Introduction

In the Museum of Natural History in New York, there is a slice of a tree. The tree rings begin more than a thousand years before the establishment of the United States. Museum goers can see all the rings at once and count them, finding the years of drought and fire, determining which came before and which after. But these are marks of time, as though time could be seen all at once and expressed as a picture or a number, and neither we, nor the tree, can experience this time “as passing.”

Several months ago, I was sitting in a coffee shop, when in walked a friend of mine from high school. I smiled and tried to catch his eye, but when he gave me a puzzled look, I realized, blushing, that he could not be my friend from high school. The person who had walked into the coffee shop was only 19 or 20 years old. My high school friend would be 53. But I had forgotten that he had continued to age while I was not looking.

I once spoke with a woman whose brother had been brutally murdered a decade earlier. She was speaking all over the country on behalf of an organization to abolish the death penalty. I asked her whether she would ever consider meeting with the man who murdered her brother. She could have the chance to tell him of her family’s suffering, to find out what he had done in prison, and perhaps to hear him express remorse or apology. She thought hard for a minute, her face taut with pain, clearly fighting with herself, wanting to be able to say “yes.” “No,” she said, finally. She explained that the crime was something she had tried hard to put out of her life, “like a box on the top shelf, far in the back of a closet.” She wanted it to be out of her world, no
longer part of her day-to-day reality. “I don’t ever want to open that box again,” she said.

Occasionally, I teach at a prison. The reason I was originally moved to do so was that, during a prison visit with one of my classes, I met a young woman serving a 50-year sentence for a crime she committed at age 14. “I’ve tried to commit suicide several times,” she told me. “It’s such a huge amount of time. I just feel sometimes that I don’t have a reason to get out of bed in the morning.” Another woman with a life sentence chimed in, “That’s right. After a while, you don’t do the time; the time does you.”

Paul Ricoeur writes of the aporta between two philosophical accounts of time: “cosmological time” and “phenomenological time,” that is, between time understood as a measurement of duration based on some form of steady movement (whether that “tick” is based on the day/night cycle, the movement of sand through a small aperture, the half-life of carbon-14, or the movement of electrons around a nucleus), and time understood as the experienced relationship among expectation, perception, and memory.¹

One aspect of phenomenological time is that it does not seem to pass, and people do not change, except as we perceive them to pass before us. As in the examples above, when we are not present to perceive the change, people and events remain “frozen” in time in our memories. We often take up with old friends “as if no time has passed,” because we often fail to acknowledge that any time has passed or that any change has occurred. And we “put things behind us” and move on, forgetting that the people “behind us” continue to change while we are not looking. Past and future are always in relation to the “now” of a human understanding, and the experienced now is always inflected by the “expected” based on the remembered, as in the example of seeing the old friend in the cafe.

A second aspect of phenomenological time is that it is not regular. Time slows down and speeds up. The young experience time as having a longer duration than the older do. High school lasts forever; graduate school seems much shorter. Traumatic experience may stop time, erase time, or create repetitive time. Exciting events pass more quickly than boring ones; happy times pass more quickly than sad ones. Time may be turgid with loss, or pregnant with anticipation. And “time in” is experienced differently in prison than on the outside. Some of those serving long sentences experience time as endlessly rewinding, as treadmill repetition and routine create identical days, months, and years. And even among those inside, time is experienced differently when one is closer to release than when the light at the end of the tunnel is merely a pinprick.2

By contrast, when we think of time “cosmologically,” time is not tied to our perception of change, but exists as “having to do with” a regular, repeated motion, “even though we must continually extend our search for the absolute clock.”3 By positing some kind of cosmic moving metronome as our standard of measurement of time, we imagine time as an x-axis extending into infinity like number itself, entirely separate from human experience. Time becomes a linear substrate that can be cut into equal, quantifiable segments by the duration of some standard motion: “Change (movement) is in every case in the thing that changes (moves), whereas time is everywhere in everything equally.”4 From the cosmological perspective, we imagine time from the point of view of eternity, publicly present for us “all at once” and everywhere as a quantity, or time-line, or map of succession—or a display of tree rings.

Time understood cosmologically is, therefore, expressed as a contemporaneously-experienced visual or spatial numerical “truth.” From the cosmological point of view, we can talk of successions of events, the “number of motion in respect to before and after,” and, therefore,

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4. Ibid., 14, explicating Aristotle’s Physics.
cause and effect; but we lose the explicitly durational ideas of “then” (before now), “now,” and “later” (after now). The “now” requires a being in time that is not available from the cosmological perspective outside time, looking at time.

When we think of time cosmologically we regard time from the perspective of a god, who sees temporal relationships “all at once” rather than as “passing from one to another.” Cosmological time is like sorting old pictures into chronological order on a screen, and seeing them all in a row “at once” in the proper order of succession. Or, to use a different metaphor, it is like the sheet music that all-at-once represents the succession of notes in their measured order. Phenomenological time, by contrast, is a lived present of a slide-show experience that passes from one picture to another—now, and then now, and then now. Or, it is the playing or hearing of music in performance. Visual metaphors, like the time-line, predominate when we speak of cosmological time; auditory metaphors, like St. Augustine’s example of chanting a psalm, predominate when we speak of phenomenological time.

According to Ricoeur, each of these two accounts of time corrects a problem with the other, and each creates its own unique philosophical difficulty. Cosmological accounts of time correct the misperception that time is identical with perception (and the misperception that what is unperceived does not change). Yet this cosmological account of time seems to fail to capture the passing before us and the experience of duration that we associate with time. Phenomenological understandings of time, on the other hand, call attention to the first-person experience of the passing of time, its interpenetrated and durational character as past, present, and future, and correct the misconception that humans in time can understand time from a point of view of eternity. But phenomenological time cannot encompass, for example, an idea

5. Aristotle, Physics, Book IV, 219b.
7. Cf. ibid., 19–21.
of geological time that extends apart from or before the origins of human life.9

The thesis of this essay is that the way in which we think and talk in the criminal law context about sentencing people to “time” exhibits both temporal fallacies. We fall into the phenomenological mistake of forgetting that time continues to pass in prison (while “we” are not looking), and when we think or talk of those serving time (if we think of them at all), we “freeze-frame” the prisoner as though, like Sleeping Beauty, no time has passed since the crime occurred.

Not only do we make phenomenological mistakes in sentencing, but in calculating sentences, we make the cosmological mistake of treating “time” abstractly as a mere “number,” and we treat sentences as “debts” that can mount far beyond the finite time of a human life, as though the debt could be paid “all at once” like a mortgage: 50 years, 50 cents, 50 dollars, 50 cookies. We don’t think of 50 as having a duration, just a quantity. In part this mistake is due to the persistence of retribution as our default theory of punishment; we believe that time must be measured by and match the crime. In consequence, the crime is always recalled fresh-frozen to our minds as the measure of sentencing, i.e., time as a quantity commensurate with the crime.

In making both phenomenological and cosmological errors, we also forget that we should understand that time is the realm or mode in which humans act and understand as we finite creatures grow, change, learn to connect and explain the disarray of past events, and then project that story into a future. Hence, if punishment is to have a “meaning” (such as, retribution or atonement), then the “time” a punishment takes is only a frame within which meaningful human action happens. It is the human action in time that may have meaning, not the time itself. Instead, then, of sentencing people to “time,” if we continue to require that the imposition of state punishment have a justification or “rational basis” (as our constitutional law requires), we should sentence people to acts, rather than to “time,” assuming that we need to sentence them at all.10


10. George Pavlich has argued persuasively that “accusation” itself and the characterization of actions as “wrongs” needs a great deal more philosophical attention,