

## WHICH IS BETTER, SIMPLE OR COMPLEX CALCULATION?

Yusuke Tsubone  
Keio Univ. ESS

Let's say we are in a math exam and there are problems that can be solved by using a formula taught the other day. Obviously, we would use the formula. Formulas are wonderful because they make calculating simple! Surprisingly there is a ridiculous part of our government -- the Criminal Code -- that knows the formula but does not use it.

During the course of this speech, I'd like to assert that a fundamental change should be made in how the lengths of prison terms are calculated in criminal cases.

First, let me explain the concepts of simple and complex calculations by referring to an example.

On November 28, 1999, a large truck tailgated a car on the Tomei highway. In this accident two young girls were killed and five other people were injured. The drunken driver, Taniwaki, faced a trial on charges of homicide and bodily injuries through professional negligence and violation of the Road Traffic Act. The Code provides no more than 5 years of prison for the former, and for the latter, it provides no more than 2 years of prison.

To simplify my argument, I have ignored fines and will focus on the prison terms. In this case, Taniwaki killed and injured 7 people and violated the Road Traffic Act. If we simply add the maximum prison terms of all his crimes, the maximum prison term for Taniwaki should be 37 years, because homicide and/or bodily injuries through professional negligence would be applied to 7 people, both dead and injured, and the outcome of 35 years is added to violation of the Road Traffic Act that equals 2 years at most.

Under the current system, however, such a simple calculation is not used.

In a case where one commits more than two offenses, the prison term for the heaviest offense is multiplied by 1.5, and that is the maximum term that can be charged. Therefore, the maximum term for the

above example becomes 7.5 years. This is what I refer to as a complex calculation.

The calculation itself isn't that difficult, but my assertion here is that in some cases, the term is insufficient. In other words, the penalty does not meet the gravity of the crime.

The two girls who were burnt to death might have lived for another 70 or 80 years, yet the maximum sentence is only 7.5 years. Please think about this! Two girls lost an aggregate of about 150 years, yet the criminal -- and he is a criminal because he was drunk - can only be sentenced to 7.5 years in prison. Where is the equity in such a system? Where is the justice?

Ladies and Gentlemen, doesn't the present Japanese Criminal Code lack something very crucial? For almost all cases, the agony and pain of victims are not reflected in the judicial decisions -- there is a total lack of equity between the crime and the penalty.

To a certain extent, the principle of the Criminal Code to rehabilitate criminals is at the root of this problem. But this principle was initially established during the Meiji era -- over a century ago! Even though the nature of crimes is becoming more vicious and one single person is capable of committing multiple felonies, this particular principle remains unchanged.

Why should we make this change to the use of simple calculation? Because if it is applied, the guilty will have to pay the price for their actions as the Roman philosopher Cicero wrote, "Let the punishment match the offense." Simple calculations are already used in the United States where it is called the annexation system under the Federal Code.

There is a number of ways to ease the pain of victims and bereaved families, such as financial support to bring cases to court, mental counseling and so on. However their strongest wish is to see those who have committed crimes to be given equal amounts of pain and agony that the victims received; that is, retribution.

In conclusion, I would like to quote the words of the victim of the Niigata abduction and confinement case after she was rescued - "Please do not keep him out of jail. Please keep him out of sunlight, like he did to me."