each other, the differences between them seem inexplicable and meaningless. The meaninglessness of the numbers seems, anecdotally at least, to cause more resentment than remorse.

If temporality is the condition of a meaningful human life, “doing time” is, quite simply, inhuman.52 Both ethical loneliness and doing “mere time” are denials of humanity, a murder of personhood. Perhaps we might also characterize “doing time” as a state of enforced anomic persistence (or, perhaps, “bare life”), the very antithesis of the pursuit of happiness. We might imagine claiming for both victim and prisoner a natural right to exist in time, with projects, actions, and plans.53

V. Bad Time and Good Time

How do we think of human life as purposeful? We should remember that there are many different traditions and understandings of a meaningful life, among them, for example:

- Productivity—achieving, building, learning, or creating something, either alone or as part of a team.
- Struggle and overcoming—a heroic story or political narrative of overcoming obstacles: leaving, learning, and a wiser returning; union and reunion; redemption; helping others overcome obstacles.

52. Jennifer Culbert explores Hannah Arendt’s views on punishment, expressed in Eichmann in Jerusalem: a Report on the Banality of Evil, noting that for Arendt:

[O]nly in the presence of others do individual human beings appear and act as such. ... human beings are distinguished from other forms of life by the fact that they can act, in speech and deed, to bring new things or states of being into the world. For these acts to take place or become real, other human beings must acknowledge and remember them. To be deprived of this space and the presence of others is to be deprived of the condition that confers reality on the founding and preservation of something new. In other words, to be deprived of this space and the presence of others is to be deprived of the condition that permits human beings to be distinctly human.”


53. See Brian Orend, Human Rights Concept and Context (Peterborough, Ont.: Broadview Press, 2002) 47, explicating Alan Gewirth’s idea that the human capacity for practical wisdom is core and requires opportunity for action, as well as the means.
• Participation—fulfilling a social role in “the circle” of life or nature, moving from child to parent to grandparent, from birth to death, in solidarity and communion with others.
• Seeking or achieving union with one’s God.
• Learning as an end in itself.
• Creating as an end in itself.
• Ethical action or virtue as an end in itself.
• Loving others as an end in itself.

Just “doing time” is none of these. Indeed, a key insight of nearly every Western ethical theory is that activity is central to human satisfaction. Robert Nozick famously imagined an “experience machine” that allows us to “feel” pleasure or have vicarious experience. Nozick concluded that such a machine would not constitute a satisfying substitute for activity with consequences in the world.54 Martha Nussbaum’s capabilities approach and John Finnis’s natural rights theory, for all their ideological differences, reach similar conclusions.55 And of course Aristotle understood that virtue was an “activity of the soul” that was dormant during sleep.56

Of course, in prison, no one (except perhaps those in solitary confinement) actually “just does time.” Like weeds in the cracks of a sidewalk, people create worlds and villages and selves, even under prison conditions. Any prison memoir or testimony reveals the importance of relationships in prison, however we may discourage them. Even on death rows, where interactions are most sparse, friendship happens.57 And despite uniforms and uniformity, expressions of individuality and

57. See Joseph M. Giarratano, “The Pains of Life” in Facing the Death Penalty: Essays on a Cruel and Unusual Punishment, ed. Michael L. Radelet (Philadelphia, Penn.: Temple University Press, 1989) 194–9, recounting a painful farewell by telephone with his prison-mentor and friend Mike, who was about to be executed:

“I love you, my friend. I’m sorry I can’t stop this.” Mike’s reply still rings in my ear:
“I’ll be fine, Joe. You know that I’m going home. Please don’t do anything you might regret later. You have to forgive them.”
creativity emerge—hairstyles, make-up, tattoos, subtle clothing alterations, and the like. The problem is that the idea of “just doing time” creates institutions designed to pave over as much human soil as possible. Made in the image of “just doing time,” we often design prisons and prison policy to cut off and frustrate most forms of meaningful human action.

In many prison settings, there is little support for finding meaning in productivity, creativity, or in the achievement of goals. In most prisons, programming is limited, difficult to access, and the first thing to fall to budget cuts. Nor can one usually keep or profit from one’s creative activities. For example, I’ve seen women crocheting in prison like Odysseus’s wife Penelope in Homer’s Odyssey, constantly undoing and reworking their projects because they are not allowed to keep the finished articles.

One cannot “overcome” narrative obstacles in prison, because every day one faces, like Sisypheus, the eternal return of the very same obstacles—repetitive cleaning tasks, crude and offensive comments, often pointless regimentation. “How can we grow up in here,” one young woman asked me, “if we never experience anything and nothing ever changes?”

One is hindered in building meaningful relationships because one’s living situation is frequently shifted; talking and socializing is discouraged or heavily restricted; and guards are changed every few weeks or months precisely to avoid developing meaningful relationships. Visiting with family is hindered by artificially expensive phone services, lack of public transportation, artificial and highly restricted conditions for visits (even with children) and restricted hours for calls and contacts.58

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58. See N. G. La Vigne, “Examining the effect of incarceration and in-prison family contact on prisoners’ family relationships,” Journal of Contemporary Criminal Justice 21 (Nov. 2005), 314; and U.S. Bureau of Justice Statistics, “Parents in prison and their minor children,” August 30, 2008. In October 2015, the Federal Communications Commission capped rates for local and in-state long-distance calling for those in prison and cut the existing cap on interstate long-distance rates. The new rules were scheduled to take effect in June of 2016, but were partially stayed by the D.C. Circuit pending review in Global Tel*Link v. F.C.C., No. 15-1461, after being challenged by phone companies and the states that receive commissions from them. www.fcc.gov/consumers/guides/inmate-telephone-service.
One may of course still find meaning in religion, and many do, but even a meditative or contemplative approach to meaningful life is hindered by the constant noise and lack of privacy inherent in over-crowded prison conditions. Any still, small voices that might offer themselves are all but drowned out.  

Even though prisons are designed in many ways to frustrate meaningful action, most prison administrators don't see their mission as forcing prisoners to merely "do time," except, perhaps, in the horrific context of solitary confinement. On the contrary, prison administrators—out of concern for prison and community safety and basic humanity (and, even more optimistically, to enhance people's chances of success after prison)—try to come up with "programming" (if they can afford it) to fill the swaths of empty time and make imprisonment at least seem to have a meaningful trajectory and a narrative arc. If the dominant rhetoric at sentencing is about retribution and the quantitative fit between the crime and the time, the dominant narrative inside prison is about therapy and atonement, and the qualities of change and rehabilitation.

So, though judges and legislators naturally employ the (eternalizing) scalar rhetoric of proportionality and retribution, prisons naturally employ the (temporal) narrative rhetoric of rehabilitation, self-improvement, and redemption. The ideal and goal of punishment is, hence, understood dramatically differently in the courtroom—whether the sentencing scheme is indeterminate (as in Connecticut).

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59. Even if prisons retained their original justification as places for penitence, obviously it would be difficult to justify prison in today's secular state on the sole ground that it encourages religious life.


61. The U.S. National Institute of Corrections has many resources on "best practices" that focus heavily on individual needs assessments and "individual development plans." See NCIC annotated bibliography of "what works:" https://s3.amazonaws.com/static.nicic.gov/Library/026917.pdf.
or highly regulated by rules (as in federal court)—and in the warden's office.

Compare the following transcripts of sentencing practices in Connecticut state court and federal court with the approach to serving time as described in the Connecticut Department of Correction's Accountability Plan:

A. Connecticut State Court

"THE DEFENDANT: I'm ready to plead. I'm ready to plead. I just need a couple of weeks so I could prepare myself to come in.

THE COURT: No.

THE DEFENDANT: I'm ready to plead. I'm not—

THE COURT: Listen. Here—

THE DEFENDANT: I'm going in blinded, broke—

THE COURT: Hold on. Just a second. Okay. You had alternate offers coming in to today. You're scheduled for a violation of probation hearing today which means depending upon the outcome of the violation of probation you could have been incarcerated as of five o'clock tonight for four and a half years. That was the possibility. Your attorney argued very eloquently for you in there and got me to reduce your prison term for today with the understanding that you were going in today. Now if you say I'm going to plead, I'll take that deal and be here tomorrow to go in, that's fine. If you're saying to me, I'm not going to do it because I want two weeks then it goes back to 15-7-3, which is 84 months in prison ... rather than 66 months in prison.... So you tell your lawyer what you want to do because if you don't want the offer as it stands today then at 2 o'clock we may or may not be starting a violation of probation hearing on you and the whole deal is off. The State wanted 20 years. All right?... For one moment and one moment I have a little bit of a weakness to give you 15 after 66 months. Either you want it or you don't."

B. Federal Sentencing Transcript

I will now state on the record the specific reasons for imposing the sentence I have just imposed.

As to the term of incarceration, the guideline range is 78 to 97 months. I have made a substantial downward departure and have imposed a term of 24 months' incarceration as to each count, with that sentence to run concurrent as to each count. I believe this sentence does adequately address the sentencing objectives of punishment and deterrence, and I will state on the record the reasons for making my downward departure in just a minute.

The order of restitution and fine are made for the reason I believe that, under the record before me, such restitution and fine are justified and do meet the ends of justice in this case.

The supervised release is imposed for the reason I believe the defendant will need this amount of supervision to see that he reassimilates himself back in society, that he obtains suitable employment, that he maintains a law-abiding life-style, that he pays the restitution and the fine.

The special assessment of $4,700 is imposed because the law mandates that it be imposed. That's $100 as to each count of conviction.

I will now state on the record the reasons for making the downward departure that I have just made.

Very few cases brought before this court have the potential to impact not only science, education, medicine, and research, but society as a whole by the restrictions and limitations placed on the transportation of hazardous and biological material as they relate to medical and academic research.

This court in no fashion condones the actions taken by the defendant in his illegal transportation of yersinia pestis to Tanzania. However, the court is of the opinion that while the defendant's actions are covered by Section 2M5.1 of the guidelines, mitigating circumstances exist to such a degree that the court does not believe a base offense level of 26 adequately achieves the desired outcome of the United States Sentencing Commission in their formulation of the United States Sentencing Guidelines. As a result, the court considers that the defendant's conduct regarding his conviction for unauthorized export to Tanzania is outside the heartland of the guidelines as noted in Section 5K2.0 and the application notes to the guidelines, Section 2M6.1, and therefore, I have assessed a downward departure.63

C. Description of Connecticut’s Offender Accountability Plan
(often required of each new prisoner upon entry into prison)

A. INTRODUCTION

An Offender Accountability Plan (OAP) shall be developed for each fully sentenced offender, formulating treatment goals and programming needs. The OAP is a tool designed to identify and address specific areas that need to be modified in order to assist the offender in a successful reintegration into the community. The foundation of the OAP is accountability, with each individual accepting responsibility to engage in productive endeavors. Each offender’s OAP shall be reviewed, and when necessary modified, on a regular basis throughout the term of incarceration in order to assess progress and reinforce achievement of stated goals. In addition to participation in identified treatment, educational and vocational programs, the OAP addresses safety and security issues, to include behavioral expectations (i.e. disciplinary reports, etc.).

The final phase of the OAP prepares the offender for transition into the community, either by way of supervised community release or full discharge from their sentence.  

In the state court transcript, the defendant is faced with a sentence that appears almost meaningless and is deeply inflected by the time he is saving the court, rather than the time that fits the crime. Of course, defense lawyers, prosecutors, and judges will determine behind closed doors “what the case is worth” based on many other factors as well, including the nature of the crime, the mitigating circumstances, the defendant’s prospects for rejoining the community, remorse, and the strength of the evidence. Many defense lawyers argue that the number that ultimately arrives in the public courtroom is a kind of tailored, individualized justice. But it is also mostly unexplained, secret, and approached as a debt paid primarily in the coin of time, in which a “program sentence” is a rare win for defense counsel, rather than a default option.

In federal court, the quantitative, time-frozen, and retributive approach to sentencing inside the courthouse necessarily jars with the rehabilitative and temporal understanding that is at least intoned if not supported by programming inside the prison. No matter what an offender does inside to atone or change, the retributive sentence remains the same, “freeze-framed” in the past and calibrated, like money, according to some quasi-monetized gain/loss/damage.

Only after sentencing is any mention made of what an offender will actually do once arriving at prison. And if he is to do “nothing,” then he might indeed prefer a punitive coma—or might simply try to make life as difficult for his jailors as possible, out of sheer boredom and a desire not to become invisible. Hence, provision for some form of “good time” sentence credit becomes almost a necessity in a prison system in order to bring prisoners a sense of progress,  

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tence” (in Heidegger’s sense), and of living in time rather than persisting “like a rock beside the road.”

One famous example of the tension between rhetorical discussions of retribution and rehabilitation is the many parole attempts of Leslie Van Houten. A Charles Manson follower who participated in two murders, Van Houten was sentenced in 1969, and she has come up for parole in California twenty times. She has earned two college degrees, aided elderly inmates, mentored, served, and accumulated a host of certificates and accolades for work in prison. At her twentieth parole hearing in 2013, these accomplishments were noted by the panel that finally recommended her for consideration for parole—only to have that recommendation rejected by a legal panel of the California Board of Parole Hearings. Nearly every news account lingered on the lurid details of the Manson Family’s crimes, published old photographs of Van Houten at age 22—and paid little attention to the details of Van Houten’s constructive work inside the prison. Van Houten testified, “I know I did something that is unforgivable, but I can create a world where I make amends. I’m trying to be someone who lives a life for healing rather than destruction.” Again this year, just as this book goes to press, in her twenty-first appearance before a panel weighing her past and determining her future, Van Houten has received a recommendation to be approved for parole. Whether this recommendation will be accepted by the two steps of review imposed by California law—first a legal review by the Board of Parole Hearings, and finally a decision by the governor—remains to be seen.

