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RESEARCH ARTICLE

Baffled Labelling: Making Sense of the Intertwined Relationship between Fundraising Fraud and Illegally Taking in Deposits from the General Public in Chinese Criminal Law

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Abstract

Fundraising fraud is one of the most serious and complicated financial crimes in China. It has an intertwined relationship with a regulatory offence, known as illegally taking in deposits from the general public (ITIDFGP). In judicial practice, ITIDFGP works as the downgraded form of fundraising fraud. This article explores why fundraising fraud is identified as financial fraud whereas ITIDFGP is a regulatory offence. The paper discerns the essence of fraud in Chinese criminal law and critically examines the concept of "intention to possess illegally." It argues that ITIDFGP should be classified as a form of fraud *de jure*, although, in reality, there are policy considerations behind its categorization as a regulatory offence. The paper also suggests that the role played by the socioeconomic policy in Chinese criminal-law legislation should be fully acknowledged.

Keywords: fundraising fraud; illegally taking in deposits from the general public; financial fraud; Chinese criminal law

1. Introduction

From the causes célèbre of *Wu Ying* (BBC, 2012)[1] and *Wu Xiaohui* (BBC, 2018),[2] to the fall of peer-to-peer online lending investments, in the last decade, fundraising fraud (*jizi zhapian* 集资诈骗) has frequently been thrust into the limelight in China. As a serious financial crime, it deserves public attention for several notable reasons. For one thing, almost all

[1] The *Wu Ying* case was well known for instigating a nationwide debate on the death penalty for economic crimes. Wu Ying was initially sentenced to death in December 2009 and the appeal court upheld the capital punishment. The wide publicity of the case created an outpouring of sympathy from the public as well as official Chinese media that have spared not only Wu Ying, but many more entrepreneurs found guilty of fundraising fraud. Wu Ying was believed to have benefited from direction from the Chinese prime minister at the time (Wen Jiabao). Wen Jiabao made a statement at a news conference that Wu Ying's case should be carefully handled by the Supreme Court in March 2012, which was widely interpreted as a call for rejecting Wu's death penalty. Shortly after that, in April 2012, the Supreme People's Court overturned the death penalty. In May 2012, her sentence was reduced to death with a two-year reprieve. In July 2014, Wu Ying's death sentence was commuted to a life sentence. In March 2018, her sentence was reduced to 25 years. BBC, "Nationwide Debate of Wu Ying Case: Should Fraudsters Be Sentenced to Death?" 5 March 2012, https://www.bbc.com/zhongwen/simp/indepth/2012/02/120221_ana_china_wu_ying_trial (accessed 8 May 2024).

[2] Wu Xiaohui is the former chairman and chief executive of Anbang Insurance Group, which was one of the largest insurers in China. In 2018, Wu Xiaohui was convicted of fundraising fraud and embezzlement, and sentenced to 18 years. https://www.bbc.com/zhongwen/simp/chinese-news-44064096 (accessed 8 May 2024).

fundraising fraud cases involve a colossal amount of money. For example, Wu Ying—once one of the richest entrepreneurs in China—was accused of unlawfully raising 770 million RMB by means of fraud. Wu Xiaohui, the former chairman and chief executive of one of the largest insurers in China, was convicted of defrauding 723.86 billion RMB from the general public through unlawful fundraising. These cases came into the public domain due to their far-reaching economic-political impact. Despite the publicity of those cases, the majority of fundraising fraud cases concerned with immense sums have never been reported in the news.[3] Second, fundraising fraud as a public-facing investment enterprise can implicate potentially vast numbers of victims. The crackdown on the peer-to-peer online lending platform in 2018 gave rise to hundreds of thousands of victims involved in the financial crime (BBC, 2018). With many victims having lost their lifelong savings, the aftermath has entailed public protests—always a social stability concern for the socialist regime. Today, fundraising fraud is considered one of the most serious and frequently applied financial crimes, with draconian punishment imposed on those found guilty. As a serious crime, it used to carry the capital punishment; following the *Wu Ying* case, the Ninth Criminal Law Amendment removed the death penalty as a punishment for this in 2014 (Sina News, 2018). However, the magnitude of funds involved in this type of crime means that severe penalties are inevitable (China Judgments online platform, 2021).[4] Given that defendants involved are oftentimes entrepreneurs with complicated social and political backgrounds, the judicial decision-making of these cases can be highly sensitive.

For all these reasons, fundraising fraud is by no means regarded as an ordinary financial crime in China. Almost every fundraising fraud case has significant social and economic implications. Yet, in-depth analysis of this offence is scant and its understanding is often confounded with another financial crime—namely illegally taking in deposits from the general public (*feifa xishou gongzhong cunkuanzui*非法吸收公众存款罪, hereinafter ITIDFGP). ITIDFGP is a relatively minor yet important offence, identified to protect the order of China's financial system. There are overlaps between the two offences. Notably both are concerned with raising funds unlawfully from the general public—that is, the fundraising in question was carried out without permission from the financial regulatory authorities or the fundraising activity exceeds the authorized legal ambit. As with fundraising fraud, ITIDFGP is a public-orientated crime that may implicate multimillion business operations, thereby causing a major social and political impact (BBC, 2022).[5] The main distinction between fundraising fraud and ITIDFGP is that fundraising fraud is categorized as financial fraud whereas ITIDFGP is a regulatory offence that does not comprise the deception element. In legal practice, ITIDFGP functions as the downgraded form and a catch-all offence (*koudaizui* 口袋罪) of fundraising fraud—that is, when a defendant may not be convicted of fundraising fraud due to factual or evidential considerations, the police and the prosecution will charge him with the less serious offence of ITIDFGP (Wang, 2019, pp. 103–18). Nevertheless, fundraising fraud and ITIDFGP are ascribed to distinctive natures of economic crimes. The question that arises is: If the same crime conduct can be potentially classified as either a fraud or a regulatory offence, why is fundraising fraud a deception offence whereas ITIDFGP is not? In which aspect does fundraising fraud embody a fraud element not found in ITIDFGP?

[3] In the case of *Shanghai Shanlin Financial Service Ltd* (2019), the defendants were convicted of defrauding 73.68 billion RMB from the general public through unlawful fundraising, resulting in a loss of 21.71 billion RMB. See the criminal judgment Shanghai Basic People's Court (2019) Hu 01 Xing chu No. 26.

[4] For example, the meridian for the principal defendants convicted of financial fraud in the 192 cases collected in this study was ten years and six months.

[5] There are also many high-profile ITIDFGP cases with political sensitivities. Amongst these cases is *Xiao Jianhua*, one of China's richest entrepreneurs, who *de facto* controls Tomorrow Holdings conglomerate and was convicted of ITIDFGP, bribery, manipulating stock funds, and breach of trust (BBC, 2022).

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To this end, this article aims to identify the fraudulent element in fundraising fraud. Drawing on qualitative analysis of 192 fundraising fraud cases and 182 ITIDFGP cases published within the last five years on the centralized judicial judgment platform,[6] the article explores how fraud is framed and understood in the context of financial crime in China. These judgments provide first-hand knowledge of how fundraising fraud and ITIDFGP were adjudicated. In examining these judgments, this study is able to extract the common ingredients that were attached great importance by the prosecution and the courts, and the perception of these two crimes in judicial practice. Existing literature on fundraising fraud and ITIDFGP tends to focus on the deception component of illegal possession within fundraising fraud in the judicial interpretation (Wang, 2021a, pp. 103–17; Sheng, 2019, pp. 41–4; Su and Li,2022, pp. 177–84).[7] For example, Wang Xiaobin has examined the concept of illegal possession and found it difficult to explain the differences between the two economic offences, suggesting an expansion of the interpretation of illegal possession based on Japanese criminal-law theories (Wang, 2021a, p. 114). Likewise, Sheng Haojie offers semantic analysis of illegal possession with an aim to articulate the distinction between the two crimes, but ends up with a recommendation of a legislative reform to address the limitation of the judicial interpretation (Sheng, 2019, pp. 41–4). Criminal scholars have struggled to pinpoint the features of fraud in the notion of illegal possession (Liu, 2021, pp. 38–48; Su and Li, 2022, pp. 177–84; Guo, 2020, pp. 141–2; Wang, 2021c, pp. 94–6). The lexicological interpretation of illegal possession has, thus far, been unable to satisfactorily establish the link between fundraising fraud and the key features of fraud, thereby failing to shed light on the main difference between fundraising fraud and why ITIDFGP is not a form of fraud (Sheng, 2019, pp. 41–4; Wang, 2021c, pp. 94–6; Wang, 2019, pp. 111–7). In this regard, this paper aims to remedy the theoretical dilemma in the criminal-law literature by untangling the intertwined relationship between the two financial crimes and revisiting their relationship with fraud in a new light. Instead of renewing the effort to align the concept of illegal possession with fraud components, this article makes novel contributions to the literature by arguing that ITIDFGP should be classified as fraud according to the Chinese criminal-law principle. This viewpoint breaks new ground and emphasizes that the nature of a crime should not necessarily be restricted to the legislative intention, but rather should be informed by the substantive meaning of and the logic in the elements of a crime. This approach contends that criminal-law scholarship should focus on the essence of the law with recourse to the established criminal-law jurisprudence, which serves as the guideline for evaluating the statutes and legal policy. Rather than seeking to provide a ostensible justification of the incongruity of the law, academic efforts should be redirected to understanding and appreciating the socio-legal context of the legislation and the criminal-law policy. In so doing, this article critically examines the intricate relationship between fundraising fraud and ITIDFGP, and conceptualizes and distils the essence of fraud in Chinese law. Referring to the fair-labelling principle, the first section of this paper explores why fundraising fraud is identified as financial fraud whereas ITIDFGP is a regulatory offence, by comparing and contrasting these two frequently applied economic crimes. The second section examines the concept of illegal possession traditionally regarded as the "fraud limb" of fundraising fraud. In identifying the essence of fraud in Chinese law, the third section arrives at a conclusion that ITIDFGP is a form of financial fraud and should be interpreted as such under the existing criminal-law structure. The fourth section then explains the underlying reason why ITIDFGP is labelled as a regulatory offence *de jure* from the policy perspective.

[6] The judgments were downloaded from the China Judicial Judgment Online, https://wenshu.court.gov.cn/, which publishes judicial judgments from various courts of China.

[7] There is a large body of literature discussing the fraud element of illegal possession; see e.g. Wang (2021a); Sheng (2019); Su and Li (2022).

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It concludes with a discussion of the fair-labelling principle and the consequence of an arbitrary inroad of policy factors into the doctrinal structure.

2. Fair labelling and financial fraud

A general expectation of criminal law is that the name of an offence should be fairly representative of the offender's wrongdoing and the degree of condemnation (Ashworth, 1981, pp. 42–3). In criminal law, the naming and classification of offences are comprehensively governed by the principle known as "fair labelling" (Chalmers and Leverick, 2008, p. 217). This suggests that the offence name has a symbolic and declaratory function; if it does not accurately reflect the degree or nature of the wrongdoing, then the offender suffers from wrongful stigmatization (Simester and Sullivan, 2007, p. 33). For this purpose, criminal law must set out offences that are sufficiently narrow and appropriately labelled, in order to correctly describe the nature and seriousness of the criminal behaviour (Horder, 1994, p. 340). The principle has two specific roles: the first seeks to use labelled offences to reflect the nature of the condemned conduct; and the second is to ensure that the degree of wrongdoing is accurately distinguished and the act in question precisely classified under the same offence group (Zawati and Doherty, 2014, p. 19). Here, two issues are at stake: offence differentiation and offence naming. To adhere to fair labelling, law-makers are tasked with reflecting the blameworthiness of the condemned conduct in the distinctions among offences, through carefully applying standards of critical morality. The resulting offences ought to be attached to descriptively accurate names that are consistent with the offender's moral guilt. In other words, the principle demands the blameworthiness (including both the wrongdoing and culpability) of offenders to be recognized in their conviction (Cornford, 2022, pp. 988–91).

As desirable as the fair-labelling principle may seem to be, within a coherent criminal-law structure, Andrew Cornford warns that it should not be considered the only—or even the principal—theorem that governs offence differentiation decisions. For one thing, the principle operates on the precondition that the blame expressed through criminal conviction must be justly allocated (Cornford, 2022, p. 992). In reality, since the duties that recognize qualitative moral distinction may not exist, the communicative value of fair labelling cannot be truly achieved through the imposition of censure and stigma. Another salient constraint is the impact of criminal justice practices, such as overlapping charges and charge bargaining. As a distinctive feature of the adversarial criminal justice system today, charge bargains (that allow the prosecution to drop one or more of the charges in return for a plea of guilty to one charge, or to drop the more serious charge in exchange for a plea of guilty to a less serious charge) certainly favour a less differentiated criminal law. Cornford also notes other relevant factors pertinent to offence differentiation that tend to be against the demands of fair labelling in the context of the adversarial system, such as social attitudes and changing social morality.

In keeping with Cornford's more realistic approach to fair labelling, this paper explores the policy reasons that work against the principle in the context of Chinese criminal law. Offence differentiation is amongst the key tasks of the legislature and the fair-labelling principle specified in the form of the internal structure theory was emphasized in the Chinese legislation drafting (Gao, 2010, pp. 56–61; Gao, 2009, pp. 1–11; Zhang, 2003, pp. 262–74; Zhao and Wang, 2009, pp. 28–64).[8] As a codified system, the Criminal Law 2007 of PRC (CL) set up ten separate chapters in its specific provisions to encompass as many

[8] Unlike the dichotomic framework of *actus reus* (guilty act) and *mens rea* (guilty mind) in common-law systems, the structural devises for criminal offences in China consist of four elements, namely (1) the object of a crime (*keti*), (2) the objective side of a crime (*keguan fangmian*), (3) the subject of a crime (*zhuti*), and (4) the subjective side of a crime (*zhuguan fangmian*). Transplanted from the Soviet Criminal Law system in the 1950s, the four-limbed structure

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offence types as possible. These chapters are structured in such a way that the offences are organized to reflect the condemnation of their harm to "the most important social interests protected by the socialist rule of law." These protected social interests are known as the objects of a crime (*fanzui keti*犯罪客体), which determine the interpretation of other elements of the criminal offence according to internal structure theory, ranging from national security, the order of the socialist market economy, and property rights, to the administration of public order and many others (Moroz, 2014, pp. 80–92).[9] The seemingly well-defined chapters and distinctions among offences epitomize the fair-labelling principle that conveys to both the public and the offender the nature and gravity of the offending, and the measured moral distinction and public censure by means of the severity of the sentences.

The communicative value of fair labelling, however, has its limits. Some outspoken law-makers have admitted that the boundaries between one offence and another—especially in the area of economic crimes—can be blurred, which sends confusing messages to judicial practices (Duan, 1995, pp. 57–61). Fundraising fraud and ITIDFGP are a good example; their intertwined and somewhat convoluted relationship makes it hard to clarify the distinction in the public mind of specific types of culpability. Harm, culpability, and wrongdoing cannot be easily discerned in the drafted provisions between the two crimes. Fundraising fraud is stipulated in Article 192 of CL, which provides that the offence is committed by "whoever, with an intention to possess illegally, unlawfully raises funds by means of fraud, if the amount involved is relatively large," according to the standard set out in law. The definition resembles that of ITIDFGP in Article 176 of CL, which criminalizes D who "illegally takes in deposits from the general public or does so in a disguised form, thus disrupting the financial order." Both offences are concerned with raising funds unlawfully from the public to engage in certain commercial business enterprises—that is, fundraising without the required permission from regulatory authorities or having obtained financial authorities' approval—but the fundraising activities were conducted *ultra vires* (Ye, 2012, pp. 16–22). Technically speaking, ITIDFGP is limited to raising funds in the form of monetary deposits whereas fundraising fraud covers a variety of financial assets, such as stock shares, crypto currency, or intellectual property (Guo, 2020, pp. 141–2). However, the investment attracted in a fundraising venture in forms other than monetary deposits is so rare that the *actus reus* fundraising conduct of both offences is essentially treated in the same way in judicial practice (Su and Li, 2022, pp. 177–84).

Nevertheless, fundraising fraud and ITIDFGP are different natures of economic crimes. Fundraising fraud is classified as financial fraud whereas ITIDFGP is a regulatory offence that does not comprise the deception element (Wang, 2021a, p. 105). As mentioned, the Chinese criminal law resorts to the objects of a crime to distinguish and grade the legal interests protected by the criminal law and public censure of wrongdoing (Gao, 2010, pp. 56–61; Zhao and Wang, 2009, pp. 28–64).[10] Fundraising fraud simultaneously damages two objects of a crime (socialist relations) in this regard: as a financial regulatory crime, it disrupts the order of the market economy; and, as a type of fraud, it deprives people or organizational entities of their property rights by deception. In contrast, only one object of a crime is ascribed to ITIDFGP—namely, the order of financial administration. Since the object of a crime dictates the interpretation of the offence, the way in which other components of these two offences should be construed is influenced accordingly.

principle has been a dominant theory in Chinese criminal law ever since, although there has been long-standing academic discussion as to whether the structure of criminal offences should be composed of three or four elements.

[9] This social relationship theory is very influential within the former socialist countries.

[10] There has been long-standing academic discussion as to whether the structure of criminal offences should be composed of three or four elements. The mainstream view is in support of the four element devises, although this view has been challenged in the last two decades; see Gao (2010); Zhao and Wang (2009). The object of a crime is closely connected to the social relation theory initially developed in the Soviet system and it is a quintessential socialist part of the internal structure theory.

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Thus, for example, as the property right is not considered the object of a crime in ITIDFGP, the public who invested in the unlawful fundraising enterprise are technically not treated as victims. From the perspective of a regulatory offence, the investors (the public) and the defendant are jointly engaged in unlawful crowdfunding and disrupting the market order. Even though CL decides neither to blame nor to criminalize the investors' investment conduct in ITIDFGP, the funds lost in the financial venture are not protected by law; indeed, the defendant is not legally obliged to return the funds (Gao and Ma, 2019, pp. 418–9; Wang, 2021a, pp. 109–10).

Fraud is a serious property offence in Chinese law. As a type of financial fraud, fundraising fraud carries severe punishment. Depending on the amount of funds involved, fundraising fraud is punishable by up to life imprisonment, concomitant with hefty fines or property confiscation.[11] The regulatory nature of ITIDFGP justifies the lesser sentence to which D is liable, with a maximum term of no more than ten years of imprisonment and a fixed fine.[12] In light of the discrepancy in sentencing, the fraud element that distinguishes ITIDFGP from fundraising fraud is crucial. Pursuant to Article 192 of CL, the deception element in fundraising fraud is encapsulated in the term "intention to illegally possess" (*feifa zhanyou wei mudi*), which appears to mark the distinction between fundraising fraud and ITIDFGP (Ye, 2012, pp. 16–22). This understanding allows us to formulate the relationship of the two offences as follows:

$$\text{Fundraising fraud} = \text{ITIDFGP (base offence)} + \text{intention to illegally possess}$$

ITIDFGP can thus be framed as the base offence of fundraising fraud. Meanwhile, the intention to illegally possess functions is a conclusive presumption that qualifies the fraudulent nature of the offence. The key issue that arises here is whether the intention to illegally possess truly and adequately captures the essence of fraud, thereby justifying the nature of the fundraising conduct as a form of fraudulence. To address this question, the following section will examine the meaning of illegal possession (or intention to possess illegally) in the Chinese legal framework with reference to the collated criminal judgments.

3. The overloaded concept of illegal possession

What gives rise to intention to possess illegally in fundraising fraud is expounded in the judicial guideline "Supreme People's Court's Interpretation on Adjudicating Specific Matters in Relation to Unlawful Fundraising Cases" (promulgated on 22 November 2010, updated by the Adjudicative Committee of the Supreme People's Court on 30 December 2021 and implemented on 1 March 2022; hereafter, the Judicial Interpretation). Specified in section 7 of this document, the intention to possess illegally can be proved if any of the following circumstances is satisfied:

1. the raised funds were not spent on business activities, or the funds that were spent on the business were disproportionately small, resulting in the funds not being able to be returned to the general public;

[11] According to Art. 192, D shall also be fined not less than 20,000 yuan but not more than 200,000 yuan; if the amount involved is huge, or if there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than ten years and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan; if the amount involved is especially huge, or if there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than ten years or life imprisonment and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan or be sentenced to confiscation of property.

[12] Arts 176 and 192 of CL 1997.

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2. the raised funds were disposed of by means of profligacy, resulting in the funds not being able to be returned to the general public;
3. D absconded with the raised funds;
4. the raised funds were spent on unlawful or criminal activities;
5. the raised funds were withdrawn, transferred, concealed, or withheld by D who evaded the return of the funds to the general public;
6. D concealed or destroyed the accounts, or made others believe that the company engaged in the investment went bankrupt or had been liquidated, evading the return of the funds to the general public;
7. D refused to confess the whereabouts of the funds, evading the return of the funds to the general public; and
8. other circumstances that can be ascertained as the purpose of illegal possession.

Aside from the last catch-all provision that authorizes judges to identify other situations at their discretion, it is not difficult to recognize from the listed circumstances that the judicial presumption is based on the nature or purpose of the ways in which D utilizes the raised funds. In establishing the circumstances, the intention to illegally possess the raised funds as the required *mens rea* can thus be proved. Straightforward as the judicial presumption seems to be, do these circumstances represent key features of fraud? To answer this question, it is useful to examine the notion of illegal possession in property offences.

Intention to illegally possess is a shared element in theft, deception offences, and other property offences that have a "possessionary" component in Chinese criminal law. For example, the offence of fraud criminalizes conduct that "swindles public or private property" if the amount is relatively large by a method that falsifies the facts or conceals the truth, with a purpose of illegal possession (Article 266 of CL).[13] Its *mens rea*, as required by legislator interpretation, consists of two elements: (1) D must intend to defraud V; and (2) he must have an intention to illegally possess the public or private property. Similarly, intention to illegally possess as a *mens rea* is also required in theft.[14] Theft is defined as an offence that D secretly steals a relatively large amount of public or private property or steals repeatedly, with the intention to illegally possess.[15] Like fraud, theft requires D to have an intent to illegally possess the public or private property. In both offences, intention to possess illegally is referred to as a required *mens rea* component. So what amounts to intention to possess illegally in Chinese law? To date, there has been academic debate as to how to interpret the term and the focal point is whether the term should be construed in line with the concept of illegal possession in property law.

Following the civil-law tradition, Chinese property law recognizes possession as a legal fact or state that enjoys certain protections by law and may give rise to a legal claim due to the exercise of dominion over property (Liu, 2000, pp. 36–45). Illegal possession means that a person's control over property is obtained unlawfully. In Chinese property law, illegal possession is categorized as a possession in fact and the person who controls the property does not have the legal position to claim its title. In light of the fact that the same legal term is used in property law and criminal law, four different views have emerged to explain the meaning of illegal possession in criminal law (Zhang, 2005, pp. 70–81; Li, 2013, pp. 9–18).

[13] Statutory interpretation of fraud, published on 19 April 2002 by the National People's Congress of PRC (2002), http://www.npc.gov.cn/npc/c2374/200204/619a12682b5349669aae3b03047a92d0.shtml (accessed 8 May 2024).

[14] Statutory interpretation of theft, published on 19 April 2002 by the National People's Congress of PRC (2002), http://www.npc.gov.cn/npc/c2374/200204/9fb5935e8c834183a79a862fe4507899.shtml (accessed 8 May 2024).

[15] Statutory interpretation of fraud, published on 19 April 2002 by the National People's Congress of PRC (2002), http://www.npc.gov.cn/npc/c2374/200204/9fb5935e8c834183a79a862fe4507899.shtml (accessed 8 May 2024).

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The first group of academics argue that possession in criminal law should be interpreted in the same way as that in property law. Intention to possess illegally, according to this view, is an infringement of property rights and should be interpreted in the same way as that of property law (Chu, 2004, p. 79). The second opinion refers to possession in criminal law as specifically to ownership. It argues that, when D intends to illegally possess a property, he or she has an intention to obtain the ownership of the property (Gao, 1998, p. 760; He, 1995, p. 719). The third interpretation of the term is by far the most liberal, arguing that the meaning of illegal possession in criminal law should be distinguished from property law and be broadly explained as making a gain for D (Zhang, 1991, pp. 225–56). Finally, the last perspective suggests that illegal possession should be understood as a form of interference in property rights that enables D or a third party to keep or deal with the property as if he or she is the owner (Gao, 1989, pp. 889–90.). This viewpoint also agrees that illegal possession in criminal law should be treated differently from the term in property law, which comprises any conduct that interferes with the property rights belonging to another.

Unlike the above four generic approaches, Che Hao argues that intention to possess illegally, as a nebulous term, should be contextualized when analyzing its meaning; illegal possession and intention to possess illegally should also be differentiated (Che, 2014, pp. 1182–207). He observes that possession indicates the proximity between the rightful owner and the property under the existing legal order; illegal possession in criminal law is a way to interfere with this legal state by exerting control over the property. Illegal possession in criminal law is therefore a component of the *actus rea* of a property offence and should be treated as an equivalent to appropriation (*qinzhan*). Illegal possession, in this sense, is possession in fact that exerts factual control over the property. Meanwhile, there is a normative aspect of possession. When D appropriates the property with an aim to change the existing legal relationship between the property and its original owner, he intends to illegally deprive the rightful owner of the said property. In theft, intention to possess illegally constitutes the ulterior *mens rea* of theft (Che, 2014, pp. 1195–206).

Che's (2014) interpretation of illegal possession and intention to possess illegally resembles the notion of appropriation and intention permanently to deprive in English theft law.[16] In section 3(1) of the Theft Act 1968 in England and Wales (TA 1968), appropriation as the key *actus reus* element of theft is defined as:

> any assumption by a person of the rights of an owner amounts to an appropriation, and this includes, where he has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping or dealing with it as owner.

Assuming the rights of an owner, therefore, amounts to an appropriation according to the law. Case-law, especially *Morris* [1984] A.C. 320, clarifies that the assumption of any one property right (not necessarily the rights of legal ownership or control) will be sufficient to find an appropriation. *Gomez* [1993] A.C. 626 and *Lawrence* [1972] A.C. 442 further confirm that appropriation can be satisfied, as long as D assumes a right of ownership over the original owner's property, regardless of the owner's consent or lack of consent. In the controversial case of *Hinks* [2000] 4 All E.R. 833, the House of Lords recognized the inconsistency between civil and criminal law in dealing with a case in which the civil title of a property is consensually transferred from the original owner (the victim). D may therefore be liable for theft of property in criminal law, but be entitled to keep that same property in civil law. The requirement for an intention to permanently deprive is an ulterior *mens rea* element. It is worth noting that this intention must exist at the point of appropriation in order to satisfy the elements of theft according to TA 1968. The coincidence between appropriation and

[16] Che's (2014) view is in line with the last group of scholarly opinion outlined earlier in China.

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intention to deprive in English law seems to echo the correlation between illegal possession and intention to possess illegally in Chinese theft law.

Treating intention to possess illegally as appropriation is currently endorsed by the Chinese judicial practice. In *Song* (2016), for instance, the defendant who used remote control to manipulate an electronic scale in order to pay less for purchased corn was convicted of theft.[17] Other theft convictions delivered by the courts include D taking a motorcycle under the pretext of a test drive[18] and D secretly removing electronic tags from clothes in the fitting room and taking the clothes without paying for them.[19] In these cases, D was found to have satisfied the *mens rea* of intention to illegally take property belonging to another. In these cases, illegal possession and intention to possess illegally are construed in a similar way to that of TA 1968.

If intention to possess illegally is interpreted as an intention to illegally deprive, does the term capture the essence of fraud? Statutory definitions on both fraud and theft are vague, offering no comparison between the two property offences.[20] The mainstream Chinese criminal-law theory suggests that the key difference between fraud and theft lies in how the property was illegally possessed and whether it was facilitated with the victim's consent. As far as theft is concerned, the illegal possession was completed without the victim's consent concerning the disposal action (*chufen xingwei*) in relation to the property in question whereas, in the case of fraud, illegal possession was the result of the victim's consent (Wang, 2015, pp. 28–48). This view, however, has increasingly been challenged, with a growing number of scholars doubting the lack of the victim's consent as a reliable way to distinguish theft from fraud (Zou, 2022, pp. 57–73; Liu, 2000, pp. 36–45). In particular, a dissenting view was supported by the Supreme People's Court (SPC), which challenges the idea that the presence of the victim's consent signifies fraud. In the SPC guiding case No. 27, *Zang Jinquan and others* (2014), the victim's consent to transfer 305,000 yuan into her online bank account to D via a phishing link did not make D's commission of the crime a fraud when the victim's consent was ostensibly obtained as a consequence by a digital trick that secretly stole the money.[21] In this case, the SPC took the opportunity to draw the distinction between fraud and theft, especially when the conduct in question involves possessing a thing both in a secret way and in a deceptive way. The judgment clarifies that the conviction should be based on "the principal method by which D obtained the property and whether the victim has the awareness to dispose of the property." If the fraudulent behaviour in question is merely intended to create an opportunity or to cover up the stealing and the victim did not willingly give up the property, then the conduct should be deemed as theft. But, if the victim delivers the property voluntarily on the basis of a mistaken belief, then the conduct shall be concluded as fraud. This decision is crucial in that it clarifies the key essence of fraud—that is, fraudulent conduct is achieved by the influence of D on the victim that causes him or her to lose control of the property. By dissecting the offence in this vein, fraud is comprised of two sets of causation: (1) a knowledge or belief influenced by D's false or unreliable information; and (2) this knowledge or belief causes the victim to lose his or her property. As a result-based offence, the completion of the conduct hinges on the knowledge or belief of the victim.[22] Thus, in

[17] Jining Shulan City Basic People's Court (2016) Ji 0283 Xingchu No. 418 Criminal Judgment.

[18] Zhongfang County Basic People's Court (2011) Fang xing chu No. 49 Criminal Judgment.

[19] Guandu Basic People's Court (2020) Yun 0111 Xing chu No. 1816 Criminal Judgment.

[20] For example, Art. 266 of CL defines fraud as conduct that swindles public or private money or property, if the amount is relatively large. Art. 264 of Cl criminalizes theft as conduct that steals a relatively large amount of public or private property or commits theft repeatedly. Neither of them has elaborated on how to distinguish one from the other.

[21] See No. 26 Guiding Case of the Supreme People's Court 2014, approved by the Adjudicative Committee of the Supreme People's Court on 23 June 2014.

[22] For a similar view, see Yuan (2021), pp. 133–51.

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establishing the fraud offence, it is necessary to show that D's false information caused the victim to form a false belief or knowledge; and that the false belief or knowledge caused victim to act in a specified manner, such as transferring property. Similarly to intention to possess illegally in theft, this can also be interpreted as "D deprived V of his or her property, which either benefited D or resulted in a loss to V." Thus, when the elements of fraud and theft are juxtaposed, it is easy to arrive at the conclusion that either illegal possession or intention to possess illegally does not represent the characteristics of fraud. The essence of fraud, as demonstrated in *Zang Jinquan and others* (2014), lies in the causal link between D's false information and V's disposition of his or her property.

With this in mind, this paper is now in a position to revisit the question raised earlier: Do the circumstances listed in the Fundraising Fraud Judicial Interpretation embody the essence of fraud at all? The answer is in the negative. These circumstances enumerate the ways in which D disposes of the raised funds in an unauthorized fashion to make a gain for herself (or another) or to cause a loss to a victim. The factors may be useful to establish the *mens rea* of D that has caused detrimental consequences for the victim—however, they cannot effectively justify fundraising fraud as a form of financial fraud by dint of the overloaded concept of illegal possession. As a matter of fact, these circumstances—being sufficiently isolated from the context—could be equally construed as a means to appropriate the property in an unauthorized manner, thereby constituting a type of theft. This understanding is consistent with the fair-labelling principle. When fraud is acknowledged as an offence dictated by the causal link between D's false information and V's disposition of his or her property, the circumstances numerated in the Fundraising Fraud Judicial Interpretation cannot be justified as a form of fraud, as they are not descriptively accurate. If fundraising fraud were to be named as financial fraud, other component(s) of the offence have to demonstrate this essence of fraud in justifying the resulting offence in accordance with the requirement of fair labelling. This understanding invites us to re-examine the other elements of fundraising fraud as a special category of fraud. To investigate this issue, the following section examines the base offence of ITIDFGP and takes a fresh look at the nature of the regulatory offence.

4. ITIDFGP as a form of fraud

As previously discussed, ITIDFGP is classified as an offence that disrupts the financial order, criminalizing conduct that illegally receives deposits from the general public or does so in a disguised form.[23] What constitutes ITIDFGP is not provided in Article 176 of CL, but is explicated in the Judicial Interpretation. According to Article 1 of the Judicial Interpretation, four components must be satisfied when D takes in deposits from the general public: namely, the fundraising activity was conducted:

1. without being approved by the relevant legal authority or in a form of operation that is lawfully permitted;
2. openly publicizing to the general public by means of Internet, media, promotion meetings, leaflets, mobile phone messages, etc.;
3. offering promises to repay the principal capital and interest or to guarantee returns within a certain period of time in forms of currency, goods, equity, or other means; and
4. soliciting from the general public, which are unspecified members of society.[24]

[23] Art. 176 of CL.

[24] See Art. 1 of the NPC Statutory Interpretation of fraud, http://www.npc.gov.cn/npc/c2374/200204/619a12682b5349669aae3b03047a92d0.shtml (accessed 8 May 2024).

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Despite being described as a regulatory offence, this paper argues that the elements of ITIDFGP satisfy the key features of fraud and serve as a classic example of the required deceptive nexuses: namely, (1) D's false representation or undisclosed information of the business opportunity influenced the victim's decision in making a risky investment; and (2) it is the recipience of the false representation or undisclosed information that leads to the loss of the property. From the fair-labelling perspective, ITIDFGP is justified to be named as financial fraud, as both the wrongdoing (i.e. the conduct for which a person is to blame) and culpability (the extent to which they are at fault for the conduct) can be recognized as the moral guilt identified in fraud. The deceptive characteristics referred to can indeed be found in all the ITIDFGP cases collated in this study.

To begin with, fraud is defined as a deceptive act that falsifies facts or conceals the truth for the purpose of illegal possession in Chinese criminal law.[25] Aside from the ambiguous segment of illegal possession (or intention to illegally possess) already analyzed, the key ingredient here is the falsified facts or concealed information, which encompass various types of false representation and undisclosed information involved in the course of promoting the fundraising venture. In the ITIDFGP context, the most obvious false representation or undisclosed information is that the companies involved have not obtained the required permission from the relevant financial regulation department in the first place and are not recognized as financial organizations to undertake the fundraising activities. This critical information was deliberately misreported or concealed in their promotional materials, which gave potential investors a false impression of their legal capacity to take and manage the assets absorbed from the public. Pursuant to Articles 13 and 14 of the Security Investment Fund Law, a company that fulfils all the legal requirements must submit an application to the securities regulatory department under the State Council and seek its approval and supervision for the purpose of carrying out the fund-taking and management business. In the judgments concerning ITIDFGP, the lack of financial authorization is often expressed as "non-qualification to receive public funds (*quefa rongzi zizhi*) according to the financial regulatory law."[26] Thus, out of 182 ITIDFGP cases, all of them ($n = 100\%$) involve companies that either received no authorization from the financial authorities or breached the financial regulations to conduct fundraising activities. This information was always disguised or concealed, taking advantage of people's lack of financial knowledge in financial law in the promotional activities and the investment contract.

It is worth noting that, although ITIDFGP is often regarded as one of the most complicated crimes in legal practice, judgments on these financial crimes have overall been simple, following a similar pattern that begins with disguised company information and false representation of the promoted financial investment leading to the successful amassing of a vast fortunate from the public. The enterprises involved in these fundraising activities widely circulated the promise of lucrative return on the investment, which was investigated and found to be not factual. Let us consider the example of the case of *He Man* (2020)[27]: D, with no permission from the financial regulator, openly sought investments from the public under the names of Beijing Longtai Investment Ltd and Beijing Miaoyou Trust Fund Ltd between 2010 and 2015. In their asset management contract with the

[25] See the NPC Statutory Interpretation of fraud, http://www.npc.gov.cn/npc/c2374/200204/619a12682b5349669aae3b03047a92d0.shtml (accessed 8 May 2024).

[26] See e.g. Zhejiang Haining People's Court Criminal Judgment (2018) Zhe 0481 Xing Chu No. 124; Beijing Dongcheng People's Court Criminal Judgment (2020) Jing 0101 Chu Xing No. 496; Jiangsu Jingjiang People's Court Criminal Judgment (2021) Su 1282 Xing Chu No. 201; Tianjing Binhai New Strict People's Court Criminal Judgment (2021) Jing 0116 Xing Chu No. 1617; Liaoling Faku County People's Court Criminal Judgment (2021) Liao 0124 Xing Chu No. 296; Guangdong High People's Court Criminal Judgment (2018) Yue Xing Zhong No. 1334.

[27] (2020) Jing 0101 Xing Chu No. 496.

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investors, the companies made a false representation that the financial management team had authority to invest their money in camellia oil and walnut oil businesses, securing high-interest returns. In all the cases ($n = 100\%$) collected in this study, the materials publicized to the investors declared or implied that the fundraising activities were authorized by the official regulatory bodies. These companies often assumed misleading names, such as "investment trust fund," and the contracts were drafted under the title of "equality investment agreement."[28] The methods of representation are variegated, either orally or in writing, often through channels including traditional media (such as local newspapers),[29] social media, promotional events, and pamphlets. In these publicity materials, the defendants conveyed false or misleading information that the investment was a risk-free enterprise with a guaranteed, lucrative return of profit. Interestingly, the contents of the contracts were primarily concerned with private loan lending in which the profit returns were calculated based on a high interest rate in proportion to the capital deposited.[30] These publicity materials and contracts portrayed the companies as institutions that were licensed to accept deposits and make loans in the same way as banks do, deliberately obscuring the financial risk. These ITIDFGP judgments revealed that one of the main purposes of the fundraising was to overcome the shortage of capital flow ($n = 121$; 66.48%) or to balance the losses in those companies' accounts ($n = 46$; 25.27%). In fact, evidence indicated that these companies were already in serious financial trouble prior to the fundraising activities; they suffered from huge deficits and struggled to manage their existing debts. They were in no position to generate any profits, much less to pay out the high-interest returns that they promised to the investors.[31] This material information was, likewise, deliberately concealed or misreported in the publicity materials.

The deception elements in these ITIDFGP cases can therefore be identified and established. Equally, the two sets of causation required by Chinese fraud law can also be proved. Thus, the investors' impression that they were able to gain the promised profit from D was evidenced by the fact that the companies portrayed themselves as financial entities that were authorized to accept deposits from the general public. The misleading information made the investors believe that they were capable of delivering the promised financial returns. It was the promotional campaign organized by D and the falsified information conveyed in this process that prompted the investors to decide to invest a large sum of money in D's companies. D—who planned and undertook the public-facing fundraising campaigns—had clear knowledge of the financial peril that they would bring to the investors. In order to maintain the everyday operation of their companies that were bogged down in debt, D deliberately misreported their accounts and offered an untrue financial forecast and a false promise of rewarding payback. A large number of the ITIDFGP cases engaged in Ponzi schemes ($n = 124$; 68.13%) in which the company promised high rates of return with little risk to investors; the fund used to pay these investors was in fact generated by later investors (US Securities and Exchange Commission, 2023).[32] When the company was no longer able to attract an adequate number of new investors, leaving them

[28] See e.g. Beijing Chaoyang District People's Court Criminal Judgment [2020] Jing 0105 Xing Chu No. 1505.

[29] Heibei Province High People's Court Criminal Judgment (2017) Ji Xing Zhong No. 167.

[30] See e.g. Beijing Haidian District People's Court Criminal Judgment [2020] Jing 0108 Xing Chu No. 191; Heibei Province High People's Court Criminal Judgment (2017) Ji Xing Zhong No. 167; Shandong Province Dancheng District People's Court Criminal Judgment (2021) Lu 1322 Xing Chu No. 613; Zhejiang Province High People's Court Criminal Judgment (2018) Zhe Xing Zhong No. 471.

[31] The losses were huge and ran over millions. Beijing Dongcheng District People's Court Criminal Judgment (2021) Jing 0101 Xing Chu No. 165; Beijing Dongcheng District People's Court Criminal Judgment (2020) Jing 0101 Xing Chu No. 406; Beijing Dongcheng District People's Court Criminal Judgment (2020) Jing 0101 Xing Chu No. 242; Beijing Chaoyang District People's Court Criminal Judgment (2021) Jing 0105 Xing Chu No. 2466.

[32] See US Securities and Exchange Commission, "Ponzi Scheme," 17 February 2023, https://www.investor.gov/protect-your-investments/fraud/types-fraud/ponzi-scheme (accessed 8 May 2024).

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with insufficient money to redistribute the promised "profits," the case was reported to the police. Again, it was this unfounded information that misled the victims' decision-making to invest in the scam business that resulted in their financial loss.

If ITIDFGP satisfies the requirements for fraud, then why is the crime categorized as a regulatory offence rather than financial fraud? The answer to this question is multifaceted; ultimately, it is a matter of legislative intention or a policy reaction to the financial environment in which the business operates in China. As noted earlier, although fair labelling operates well within a coherent criminal-law structure, Cornford has warned that this principle may not always work in reality. In the Chinese context, the criminal-law policy plays an important role in decisions concerning criminal-law legislation. The following section approaches this question from a policy perspective, exploring the adverse investment environment in which companies in China live and the challenges they face.

5. The policy approach to assigning the economic offence

In the Report on Assessment of China's Entrepreneurs' Criminal Risks 2014–18, conducted by Beijing Normal University, ITIDFGP was the most frequently accused offence against entrepreneurs ($n = 1{,}527$), making up 17.77% of the total number of convicted businesspersons (Zhang, 2019, pp. 19–68; Beijing Normal University Research Team, 2017, pp. 17–62).[33] Despite having been identified as the biggest risk factor, the number of entrepreneurs who commit the offence continues to grow. The Work Report of the Supreme People's Procuratorate 2023 reported an increase of 28.2% in the number of suspects charged with ITIDFGP and fundraising fraud compared with five years ago (Zhang, 2023).

Why is ITIDFGP such a prevalent economic offence for entrepreneurs who willingly run the risk of ruining their future? In their Report on Assessment of China's Entrepreneurs' Criminal Risks 2017, the research team found that only one entrepreneur who worked within a state-owned company was charged with and convicted of ITIDFGP whereas as many as 414 private enterprise owners were found guilty of the offence in that particular year (Beijing Normal University Research Team, 2017, p. 42). This situation was repeated in 2018, when ITIDFGP topped the list of all the financial crimes committed by entrepreneurs ($n = 693$) working within private enterprises. In contrast, ITIDFGP ranked only tenth on the list of financial crimes for entrepreneurs ($n = 6$) who ran state-owned companies (Zhang, 2019, p. 45). Behind the financial crime phenomenon are private enterprises' limited access to finance and a deep-seated institutional bias against private entities. Under the socialist market economy, private enterprises are allowed to co-exist with public ownership and state-owned enterprises; and indeed many of them have flourished. Today, private enterprises represent over 90% of businesses and are important contributors to China's economic growth.[34] Yet, despite their major role played in China's economy, they are less likely to be able to obtain bank loans than state-owned corporations. To a large extent, the existing credit infrastructure and financial environment are a legacy of the socialist planned economy, which heavily tilts toward serving publicly owned corporations rather than private business (Beijing Normal University Research Team, 2015, p. 43). Private enterprises' access to finance and sources of capital is restricted, largely due to the interested financial policy and complicated

[33] The offence ranked second is falsely making out special invoices for value-added tax, which counts towards 11.30% of all the criminal offences committed by Chinese entrepreneurs.

[34] The number of private enterprises account for 92.2% of China's businesses; see The People's Daily, "The Number of Private Enterprises Doubled within a Decade," 23 March 2022, http://www.gov.cn/xinwen/2022–03/23/content_5680738.htm (accessed 26 September 2022).

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bureaucratic application processes (Beijing Normal University Research Team, 2015, pp. 44–7). With the economic slow-down in recent years, and onerous tax levies and increase in costs of materials and labour, there has been an unmet financing need for private firms (Yu, Yin and Liang, 2018, pp. 101–2). Wang Xin (2021b) noted that more than 80% of small and medium-sized enterprises in China survive on the basis of private lending (Wang, 2021b, pp. 108–15). Most owners rely on internal funds and cash from friends and family to launch and run their businesses (Beijing Normal University Research Team, 2015, p. 43). This is reflected in the cases collected in this study, in which 78.57% of the ITIDFGP ($n = 143$) and 82% of the fundraising fraud ($n = 157$) cases were instigated due to companies' financial difficulties according to the published judgments. The shortage of formal lending avenues has, on the one hand, prompted private enterprises to seek innovative resources to fill the financing gap (Beijing Normal University Research Team, 2015, pp. 43–6). On the other hand, as China's economy continues to develop, there have been a growing number of ordinary people with disposable incomes who have accumulated a large amount of savings, looking for profit-seeking opportunities and lucrative investments in the financial market (Wang, 2021b, p. 62). Against this background, it is no surprise that myriad public-facing fundraising platforms have sprung up in a matter of a few years, advertising high returns for safe investment. Not all companies fulfil the requirement to absorb public deposits, however; nor are they able to pay the high interest rates for loaning from the public or honour the promised high returns. They are likely to face ITIDFGP investigations when such a business model becomes unsustainable.

Policy-makers are privy to the investment system, the prejudiced lending practices operated by Chinese banks, and the bottleneck obstacles in financing that private enterprises face (Zhao, 2013. pp. 238–41). In light of these challenges, there has been a consensus that the system should acknowledge and support alternative revenues to improve private enterprises' access to finance, allowing an enabling environment to be developed (Wang, 2021b, pp. 66–70). Since the mid-2000s, private financing has accounted for a growing proportion of China's GDP (Liu and Zhu, 2015, p. 35).[35] As a response, the state has somewhat acquiesced in diversified forms of financing (especially peer-to-peer e-lending platforms and public-facing fundraising activities) as a complement, or even supplement under certain circumstances, to the formal financing sector as part of the private economy (Wang, 2021b, p. 66). To this end, the regulatory authorities are inclined to regulate and direct public-facing fundraising ventures, enabling them to play a part in economic development rather than eliminating these private financing activities altogether by law enforcement.

The principle of financial crimes is a reflection of this policy consideration. Quite often, ITIDFGP, as a result-based offence, is not pursued unless the fundraising activity has actually caused a disturbance to the financial order. It is clear from the judgments that the ITIDFGP cases were investigated primarily because the loss of the public invested funds ensued widespread social implications, in some instances resulting in public protests.[36] Public opinion and social stability play a significant role in investigating these cases (Jiang, 2015, pp. 122–7). The local government is under a lot of pressure to quell public anger and maintain social stability. In salvaging the financial loss, they may influence the decision-making in the case, emphasizing the priority of civil compensation rather than the criminal liability of the defendant (Wang, 2021b, p. 68). A long-term custodial sentence imposed on the entrepreneur involved is not conducive to the compensation scheme.

[35] For example, private financing represented 6.96% of China's GDP in 2005. Its scale has expanded significantly recently. In 2014, the private financing sector reached 7.26 trillion yuan.

[36] See e.g. Beijing Dongcheng District People's Court Criminal Judgment (2020) Jing 0101 Xing Chu No. 406; Beijing Dongcheng District People's Court Criminal Judgment (2020) Jing 0101 Xing Chu No. 496.

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The social stability concerns surrounding ITIDFGP cases set the tone of the accompanying legislation and law enforcement. There is an inclination to exculpate the defendant or mitigate their liabilities if possible, especially when D demonstrates their efforts and sincerity to make amends for the investment loss (Wang, 2021b, p. 69). In this context, there is a need to frame ITIDFGP as a relatively minor regulatory offence, with flexible sentencing options.[37] Only if initial investigations indicate that potential compensation to the investors is out of the question and D is unable or unwilling to pay them back (thereby satisfying the requirement for illegal possession) would the case be likely to be treated as fundraising fraud that carries heavier sentences. In criminal justice practices, private enterprises have now been given a second chance to submit a workable compliance management plan as a condition of non-prosecution when an investigation of ITIDFGP is under way (Lu, 2020, pp. 127–37). Such measures and policy downplay the seriousness of the lawful fundraising activities undertaken by private enterprises, with a clear aim to maintain a desired social stability.

6. Conclusion

For a long period of time, academic discussions on the intricate relationship between fundraising fraud and ITIDFGP have focused on justifying illegal possession in fundraising fraud as a fraud element in the context of the existing criminal-law structure. Instead of critically examining the essential meaning of fraud and the inner logic that underpins the designation of the nature of a crime, these analyses appear to have lost sight of the nature of ITIDFGP and its endogenous relationship with fundraising fraud, largely due to the constraint of the existing legislative structure and the judicial interpretations. This narrow approach has led to prolonged theoretical confusion about the relationship between the two financial offences that in many ways contradicts established criminal-law jurisprudence. Rather than conforming to the conventional approach of following the seemingly straightforward judicial interpretations, this article argues that scholarly efforts should be channelled to consider the socio-legal context of the legislation, which offers a new perspective from which the crux of legal problems can be better identified and the nature of a crime ascertained.

Chalmers and Leverick (2008) argue that the description of an offence should not create a false or misleading impression of the nature or magnitude of the offender's wrongdoing, nor invite an inaccurate conclusion to be drawn (Chalmers and Leverick, 2008, p. 223). Even though fair labelling, in principle, should carry the functions of checking judicial discretion in sentencing and the communication to offenders, in reality, many other factors may become the main principle governing offence differentiation decisions. This article does not set out to advocate a reform to change the law in relation to ITIDFGP or fundraising fraud (which is beyond the scope of this study), even though doing so might help straighten out the baffled relationship between the two offences. Rather, it aims to bring to light the importance of criminal-law policy and the fact that the nature of a wrongdoing blamed by the state can be determined by policy factors and reassigned as a matter of taxonomy. It illustrates that the nature of a crime can be dictated by expedient grounds that may not necessarily be in line with criminal-law principles. Future academic debates may need to be aware of role that socioeconomic policy plays in criminal-law legislation and acknowledge the fact that Chinese criminal law is not merely a coherent set of principles, but is also an embodiment of and functions as socioeconomic policy.

[37] According to Art. 176, D, who is convicted of ITIDFGP, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined not less than 20,000 yuan but not more than 200,000 yuan; if the amount involved is huge, or if there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan.

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