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Criminal justice and mass incarceration

The moral failures of America's prison-industrial complex

Jul 20th 2015, 18:48 BY W.W. | CHATTANOOGA



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BARACK OBAMA toured the El Reno Federal Correction Institution in Oklahoma last week, making him the first sitting president to visit a federal prison. He took the occasion to reiterate some points from his [lengthy speech about criminal-justice reform](#), delivered earlier in the week before the NAACP in Philadelphia. He was philosophical, too, as he reflected on the way some young people end up in prison for mistakes "that aren't that different than the mistakes I made." These actions, along with his decision to commute [the sentences of 46 non-violent drug offenders](#) last week, underscore his determination to do something about America's [scandalous incarceration rate](#).

Mr Obama is starting small, calling for increased judicial discretion for non-violent drug offenders. John Boehner, the Republican Speaker of the House, has [indicated his support for reforming federal sentences](#) for non-violent drug crimes, which means something might actually get done. Federal-level sentencing reform for drug crimes is

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Thoughts and opinions on America's kinetic brand of politics. The blog is named after Alexis de Tocqueville's study of American politics and society

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certainly most welcome, but it would barely put a dent in America's overall incarceration rate. Drug offenders make up only about a fifth of America's prison population, and less than 15% of America's prisoners are housed in federal cells.

To really roll back the prison-industrial complex, it is necessary to reduce sentences for violent criminals at the state level, too. That's a tougher sell. It involves not only considering its racial inequities and costly bloat, but also the moral failures of a system that doles out punishments that are out of proportion with their crimes.

To weigh the merits and morality of America's incarceration rate, it helps to remember why it started booming. It began in the 1980s, when high crime led [district attorneys](#) to send more people to prison, and for longer sentences. The country's "war on drugs" introduced strict sentencing guidelines, which reduced the discretion of judges and parole boards. In their 2013 study "[Why are so many Americans in prison?](#)", Steven Raphael and Michael Stoll, professors of public policy at Berkeley and UCLA, found that changes in sentences for drug offences were important, accounting for about 20% of the increase in the incarceration rate. However, harsher sentences for violent criminals accounted for nearly half the rise. Between 1984 and 2009, the time typically served in state prisons increased by roughly five years for murder, three years for sexual assault, eighteen months for robbery and six months for burglary. A significant reduction in the incarceration rate will require rolling back prison terms for these crimes, too.

Defenders of harsh sentences claim that they both deter crime and prevent it by keeping many criminals off the streets. The evidence for deterrence is weak. [A 2014 report on incarceration from the National Academy of Sciences](#) explains that criminals are deterred primarily by the risk of getting caught; longer sentences have had no discernible effect. Longer prison terms affect crime rates mainly through the "incapacitation effect", which keeps those most prone to crime locked up. However, as Messrs Raphael and Stoll explain in [a paper for the Brookings Institution](#), the incapacitation effect peters out considerably as the incarceration rate rises. The worst criminals tend to get locked up even in much more lenient regimes. Locking away large numbers of less dangerous people for long periods delivers very little in additional public safety. Given how high America's incarceration rate is, it is fair to say reducing it won't precipitate a crime wave. Many convicts serving long sentences were never generally dangerous, or have mellowed with age, and no longer pose a threat to the public.

Messrs Raphael and Stoll point to the recent example of California. A court decision declaring prison-overcrowding unconstitutional led the state in 2011 to pass reforms that ended the practice of sending convicts back to prison for technical parole violations. The result was that some 20,000 convicts who otherwise would have been sent to prison remained free. The state incarceration rate reverted to 1990s levels without an attending rise. Indeed, studies found no effect on violent crime and a small effect on property crime. (Each year of prison not served due to California's reform was estimated to cause an additional 1.2 auto thefts.) However, the social cost of a stolen Corolla is not clearly greater than the cost to taxpayers of a year of prison time. "[H]arshness in sentencing often results in prison spells that cannot be justified by the risk posed by the offender," Messrs Raphael and Stoll observe.

Harsh sentences may not do much to ensure safer streets, but maybe criminals deserve them. Plenty of people think that America's incarceration rate reflects the justice of retribution. But this theory has some holes, too. To lock someone in a cage is to strip him of all liberty. Most of us think this sort of total deprivation of freedom can be justified when a crime is serious enough. And most of us think that very serious crimes can justify very long spells of captivity. A rule of proportionality applies. Punishment must fit the crime.

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Keeping people in jail *too* long adds a new injustice to the original crime. If someone commits a crime that merits five years in prison, but is kept in captivity for ten, then five years of his or her life have been unjustly stolen in much the same way that the life of a kidnapping victim, locked away for five years in a basement, has been stolen. It's a horrible injustice either way.

So what are we to make of the leap in time typically served for violent crimes between 1984 and 2009? Either we were unjustly lenient then, or we are unjustly punitive now. Did we only lately wake up to the real gravity of murder, or are we now overreacting?

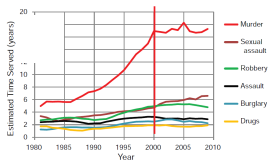


FIGURE 2-10 Estimated time served in state prison, 1980 to 2010.
NOTE: See text for a discussion of calculations of time served.
SOURCE: Beck and Blumstein (2012).

The fact that America's previous practices were more in line with those of the rest of the civilised world today ought to lead us to suspect that America is now punishing its violent criminals too harshly. America's prisons may therefore be teeming with many thousands of people who have already served sentences equal to their crimes, yet remain in captivity, deprived of their liberties and rights, like kidnapping victims or slaves.

"But they're violent criminals!" you say. "Rapists and murders!" Indeed, many are. And they have been, and are being, duly punished for their crimes. Those who have served a proportional sentence, and have proven themselves worthy, deserve to be restored to public life.

Tough-on-crime types are likely to rebut this sort of position with arguments about deterrence and public safety. And it's true that keeping people in prison too long prevents a little crime, though not much. However, deterring crime by keeping people in prison too long is equivalent, from a logical and moral point of view, to rounding up ex-cons who have already served their time and throwing them back in the clink for a while, even if they've committed no new crimes, simply because some of them eventually will. We wouldn't stomach this kind of pre-emptive incapacitation. So Americans shouldn't be willing to tolerate it when it involves keeping people in prison after they deserve to be released.

It bears mentioning that even those who *are* released are now treated more harshly than they were. Many ex-felons are banned from voting, serving on juries and acquiring occupational licenses necessary for certain professions. Even after serving parole, and going without a new offence for years, ex-offenders may remain ineligible for pensions, disability benefits, public housing, food stamps and government assistance for higher education and job training. This pushes disadvantaged ex-convicts deep into the margins, making it cruelly difficult, and sometimes impossible, to find a path to a normal, un-criminal life.



How to make America's penal system less punitive and more effective

What's the reason for this? How did America arrive at a point where it not only punishes more people more harshly than ever, but also keeps on punishing them? It may be that many Americans have become taken with idea that a serious crime justifies the permanent loss of certain rights. This may help to explain the country's indifference to the fair proportionality of punishment. Fairness is reserved for those who have not disgraced their humanity and citizenship by committing a serious crime! This, in turn, may have fuelled America's rising incarceration rate. Once we develop the mental habit of lumping



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together murderers and muggers as irredeemable monsters, it becomes possible to convince ourselves that it's okay to lock a man in a cage for most of his remaining years for having committed a relatively trivial "violent crime".

A reflexive dehumanisation of "criminals" and "felons" discourages the exercise of real judgment in sentencing and probation. It allows us to sleep well when judges commit injustice in the name of justice, consigning people to captivity long after they ought to be let free. And it helps us rationalise the disenfranchisement of those who are, eventually, released.

Now that Mr Obama has made it a priority to point out the problems inherent in America's sentencing practices, perhaps Americans will begin to consider the possibility that the criminal-justice system, in losing sight of proportionality, has become criminally unjust. Until then, America may make some headway in sentencing reform, but will struggle to really reduce its incarceration rate and rejoin the civilised world.



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guest-nwiawwm Dec 15th 2015, 20:10

I am praying some of the readers and commenters will lend their support. We are currently fighting to help Keith Ezell regain his freedom. PLEASE click the link and sign your name to help us get him home after 15 years of incarceration! He is dearly missed!

<https://www.change.org/p/naacp-bill-haslam-tennessee-department-of-corre...>

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guest-nwiawwm Dec 15th 2015, 20:10

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guest-nwiawwm Dec 15th 2015, 20:09

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guest-nmimiwm Oct 8th 2015, 13:26

One of the largest reasons for recidivism is that many ex-felons can not get work. Many states and localities still have rules not allowing an ex-felon to obtain work or to obtain an occupational license to do the work they are very capable of. Even states who claim to allow ex-felons to obtain licenses do not do so. Putting people through the paces and then at the end denying their license as if taunting them - such as they do in Virginia. I applaud places like Washington DC who actually have programs to help ex-felons obtain a decent job and migrate back into society. Also to people like Richard Branson the Virgin Airlines Billionaire who is committed to hiring ex-felons. Giving people a second chance is a critical step into lowering recidivism rates and allowing all these people back into society. Everyone makes a mistake some are caught and many are not. As the good lord said - "let he who has NOT sinned cast the first stone"

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Reply

guest-njejoan Aug 31st 2015, 11:38

The whole judicial organization in the USA is in need of improvement. Stay more focused and updated on the people and issues that really matters. Suggest people, issues and statements you would like featured at <http://st8.co/issues>

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Reply

guest-njmeaoo Aug 18th 2015, 11:36

I often hear about the insane sentences passed in America, some ludicrous ones close to a millennium which seems to be nothing more than a headline grabber, and thank god I live in the UK. Although with an average sentence of 12 years for murder here it is a bit too lenient in my opinion.

One thing I don't understand about the American system is how they can justify life sentences for drug possession. The war on drugs is nothing more than a publicity stunt, especially considering the CIA were caught smuggling in tons of pure cocaine and nothing was done about that. People will always take drugs, people will always sell drugs, sending people to prison will NEVER stop that, EVER.

In fact, you can't even stop people getting drugs in prison!

I'm not saying that there shouldn't be any drug laws, I'm just saying that common sense shows us that nothing will ever change with regards to the amount of drugs on the street or the people who take them, the only thing that does change is the prison population.

I didn't know about the loss of things like public housing and disability benefit etc. but now that I do I can see why many re-offend after release. Trying to go straight is hard enough with some help, but with no help and nothing but obstacles it would be close to impossible. Unless of course people can somehow secure a very well paid job as soon as they leave prison and are able to obtain a mortgage!!!

Then there is another problem of having minors sent to prison for 30 years for mediocre crimes. Imagine being sent to a prison full of hardened criminals at that age and the toll 30 years amongst such people would have. Institutionalized is an understatement.

It's ironic that it costs the government a fortune to keep people in prison, yet upon prisoners' release they do nothing but put obstacles in their way and even make it as difficult as possible for them to obtain rehabilitation, when in reality it would be a much cheaper alternative to the current system.

People make mistakes and NOBODY is flawless, Nobody. Hell, look at Australia. That country was built by criminals and now they won't let anyone in if they have criminal convictions.....the irony.

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guest-njaeioo Aug 15th 2015, 16:24

Unreasonably harsh, long / mandatory minimum sentences is the leading cause of mass incarceration that negatively impacts every U.S. citizen that reduces funds available for infrastructure, public safety, medical research, education, etc. Drug incarceration is the second cause followed by for-profit private prisons.

Mandatory minimum sentences harm our society.

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Reply

guest-njaeioo Aug 15th 2015, 16:13

Many Americans are not aware of the negative impact to themselves and to all U.S. citizens from

mass incarceration that lowers funding for education, infrastructure, medical research, public safety, and so on.

Thank you for the article. (I am a subscriber to your print magazine.)

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Reply

guest-onseoil Aug 3rd 2015, 14:21

The entire Judicial system in the USA is in need of just reform.

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Report

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Reply

pllasalle Jul 27th 2015, 18:20

It takes a lot of nerve for a politician to take on the prison industry whose political and emotional power is right up there with teachers unions and the NRA.

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Reply

daydreambeviva in reply to pllasalle Jul 27th 2015, 20:14

"It takes a lot of nerve for a politician to take on the prison industry whose political and emotional power is right up there with teachers unions and the NRA."

What a load of hogwash. The man isn't eligible to be elected again. He is just polishing the shelf for the trophies the NAACP and SCLC are going to give him for his presidential library when he starts his \$250,000 a pop retirement speech circuit.

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Reply

Jake Swenson Jul 27th 2015, 00:49

>>Those who have served a proportional sentence

And the proportions for committing murder should be life in prison or death. That is proportional.

Recommend26

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Reply

Lord Of The Strings in reply to Jake Swenson Jul 27th 2015, 07:04

Is it really? Say that you kill a man on his deathbed. Should you serve life in prison for taking a man's life when he has but minutes left?

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Reply

daydreambeviva in reply to Lord Of The Strings Jul 27th 2015, 20:17

"Is it really? Say that you kill a man on his deathbed. Should you serve life in prison for taking a man's life when he has but minutes left?"

Truly the delusional white leftist is at sea where anything concerning the rights of victims is concerned.

"The real victim is little Tommy Tucker who had to sing for his supper and couldn't held bashing the old lady for her pension check. Check it out- he never saw a color tv until he was seven!"

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Reply

guest-oonolss Jul 26th 2015, 23:37

I guess I'm a cold hearted bas&&@\$ for thinking the 16 year average sentence for murder is better than five! Oh wait, it's the murderers who are cold- hearted! There are many MANY reforms that can be made in the state and federal criminal justice system but this article doesn't seriously advance any of them. Sure, the data is there. We have too many folks locked up. If it's a burden on taxpayers then compelling reason for reform. The point here is, we have too many people locked up and for too long, don't you feel bad (insert pronoun)? Well no I really don't feel bad for locking up murderers, and rapists, in fact I feel pretty good, and the reason is self explanatory. Since we are so concerned about feelings, how do the victims or the victims families feel? How about the juror, who sat on a rape case and gave a rapist 40 years because it was the right thing to do? Then said juror finds out the pleas are down to 5 years in prison for rape cases not going to trial because the judges and prosecutors have feelings about putting bad people away. This feeling stuff has got to stop, in the end we all have a job to do, if it can be done better or cheaper great

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Reply

Lord Of The Strings in reply to guest-oonolss Jul 27th 2015, 07:12

I think you're missing something here. You're trying to view this issue as a 'right and wrong' or 'good vs. evil' scenario, when there's a lot of middle ground that includes environment and psychology. There are people in prison who have mental issues and a lot of them come from poverty. Instead of acting punitively, we should be looking to get help for the loonies and trying to raise up our lower economic classes to reduce the number of poor and mentally disturbed who turn to crime.

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Reply

daydreambeviva in reply to Lord Of The Strings Jul 27th 2015, 20:27

'You're trying to view this issue as a 'right and wrong...'

If right or wrong are not the issue, why should we be concerned with the length of jail sentences?

Right and wrong are what criminal law is about, otherwise there is no restraint on conduct other than the size of your fist.

Indeed, you are making the argument of Christianity, the source of Western notions of right and wrong, which enjoins us to turn the other cheek.

But that faith is not a smorgasbord or a buffet. All or nothing.

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Reply

guest-omnnmei Jul 26th 2015, 17:13

I'll consider the purported "moral failures" of America's prison system and America's justice system after criminals' moral failures are addressed first.

Recommend

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Reply

guest-omnnmei Jul 26th 2015, 17:02

Do lengthy sentences have a deterrent effect? Probably not. Do short sentences have a deterrent effect? Probably not.

The reason is very simple -- criminals don't plan on getting caught.

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daydreambeviva in reply to guest-omnnmei Jul 26th 2015, 21:08

"Do lengthy sentences have a deterrent effect? Probably not."

While the criminal is in jail he cannot commit more crimes. What could be a better deterrent than that?

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guest-omnnmei in reply to daydreambeviva Jul 26th 2015, 21:44

The issue was before a crime is committed and before incarceration.

After the bad guys are in the big house, I agree completely with you.

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guest-omnnmei Jul 26th 2015, 16:57

I think adult idiots, fools, and the brainless should be allowed to ruin their health with whatever poison they choose to put into their bodies so long as the rest of society doesn't have to pick up the medical bills or other social costs for their stupidity. Legalize drugs and let the idiots overdose. That would greatly reduce the pool of fools now locked up for non-violent drug offenses.

On the issue of violent offenders, the author substitutes his/her opinion for what is an unfair, overly lengthy sentence. For a violent offender, who's to say if, for example, 15 or 20 years for manslaughter is too long? Or for that matter, too short? That's a call for society at large to make. The way that call is made in a representative democracy is through the legislature.

I agree that much older violent offenders would rarely pose a risk if released. But why are these oldsters now, perhaps, rendered harmless? Precisely because they got the lengthy sentence in the first place. Let an 83 year old murderer out now, 60 years after he committed the murder? Maybe -- if it's okay with society AND with the approval of the victim's family. Let the murderer out when he's 45 or 55? Not a chance.

The violent crime rate has been going down steadily for years now. That fact alone argues persuasively for maintaining the status quo.

Tongue in cheek, there's another solution: contract out our entire criminal justice system to Singapore.

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Mad Maggie in reply to guest-omnnmei Jul 26th 2015, 18:14

The violent crime rate has been going down in Britain, too, without excessively punitive prison sentences. The author asserts that either America's prison sentences were too lenient previously, or they're too harsh now. However, previously they were more in line with those of other Western

countries. Now, they're more in line with countries such as Saudi Arabia, Iraq or Iran.

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Reply

Mad Maggiein reply to guest-omnnmeiJul 26th 2015, 18:14

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Timber xJul 26th 2015, 09:11

Most people who have had family members become victims of violent crime would not agree that sentences are "overly harsh".

Simple solution to "overly harsh sentences": Don't commit violent crime.

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Reply

cronksterin reply to Timber xJul 26th 2015, 15:42

You're right.
You have to love The Economist. In this article about 'harsh' treatment, they post a picture of a guy sitting down to a huge meal.
Drug offenders should not be in prison, drugs should be legalized (as in Lisbon, Portugal) and the other people who commit crimes, including robbery, should be WORKING in prison, providing restitution to their victims, and extremely unhappy about it and determined never to go back once they get out.

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Reply

Mad Maggiein reply to Timber xJul 26th 2015, 18:18

"Most people who have had family members become victims of violent crime would not agree that sentences are "overly harsh"." ----- That is precisely why we have courts of law, who are not emotionally involved, but who can be detached and reasonable.

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Reply

Samuel Lewis ReichJul 26th 2015, 08:41

Obviously people who are more than 50% likely to do great harm to others if fee must live in place where only have contact with simular people. To put them with others than that is be a partner in their antisocial actions.

Therefore there needs to be cities made where only such probable anti-social people must live, if one does not want to pay for jailing them.

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guest-snmojen Jul 26th 2015, 03:12

U.S.

sanfrancisco.cbslocal.com/2014/11/13/from-prisoners-to-programmers-san-quentin-inmates-are-learning-how-to-code-the-last-mile/

Russia

Google Black Dolphin prison (TE treated the links as spam).

Brazil

Google Brazil prison overcrowding

Clearly there is room for improvement in the U.S.

However, the man in TE's photo for the article is seen eating and drinking like a civilized man.

In other countries, someone truly criminal or framed by politics, etc. is treated subhuman.

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guest-onwloss Jul 26th 2015, 01:55

"When you don't have enough criminals, you create more laws."...and the US has been doing just that. A few years ago a head lawyer at the DOJ was tasked with coming up with how many crimes are "created" by the law makers. It took 2 years.....AND THEY GAVE UP. Yep! Couldn't count them all for even 1 year alone. The lawyer stated words to the effect that you would have lived and died two generations and not been able to come up with the number. Gee...how can anyone be acCOUNTable when the world's largest law firm can't even COUNT them? So when people say the law makers in Congress were lazy and didn't come up with any new laws....its a good thing. Everyone of those laws they pass were intended to apply to government alone but have been systematically applied to THE PEOPLE...and the result has been devastating.

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guest-omnnmei in reply to guest-onwloss Jul 26th 2015, 17:06

"Couldn't count them all for even 1 year alone. The lawyer stated words to the effect that you would have lived and died two generations and not been able to come up with the number."

Where's the citation for this claim?

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Kenneth711 Jul 25th 2015, 22:11

Prison reform starts with having fewer people commit crimes that require they be sent to prison. That is not going to happen as the prevailing dogma in American society is criminals are made by society and not by poor moral choices by the criminals. That in turn requires setting certain moral values as absolutes with no excuses. So a heritage of slavery is no excuse to commit crimes. Poverty is no excuse to commit crimes. etc.

The true moral bankruptcy is thinking that reducing prison population without addressing why the

prisoners committed their crimes in the first place will solve anything.

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ds@davidsweetnam.tv in reply to Kenneth711 Jul 26th 2015, 00:14

And what about the corporations who run the prisons then suing the states for their 'quota' not being filled should the crime rate drop..?

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guest-onwloss in reply to Kenneth711 Jul 26th 2015, 01:58

Largely correct. People blame the cart for not moving properly...and ignore the horse.

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