theoretical benefits, criminal justice institutions often fail to harness the reparative potential of apologies. Probation hearings, for instance, tend to emphasize compliance and efficiency rather than moral engagement. Victims seldom have the opportunity to express their experiences or expectations to offenders, while offenders typically focus on satisfying conditions quickly. As a result, apologies are rarely offered, and when they are, they are often not deep enough. In general, probation frequently reduces to monetary compensation or adherence to judicial rules, with little space for acknowledgment of harm. Such arrangements overlook the symbolic importance of apologies. Financial payments may compensate for certain losses, but they do not address the degradation and disrespect embedded in certain offenses. The opportunity to repair relational damage is thus wasted, leaving victims with formal remedies but without genuine recognition. The offender's apology, recorded as part of the proceedings, restores part of the victim's autonomy by affirming her voice in a process that otherwise marginalizes it. For the offender, the act of apologizing publicly represents a commitment before the political community not to repeat the offense.

³¹ See, e.g., Christopher Bennett, *The Apology Ritual* (2008); Nick Smith, *I Was Wrong: The Meanings of Apologies* (2008); Linda Radzik, *Making Amends: Atonement in Morality, Law, and Politics* (2009).

This dynamic aligns with communicative theories of punishment, which stress the importance of offenders acknowledging wrongdoing and undergoing moral reform. Apologies function as speech acts that not only recognize past harm but also project a willingness to change. They thus serve both backward-looking and forward-looking purposes: repairing harm already caused and showing future behavioral commitments.

B. Beyond Apologies: The Need for Complementary Measures

Although apologies are essential first steps in repairing relationships, they may not suffice in every case. Serious wrongdoing often requires additional measures, such as material reparations or acts of amends. These measures extend beyond words, imposing obligations that reflect the gravity of the harm. Still, apologies remain foundational. Without acknowledgement of wrongdoing, no further reparative process can begin. Thus, serving a community service sentence does not in itself constitute an apology; an explicit and public verbal apology is required. Without such a verbal expression, there can be no genuine reparation.

Crucially, victims themselves should retain the authority to determine whether an apology is adequate or whether further measures are necessary. The legitimacy of any reparative process depends on the victim's voice being heard and respected. Apologies represent a promising yet underutilized tool in criminal proceedings. Properly structured, they can repair relational harm, affirm victims' dignity, and contribute to offenders' moral reform. Their public nature integrates the perspectives of both victims and communities, aligning with communicative theories of punishment. At the same time, challenges of proportionality, sincerity, and state involvement must be carefully addressed to avoid reducing apologies to empty rituals.

Despite these challenges, the potential of apologies should not be underestimated. They provide recognition of harm in ways that, for example, community service alone cannot achieve and offer pathways for rebuilding trust between victims, offenders, and communities. Apologies may carry transformative value by affirming the need for change and creating conditions for reconciliation. As such, incorporating apologies into criminal processes—while not a panacea—deserves serious consideration as part of a broader communicative and reparative approach to punishment.

VI. Conclusion

The “conversion” of penalties into community service seemingly generates positive outcomes for convicted individuals. Offenders can resolve their conflict with the criminal justice system while avoiding imprisonment. This is why countries like Argentina and Chile employ it as an alternative to incarceration. However, when viewed as a form of punishment, community service appears to effectively impose punishment for unpaid debts. A state that, in a context of social injustice, has failed to address the social demand for employment is not entitled to impose community service as a punitive measure. In this context, states should offer alternative forms of reparation. I propose that prioritizing the role of

apologies in a criminal trial aligns more closely with the aims of a communicative theory of punishment than imposing community service as punishment without the appropriate moral standing to do so.