

with power in another sense, while the lenders (even the country) can become the weak party all the same. The change of the strong–weak relationship between borrowers and lenders has its expression in the folk saying: “I don’t have any money and only one life.” If the situation reaches such an extent, and if the purpose of the lender is to “want money” but not “life” or the official or unofficial system does not allow you to want “life,” then the strong–weak relationship between the borrower and the lender has experienced some subtle change. This kind of situation has become more and more common in China in recent years. The “debt chain” among enterprises is one example. Banks do not want enterprises to file for bankruptcy due to the revenue they receive is another example. The black humor among the people that “the borrower Yang Bailao threatens the lender Huang Shiren” certainly goes too far, but has a kind of meaningful summary on the change of relationship of dominance between the borrower and the lender.

It is not only possible in the natural space, but also possible in the people’s space that the strong–weak relationship has changed. By the so-called people’s space, I refer to the society of acquaintance in rural China. Compared with the community in which the borrower lives, the country is only a kind of concept that exists for him. Although the court chief and representative from the credit cooperative from the town collecting loans on behalf of the country or “according to law” do have undoubted political legitimacy, and have support of state force, they are more or less strangers from outside and the rights they represent do not have much of a strong basis in this area. The belief in the modern national state in China only came into being 100 years prior at most, but before a fundamental change takes place in the production method and relevant social and organizational structures in rural society, borrowers are prone to regard national power as an external force. It is easy and almost certain for the borrowers living in a society of acquaintance to form a relationship of mutual benefit and “legal protection between relatives” with people in the same community. The first draft of Jiang’s article has shown this. Jiang, who was born and grew up in the north and Shaanxi Province, used to doubt whether village cadres would inform the borrower and let him run away. Although in this case, the fact afterward eliminated his doubt, this did not eliminate the possibility. On the contrary, the reason that Jiang had this kind of doubt at that time in that place is itself a support but not strong evidence. Our research in the basic-level courts in Hubei Province discovered that villagers usually refused to appear in court to testify for the criminal behaviors of their fellow villagers, even when there was irrefutable evidence. This situation became so common that the regulations on witnesses going to court and testifying made by the Criminal Procedure Law newly promulgated in 1998 could not be implemented.<sup>18</sup> This can be another

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<sup>18</sup>But this is not the only reason, let alone the main reason. This kind of situation still exists in urban areas and is even worse. According to a report, in the trial of criminal cases, the court attendance of witnesses in Huangpu District of Shanghai is only 5 % and the attendance in certain city of Jiangsu Province is less than 10 %, while the attendance in court of a certain county reaches 25 % (but no witnesses appear before the court in bribery cases). Please refer to Wu Dingzhi: “Where can we find the right solution when witnesses refuse to testify,” *People’s Procuratorial Monthly*, Issue 3 of 1999, p. 6.

strong piece of collateral evidence. It is a common phenomenon in China's society that people tend to help people they know.

It is just in this natural and cultural space that we can possibly understand why the borrower can refuse to pay his loan back for 10 years even when the business office of the cooperative came to the door to collect the loan. All this shows that the actual control of the national power is quite weak in the village. From this point, there is another meaning for sending the cadre and court to the countryside, sending law to the door, and opening procedures on the kang. We cannot easily accept a theoretical presupposition that we are already used to. It is that the country is bound to be strong while poverty-driven and poor farmers are destined to be the weak party. In this geographic and cultural space, the national power sent out by the central government has become the final kick of the crossbow in this "desert margin," with a strong sense of metaphor.

We must also see that although modern countries have almost completely monopolized the legitimate utilization of force, this kind of utilization must still be legitimate. Countries cannot resort to violence only. It is true that people implementing rights on behalf of the country will sometimes abuse power and victimize the people, and even treat human life as not worth a straw in certain extreme cases. But these are not justifiable. No matter it is the official state ideology,<sup>19</sup> traditional Confucian ideology,<sup>20</sup> or the relationship of coexistence to some certain extent between village cadres and villagers,<sup>21</sup> it must limit the violent behaviors or behaviors threatening to use violence by loan collectors. We can see in the above case that the loan collectors did not threaten to catch the person failing to pay back the loan, they just threatened to summon him to the people's court in town for public trial in order to make him "lose face" in the village. This may not be counted as a threat in the legal sense, but "doing business according to law" and "collecting loans according to law," but in the local social context, it did constitute an actual and quite strong threat for the borrower or ordinary villager. This once again confirms what I put forward in another analysis that what constitutes harm, threat, and embargo is quite different in rural areas from that in urban cities.<sup>22</sup> As a matter of fact, the head of the court also used this kind of folk method of threatening here as a local and traditional resource (we will have more detailed analysis on this point later). But even this being the case, if the borrower really did not have the ability to return the loan, or even was not intending to return the money at all, while willing to lose face, this kind of threat did not work (as the saying goes that

<sup>19</sup>Such as, people's government, people's court, and the "rule of law" itself which supports and limits the country's use of force.

<sup>20</sup>Such as the traditional wording of parent-like magistrates.

<sup>21</sup>Among officials (including judges of people's court) working in rural areas, many are official deputies of the state—that is to say, taking salaries from the state. But their interests are not equal to the interests of the state. Many of them were born here, grown up here, and will die here. Most of them do not have any expectation of promotion. They also have all kinds of relations with the local areas. Those kinds of relations enable them to coexist with local villagers.

<sup>22</sup>Suli: "Rationality and feasibility of modern rule of law", *The East*, Issue 4, 1996.

weak people are afraid of strong people, strong people are afraid of people who are willing to risk their lives, and people who are willing to risk their lives are afraid of people who are willing to lose face). This once again shows that the national power which is supreme in name is actually not omnipotent.

Based on this, we could say that in terms of right implementation, natural space and cultural space are both important. And the locality of right function is also important. In the above case and other similar cases, it is because of locality that the specific relationship of rights between the country represented by courts and credit cooperatives and the borrower has changed beyond the imagination of me before the writing of this book.

#### **1.4 Going to the Countryside—the Reconstruction of the Relationship of Local Dominant Power**

The above analysis could approximately help us to understand why cadres of different levels from the basic level of authority in rural China have to go to the countryside, and why “going to the countryside” needs to continue after 50 years of modern nationhood. Generally speaking, “going to the countryside” can be regarded as a strategic choice made and realized by the state power which tries to build authority in the rural society. As far as this case of debt collection according to law is concerned, opening procedures on the kang can be seen as a reconstruction of state’s dominant power toward a certain individual in a certain locality in rural China. It is also an expression of power operation of “concentrating our superior forces to destroy our enemies one by one.”<sup>23</sup> In particular considering both the debt collector and the court is trying to use this case to create a precedent of demonstration as a good beginning for future’s debt collection according to the law. It is therefore exceptionally important to build this kind of local power dominance in places where state power is rather weak.

Going to the countryside is one of the flexible methods to build power dominance in certain localities, and it is probably the only flexible method under the current restrictions. It is not, however, necessarily the method to ensure success. We need to reiterate the possible change of power relationships. From another perspective, going to the countryside may constitute a new threat to power operation and may even completely lose the hold that is already weak. First of all, as mentioned above, going to the countryside is one demonstration of weak power. Secondly, but more importantly, once the power leaves its own base or central area

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<sup>23</sup>It is essential to point out that this tactic is not only limited in rural areas but also common in cities. When a court hears a case, there are a series of ceremonies and procedures which are actually intended to strengthen this kind of dominant power relationship. During our daily life, people will use this tactic subconsciously. For example, the teacher will ask a naughty student to “come to my office after class” and visit his home. Then even the naughtiest child will feel scared and respect this power authority.