

An empirical analysis of criminal sanctions against exam cheating in China

L. Li

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In order to ensure the sustainability of the national examination system, which is the basis of social mobility, China has added new criminal sanctions for Exam Cheating in the criminal law amendment in 2015, and issued the latest judicial interpretation in 2019. However, through the analysis of the relevant judicial application data from 2015 to 2019 by SPSS, it is found that there is still a certain gap between the latest judicial interpretation and the actual problems. To a large extent, the judicial interpretation in 2019 solved the problems of the scope of the crimes of exam cheating and clarified its boundary with other related crimes. However, it does not contain detailed provisions on “serious circumstances”, which will certainly affect the original purpose of legal regulation laid down by the legislator to prevent illegal acts and formulate lawful behavior. Through the empirical research on such crimes, this article argues that the functions of criminal law in shaping the moral and behavior standard could give full play only by revising the penalty standards through later judicial interpretation. Such measures are extremely necessary and will achieve the goal that the legislator pursued when introducing liability for cheating.

Keywords: China’s National Examination System, Criminal law Amendment, exam cheating; judicial interpretation.

Introduction

Today, the examination system has become the crucial safety valve to maintain social mobility in China. In fact, examination results have become the most important factor, if not the only evaluation indicator, for enrolment or promotion. On the other hand, cheating will weaken public confidence¹. It may indicate that values considered essential to good citizenship and good business practice have not been instilled². Exam cheating wholly violates the principle of fairness and undermines the concept of equal opportunity. Those who did not cheat on exams will be affected because the grading process will not be totally based on merits³. Indeed, the normative order of society will be damaged or altered if cheating were known and continued over time but were, however, uncondemned and unpunished. Perhaps it would simply “fail, go dead, and lose its grip”. In this sense, the research on exam cheating is of significant practical implication and academic value⁴.

Following the same logic, China has added new criminal sanctions for exam cheating in Amendment (IX) to the Criminal Law of the PRC in 2015 to ensure the sustainability of the national examination system — which is the basis of social mobility. The new law

Lifeng Li — PhD in Philosophy, Professor, Jilin University, 2699, ul. Qianjin, Changchun, 130012, China; lilifeng@jlu.edu.cn

¹ *Hermanowicz J. C.* The Degradation of Merit // *Society*. 2019. Vol. 56, no. 4. P. 340–47.

² *West T., Ravenscroft S., Shrader C.* Cheating and Moral Judgment in the College Classroom: A Natural Experiment // *Journal of Business Ethics*. 2004. Vol. 54, no. 2. P. 173–183.

³ *DiMatteo L. A., Wiesner D.* Academic Honor Codes: A Legal and Ethical Analysis // *Southern Illinois University Law Journal*. 1994. Vol. 19, no. 2. P. 49–104.

⁴ *Kleinfeld J.* Reconstructivism: The Place of Criminal Law in Ethical Life // *Harvard Law Review*. 2016. Vol. 129, no. 6. P. 1485–1565.

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includes the crime of organizing cheating in a national examination, the crime of illegally selling or providing test questions or answers, and the crime of taking on behalf of anyone else or enabling anyone else to take on behalf of himself or herself an examination.

As mentioned above, exams have played a very important role in the social life of China and have changed the fates of many people. Exam cheating seems inevitable since the benefits are huge. This is to say that an increase in the benefits associated with undetected cheating will encourage students to cheat⁵. If there are no effective measures to counter exam cheating, there will be negative consequences for both the individual who cheated in the exam and the world. It has been argued that the experience of successfully cheating might reinforce cheating behaviors⁶. Since individuals do not have strong religious tenets in China⁷, legal consequences should be used as restriction to fight against the wrongdoings of exam cheating. According to the hypothesis of rational beings, a reasonable person may be tempted to cheat if the punishment from being caught is not as severe as the potential benefit of passing the examination and receiving a high score⁸. This means that increasing the severity of penalties imposed on students who are caught cheating will decrease the act of cheating. Furthermore, measures that increase the probability of detection will also discourage cheating⁹. On the other hand, since criminal law is the primary legal institution by which a community reconstructs the moral basis of its social order¹⁰, it is natural for the Chinese legislature to play the distinctive role of criminal law to counter exam cheating. Such cheating could be regarded as a moral wrong and a nature crime.

As to the second issue, following the principle of legality, the Chinese legislature did not punish exam cheating through existing crimes. Rather, they chose to coin new crimes for specific exam cheating. In the United Kingdom, the court could have used property crime, such as theft, to punish exam cheating. Its logic will be that, if a person copies an examination paper, the person may not steal the actual paper that the exam is written on; however, such person would destroy all the goodness of the examination paper. It can no longer be used for examination as its contents have already been leaked, and professors have to be paid yet again to write a new paper. Additionally, more money will be used for printers to reprint the new paper¹¹.

1. The Legislations of Criminalizing Cheating in Specific Examinations in China

On August 29, 2015, the Standing Committee of the National People's Congress of China issued the *Amendment (IX) to the Criminal Law of the PRC*. It added Article 284a which includes provisions concerning cheating in a national examination. The purpose

⁵ Kerkvliet J., Sigmund C. L. Can We Control Cheating in the Classroom? // *The Journal of Economic Education*. 1999. Vol. 30, no. 4. P. 331–343.

⁶ McCabe D. L. Faculty Responses to Academic Dishonesty: The Influence of Student Honor Codes // *Research in Higher Education*. 1993. 34, no. 5. P. 647–658.

⁷ Wu Y., Zhong L., Ruan Q., Liang J., Yan W. Can Priming Legal Consequences and the Concept of Honesty Decrease Cheating During Examinations? Original Research // *Frontiers in Psychology*. 2020. Vol. 10, no. 2887. P. 1–5.

⁸ Ma Y., McCabe D. L., Liu R. Students' Academic Cheating in Chinese Universities: Prevalence, Influencing Factors, and Proposed Action // *Journal of Academic Ethics*. 2013. Vol. 11, no. 3. P. 169–184.

⁹ Martinelli C., Parker S., Pérez-Gea A., Rodrigo R. Cheating and Incentives: Learning from a Policy Experiment // *American Economic Journal: Economic Policy*. 2017. 10, no. 1. P. 298–325.

¹⁰ Kleinfeld J. *Reconstructivism...*

¹¹ Baker D. J. *Glanville Williams // Textbook of Criminal Law*. 4th ed. London: Sweet & Maxwell, 2012. P. 1244.

of the Amendment (IX) to the Criminal Law of the PRC is said to be “preserving social integrity, punishing the action of perfidy and breaking promise”¹². It likewise sought to give full play to the leading role of the criminal law in the value orientation of civil behavior to solve the current problems of lack of social integrity, fraud, and other dishonesty. In other words, the Chinese legislature wanted to send a clear message to the public by criminalizing exam cheating that such wrongdoings is so severe and morally bad and that it can only be treated by criminal law. At the same time, compared with the first draft, the final version of the Amendment (IX) added the term “prescribed by law” before the “national examination”. It obtained the approval of the Standing Committee of the National People’s Congress to limit the scope of punishment. Someone argued that such addition aimed to limit the scope of criminalization, (i. e., not to bring all national examinations into the ambit of criminal law protection)¹³. Whether this view holds or not obviously depends on how one interprets the key concept category of “national examination prescribed by law”. After all, what national examination really is must be clarified if such criminalization is to be effectively operable. Moreover, the crime of illegally selling or providing test questions or answers and the crime of taking an exam on behalf of anyone else or enabling anyone else to take an exam on behalf of himself or herself are scientific since those crimes capture the crucial part of exam cheating. Such corresponds with the empirical study that argued that, among peer influence, methods of cheating, and institutional context that could be used to predict the propensity to cheat on exams, two of those factors are associated with the context, and one factor is associated with the individual. The contribution of the methods of cheating, such as taking, receiving, or giving information about the exam that should not be shared or using forbidden material during exams, is the second strongest in predicting the propensity of cheating on exams¹⁴.

On the other hand, economic theory argues that the right combination of increasing the probability of detection and the threat of punishment may reduce corruption by increasing its costs¹⁵, if punishment is essentially the imposition of a penalty for wrongdoing. Thus, the central philosophical question will be the question of what justifies the imposition of hard treatment or suffering as a penalty for those wrongdoings¹⁶. Deterrent punishment seems to violate the non-sacrifice principle rather straightforwardly, as the state inflicts suffering upon an offender as a prudential warning to would-be future offenders for whom the offender has no responsibility.¹⁷ As to the punishment figurations of the new exam cheating crimes set up in the Amendment (IX), there is some ambiguity as to the sentencing, especially about the meaning of “serious circumstances”. The *Interpretation of the Supreme People’s Court and the Supreme People’s Procuratorate on Several Issues concerning the Application of Law in Handling Criminal Cases regarding Organization of Exam Cheating* was issued in 2019 to solve the application problems of those new crimes, especially the reasonable punishment for them. It was issued to respond the dispute and ambiguity of the legislation

¹² Shishi L. The Explanation of the Amendment (IX) to the Criminal Law of the People’s Republic of China // China Legal Science. 2015. Vol. 3, no. 5. P. 157–160.

¹³ See: 桂亚胜. 组织考试作弊罪若干问题研究//华东政法大学学报. 2016. №2.页38. [Gui Yasheng. Issues in Crime of Organizing Exam Cheating // ECUPL Journal. 2016. No. 2. P. 38.]

¹⁴ Fontaine S., Frenette E., Hébert M.-H. Exam Cheating among Quebec’s Preservice Teachers: The Influencing Factors // International Journal for Educational Integrity. 2020. Vol. 16, no. 1. P. 14.

¹⁵ Becker G., Stigler G. J. Law Enforcement, Malfeasance, and the Compensation of Enforcers // Journal of Legal Studies. 1974. Vol. 3, no. 1. P. 1–18.

¹⁶ Uniacke S. Punishment as Penalty // Criminal Law and Philosophy. 2015. Vol. 9, no. 1. P. 37–47.

¹⁷ Bronsther J. Two Theories of Deterrent Punishment // SSRN Electronic Journal. 2017. Vol. 53, no. 3. P. 461–495.

of the Amendment (IX). What needs to be clarified here is that the Supreme People's court and the Supreme People's Procuratorate have the authority to make judicial interpretations that share the same effect as the law, unlike the often-held Western view of Chinese courts as uniformly passive, unsophisticated, and politically weak actors¹⁸, according to *the Legislation Law of the PRC*.

Although the judicial interpretation has made some specific settings for the so-called "serious circumstances", the practical problems and related controversies in the sentencing of those crimes has not been effectively dealt with. Moreover, the ambiguity around the "serious circumstance" of those crimes has not been clarified, which still needs to be further discussed. Most importantly, there is no clear distinction between serious circumstances as the condition of the punishment of upgrading and sentencing circumstances based on the purpose of deterrence. These problems can only be found and solved through empirical analysis, which will be explained and analyzed through empirical research, to further improve the implementation effect of judicial interpretation.

2. Analysis

The author conducted cross searching by keyword "cheating in examination" using the Chinese legal database "JuFa"¹⁹ in the columns of "cause of action" and "document of judgment." They then manually eliminated invalid, repetitive, and nonsubstantive results. They finally retrieved 1229 effective judicial documents from December 2015 to November 2019, which involved 2887 defendants. Following the categories made by the *Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues concerning the Application of Law in Handling Criminal Cases regarding Organization of Exam Cheating*, the national exams will include four categories in this article:

1) national-level education exams, including college entrance exams for ordinary institutions of higher learning, postgraduate entrance exams, self-taught higher education exams, and entrance exams for adult colleges and universities;

2) exams for the recruitment of civil servants for central and local governments;

3) national exams to obtain professional qualifications, such as the national uniform legal profession qualification examination, national exams for qualifications of teachers, national uniform exams for certified public accountants, qualification exams on professional skills in the field of accounting, asset appraisal qualification exams, doctor qualification exams, licensed pharmacist professional qualification exams, qualification exams for registered architects, and constructor practicing qualification exams; and

4) other national exams organized by central or local competent authorities and industries under applicable laws.

In the particular case, exam cheating, being an inchoate offense, might indirectly lead to acts that wrongfully harm others if it goes unpunished²⁰. According to the Criminal Law of the PRC, criminal attempts occur when a crime was already begun to be conducted but the same was not consummated because of factors independent of the will of the criminal element. The one who attempts to commit a crime may, in comparison with one who consummates the crime, be given a lesser punishment or

¹⁸ Kellogg T. E. "Courageous Explorers?": Education Litigation and Judicial Innovation in China // Harvard human rights journal. 2006. Vol. 20. P. 47.

¹⁹ Chinese legal database "JuFa". URL: www.jufaanli.com (accessed: 21.05.2020).

²⁰ Lacey N. The Prisoners' Dilemma: Political Economy and Punishment in Contemporary Democracies. The Hamlyn Lectures. Cambridge: Cambridge University Press, 2008. P. 82.

a mitigated punishment. This article assigned “1” to a judgment in which the defendants found to have attempted the crime and “0” to a judgment which has no mitigating circumstance. What needs to be specially explained here is that attempted crimes of exam cheating may have nothing to do with the illegal gains, unlike in property crimes. For example, according to the judicial interpretation mentioned above, an organizer of exam cheating who is captured before an exam but has illegally acquired exam questions and answers or have seriously interrupted the exam order shall be determined as having committed an accomplished offense of exam cheating.

The defendant whose charge was dismissed, or was still on the run, will not be included in the data collection. It mainly involves issues of criminal procedure. The valid samples collected from December 2015 to November 2019 will be divided into the following categories according to relevant variables. The basic facts are shown Table 1.

Table 1. Basic Facts of the Crimes of Exam Cheating from December 2015 to November 2019

	Case load	Percentage	Number of defendants	Perpetrator and accomplice of crimes of exam cheating	The examinee who was organized to participate in exam cheating/the examinee taking exam by others/the buyer of questions and answers
The crime of organizing exam cheating	586	47.7 %	1578	1578	0
The crime of taking exam on behalf of anyone else	522	42.5 %	1089	694	395
The crime of illegal selling or providing of questions and answers	121	9.8 %	220	220	0
Total	1229	100 %	2887	2492	395

Source: Compiled by the author based on www.jufaanli.com.

As shown in Table 2, R^2 is 0.175, indicating that the model can only explain the error of 17.5 % of the term of the imposed criminal penalties of the crime of cheating in organizing exam cheating. Such is to say that the explanatory ability of the selected variables is insufficient, and some decisive variables affecting the penalty have not been found. The Variance Inflation Factor (VIF) value represents the degree of interaction between the independent variables of linear regression. Each independent variable is independent and has no correlation; therefore, it can be used for regression analysis, when the VIF value is between 1 and 10. The VIF values of all variables in Table 2 are between 1 and 3, indicating that each variable is independent of each other. The independent variables have a significant impact on the dependent variables when $p < 0.05$. Such mainly includes national-level education exams, national exams to obtain professional qualifications, illegal gains, no illegal gains, accomplice, college entrance exams for ordinary institutions of higher learning, postgraduate entrance exams, exams for the recruitment of civil servants, recidivists, and casual offenders. These variables have a significant correlation with the term of imposed criminal penalties.

One can find that the influence of variables on the term of the imposed criminal penalties from large to small is as follows: college entrance exams for ordinary institutions of higher learning, postgraduate entrance exams, and exams for the recruitment of civil servants (Y/N) > national exams to obtain professional qualifications > illegal gains > casual offender > national-level education exams > no illegal gains > accomplice > recidivist. Such can be achieved by comparing the absolute value of the

Table 2. Linear Regression Analysis of the Influence of Variables on the Term of the Imposed Criminal Penalties of the Crime of Organizing Exam Cheating

Variables influencing the term of the imposed criminal penalties	Nonstandardized coefficient beta	Standardized coefficient beta	P	VIF
National-level education exams	0.154	0.100	0.026	2.231
Exams for the recruitment of civil servants	0.130	0.036	0.338	1.555
National exams to obtain professional qualifications	0.338	0.215	0.000	1.226
Preparation for a crime	-0.077	-0.011	0.731	1.045
Criminal attempt	-0.195	-0.047	0.123	1.035
Illegal gains	6.617E-7	0.147	0.000	1.030
No illegal gains	-0.637	-0.088	0.004	1.037
Accomplice	-0.129	-0.080	0.015	1.192
Perpetrator with minor contribution	-0.155	-0.048	0.129	1.118
Number of examinee who was organized to participate exam cheating	0.000	0.042	0.207	1.216
Times of exam cheating	0.016	0.050	0.115	1.112
Providing over 50 pieces of cheating devices	-0.302	-0.056	0.091	1.225
Confession	0.052	0.036	0.301	1.345
Voluntary surrender	-0.062	-0.040	0.209	1.139
College entrance exams for ordinary institutions of higher learning, postgraduate entrance exams, and exams for the recruitment of civil servants (Y/N)	0.401	0.229	0.000	2.354
Exam cheating organized by an exam's working staff (Y/N)	-0.092	-0.017	0.615	1.194
Pay the fine (Y/N)	-0.133	-0.065	0.060	1.301
Voluntarily returns the illegally obtained money	0.083	0.048	0.149	1.201
Meritorious performance	-0.323	-0.056	0.074	1.072
Guilty plea	-0.063	-0.047	0.218	1.567
Repentance	0.088	0.050	0.126	1.193
Criminal record	0.086	0.018	0.566	1.137
Recidivists	0.379	0.076	0.016	1.089
First offender	-0.105	-0.050	0.151	1.321
Casual offender	0.372	0.114	0.000	1.158
R ² = 0.175	F = 7.710			

Source: Compiled by the author based on www.jufaanli.com.

standardized regression coefficient. It can be argued that the importance and categories of national exams, in addition to illegal gains, could best reflect the harm of the crime of organizing exam cheating and the necessity of deterrence. In the four categories of examination, only the national-level education exams and national exams to obtain professional qualifications have a significant impact on the term of the imposed criminal penalties. The exams for the recruitment of civil servants for central and local governments are not related to the term of the imposed criminal penalties. Moreover, other examinations are excluded because of the existence of collinearity. Additionally, the judge's sentencing is in line with the expectations of the community since the

harm caused by accomplice is comparatively less, and the personal dangerousness of recidivist is comparatively large. The influence on the term of the imposed criminal penalties of the crime of organizing exam cheating by the status of casual offender is abnormal. It should be taken as a mitigating circumstance; however, it may also aggravate the penalty.

Table 3. Linear Regression Analysis of the Influence of Variables on the Term of the Imposed Criminal Penalties of the Crime of Taking Exam on Behalf of Anyone Else

Variables influencing the term of the imposed criminal penalties	Nonstandardized coefficient beta	Standardized coefficient beta	P	VIF
National-level education exams	-0.055	-0.208	0.000	1.390
Exams for the recruitment of civil servants	-0.025	-0.024	0.499	1.185
National exams to obtain professional qualifications	-0.338	-0.113	0.002	1.239
Preparation for a crime	0.067	0.036	0.275	1.062
Criminal attempt	0.004	0.007	0.829	1.096
Illegal gains	7.751E-7	0.099	0.003	1.027
No illegal gains	0.007	0.020	0.569	1.128
Accomplice	-0.059	-0.039	0.233	1.037
Perpetrator with minor contribution	-0.028	-0.037	0.270	1.092
Taking exam by anyone else (Y/N)	-0.018	-0.074	0.043	1.269
Confession	-0.006	-0.021	0.578	1.311
Voluntary surrender	-0.023	-0.091	0.017	1.374
College entrance exams for ordinary institutions of higher learning, postgraduate entrance exams, and exams for the recruitment of civil servants (Y/N)	0.021	0.048	0.209	1.385
Pay the fine (Y/N)	-0.017	-0.068	0.043	1.074
Voluntarily returns the illegally obtained money	0.083	0.048	0.149	1.201
Meritorious performance	-0.074	-0.041	0.217	1.029
Guilty plea	-0.007	-0.028	0.441	1.251
Repentance	0.044	0.157	0.000	1.202
Criminal record	0.056	0.055	0.094	1.016
Recidivists	-0.059	-0.023	0.483	1.020
First offender	-0.035	-0.089	0.029	1.584
Casual offender	-0.002	-0.004	0.928	1.530
R ² = 0.121	F = 5.207			

Source: Compiled by the author based on www.jufaanli.com.

The R² in Table 3 is 0,121, which is still not ideal. The VIF values of all variables are between 1 and 2, indicating that the variables are independent of each other. The variables that have a significant impact on the term of the imposed criminal penalties of the crime of taking exam on behalf of anyone else from large to small are as follows: national-level education exams > repentance > national exams to obtain professional qualifications > illegal gains > taking exam by anyone else (Y/N) > voluntary surrender > first offender > voluntarily returns the illegally obtained money > pay the fine (Y/N). The author obtained this by examining the significance and comparing the standardization coefficient. Among the variables above, national-level education exams and illegal gains are still the important factors affecting the term of the imposed criminal penalties.

The sentencing of the examinee taking exam by anyone else is generally lower than that of the defendant taking exam on behalf of anyone else. The influence on the term of the imposed criminal penalties of the crime of taking an exam on behalf of anyone else by the variables of national-level education exams, national exams to obtain professional qualifications, repentance, and voluntarily returning the illegally obtained money are abnormal. Such should be taken as mitigating circumstances but should likewise play the role of aggravating the penalty.

The criminal law and the judicial interpretation set the same legal penalty for the examinee whose exam was taken by anyone else and the defendant taking the exam on behalf of anyone else. According to the analysis and results above, the main reason for the penalty difference in the sentencing stage has something to do with the illegal gains of the defendant for taking the exam on behalf of anyone else. However, this article argued that, although the defendant who took the exam on behalf of anyone else has the circumstances of having illegal gains, the examinee who had his or her exam taken by anyone else also gets substantial benefits from the cheating. Thus, the punishment for the two parties should be the same when no other circumstances are concerned.

3. Discussion

Generally speaking, the statistics basically cover the information presented in the judgment. Nonetheless, the R^2 is still not ideal as it indicates that some decisive factors affecting the term of imprisonment are not completely reflected in the judgment, and they are not included in the “serious circumstances” stipulated in the interpretation.

Additionally, the “serious circumstances” stipulated in the *Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues concerning the Application of Law in Handling Criminal Cases regarding Organization of Exam Cheating* still had the problem of not distinguishing between the serious circumstances as the conditions for the promotion of statutory punishment and the circumstances of sentencing based on the purpose of prevention. Circumstances such as “exam cheating organized by an exam's working staff”, “times of exam cheating”, and “illegal gains of more than 300 000 RMB” can neither increase the illegality of the crime nor change the type of behavior. Therefore, such circumstances should only be regarded as a sentencing rule based on prevention, which reflects the subjective guilt and the possibility of recidivism. However, as to the special deterrence, there are several prerequisites for its effectiveness. For example, the examiners must know and understand this legal framework, and they must be aware of the consequences of cheating²¹, students should then be serious in making a decision to cheat since there are potential risks of being caught. Therefore, it is reasonable that reminding the risks of being caught right before the exams could restrict the cheating behaviors of students²². There are also studies that showed that individuals are not always rational and often pay more attention to the effects of a self-concept than profit and risk, at least with regard to cheating behaviors²³. Such conclusion was proven by some empirical study that showed that many examiners are unaware of the consequences associated

²¹ McCabe D. L., Trevino L. K. Academic Dishonesty // The Journal of Higher Education. 1993. Vol. 64, no. 5. P. 522–538.

²² Wu Y., Zhong L., Ruan Q., Liang J., Yan W. Can Priming Legal Consequences and the Concept of Honesty Decrease Cheating During Examinations?

²³ Gino F., Mogilner C. Time, Money, and Morality // Psychological Science. 2014/02/01 2013. Vol. 25, no. 2. P. 414–421.

with cheating and consider the risks to be low²⁴. This is why many scholars argue that the priming of legal consequences and honesty will not always reduce cheating, at least in situations such as examinations²⁵.

The last point to be emphasized here is related to the gender of the defendant. Research showed that women are less likely to cheat than men²⁶. Specifically speaking, the findings showed that the effects of morals and grades were more pronounced in predicting the cheating intentions of women. On the other hand, men were more affected by prior cheating and the perceived pleasure of cheating. Further analysis likewise showed that higher levels of anticipated shame among women and less self-control among men accounted for most of the variation in cheating intentions between women and men²⁷. However, this article did not include gender as a variable since it should have no effect on the punishment of exam cheating. Otherwise, it will infringe the principle of equality.

Conclusions

In human society, one may shape the preferences of potential offenders and enhance their taste for the desirable behavior by impacting the social norms of the relevant community. People should bear mind that anti-corruption programs are not a cure for all ills²⁸, since the action of cheating from others, including peers in the classroom, could be labeled “corruption”. Only continuing research on our understanding of the attitudes of people toward cheating can significantly contribute to the design and implementation of organizational interventions for curbing such behaviors²⁹, which is crucial for developing countries including China. Academic sanctions have occasioned greater deference from the courts³⁰. A pedagogical commitment to moral integrity is perhaps a more efficient and effective low-tech solution to the high-tech problem of cheating. However, educators monitor radio signals with drones and check students with scanners in China³¹. We should always remember that, if we want to uphold something in the wake of cheating, then condemnatory punishment in the community’s name is only the tool for the job³². To a large extent, the judicial interpretation in 2019 solved the problems of the scope of the crimes of exam cheating and clarified its boundary with other related crimes. However, it has not made detailed provisions on “serious circumstances” that is bound to affect the original legislative intention and the shaping of the preferences of potential offenders. Through the empirical research on such crimes, this article argues that the functions of criminal law in shaping the moral and behavior

²⁴ Chan C., Othman J., Dsilva J., Omar Z. Influence of Neutralization Attitude in Academic Dishonesty among Undergraduates // *International Education Studies*. 2014. Vol. 7, no. 6. P. 66–76.

²⁵ Wu Y., Zhong L., Ruan Q., Liang J., Yan W. Can Priming Legal Consequences and the Concept of Honesty Decrease Cheating During Examinations?

²⁶ Crittenden V. L., Hanna R. C., Peterson R. A. The Cheating Culture: A Global Societal Phenomenon // *Business Horizons*. 2009. Vol. 52, no. 4. P. 337–346.

²⁷ Tibbetts S. G. Differences between Women and Men Regarding Decisions to Commit Test Cheating // *Research in Higher Education*. 1999. Vol. 40, no. 3. P. 323–342.

²⁸ Borcan O., Lindahl M., Mitrut A. Fighting Corruption in Education: What Works and Who Benefits? // *American Economic Journal: Economic Policy*. 2017. Vol. 9, no. 1. P. 180–209.

²⁹ Lim V. K. G., See S. K. B. Attitudes toward, and Intentions to Report, Academic Cheating among Students in Singapore // *Ethics & Behavior*. 2001. Vol. 11, no. 3. P. 261–274.

³⁰ Dutile F. N. Disciplinary Versus Academic Sanctions in Higher Education: A Doomed Dichotomy? // *The Journal of college and university law*. 2002–2003. Vol. 29, no. 4. P. 619–653.

³¹ Roberts L. A., Todda M. M. Let’s Be Honest About Law School Cheating: A Low-Tech Solution for a High-Tech Problem // *Akron law review*. 2019. Vol. 52, no. 4. P. 1155–1188.

³² Kleinfeld J. Reconstructivism...

standard could give full play only by revising the penalty standards through later judicial interpretation. Such is to ensure the sustainability of the national examination system, which is the basis of social mobility. We should also bear in mind that criminal punishment, even if it works, is only part of the picture.

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Эмпирический анализ уголовных санкций за мошенничество на экзамене в Китае

Л. Ли

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Чтобы обеспечить устойчивость национальной экзаменационной системы, которая является основой социальной мобильности, в Китае в 2015 г. в уголовный закон были внесены новые уголовные санкции за мошенничество на экзамене, и последняя судебная интерпретация этого закона появилась в 2019 г. Анализ соответствующих данных судебных решений за 2015–2019 гг. показал, что все еще существует определенный разрыв между последней судебной интерпретацией и реальными проблемами. Судебное толкование в 2019 г. во многом решило проблемы состава преступлений, связанных со списыванием на экзамене, и уточнило его границы с другими смежными преступлениями. Однако в нем не содержится детальных положений о «серьезных обстоятельствах», что обязательно повлияет на первоначальную цель правового регулирования, заложенную законодателем по превенции противоправных деяний и формированию правомерного поведения. На основе эмпирического исследования таких преступлений в данной статье утверждается, что функции уголовного права по формированию моральных и поведенческих стандартов могут быть раскрыты в полной мере только путем пересмотра стандартов наказания посредством последующего судебного толкования. Такие меры чрезвычайно необходимы и позволят достичь цели, которую преследовал законодатель, вводя ответственность за списывание.

Ключевые слова: национальная экзаменационная система Китая, поправка к уголовному законодательству, обман на экзамене, судебное толкование.

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Ли Лифэн — д-р филос. наук, проф., Цзилиньский университет, Китай, 130012, Чанчунь, ул. Цяньцзинь, 2699; lilifeng@jlu.edu.cn