

GRASSROOTS FINANCE FROM THE PERSPECTIVE OF LEGAL SOCIOLOGY: DILEMMAS AND SOLUTIONS

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Abstract: The grassroots economy needs the oxygen and blood supply of finance, and residents expect investment objects with higher returns. However, my country's mainstream financial system has structural exclusion and service imbalance problems. For this reason, the emerging grassroots finance represented by P2P has suddenly emerged, but it also faces problems such as difficulty in survival, alienation and deterioration. The crux of the problem can be explained with the help of theories such as the lemming effect and long-tail risk in legal sociology; based on this, the dilemma can be solved by following the social combustion theory and the pluralist path of complementary soft and hard law.

Keywords: Sociology of law; Grassroots finance; Social combustion theory; Lemming effect

1 GRASSROOTS FINANCE: CURRENT DILEMMA

Grassroots finance refers to the weak finance corresponding to the dominant formal financial system. Its main service targets are small and micro enterprises, self-employed individuals, farmers, entrepreneurs, low-income people or others in urgent need of funds. Its extension includes but is not limited to P2P. Online lending platforms, crowd funding, small loan companies, rural banks, etc. Developing and strengthening grassroots finance is a core issue for financial deepening in developed countries, and it is also a lesson that developing countries must learn for financial inclusion [1]. At present, my country's mainstream financial system still has problems such as structural exclusion and uneven service coverage, presenting a dual structure of "large and medium-sized enterprises and small and micro enterprises" and "large customers and small retail customers" [2]. The above problems have led to the following two unfavorable situations.

1.1 Financing Difficulties for Small, Medium and Micro Economic Entities

Grassroots economies lack oxygen and blood, and their rigid needs are difficult to meet from traditional financial institutions. The "Research Report on Tax Policy for Small and Micro Enterprises" released in early 2016 shows that by the end of 2014, the total number of small and micro enterprises in my country was approximately 70 million; in addition, there were approximately 210 million productive farmers. According to recent survey data from the All-China Federation of Industry and Commerce, the financing needs of small and micro enterprises are more than 800 billion yuan every year, but the financial support they can obtain from banking financial institutions is less than 100 billion yuan; 95% of the total small and micro enterprises are related to Formal financial institutions have almost no lending relationships [3]. According to a survey of 101 rural credit cooperatives in the jurisdiction of a branch of the People's Bank of China, the average interest rates for farmers' loans from rural credit cooperatives from 2011 to 2014 were 10.52%, 10.51%, 10.32% and 10.11%, which are 2.58, 2.35, 2.89 and 2.52 percentage points higher than the average loan interest rates of all financial institutions in the province during the same period [4]. In addition to interest, the loan costs for small and micro enterprises that obtain loans from banking institutions also include: credit inquiry fees, account management fees, mortgage registration fees paid to government departments, and industrial and commercial inquiries .

1.2 Ordinary Residents have Narrow Investment Channels

Ordinary residents have limited investment channels, and it is difficult for them to find independent and flexible investment objects with higher returns and controllable risks with their spare money. Against this background, in recent years, emerging grassroots finance represented by P2P online lending, equity crowdfunding, etc. has emerged, but it has also encountered frequent problems and difficulties. main performance:

1.2.1 Difficulty of survival

Financial repression is a prominent feature of my country's financial field. The government prefers to regulate interest rates and control banks [5]; the financial market has many monopoly factors and high entry barriers, and financial licenses are still a scarce resource; with the increase of mutual financial platforms , the dividends of "Tou Dao Tang" are fading, competition between platforms is intensifying, and sustainable profitability is becoming more difficult. Monitoring data from P2P Online Loan Home shows that by the end of December 2016, a total of 3,201 platforms in the P2P online lending industry had ceased operations, had difficulty withdrawing money, or had run away, with a mortality rate of over 65.8%.

1.2.2 The disaster of alienation

Some severely mutated platforms use the art of false propaganda to construct a Ponzi scheme and seize the real money from the pockets of ordinary investors like a vampire. "Ezubao" has not paid nearly 37 billion yuan to public investors as of the time of the incident; other platforms such as Sannong Capital, Jinlu Financial Bank, Zhongjin Assets, Toubao Finance, etc. are all suspected of illegally absorbing public deposits, Fund-raising fraud. These black sheep have brought the industry reputation of grassroots finance to a record low, while small and micro enterprises and other grassroots economies have failed to truly share the rain and dew of financial services.

2 THE CRUX OF THE MATTER: THE INTERPRETATION OF LEGAL SOCIOLOGY

Sociology of law (sociology of law or jurisprudential sociology) is a theoretical form that integrates law and sociology. The methodology (the highest level method) used includes but is not limited to phenomenology, system theory, functionalism, etc. Its basic principles and orientations Collateral appraisal fees paid by intermediaries, etc. There are pluralism, anti-formalism, etc. [4].

2.1 Social Combustion Theory

The "social combustion theory" proposed by Academician Niu Wenyuan of the Chinese Academy of Sciences is a theoretical achievement in social physics. This theory believes that social disorder, crisis and turmoil are similar to the combustion phenomenon in nature - three basic conditions must be met, namely, burning substances, combustion accelerants and ignition temperature; all three conditions are indispensable [5]. As for the reasons for the overturning, running away, and cash withdrawal difficulties of online loan platforms, the social combustion theory can be used as a rough analogy: imperfect risk control mechanisms and weak governance capabilities are equivalent to "burning materials"; decision-making errors and social psychology (such as halo effect, topological chain reaction, etc.) is equivalent to "combustion accelerant"; specific triggering events (such as break of capital chain, absconding of legal representative, etc.) are equivalent to "ignition temperature", that is, "fuse" [6].

In the current Web 2.0 era, online grassroots finance uses mobile Internet and big data technology to match and match fund supply and demand information, which can improve efficiency; through asset securitization, some online loan P2P and crowdfunding platforms not only transfer their own investment risks, and can enjoy the benefits brought by mixed operations; Moreover, based on the atmosphere of encouraging "mass entrepreneurship and innovation", before the first half of 2016, the national level implemented comprehensive supervision on online lending P2P, equity crowdfunding, online cross-border finance, etc. The rules have not been announced for implementation. Based on this, many entrepreneurs, IT companies, financial institutions, etc. regard online finance as a blue ocean with unlimited potential and considerable profits. While the number of online grassroots financial platforms is expanding at an accelerating rate, a large number of platforms have not formed effective risk control systems and have not established a sound governance structure. It goes without saying that platforms with weak risk control capabilities and failed check and balance mechanisms are exactly the "flammable and explosive" substances on the fast-moving economic "train".

my country's individual investors have long been immersed in an environment of rigid redemption of deposit funds and bank wealth management products. They have a weak awareness of the coupling of "risk and return" and usually do not study it in detail: The reason why online platforms or borrowing units can promise high returns is often It means that the project quality is poor, the risk is high, and it is leftover from the screening by banks or trusts. At the same time, some grassroots financial institutions are exaggerating and packaging them online and offline. For example, Toubao Financial falsely claims to have a "state-owned background" on its official website; Zhongjin Assets rents a landmark top-level commercial building in Shanghai's CBD and even registers a trademark "Zhongjin 1824" is prominently used in office buildings; Kuailu boss Shi Jianxiang spared no expense to include the chief producer of movies such as "Ip Man 3" as well as the unfunded top businessmen in Shanghai and China's top ten business elites, etc. More than 20 The title is on top. The operators of such platforms carefully construct "information black boxes" and activate the halo effect, but inadvertently add "accelerants" to future collapse situations.

2.2 Lemming Effect

The reality of rational choice lies in the tendency to "profit", and the meaning of "profit" can be attributed to the subjective pursuit of the agent and the intrinsic value of things [7]. In the financial market, investors are bound by subjective and objective conditions, and "lemming behavior" will inevitably occur. Lemmings are mainly distributed in the alpine polar regions of Norway. When the population increases and the food around their homes becomes less, some lemmings will migrate to other mountainous areas. During migration, they are sometimes blocked by lakes or even bays; if the leading rat tries to swim to the other side and jumps into the lake, the rats that follow will also jump one after another. As a result, most lemmings will be buried in the lake and sea.

In the online grassroots financial ecosystem, investors have different levels of knowledge, experience, and abilities; in today's mobile Internet era, individuals are no longer isolated and free atoms, but often rely on search engines, Online social platforms or other application software are used to quickly and easily understand the latest trends; by watching, observing, and closely following the actions of fellow investors, investors hope to obtain benefits or avoid risks with greater certainty. Because small retail investors with limited resources tend to believe that when enough people, especially trusted authorities, are doing the same thing, they can follow up with more confidence - collective wisdom and authority. The judgment is generally correct. It is not difficult to understand why more than 900,000 ordinary

investors were involved in the "eZubao" incident, although most of them did not fully understand the platform's A2P model (financial lease debt transfer). I don't fully believe in the stable and high returns it advertises. Of course, in the financial market, some investors will be wary of the lemming effect (or similar herd effect), and there are even people who have strong reverse thinking skills and are good at moving against the cycle. However, considering that market trends are the forces of many parties, in particular, as a result of the game between several dominant forces, under the constraints of incomplete information, high data mining costs, fleeting opportunities and other factors, individuals may still choose the convenient plan of following a certain "lemming group". Not to mention some lucky people who want to get a share of the flower-passing game. In the blind confidence of "the first wave of safety", they are willing to gather in groups or even find ways to gather the "rat group".

At the same time, the management level and risk control capabilities of online financial platforms vary, and new business formats such as crowdfunding, P2P online lending, and third-party payment have profit margins and market demand, and are affected by the concept of "too similar to fail". To fail "too similar to fail" and "too inter-connected to fail" [8], the platform itself and its business also have a lemming effect. In recent years, the number of mutual financial platforms has been rising, and the transaction amount has been rapid. growth, some platforms have followed suit and engaged in illegal cross-border operations. Many P2P platforms have promised to guarantee principal and interest and provide credit-enhancing services, which are examples.

2.3 "Long Tail" Risk

The "long tail" risk of grassroots finance comes with the "long tail effect". The "long tail effect" theory was first proposed by Chris Anderson, which means: In the new technology economy era, with the diminishing marginal cost and the expansion of commodity display and circulation channels, those sales on the "long tail" of the normal curve will no longer. The market share of the best products together can be comparable to or even greater than the market share of the best-selling products with a protruding "narrow head". There is no doubt that online grassroots finance has given a large number of long-tail groups not covered by traditional finance the opportunity to enjoy investment and financing services through technological innovation and model optimization. Moreover, big data technology can mine and track consumer preferences and achieve personalized design through "tailor-made services," thus greatly expanding the possibilities of financial services.

Compared with traditional formal finance, grassroots financial services have the characteristics of low threshold, large number of involved parties, and large total transaction volume, which has given rise to long-tail risks. This risk has the following characteristics:

2.3.1 Infectiousness

Most of the investors and financiers at the bottom belong to disadvantaged groups in the financial field and do not know much about financial knowledge, new IT technologies and legal risks. In the mobile Internet environment, the rapid and convenient information dissemination will aggravate risk contagion and expand the impact on the financial market and even the financial market. The instability of society as a whole. For example, when a certain online financial platform or model is on the rise, a large number of grassroots investors and financiers will follow in the short term; and when affected by negative information, individual investors rush to withdraw funds, thus triggering a run on the mutual fund market. and stamped.

2.3.2 Multiple sources

The sources of risks in grassroots finance include at least platform non-compliance, technical flaws, information insecurity, erosion of funds, and borrowers' breach of trust. For example, in 2015, the information of more than 8,000 customers in a grassroots financial network database was circulated on the forum. For a certain price, you can download sensitive information including customer names, ID numbers, mobile phone numbers, email addresses, bank card numbers, etc. packaging file. After testing these data, it was found that all accounts can be successfully logged in. The amount of funds in many accounts reaches hundreds of thousands of yuan, and the total amount exceeds 30 million yuan [9].

2.3.3 Susceptibility

Grassroots residents have limited risk identification capabilities and are easily misled by false information and become victims of "noise"; individual investors lack the motivation to conduct continuous and in-depth supervision of the platform and borrowers due to their small and dispersed investment amounts; as information intermediaries Platforms such as P2P cannot provide risk-free financial products (savings, treasury bonds, etc.) covered by deposit insurance or provision mechanisms like traditional financial institutions - although platforms such as P2P can introduce third-party guarantee institutions in accordance with the law, or set up risk protection. However, due to information asymmetry, it is difficult for investors to understand the scope of effective guarantees, whether there is a relationship between the platform and the guarantee institution, and the true payment ability of risk guarantee funds. Moreover, the rapidly developing online grassroots financial platforms have not been "stress tested" like banks.

3 SOLUTION TO THE DILEMMA: THE PATH OF LEGAL SOCIOLOGY

3.1 Perspective of Social Combustion Theory

According to this theory, at least the following points should be used as starting points to scientifically prevent and properly handle the systemic risks of Internet finance, so as to normalize the body temperature of grassroots finance and even the entire society:

3.1.1 Reduce “explosive and dangerous” items and improve the early warning mechanism

Mutual finance platforms such as excessive publicity, promises of ultra-high returns, large-scale offline marketing, fictitious loan targets, and self-financing or capital pools should be coordinated by multiple parties and monitored throughout the process.

3.1.2 Block “combustion accelerants” and strengthen information disclosure

P2P online lending platforms should comply with the "Internet Finance - Information Disclosure Standards for Individual Online Lending" (T/NIFA 1-2016) and achieve "three transparency", namely: transparency of the institution itself, transparency of customer fund flow, and transparency of business risks, to isolate generalized associations, random amplification of social emotions, etc. A negative example is Yucheng Group (the parent company of "e-zubao"). Yucheng Group has previously made a high-profile publicity: In order to support the "One Belt, One Road" initiative, it negotiated with the Second Special Administrative Region of Myanmar (Wa State) and obtained approval from the government of the Special Administrative Region. Approved, the Yucheng Southeast Asia Free Trade Zone was built locally, where the investor has complete administrative rights; after the "Yucheng Group" case, the media revealed that the Wa State is an armed area in northern Myanmar that is politically and economically chaotic, and its capital It is only equivalent to an ordinary county in China.

3.1.3 Cut off the “fuse” and set up a “firewall”

The "Interim Measures for the Management of Business Activities of Online Lending Information Intermediaries" (hereinafter referred to as the "Measures") jointly issued by the China Banking Regulatory Commission, the Ministry of Industry and Information Technology and other four departments in August 2016 clarified the filing, business, risk control, letter disclosure, etc. of P2P Code of conduct and regulatory requirements. Only by strictly complying with the "Measures" and other relevant regulations, for example, P2P as an information intermediary must implement third-party custody of funds, prohibit illegal operation of securities business, etc., can we block risk contagion and maintain financial ecological security and social harmony and stability. .

3.2 Path of Pluralism

In the theoretical framework of pluralism in the sociology of law, "living law", "law in action" and "non-state law" are important categories; in this theory's view, law is not only connected with the country (not only derived from the country), but also The law of the country is only a part of the social legal order, and it is not necessarily the most important part.

3.2.1 Symbiosis and complementarity between soft and hard laws

Those who illegally conduct capital operations, maliciously disrupt financial order and cause large economic losses should be regulated by criminal law. Legal sociologist Durkheim pointed out, "Penalty is a means of fighting crime and punishing those who trample on 'collective consciousness'. It is a public instrument of social governance; through punishment, collective consciousness can be reaffirmed, and social emotions and social morality can be restored." Sublimation, social cohesion can be enhanced" [10]. On the basis of recognizing the necessity of criminal law to regulate the economy and society, we must be wary of state law omnipotence and state law dependence (called hard law dependence in administrative law circles).

National law (hard law) has its drawbacks: first, it tends to overemphasize the will of the state and ignore the function of social norms, which reduces dialogue and increases confrontation between the state and society [11]; second, the nature of national law Universality makes it unable to fully take into account specific differences, and it is easy to fall into the quagmire of "one size fits all". For example, my country's "Judicial Interpretation of Criminal Law" only uses "amount or number of people" as the threshold for illegal fund-raising. Some scholars pointed out that this criminalization model takes less into account other circumstances such as subjective intent and fund use, and is suitable for P2P under the new situation. In online loan cases, the mechanism has appeared and there is suspicion of objective imputation; in view of this, the scholar suggested that for illegal fund-raising activities, a comprehensive conviction and sentencing standard of "amount + circumstances" should be established in judicial interpretations [12].

Soft law is a rule tailored by a certain community according to its own situation and used to regulate the behavior of the community and its members. Therefore, its content is more targeted and the procedures for establishment, modification and abolition are simple. The advantages of promoting soft law governance in the grassroots financial field are: on the one hand, financial service providers are the most down-to-earth, and under the guidance of regulatory authorities, practitioners formulate corporate standards and then refine them into industry standards, which is conducive to promoting business freedom and businessman autonomy; on the other hand, On the other hand, soft laws generated on the basis of interactive consultation and changes in response to the times are more suitable for grassroots finance that is still undergoing differentiated combination and innovative development, and can better implement the spirit of hard laws and enhance the appropriateness of hard laws. It goes without saying that to promote soft law governance, we must eliminate "mountainism", embody the characteristics of multi-subjects, heavy negotiation, two-way interaction, and decentralization [13], ensure the procedural justice and content fairness of soft law, and balance industry interests and public interest. On the basis of soft law governance, regulatory authorities or legislators should conduct research and

demonstration to upgrade applicable soft laws to hard laws and achieve the integration and interaction of soft and hard laws.

3.2.2 Differentiated supervision concept

The international community calls for the establishment of a "proportional supervision" system, also known as a "differentiated" and "classified" regulatory framework. Based on the situation of insufficient financial services for the grassroots class and underdeveloped areas, my country's regulatory authorities should introduce and implement "differential treatment" or "exemptions" for grassroots financial institutions in the strict sense in terms of access conditions, paid-in capital, and credit disclosure obligations. For example, the development of small loan companies, village banks, financial cooperatives, etc. that are close to the land and deeply rooted in the grassroots should be promoted and supported. This does not conflict with the "Internet +" strategy. Just as the development of e-commerce still requires physical small and medium-sized supermarkets, terminal stores, farmers' markets, etc., while standardizing the development of Internet finance, different types of physical grassroots finance should still be cultivated and developed. In addition, the "penetrating" supervision method currently being implemented, that is, identifying business attributes based on appearance and substance, is also a manifestation of the concept of differentiated supervision. By identifying the platform's full-process information such as the source of funds, intermediate links, and final investment direction, we can determine the behavioral norms that the financial platform should abide by and apply, thereby achieving "behavior supervision" and "classified supervision."

3.3 Improve Financial Literacy and Strengthen Legal Thinking

According to Schutz, a representative scholar of phenomenological sociology, the experience, knowledge and values accumulated by each person in the process of socialization will become default rules, foresights and ideas after integration. This can be collectively referred to as "sleeves". The behavior of an individual in a specific interaction situation is the result of making judgments about the matters faced by the individual's "intellectual world" [14]. If residents have high financial literacy and a strong awareness of the rule of law, it means that they have strong financial planning capabilities, rational analysis capabilities, and the ability to distinguish right from wrong. In this way, you can reduce your own investment risks, restrict relevant illegal activities, facilitate the formulation, compliance and improvement of financial policies and regulations, and promote the operation and development of a harmonious and shared society.

Although our country's central bank has set up "12363—Financial consumption complaint hotline", there are probably only a few ordinary people who know this. A report on global financial enlightenment released by Standard & Poor's pointed out that the proportion of the population in mainland China with financial knowledge is only 28%, lower than the global average of 33%, while the proportion in developed countries is 55%. In order to improve the efficiency of its national financial behavior and share the level of inclusive finance, Russia has implemented the "National Financial Literacy Five-Year Plan" (2011-2016), with a budget of US\$113 million, targeting people from primary school to university students and low- and middle-income groups [15]. The plans carried out by neighboring countries are of great reference value to us. For example, our country can carry out publicity and training on personal income and expenditure planning, financial risk identification, Internet financial knowledge, etc. to the elderly, migrant workers, people with low education levels, and students, etc., and continuously improve the penetration of financial education into disadvantaged groups [16].

Rule of law thinking advocates rule awareness and emphasizes bottom-line thinking. Investors and financiers and grassroots financial practitioners must abide by the rules. For example, online loan information intermediaries should abide by the provisions of the "Measures" and are not allowed to provide information intermediaries for high-risk financing such as investment in stocks, over-the-counter capital allocation, and futures contracts. Services must not be self-contained or disguised, etc. It should be noted that around the first half of 2015, some P2P platforms and similar institutions illegally provided over-the-counter capital allocation intermediary services to ordinary shareholders, allowing shareholders to raise approximately 1.7 trillion yuan and invest it in the stock market at an annual interest rate of 13% to 20%. This contributed to the skyrocketing rise and fall of A-shares, which ultimately led to many shareholders suffering huge losses [17]; Hang Seng Network Company was involved in a link in the illegal over-the-counter capital allocation business chain during this period (selling qualified funds to unqualified persons). Software with securities business attributes) was fined nearly 440 million yuan by the China Securities Regulatory Commission. Market entities must enhance their "red line" awareness, strengthen bottom-line thinking, and especially be in awe of criminal law norms, because these norms are "highway guardrails" that are not allowed to be climbed. A negative example is Cai Jincong, the person in charge of the online lending platform Yinfang Finance, who was sentenced to life imprisonment by the Hangzhou Intermediate Court in 2016 for committing fund-raising fraud; given that the Criminal Law Amendment (9) has abolished the death penalty for fund-raising fraud, "Life imprisonment" is the maximum penalty for this crime, and the case was therefore reported by the media as the first heaviest penalty case in the P2P field.

COMPETING INTERESTS

The authors have no relevant financial or non-financial interests to disclose.

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