

Status and Disputing in a Bavarian Village¹

THE USE OF IMPARTIAL THIRD PARTY MEDIATORS in efforts to de-escalate and manage conflicts and disputes in non-Western societies is well documented in the legal anthropological literature (cf., Gulliver 1973)². The Ifguao *monkalun* or go-between (Barton 1969), the Nuer leopard-skin chief (Evans-Pritchard 1940), the Zapotec *presidente* (Nader 1964, 1969), and the *waasta*-maker of the Middle East (Ayoub 1965; Nader 1965; Witty 1975) are all familiar examples of such neutral mediators who enter disputes between individuals either on their own initiative or at the behest of one or both of the disputing parties. Such intervention may occur on an *ad hoc* basis, though in the instances cited, and in many others, the mediation process, and the role of mediator itself, have been institutionalized, and the functions they perform regularized and routinized.

In general, these institutionalized mediation procedures, and the role of mediator, are described in the literature either in terms of the "traditional" politico-legal organization of the society under consideration, or as an extra-legal, added feature of a formal, official politico-legal role. The Middle East *waasta*-makers, for example, have no official standing *vis-à-vis* the formal political organization of the nation-states in which they are found; nor does the "balancing" function of the Ralu'an *presidente* (as described by Nadere) derive from the formal, official Mexican legal system.

These two instances, however, contrast with a third kind of institutionalized mediation procedure found in Bavaria (West Germany). There, federal and "state" statutes were enacted in an attempt to provide both procedure and personnel for managing and de-escalating local-level disputes before the formal system (i.e., the courts) was required to intervene. Here, we have an explicit

1. The research upon which this paper is based was carried out in 1970-71 in the Bavarian village for which Gottfrieding is a pseudonym. This research was supported by the U.S. Public Health Service, under NIH Training Grant No. GM-1224. Further explication of many of the points raised here can be found in Todd (1972). I am indebted to my friends and colleagues, Drs. Laura Nader and Julio Ruffini, and to Phillip Parnell, for their many helpful comments and suggestions made in earlier versions of this paper.

2. It should be noted, as Gulliver points out, that not all mediators are impartial or neutral, but, instead, may have very definite interests in the outcomes of the mediation processes in which they become involved. Here we shall be dealing primarily with a mediator as a "neutral interested third party" — i.e., a person who "is not, or seems not to be, directly involved in the dispute, yet [whose] interests may be affected by its outcome or by a failure to reach a settlement. He desires a speedy settlement which will do minimal harm to him. He may be a political leader or administrator, a person in the same line of business, or a member of the same community. Alternatively, or as well, he may be seeking the potential prestige or the credit in the community or with the disputants which can accrue to the successful mediator" (Gulliver 1973: 19). In some instances, however, the status of the mediator in this setting can alternatively be viewed as that of a "structural intermediary", i.e., a "person who is connected with both parties to the dispute, and who is therefore to some extent trusted by both of them. The anthropological prototype here is the person who is kinsman to both disputants, but in any case he may be a friend or ally of both or a member of the same group to which both belong" (p. 20). The line between these two mediator types is not clear-cut; rather, as Gulliver points out, there may be a considerable amount of overlapping between these two statuses. As we shall see, the particular status which the mediator in the Reconciliation Agency in Gottfrieding is given depends upon the relative status of the disputants, i.e., on their positioning *vis-à-vis* one another in the community's social structure.

recognition by the official legal system of the need for, and value of, such a local-level, institutionalized mediation procedure, staffed by community personnel and governed by community norms, to de-escalate and manage disputes and to try to resolve them amicably, and to reconcile the disputing parties before the issue can enter the formal arena. In this way, in theory at least, lower court loads could be better controlled by preventing frivolous and nuisance actions from coming into the court system.

By looking at the operation of what is known as the Reconciliation Agency (*Sühneveruch*) against a backdrop of the social structure and normative system of a small, face-to-face community in Bavaria, I intend to show how and why this institution has not been completely successful in the area of dispute management. I also intend to show how and why its stated reconciliation purpose has, in many instances, been subverted by many who utilize this forum not as a dispute management mechanism at all, but rather as an arena in which status and prestige can be fought for by those in low or undetermined status positions within the village structure. By focusing on the normative attribute of "character" (a folk category with independently-verifiable socio-economic correlates which operates to define an individual's position within the village's structure), I will demonstrate how this structural position, in this Bavarian village, determines with whom an individual will fight, what he will fight about, and the use that he will make of this agency in his struggle.

SETTING

GOTTFRIEDING³ IS A SMALL, RURAL LOWER BAVARIAN VILLAGE of 371 persons, located in the heart of the Bavarian Forest. Along the floor of the valley in which the village is located, the rolling land is broken into long, narrow parcels of cultivated and grazing areas which extend far up the mountainsides, to the edge of the forest line, until the slopes become too steep and the land too inaccessible to be utilized profitably.

The whole northeastern region of Lower Bavaria lies in a "border area", since it shares a common boundary with Czechoslovakia. The area is economically underdeveloped, industry having been reluctant to move in because of the area's East-West frontier location. This factor was of little consequence in times past, when the source of income for most of the village's population was derived almost exclusively from agriculturally-related pursuits — i.e., from animal husbandry and farming. Now, however, it has become practically impossible — because of the fragmentation of land holdings (which rarely exceed five hectares) and the marginal productivity and utility of most of the land in the area — to earn even a subsistence wage solely on the basis of farming and/or animal husbandry. In order to supplement their family incomes, therefore, the men of the village

3. All names, both geographical and personal, have been changed to protect the identity of informants.

have turned to jobs outside the immediate area, jobs which provide cash wages. This shift in occupational patterns has created a new occupational class within Gottfrieding, a class of "worker-peasants" — men who commute from the country-side to their jobs (usually in urban areas) on a daily or weekly basis, and who return to the village in the evenings or on weekends to work their land and/or tend their cattle.

The town itself exhibits the characteristics of a clustered village, with four major institutions located at its center: the general store, the church, the school, and the public house. The tight clustering of residential units around these public places insures that a great amount of interaction occurs within a small, well-defined area. Women congregate daily at the store to do their marketing and to trade bits of news and gossip. On Sundays, and often during the week as well, townsfolk gather at the church, before and after Mass, to visit. The old schoolhouse — the focus of the children's world — stands within a dozen yards of the other three institutions.

The public house⁴ is the prime locus of male interaction. At the same time, however, it plays a much wider role in village social life, providing a setting for many of the events which are celebrated at various points in the individual's life cycle (births, confirmations, marriages), as well as for those festive occasions associated with the seasonal cycle of the village itself (dances at Christmas and Carnival). One portion of this institution the *Gastzimmer*⁵, or public drinking room, is of particular interest to us here; for it is the only place in the village where interaction among the men occurs with any regularity and predictability. These "pubs" serve not only as a refuge for the male seeking drink and fellowship, however, but also provide the several voluntary associations (all but two which are exclusively male) with a location in which to meet. Thus, for the men of Gottfrieding, the *Gastzimmer* serves as what can be called an "institutionalized meeting place", a setting in which they can congregate to discuss matters of common interest, to gossip, to socialize — in brief, to organize their views on life.

As the primary locus of village male interaction, the *Gastzimmer* is the main arena in Gottfrieding in which consensus can be achieved on norms⁶. The

4. The term "public house" is a translation of at least three different German words which alternately are used to describe this institution: *Gastwirtschaft*, *Gasthaus* and *Wirtshaus*. The institution is usually divided into several distinct areas, the most important being the public drinking room (the *Gastzimmer* — see, n. 5, below); a public room (*Nebenzimmer*) which adjoins the drinking room, and which usually reserved for village-wide or life cycle occasions; a ball room (*Saal*); and several bedrooms which are rented out to tourists or casual visitors.

5. The German term *Gastzimmer* has no precise English equivalent. The term is used here to refer exclusively to the public drinking room that is found within the public house. Further, the plural of the term is formed by declension of the definite article, and is not indicated by a change in the stem itself (hence, *das Gastzimmer* is the singular form, *die Gastzimmer*, the plural). In order to avoid confusion between the singular and plural forms, and to obviate any translation problems, the term has been Anglicized here, and the underscoring omitted. The plural is indicated herein simply by the addition of an "s" to the German form (i. e., *Gastzimmers*).

6. My usage follows that of Bott (1957) who distinguishes among three different kinds of norms — i. e., "people's ideas about what behaviour is customary and what behaviour is right and proper in their social circle. These norms are social. They are views that informants assume they

frequency of interaction in this environment serves to correct idiosyncracies of ideology and behavior by providing a place in which *reality testing* occurs. In this setting, the individual is provided with an opportunity to question whether his thoughts and actions are in line with those of the other men present. It means that he is given a chance to reassess his position, to rethink his ideas, to rephrase his arguments in light of the criticism and comments of others. In this manner, then, interaction in the Gastzimmer promotes the formulation between and among the men of the village of certain shared expectations, of a normative system which is much broader than the idiosyncratic ones of its individual participants. In Bott's (1957) terminology, it is a place in which many of the community's social norms and norms of common consent⁷ can be, and are, formulated and reinforced⁸.

Just as the Gastzimmer provides a common gathering point for village males, so also the women of the village have their institutionalized meeting places. Several of these centers operate in Gottfrieding, all located in different parts of the village. As the Gastzimmer is the nearly-exclusive resort of men, so are these centers the select reserves of women. In these centers — houses in which an "information broker" resides — women of the village gather in groups of two or three to exchange whatever information they may have picked up elsewhere. The movement of women between and among these centers insures that any fresh bit of news or information is quickly and widely disseminated. In much the same manner that Gastzimmer interaction acts to help formulate and reinforce normative expectations among men, so these gossip centers operate among the women of Gottfrieding. Interaction in these two milieux, then, when coupled with that between husband and wife, and parents and children, in the nuclear and extended families, helps to shape the social norms of the community at large, and aids directly in the formulation of norms of common consent.

NORMS AND STRUCTURE

IN AIDING IN THE FORMULATION and reinforcement of norms, these two institutions — the Gastzimmer and information centers — play an important role in the definition of the village's social structure; for it is the individual's subscription or non-subscription to these social norms and norms of common consent that acts to classify him within the village as a member of the Gottfrieding community, or as an outsider.

share with other members of their social circle" (pp. 193—4). These "social norms" are distinguished from "norms of common consent", or "norms on which there is in fact consensus"; and from "personal norms", or "those ideals and expectations that informants think are their own private standards, different from those they attribute to other people" (p. 196).

7. See, no. 6, *supra*.

8. Cf., Photiadis (1965) for a discussion of the operation of a parallel institution in Greek society, the coffee-house. He writes: "By exerting control over the male, the coffee-house also exerts control over the women, the children, and in turn, the entire village. The adult male demands that his family members behave in line with the expectations of the coffee-house group either because he likes to preserve his status in the coffee-house group or because he actually adopts its attitudes" (Photiadis 1965: 50).

In Gottfrieding, subscription to or rejection of these norms is defined in terms of the folk category of *character* (*Charakter*). Those persons in the village who conduct themselves in a manner which is antithetical to village-wide norms are considered to be without character (*ohne Charakter*), and are, by virtue of this fact, relegated to low statuses in the village's social structure. On the other hand, those who are perceived of as having character belong to the central core of community life, and interact on a frequent, regular basis in particular institutions. This grouping may be conveniently referred to as the village *insiders*, or as members of the village *cluster*⁹.

This arrangement of the two social categories present in Gottfriedings may be conceptualized schematically as comprising two concentric circles. The inner circle represents the cluster, the insiders — that part of the village network which is composed of people who live in the village and who subscribe to the social norms and norms of common consent held by most other villagers. These people are held together structurally by a series of multiplex ties (based on kinship, friendship, neighborhood and occupation); and culturally, by subscription to a common normative system. The structural and cultural features combine in, and the ties and norms among insiders are constantly reinforced through, continuous interaction in what we have called institutionalized meeting places (the Gastzimmer and information centers).

Surrounding this inner core are the "character-less" individuals. Like those in the cluster, these people are tied into the village network in terms of co-residence, and in terms of varying ties of kinship and neighborhood; but unlike insiders, they do not share in the community's normative system. Rather, their relationships with one another, and with those in the cluster, appear to be based more on pragmatic, personal considerations than on normative ones (cf. Bailey 1969). These people are seen by those within the cluster, because of their characterlessness, to be socially *marginal* in the community; and they are consequently excluded from many of its activities.

These marginals rarely enter onto the premises of insider institutions, i. e., the institutionalized meeting places; and even when they do so, it is only on specific village-wide occasions. There are few cross-cutting ties among persons in this marginal category, or between them and outsiders; and those which do exist tend to be highly specific, even transactional. Generally, the marginal is bound most closely with one neighbor, or one friend, instead of with a number of neighbors, friends, or workmates. There are few kinship ties among those within this marginal category, and between them and insiders; but where these exist, they tend to be de-emphasized.

9. The term "cluster" is used here to refer to that dense portion of the village network in which there are multiple cross-cutting ties between and among individuals. While the limits of such a cluster are necessarily vague, in some situations, as here, as Epstein (1969: 111) has pointed out, "... they show an exclusiveness so marked as to suggest the existence of groups in the strict sense, and to point to recognizable differences within the community".

TWO IMPORTANT GENERAL POINTS, both dealing with the definition of an individual as a marginal, must be made before we proceed further. First of all, as Erikson (1966), in his study of social deviance among the Puritans of Massachusetts Bay, has noted,

"Deviance is not a property *inherent* in any particular kind of behavior; it is a property *conferred upon* that behavior by the people who come into direct or indirect contact with it. The only way an observer can tell whether or not a given style of behavior is deviant, then, is to learn something about the standards of the audience which responds to it (p. 6)."

Thus, in Gottfrieding, when an individual is assigned to the marginal category, the assignation is one which is made by his "audience", the community-at-large. It is a classification which is conferred upon him by the members of the insider category, one which is rooted in the social norms and norms of common consent of the dominant segment of the population. Those who are considered by persons in the insider category to be characterless, therefore, would not necessarily choose so to identify or classify themselves, and may, as we shall see, make every effort to reject or to deny this classification.

Further Erikson continues, "whether or not a person will be considered deviant . . . has something to do with his social class, his past record as an offender, the amount of remorse he manages to convey, and many similar concerns which take hold in the shifting mood of the community" (p. 7). Thus, we must look beyond the folk categorization, at the socio-economic context of village life, if we are to arrive at a true picture of the Gottfrieding marginal. When we do this, we see that there are several socio-economic determinants which similarly partition the set, and which are also useful in identifying village marginals.

These socio-economic criteria may be used to define two general types of marginals. The first is the economic marginal. He is distinguished primarily on the basis of several economic indicators, and is generally referred to in the village as a *Taugenichts*, here meaning "ne'er-do-well". This type of marginal is a person who cannot hold down a regular and/or prestigious job. He usually has little or no money, and even that which he has is unwisely expended. He is a man, I was told, who even if he were given 10,000 Marks today, would have nothing tomorrow. One consequence of such misuse of funds is that the individual is unable to feed and clothe his family in a manner considered appropriate by insiders' standards; and the children of such individuals are living symbols of their parents' failings. In addition, these individuals are constantly in debt, and continually appear in the nearby District Court (*Amtsgericht*) in answer to suits for debt, garnishment of wages, or attachment or repossession of goods. Finally, occupationally, most of these people have very little in common with their fellow villagers who are insiders. They are either itinerant workers, or are out of work (either unemployed, or unemployable), or are pensioned. These occupational factors, particularly, in the folk view, reflect strongly and negatively on the marginal, and reinforce the character-less label that has been applied to him by insiders.

The second kind of marginal may simply be called the *troublemaker*. He, too, is referred to as a *Taugenichts*, this time the term carrying with it a "good-for-nothing" connotation. This person has generally, over time, acquired a reputation for getting into trouble and for causing problems. He is a person who simply cannot get along with others: he is either insulting or insulted, attacking or attacked, complaining or complained about. His gossip is not idle chatter, but goes further, and with the infusion of malice, often becomes actionable. Consequently, he is an individual who finds himself, at one time or another, filing or answering complaints in the village Reconciliation Agency, or in the courts, or in both, for slander, malicious gossip, insult or rumor-mongering; who files nuisance actions in the court against his fellow villagers for minor debts or other issues — actions which are usually dismissed by the court for failing to state a claim upon which relief can be based; or who not infrequently finds himself on the wrong side of the law in criminal court proceedings.

WHILE THESE TWO MARGINAL TYPES are analytically distinct, in actuality the economic marginal is almost invariably also a troublemaker. His marginality is enhanced by his economic woes, many of which act to exacerbate an already bad situation. In the remainder of this paper, I will continue to distinguish between these two marginal types, though the reader should be aware that classification of an individual as an economic marginal implies that he is also a troublemaker.

Two additional general points must also be made here with regard to marginality. First, movement from the marginal category to the insider one, or *vice versa*, is possible, though generally, the tendency is for a person to move toward the outer zones rather than to migrate inwards. Inward migration takes time and requires effort; one must not only reform his ways, and make a claim to character, but he must be able to establish this claim and to prove that he has reformed. Only by a long, slow process of proving that he, indeed, has reformed, can a once marginal achieve admittance to and acceptance within the cluster.

Secondly, marginality tends to run in families, though this is not invariably the case. Affiliation with marginals, particularly with marginals who are relatives and who live in the same household, may cause a non-marginal individual also to be so classified. To escape this categorization, that person must make a claim to character in his or her own right, and must, through interaction with insiders, constantly substantiate this claim.

On the basis of the folk category, informants consistently placed 13 individuals, representing 5 families, in the marginal category. Opinions on seven others differed. Two of these individuals received their marginal classification by some informants apparently on the basis of their familial and residential relationships with marginals. This leads one to suspect that unless these two individuals take some affirmative action to dissociate themselves normatively

from their marginal relatives, they, too, are in danger of becoming (in some villagers' eyes), or already are (in others' eyes), marginal.

Applying the socio-economic criteria to the same population, I found that these tests similarly partitioned the set. The 13 unequivocally named by informants using the folk category again appeared. Six were identified as troublemakers, and seven as economic marginals. In addition to these 13, four other persons — all of whom had received equivocal informants' ratings — appeared (all in the troublemaker category). The socio-economic criteria, however, failed to mark off the other three persons who had received equivocal informants' ratings (including one marginal-by-affiliation); and for this reason, they were excluded from the final listing.

The two listings, then, combined to identify 13 "hard core" marginals, and 4 "quasi-marginals" — those who were either on the skids, moving into the marginal zone, or on the upswing, entering the cluster area. For analytical purposes, however, these 17 people, representing 7% of the village adult population (18-years old and older) of 244, will be considered here to constitute the marginal population of Gottfrieding. Of these 17 marginals, 10 (59%) were identified as troublemakers, the remaining 7 (41%) as economic marginals. Eleven were male, and six female. Thirteen of these marginals are distributed over 5 families. While three of the remaining four live with other family members, these other family members have apparently been successful in establishing a claim to character in their own right, and do not appear in the marginal category.

Character, then, is a folk concept used by villagers to differentiate between two social categories in Gottfrieding — *viz.*, insiders and marginals. As such, it is intimately bound up with the system of status and prestige in the village. Those without character, the marginals, cannot ever hope to achieve a high status, or to be accorded much prestige, by village insiders. In this situation, characterlessness *per se* is sufficient reason for relegation of an individual to a low status, one with little or no prestige. Other considerations, however, may enter to cloud the picture; for the relationship between character, and status and prestige, is primarily a negative one. If one does not have character, he is automatically doomed because of this failing to a low prestige status. Conversely, however, even if an individual has character, he is not automatically accorded a high prestige status — though, of course, neither will he be relegated to a low prestige one. Finally, it is extremely unlikely that an individual with a large amount of money, or with extensive property holdings, would ever be categorized as characterless, and assigned a low prestige status. Similarly, it would be difficult, if not impossible, for a man with a small income and little or no property to claim for himself a high status. In this latter instance, however, his being of good character might well help him to increase his prestige in the village by raising his status above that which is accorded his fellow villager in similar economic circumstances, but who is character-less.

TO SUMMARIZE BRIEFLY, character (hence, status and prestige) is determined by an individual's subscription to or rejection of the community's social norms, and the norms of common consent prevailing within the cluster. Most frequently, claims to character are thrashed out and decided in what we have called the village's institutionalized meeting places — the only village-wide gathering places which function on a day-to-day basis. It is within these settings that adherence or non-adherence to community norms is noted, that character is assessed, that status and prestige are fought for, and won or lost. These forums, however, are open only to insiders. Marginals — because of their emphasis on personal norms over social norms — manifest to insiders an inability to act and interact in a manner considered to be proper and desirable (i. e., normative). As a result, they are segregated — voluntarily and involuntarily — from the remainder of the community, and from its social institutions.

Lacking access to these institutionalized meeting places, and lacking parallel institutions of their own, marginals are left with two choices with respect to their character. Either they must accept the insiders' attribution of characterlessness (and with it, an assignment to a low status with little or no prestige); or they must fight for a higher status and greater prestige by making a claim to character in an arena in which they, too — even as marginals — are eligible to compete, in an arena to which they, also — even as outsiders within the village community — have access.

In Gottfrieding, this claim by marginals to character is most frequently phrased in the idiom of a dispute over honor or reputation. As such, it is amenable to resolution only in a limited number of arenas — both within the village and outside of it. These arenas must have jurisdiction not only over the subject-matter in dispute (honor or reputation), however, but also over the person against whom the marginal has lodged his complaint. Outside Gottfrieding, the courts fit this description; and, indeed, they are often utilized for this purpose. Much more convenient, and much less costly, however, is another agency which seems to be tailor-made for handling such complaints. This forum, the Reconciliation Agency (*Sühnever such*), 1) is located in the village, 2) is staffed by village residents, and 3) is inexpensive and easy to use. Most important of all, however, is that marginals, as a matter of law, have access to its procedures. It is to a consideration of the records of this agency — in actuality, an institutionalized mediation procedure — that I now turn.

THE RECONCILIATION AGENCY (*SÜHNEVERSUCH*)

THE GERMAN CRIMINAL PROCEDURE CODE (*Strafprozeßordnung*), Section 380, provides that in certain actions which in Anglo-American law would be classified as torts, a private criminal complaint may be filed in court (the District Court) by the aggrieved party, but only after he has first undertaken an "attempt at reconciliation" (*Sühnever such*) with the offending party at the local level, provided that both parties are co-resident in the same civil parish (*Gemeinde*).

The list of actions that must first be heard in this agency (before a court suit can be filed) comprises a wide variety of offenses. These include slander, insult, threat, light intentional or negligent bodily injury, and destruction of property.

The statute, as implemented in Bavaria¹⁰, entrusts the undertaking of these reconciliation attempts to the civil parish and to its authorized administrator, the mayor (*Bürgermeister*). This official is in charge of the proceedings, and may meet individually and/or jointly with the concerned parties in an attempt to resolve the differences between them. A record is kept of the sessions, noting the names and addresses of the complainant and respondent, their appearance or nonappearance at the hearing, the outcome of the session, and the charge on which the hearing was sought.

The agency was set up primarily as a means of controlling court loads and of preventing frivolous and nuisance actions from reaching the courts. The theory is that it is better to settle a case at the lowest level possible, as quickly as possible, and by persons who are most familiar with the litigants and with the kinds of complaints which arise in the area. As the mayor explained, the intention is to get the cases settled and the people back together before their positions harden. Once the parties contact a lawyer, the task of reconciliation becomes almost impossible. Not only do the parties become more intransigent, but there is also a threat that a real enmity (*Feindschaft*) will develop between them. Further, he noted, the costs — both in terms of hiring a lawyer and in terms of the costs of court — plays an important role here: once money is laid out, the parties tend to become more intransigent than ever. No longer does the dispute involve solely a principle — an insult, for example, that can be remedied through apology; rather, now the dispute is escalated to one involving both principle and money, this added factor making it more and more difficult for the principals to compromise.

The proceedings themselves are headed by the mayor, a community resident. After the complainant files a charge in the parish hall, and pays a small fee (10 Marks, or about \$ 3,00 in 1971), the mayor calls a hearing, not less than three days from the date the complaint was filed, but not more than three months from that date. A time is set by the mayor, usually one which is agreeable to both parties (who are contacted by telephone or in person), and the parties are formally notified by certified mail. Although lawyers are permitted by law to attend the hearing and to represent either or both sides, their presence is discouraged and occurs only infrequently.

The respondent has the option of attending the hearing or not. Although the statute provides that the respondent's presence may be compelled, the mayor indicated that such action would not promote the main purposes of the hearing — getting the parties back together again; and that, indeed, such a procedure might have an undesired side effect, such as causing a hatred to develop between

10. The Federal statute is an enabling statute, and had to be implemented by "state" law. The Bavarian statute cited provides for this implementation, and for setting up the actual machinery for the functioning of this institution.

the respondent and the mayor (as mediator). Thus, in the event that the respondent chooses not to attend, a certificate (*Zeugnis*) is issued to the complainant stating that the hearing was without result due to the non-appearance of the respondent. The complainant is then free to file an action in court.

In the event that both parties appear at the hearing, and no settlement is reached, the certificate is again issued, thus allowing the complainant to file a court action. It is then at the complainant's discretion whether this action is actually filed or not. Not infrequently, even though the certificate has been obtained, no suit is ever filed. This result is particularly common in disputes between insiders, less common in those disputes in which marginals are complainants.

When both parties attend the hearing, the procedure used is completely at the discretion of the mayor. In general, the parties are asked to state their respective sides of the dispute. Since the mayor is acting as a mediator in the proceedings, trying to get the parties back together rather than trying to find fault with one or the other; since the issues and questions of fact involved are rarely clear-cut, and are almost always disputed by the opponent; and since the mayor has no power to enforce his decision, even if he should choose to make one, his role is simply to listen attentively and to try to persuade both parties that a reconciliation is in both their best interests. He generally does this by reference to the community's norms, by reminding the disputants of the socially-desirable ends of friends' and neighbours' living together in peace and harmony, and of the disruptive and harmful effects of disunity and enmity caused by their fighting. Simply put, the emphasis in these sessions is on trying to get the parties back together again with a minimum of legalistic, formalistic procedure, and at a point in time and in an atmosphere in which there is a maximum chance for reconciliation.

DEPENDING ON THE NATURE OF THE DISPUTE and the parties involved in it, there may be — and generally are — variations in the procedure outlined above. Often, the mayor related, he leaves the disputing parties alone and goes into an outer office to work while they "talk things over". In such a situation, he is careful to leave the door ajar, however, so that he can pay attention to what is being said and done in the next room. The procedures that he uses are often "unorthodox", he admits; but he also notes that it is frequently these very unorthodox procedures which prove to be the most successful.

In one case, for example, the mayor resorted, in essence, to bribery to effect a reconciliation. The respondent in that case, Josefa, had left a pair of shoes in a storage room in the complainant's (Michl's) house. She later went to retrieve the shoes, but found that they were missing. Michl charged at the Reconciliation Agency hearing that Josefa had gone about the village telling people that he had stolen her shoes, and that he was nothing but a thief. Josefa denied these charges. After the mayor had listened patiently to each side's case, and after

some time had elapsed ("to give them time to work it out of their system", he noted), an agreement was worked out. The mayor gave Josefa 10 Marks for the lost shoes, and she apologized to Michl who, in turn, withdrew the complaint. With this arrangement (which satisfied everyone), Josefa recovered the cost of the shoes, Michl got his apology, and the mayor was relieved of a big burden. The episode was settled. The complainant still had paid 10 Marks for filing the complaint, and that amount he was now out of pocket. However, for that 10 Marks, he had received a public admission from the respondent that, indeed, she was wrong in making the charges, and that he, Michl, was not a thief after all, but a decent, respectable man (*anständiger Mensch*).

The institution of the Reconciliation Agency, then, is called into operation as a preliminary step before court action can be filed in the cases specified by statute. When a party files a complaint in this agency, therefore, he signals several things: (1) that, if he is a member of the cluster, the other institutions in the village which are generally effective in managing conflicts and disputes (e.g., the Gastzimmer) have been unsuccessful, and that the dispute is important enough to him personally to risk censure by taking another villager (particularly, another insider), to the agency and possibly to court; (2) that the complainant is a marginal, and has no access to other village agencies; and/or (3) that there already exists an enmity between the parties to the dispute, and this case is simply another episode in a long-standing dispute. Another example illustrates the latter two situations.

Franziska was walking along the pathway from her home in Fuxstein (in the civil parish of Gottfrieding) to Gottfrieding village to do some shopping. Along the way, she saw Xaver standing near the water tower, and stopped to chat with him. In the course of the conversation, Xaver asked Franziska if she had ever looked into the water tower from the top. When she answered in the negative, he suggested that it would be a good time to do so, since he had just pushed the cover to one side to inspect the water level. She agreed, and began to ascend the ladder affixed to the tower. Xaver remained below, telling Franziska that the ladder would not bear the load of two people.

When Franziska had had her look, she descended the ladder, and after a few minutes, continued her walk toward the village. On her first stop in Gottfrieding, at a grocery store, she discovered that 50 Marks were missing from her purse. She then recalled the incident at the water tower, and that she had left her purse unattended at the bottom of the tower when she had ascended the ladder. Franziska very agitated, went directly to the general store run by Xaver and his wife, and accused Xaver to his wife of having stolen the money. The wife, having no knowledge of the incident, informed Franziska that she would have to wait until Xaver had returned to discuss the matter. Franziska left the store, and went immediately to two of the Gottfrieding information centers, spreading her charges.

She never found Xaver that day. The next day, he appeared at the parish hall to file a complaint for slander (*üble Nachrede*). Franziska, however, failed to appear at the hearing, and the court-going certificate was issued to Xaver. A suit was filed in the District Court, where a compromise settlement was reached: Franziska took back the offending remarks and apologized to Xaver. Xaver, in turn, withdrew the complaint.

Four years later, another complaint was filed in the Reconciliation Agency by Xaver against Franziska. Xaver then alleged in the complaint and in the hearing that Franziska had resurrected the earlier incident, and had again been referring to him publicly as a thief. He also charged that now she had gone further, referring to him in front of witnesses as "the worst kind of man on the face of this earth" (*„der allerschlechteste Mensch, der auf dieser Welt herumlaufe“*), along with several other highly uncomplimentary animal names¹¹. In the hearing, which Franziska attended, she denied the charges and refused to apologize. Xaver again filed a suit in the District Court. The case there, however, was dismissed on the grounds that the time permitted the complainant for taking of witnesses' testimony had expired without any testimony having been taken. Xaver subsequently withdrew this complaint.

About a year afterwards, Xaver filed another complaint in the Reconciliation Agency against Franziska, alleging the same facts: Franziska was still going around telling villagers that Xaver was a thief, and using several animal epithets as well to malign his good name. Again, the reconciliation effort was unsuccessful, though both parties attended, and a court action was filed. There, again, a compromise settlement — much like the one in the first court case — was reached: the defendant apologized, and the plaintiff withdrew the complaint.

This dispute will probably never be resolved. Since there were no witnesses to the original incident, and since Franziska has no way of proving that Xaver took her money (or he, that he did not take it), she has only one way in which she can achieve any satisfaction — viz., to vent her spleen by charging Xaver publicly with theft. The alternative of "lumping it" (cf., Felstiner 1974), of doing nothing, was not as attractive to her. Xaver, one of the village's trouble-making marginals, on the other hand, was faced with a similar choice: do nothing, or file a complaint. Since his character was already questionable, doing nothing might well have been interpreted as substantiating Franziska's charges. The actions he filed, however, brought only temporary relief each time. In such a situation, no remedy agency — and no mediation or adjudication procedure — will be effective, and the underlying grievance will continue to erupt from time to time, so long as each party is convinced of the rightness of his case, or the necessity for pressing it.

11. The use of animal names in referring to an individual is one of the worst insults that a Gottfriedinger can use.

THE RECORDS OF THE GOTTFRIEDING RECONCILIATION AGENCY date from 1926, when the procedure was first implemented. The difficulty inherent in obtaining an estimation of character for the persons involved in actions before the agency, however, limits consideration here to the 1960–69 period. During this 10-year span, a total of 51 cases was heard. Intra-village disputes accounted for 22 (43%); an additional 11 (22%) were disputes between a villager and a non-villager who was, nevertheless, co-resident in the parish; and the remaining 18 (35%) were disputes between two non-village parishioners. Since no villagers were involved in this last category of cases, this portion of the total corpus may be omitted from further consideration here.

Of the corpus of 33 cases involving villagers, 32 (97%) of the actions were brought for insult or slander (*Beleidigung, Verleumdung, üble Nachrede*). The thirty-third case was a personal injury action, asking for money damages. Although the agency, therefore, is authorized to hear a wide variety of complaints — including breach of the peace and threat to life or property, as well as actual property damage and personal injury — in actuality, it deals with relatively few complaint types, practically all of which devolve around the question of one's good name.

Even more interesting, however, is the datum that in 27 of these 33 cases (82%), marginals are found: in 23 cases (70%) they were complainants, and in 13 (52%) respondents¹². This means 7% of the village population brought 70% of the cases into this agency. In addition, of those 23 cases with marginal complainants, 15 were disputes between two villagers, and 8 disputes between a villager and a fellow parishioner who is not resident in the village. Resolution of the dispute and reconciliation of the parties, however, occurred in only 8 instances (35%): in 6 of the 15 villager-villager disputes (40%), and in 2 of the 8 villager-parishioner disputes (25%). In the 15 cases remaining unresolved, 10 (67%), were taken on to court: 8 of the 15 villager-villager disputes (53%), and 2 of the 6 villager-parishioner disputes (33%). In other words, when a marginal sued an insider in this agency, it was highly unlikely that any reconciliation would be achieved (about one chance in three); and if reconciliation was not achieved here, the chances were about 2 in 3 that the case would be taken on to court.

These instances contrast with those for insider-complainant cases. Insiders appeared in 15 of 33 cases (45%): in 7 (21%) as complainants, and in 12 (36%) as respondents¹³. Insiders, in other words, comprising 93% of the village population, were responsible for bringing only 21% of the cases to his agency.

12. The sum of the percentages is greater than 100%, since in 9 cases, a marginal appears as both complainant and respondent. Marginal-marginal cases numbered 9, marginal-insider cases 6, and marginal (non-village) -parishioner cases 8. In the 13 cases in which marginals appeared as respondents, 9 (69%) had other marginals as complainants, 3 (23%) had insiders, and 1 (8%) a non-village parishioner.

13. The 15 cases involving insiders break down as follows: Insider-insider (4 cases), insider-marginal (3 cases), insider (non-village) -parishioner (no cases), marginal-insider (6 cases), and (non-village) parishioner-insider (2 cases).

These data are further enhanced when the cases are further broken down. In the 7 cases with insider complainants, 4 were of the insider-insider type, and three of the insider-marginal type. None of these cases involved a non-village parishioner-respondent. Three of the insider-insider disputes were amicably settled here. The fourth was the only personal injury action in the 10-year sample, and involved a claim for money damages. Even in this instance, however, an amicable settlement was reached before the case was heard by the court. In contrast are those 3 cases of the insider-marginal type where, in all three instances, the respondent chose not to attend the hearing. The *Bürgermeister*, therefore, had no opportunity to mediate the dispute, or to try to achieve a reconciliation; and had no alternative but to issue the court-going certification. Nevertheless, even here, a compromise settlement was reached in both cases before a decision came down from the court.

Thus, if an insider brings another insider to this agency, he may expect to receive an apology, and the reconciliation may be expected. On the other hand, if the respondent is a marginal, no such apology or reconciliation is to be expected — except, perhaps, in court. If the complainant is a marginal, the odds are better than 2-to-1 against an amicable settlement and a reconciliation; and if such a reconciliation is not effected, then the chances of a court action being filed increase to about 2 in 3.

The evidence from the Reconciliation Agency, then, can be summarized as follows:

- 1) The disputes brought to this agency are almost exclusively those involving honor and reputation — in a word, character.

- 2) These disputes are brought primarily by those in marginal positions within the village: 7 % of the village's adult population brought 70 % of the actions here.

- 3) In cases in which marginals were involved — whether as complainants or respondents — reconciliation is generally not achieved, and more frequently than not, the case winds up in court.

- 4) Insiders seem loath to take cases into this agency: 93 % of the village adult population accounted for only 21 % of the cases heard here.

- 5) In cases in which insiders were involved, resolution and reconciliation is usually achieved, provided that the respondent is also an insider or a non-marginal parishioner. If the respondent is a marginal, resolution and reconciliation cannot be expected.

SUMMARY AND CONCLUSIONS

THE PLIGHT OF THE GOTTFRIEDING MARGINAL is perhaps best viewed as but symptomatic and illustrative of that of many other groupings and kinds of deviants in other societies, and in other times. In this vein, Erikson (1966) notes that "single encounters between the deviant and his community are only

fragments of an ongoing social process. Like an article of common law, boundaries remain a meaningful point of reference only so long as they are repeatedly tested by persons on the fringes of the group and repeatedly defended by persons chosen to represent the group's inner morality" (p. 13). By challenging an insider norm, the Gottfrieding marginal performs an important service for those in the insider category; for "each time the community moves to censure some act of deviation, ... it sharpens the authority of the violated norm and restates where the boundaries of the group are located" (p. 13).

The marginal in this village, through his words and actions, helps the Gottfrieding community establish its boundaries. The line is drawn along the axis of character: those who are considered to have this attribute belong to the insider category, those who do not to the marginal category. As we have seen, this social structural arrangement — whether an individual finds himself in the inside, or marginal to it — is of prime importance in understanding the question of his access to and utilization of dispute management mechanisms and agencies. Who you are, and what you are, in Gottfrieding, determines to a large degree what you fight about, whom you fight with, what strategies, procedures and agencies you use, and what outcome is achieved. As Starr and Yngvesson (1975: 562—3) note, in focussing on the social correlates on disputes, "we make the disputing arena a stage (rather than the central focus) in the ongoing relationship between disputants and leave open the question as to whether dispute handling forums always settle grievances". This perspective leads the analyst to view the dispute as a single episode in a series of events (perhaps involving other disputes) which link persons and groups over time. This focus, then, forces the observer to consider the options open to all actors — not only for handling the particular dispute through the manipulation of the dispute management machinery to their own maximum advantages, but more generally, for manipulating (maintaining and altering) the social relationships that are involved (cf., Collier 1974).

Here, we have considered the Reconciliation Agency as one stage in the Gottfrieding disputing arena. The relationships linking villagers and their desire to maintain or alter these relationships, have been seen to be of paramount importance in understanding the use that has been made of this stage. As we have seen, the relationships in Gottfrieding between and among marginals, and between and among them and insiders, are conflict-laden. Social and structural conflict is built into the system, a system which provides for assignment of statuses between and among insiders, but no such assignment for those in marginal positions (either within their own ranks, or between and among marginals and insiders). The idiom through which this social and structural conflict is expressed most frequently is disputes over honor or reputation; and the village forum in which the battle is most often pitched is the Reconciliation Agency. The result of these battles between the deviant and the community, as Erikson has observed, is that a circularity is set in motion, a circularity "which has all the ear-marks of a 'self-fulfilling prophecy'" (p. 17). The harder the marginal tries to escape the character-less label through actions brought in this agency, the more rigidly the

label is applied to him. "The common feeling that deviant persons never really change... is expressed so frequently and which such conviction that it eventually creates the facts which later 'prove' it to be correct" (Erikson 1966: 17).

In those instances in which marginals are involved in cases before this agency, the actual grievance which gives rise to the dispute almost invariably becomes of secondary importance — secondary to the marginal's chief goal of attaining a status within the cluster, or of improving his position *vis-à-vis* other marginals outside of it. Indeed, it is doubtful that the Reconciliation Agency ever was very effective in the area of dispute management with the village, particularly in disputes involving marginals¹⁴.

In a broader context, however, the Reconciliation Agency has provided a convenient forum for marginals in which claims to character could be lodged, and status fought for. In short, I suggest that the Reconciliation Agency provides a very convenient arena for "institutionalized prestige contests", and a procedure which allows the village marginals to try to establish a pecking order among and between themselves, as well as trying to establish a claim to character (hence, a status within the cluster) *vis-à-vis* insiders. In this respect, then, it has acted to supplement and complement the other options open to marginals in grievance situations — avoidance (or lumping it), face-to-face negotiations (with the attendant risk of escalation and even violence if or when tempers flare), or seeking a decision in court — by providing an institutionalized procedure which deals not only with the manifest problem (the grievance itself), but which reflects the underlying structural conflict and social dissonance as well.

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14. If Erikson's (1966: 163) hypothesis — that "social groups are likely to experience a relatively stable 'quota' of deviation, partly because their social control machinery is calibrated to handle a steady flow of deviant conduct and partly because of a group's definition of deviant behavior is usually phrased in such a way as to embrace a given segment of its range of experience" — is true, then this conclusion may be inescapable.

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