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THE RISE AND FALL OF THE KUTCH BHAYAT¹

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Abstract. *Kutch was a Rajput State in north-western Gujarat. In 1819, following a short war, a treaty was signed between Kutch and its new overlord, the British Government of Bombay. The treaty included a provision that the British would guarantee the nobles of Kutch, the Bhayat, Ain full enjoyment of their possessions. The meaning of Apossessions was left vague, but it was interpreted as including executive, judicial and fiscal powers over the lands of the Bhayat. As a result of this, about half the area of Kutch was effectively exempted from the control of the State's king, or Maharao, being governed by the guaranteed members of the Bhayat.*

Successive Maharaos of Kutch sought to curtail the autonomy of the Bhayat, but thanks to the British guarantee made little headway. In the early 1940s, however, the Paramount Power changed its policy. It allowed the Maharao to deprive the Bhayat of their judicial powers and to force them to hand over a large part of their revenues. The guarantee of 1819 was reinterpreted to mean no more than a Bhayat's right to an appeal to the (now outgoing) British Awhen his property is interfered with arbitrarily by the State. As a result, in the years immediately before Kutch was taken over by the government of independent India in 1948, the Maharaos enjoyed more real power over their kingdom than at any time since the early nineteenth century.

This paper examines the Arise of the Kutch Bhayat, by which I mean their acquisition of what was said to be greater autonomy than any other State nobles in India, and their Afall, the elimination of those rights. I intend this in-depth study to increase our knowledge of Kutch State, and to lay a basis for further comparative analysis of other States. I shall also suggest that it shows the importance of the law and the judiciary in a number of aspects of the history of the Indian States.

In the ante-British Rajput kingdoms of India, government was a coordinate venture. Executive, legislative, judicial, and spiritual authority were shared among the king, religious leaders, urban merchants, and a class of powerholders whom, on analogy with traditional European society, we

¹ This paper has benefitted from the careful comments of His Highness Maharana Sriraj Meghrajji III, Maharaja Sriraj of Dhrangadhara (probably the last surviving person to have governed a Rajput kingdom before the merger and integration of the Indian States); and of Dr Mary Hora, historian and lawyer, whose comments were (as always) enormously helpful.

may call nobles.² These nobles included local chieftains whose territories had been incorporated in the kingdom; the descendants of companions of kings; and members of junior branches of the royal family. The nobles generally held a tract of land somewhere in the kingdom; they drew their incomes from the revenues of their lands, where they conducted the local government and administered justice. In return, they were required to furnish troops to the king, and take part in periodic ritual demonstrations of their subordination to him. In Gujarat, landholding nobles were properly styled Garasiyas or Garasidars, a derivative of *garas*, the lands that they held. Those nobles who belonged to the same clan as the king were styled the Bhayat, or brotherhood. In Kutch, the State studied in this paper, all of the nobles, even those from other clans, were commonly though wrongly called the Bhayat.³ In many Rajput States, nobles were generally (if inaccurately) also called Jagirdars.⁴

British paramountcy, which in the Rajput States began during the early decades of the

² One of the defining characteristics of European nobility was possession of a special status under the law. This characteristic did not apply to the Anobles of many Indian States; but, as will be seen, it was true of the group of nobles studied in this paper, the Kutch Bhayat.

³ For kings and nobles in a Rajput State, see Barnett R. Rubin, *Feudal Revolt and State-Building: The 1938 Sikar Agitation in Jaipur* (New Delhi and Madras, 1983), pp. 4-11; and for the allocation of land to the younger sons of Rajput kings, and the Bhayat of States in Gujarat, see James Tod (edited by William Crooke), *Annals and Antiquities of Rajasthan or the central and western Rajput States of India* (3 volumes, London, 1920), 1:201-203. For the generic use of the term Bhayat in Kutch, see C.U. Aitchison, *A Collection of Treaties, Engagements and Sanads relating to India and neighbouring countries* (5th edition, 14 volumes, Calcutta, 1929-1933), 6:81. The fact that this usage is incorrect is noted in J.W.S. Wyllie, 'The Rao of Kutch and his Bhayad (Kindred)', in *idem* (edited by W.W. Hunter), *Essays on the External Policy of India* (London, 1875), pp. 245-319, at p. 246. The word also appears as Bhayad, but Bhayat is the standard Gujarati spelling.

⁴ Properly speaking, a Jagirdar is a person to whom a monarch gives a Jagir, an income drawn from the revenues of a particular territory. A Jagir is held at the pleasure of the monarch, who may resume it at any time, and it does not carry with it any rights beyond the income. For the modified sense in which the term was used in Rajput States, see Rubin, *Feudal Revolt*, p. 9.

nineteenth century, transformed the relationship between kings on the one hand, and the nobles and other powerholders on the other.⁵ The transformation took different forms in different places. In the kingdom of Kutch in north-western Gujarat, the deciding factor in the relationship after the establishment of British overrule was a British guarantee to maintain the Bhayat Ain full enjoyment of their possessions. Whether intentionally or not, the meaning of Apossessions was left vague in the guarantee, but it was interpreted as including executive, judicial and fiscal powers. The Kutch Bhayat were in consequence said to enjoy more autonomy than the nobles of any other State in India; about half the area of Kutch was effectively exempted from the control of the king, or Maharao, being governed by the guarantee-holding members of the Bhayat. The Maharao and his government, the Darbar, enjoyed full control only over the Khalsa lands, the portion of Kutch that was *not* controlled by the Bhayat. Then, a hundred and twenty years later, on the eve of their departure from India, the British suddenly changed policy and watered down the guarantee, until by 1947 the Kutch Bhayat had been reduced to the status of ordinary landlords.

In this paper, I shall examine three defining moments in the relationship among the Paramount Power, the Maharao of Kutch, and the Bhayat: the years that saw the establishment of British overrule and the institution of the guarantee between 1816 and 1819; attempts to codify the Bhayat's rights between 1862 and 1877; and the elimination of noble autonomy between 1942 and 1947. I argue that British policy was first governed by the need to secure control of Kutch, and then by a desire to maintain prior obligations to either nobles or Princes; that the Maharaos sought to

⁵ Most recently noted in Barbara N. Ramusack, *The Indian Princes and their States (The New Cambridge History of India, III.6)* (Cambridge, 2004), pp. 111-114.

maximise both their sovereignty and their revenues; and that after 1819, the Bhayat simply wished to preserve what they already had, partly because of the concrete advantages those brought to them but also as a means of upholding a crucial element of Rajput culture, their *izzat* or honour.

I have called the paper *Athe rise and fall of the Kutch Bhayat*. This title may be misleading, in that the Bhayat were there throughout the existence of the Kutch State. By *Arise* I do not mean the actual genesis of the Bhayat, but their acquisition of guaranteed autonomy; and by *Afall* I mean not their disappearance, but the elimination of their special privileges. This is a topic that has hitherto received virtually no scholarly attention. The only academic examination of the Kutch Bhayat is an essay written in 1867 by a British Political Officer.⁶ Barnett Rubin's study of the dispute that took place in 1938 between the Maharaja of Jaipur and one of his most powerful nobles, the Rao Raja of Sikar, is analogous in some ways. There as in Kutch, changing British policy came to encourage a State government to centralise power at the expense of nobles. Still, there are significant differences: the position of the nobles of Jaipur was never formally guaranteed by the British; centralisation in Kutch did not lead to violence as it did in Jaipur; and neither a bourgeois political movement nor peasant associations became involved in Kutch as they did in Sikar.⁷

With my paper, I hope both to increase our knowledge of Kutch State, and to encourage further study of similar situations in other parts of India. I also suggest that my paper shows the importance of the judiciary in a number of aspects of the history of the Indian Princely and Chiefly States. This is a point that has been almost entirely overlooked until now.

⁶Wyllie, *ARao of Kutch*.

⁷ See Rubin, *Feudal Revolt*.

I

The Princely State of Kutch was united in 1540 by Maharao (or king) Khengarji I, a Rajput of the Jadeja clan.⁸ The Jadejas claim descent from Lord Krishna the Yadava, although their name is presumably actually connected with the Gujarati word *jadum*, Afat. At the end of Jadeja rule in 1948, Kutch had just over half a million inhabitants, and an area of 8500 square miles (for Americans, that's about the size of Massachusetts; for Europeans, it's three quarters the size of the Netherlands). Since 1960 it has been a district of Gujarat state.

The Kutch Bhayat came into being in the same way as the nobilities of other Rajput States. Of the fourteen principal nobles of Kutch, two were Waghela Rajputs, whose ancestors had ruled in eastern Kutch before the coming of the Jadejas, and retained their lands by submitting to the Maharaos. The other twelve, the true Bhayat, were all Jadejas, relatives of the Maharao.⁹

Until the late eighteenth and early nineteenth centuries, the Maharaos of Kutch maintained the allegiance of their Bhayat, and remained the real rulers of the entire State.¹⁰ Between 1762 and

⁸ The most easily available history of Kutch is L.F. Rushbrook Williams, *The Black Hills: Kutch in History and Legend: A Study in Local Loyalties* (London, 1958). Until 1918, the British referred to the king of Kutch as Rao rather than Maharao, but to avoid confusion the latter term is used throughout this paper.

⁹ These fourteen are the ones who, as will be seen, exercised judicial powers over their lands from 1877 to 1945. The Waghelas held Palanswa and Gedi. The Jagirdars of Roha, Adesar and Vinjhan were descended from Sayabji, brother of Maharao Khengarji I (1540-1586); and the Jagirdars of Chitrod, Wandhia, Nagrecha, Vijpasar and Kumbhardi, from brothers of Maharao Pragmalji I (1698-1715). The Jagirdars of Kera, Bambhadai, Nara and Jadodar were also Jadejas.

¹⁰ See S.N. Raikes (edited by R. Hughes Thomas), *A Memoir and Brief Notes Relative to the Kutch State, Selections from the Records of the Bombay Government*, n.s., 15 (Bombay, 1855), p. 13. For the changing relationship between the Ruler and the Jagirdars in Jaipur, which

1777, however, the kingdom was badly disrupted by four incursions by raiders from the neighbouring State of Sindh. Then, Maharao Rayadhanji II, who ruled from 1778 to 1813, became insane. All this led to the collapse of the Maharao's authority, and much of the Bhayat became effectively independent.¹¹ The breakdown of central government made Kutch an ideal base for pirates and brigands. The pirates preyed on ships belonging to the British East India Company and its Indian allies, while the brigandage devastated the States of the Saurashtra peninsula south of Kutch. Many of these States paid tribute to the Maharaja of Baroda, who from 1802 was a dependent of the Company. They were also a major sources of the cotton that helped finance the Company's lucrative trade in Chinese tea.¹²

In 1809, the British therefore resolved to take measures against the lawlessness in Kutch. By this time there was no government to speak of in the State, but the Company persuaded the two most powerful men of Kutch, Jamadar Fateh Muhammad (a Muslim officer who controlled the capital, Bhuj) and Hansraj (a former Dewan or chief minister and now master of the principal port, Mandvi), to promise to eradicate piracy. These arrangements, however, proved utterly ineffective. The mad Maharao's son, Bharmalji II, succeeded to the throne in 1813 and restored royal power at Bhuj, but he too was unable to end his subjects' attacks on ships and on the people of Saurashtra. The Company's Government of Bombay and the Maharaja of Baroda accordingly sent an army that captured Bhuj and in January 1816 compelled the Maharao to sign a treaty. This agreement brought

followed a similar pattern, see Rubin, *Feudal Revolt*, pp. 14-16.

¹¹ Raikes, *AMemoir*, p. 14.

¹² This account of the establishment of British Paramountcy over Kutch is based on John McLeod, *Sovereignty, Power, Control: Politics in the States of Western India, 1916-1947* (Leiden,

Kutch under British suzerainty, Bharmalji accepting a British Resident; in return, the British undertook to restore the Maharao's authority over all of Kutch, so that he could suppress the pirates and bandits.

Both the Company and Maharao Bharmalji profited from the new treaty. Piracy and brigandage finally ended, and for the first time in a generation the Bhayat was subject to the Maharao. Indeed, the Treaty of 1816 included several provisions to ensure that the Ruler could curb his nobles: Article 8 provided that AThe HonourableCompany ... engage to cause such possessions as have been alienated by the treachery of his servants to be restored to His Highness's authority, and Article 13 stated that the new British Resident Ashall not listen to any complaints either from the Rao's Bhayad or his Ministers.¹³ A British force entered Wagad or eastern Kutch, and forced the nobles there to acknowledge the Maharao's overlordship; and to ensure that the nobles across the State never regained their independence, Bharmalji began to reduce their extensive privileges, and seized the villages of some of the leading members of the Bhayat.¹⁴

The British might have tolerated this, but they would not acquiesce when Bharmalji made it clear that, with his power restored, he had no desire to remain subordinate to them. When several prominent nobles asked for protection against the Maharao, the Company was only too happy to oblige, and in 1819 again invaded Kutch. This time, no chances were taken. The British promptly deposed Bharmalji, and turned to the Bhayat to choose a new Maharao (the choice fell on

Boston, and Cologne, 1999), pp. 20-21.

¹³ Treaty between the East India Company and the Maharao of Kutch, 14 Jan. 1816, in Aitchison, *Collection of Treaties*, 6:111-114.

¹⁴ See Raikes, AMemoir, p. 30.

Bharmalji's two-year-old son, Desalji II). After the election, the Company concluded a fresh treaty with Kutch, on 13 October 1819. The new Treaty was signed not by the infant Ruler, or even his Dewan, but by nine leading members of the Bhayat. It secured the Bhayat a voice in the future government of Kutch by placing the State under the administration of a council of regency of six members, of whom two were drawn from the Bhayat. More importantly, Article 16 stated that

The British Government with the approbation of that of Kutch, engages to guarantee by separate deeds the Jhareja Chiefs of the Bhayad, and generally all Rajpoot Chiefs in Kutch and Wagar [eastern Kutch] in full enjoyment of their possessions....¹⁵

Gujarati deeds of guarantee were then issued to the Bhayat, stating that

The Guarantee of the British Government is hereby given to the aforesaid Jharejas, they their Heirs and Successors shall be in the full enjoyment of their possession and rights by them on their part performing the services due from them to His Highness the Rao's Government.¹⁶

Admittedly, under the Treaty of 1819, the guaranteed Jagirdars of Kutch were not independent Rulers. They did not have legislative power. In other words, they were required to follow the laws made by the Maharao's government. They had to supply troops to the Maharao in times of emergency; and on certain occasions they made presents to the Maharao in token of their subordination. Nevertheless, they enjoyed considerable autonomy. The British Paramount Power

¹⁵ Treaty between the East India Company and the Maharao of Kutch, 13 Oct. 1819, in Aitchison, *Collection of Treaties*, 6:115-119.

¹⁶ Guarantee given by J. Williams (Resident at Kutch) to Jadeja Vijerajji (Jagirdar of Roha), 7 Oct. 1820, The British Library, Oriental and India Office Collections (henceforth OIOC), R/1/1/4006. In accordance with Article 18 of the Treaty of 1819, the Bhayat were required to renounce the practice of female infanticide, widespread among the Jadejas and other

interpreted the Apossessions guaranteed to the Jagirdars both as property and as governmental rights. On the property side, the landed estates of the nobles were treated more or less as their private property. On the governmental side, the Jagirdars had the sole right to collect and spend taxes within their lands; they enforced State laws through their own police forces; and they administered justice with their own courts.¹⁷ In 1821 Mountstuart Elphinstone, the Governor of Bombay, visited Kutch and stated that AThe Rao's ordinary jurisdiction is confined to his own demesne [the Khalsa areas], each Jadeja Chief exercising unlimited authority within his own lands.¹⁸

Kutch was not the only State in India where the nobles received written guarantees of the rights from the British.¹⁹ There were even instances in which British policy recognised the Bhayat as Rulers of separate States.²⁰ But nowhere else did nobles enjoy so much autonomy while remaining subjects of their parent State. The British were themselves aware of this; J.W.S. Wyllie, a British Political Officer who studied the position of the Kutch Bhayat in the 1860s, commented that Athe position secured to the territorial vassals under the new constitution of Kutch [that is, the Treaty of 1819] can hardly be regarded otherwise than as a singular divergence from the ordinary feudal system of Rájwára [Princely India].²¹

Rajput communities of KutchBbefore receiving their guarantees.

¹⁷ See Aitchison, *Collection of Treaties*, 6:81.

¹⁸ *Gazetteer of the Bombay Presidency* (27 volumes in 35, Bombay, 1877-1904), 5:191.

¹⁹ Of the others, the most important was Gwalior; see Aitchison, *Collection of Treaties*, 5:357-378.

²⁰ Most famously in Saurashtra, where the transformation of the Bhayat from nobles into full-fledged monarchs created hundreds of tiny AStates. See McLeod, *Sovereignty, Power, Control*, especially pp. 116-120.

²¹ Wyllie, ARao of Kutch, p. 256. I am not going to concern myself with the implications of Wyllie's choice of the words Afeudal system.BSee also Williams, *Black Hills*, pp. 203-204.

This raises the question of why the Paramount Power did as it did in Kutch. The great political officer James Tod believed that the Kutch Bhayat had always enjoyed a degree of independence unusual among Rajput nobles, and that the guarantees of 1819 merely recognised this fact. Successive Maharaos of Kutch countered that the original purpose of the guarantees was merely to ensure that future Rulers did not follow Bharmalji's example by infringing on the legitimate rights of the Bhayat. L.F. Rushbrook Williams, the author of the best-known English history of Kutch, however, suggested that the British happened to arrive in Kutch at a time of unprecedented disorder and noble independence; they mistook these unusual conditions for the norm, and sought to safeguard what they wrongly believed was the traditional relationship between the Maharao and Bhayat. Again, it was certainly not unheard of for the East India Company to favour State nobility to counter the power of Rulers, and so reduce the ability of the latter to oppose British dominance.²²

And in 1943, the British Resident responsible for Kutch suggested that the reason for the guarantee was that in 1819 the Rao was an infant and Captain Macmurdo [who concluded the Treaty on behalf of the Company] wished to place emphasis on the association of the entire Bhayat with the settlement then arrived at.²³

All of these may have played a part in the decision to establish the guarantee. I shall offer another explanation. One of the ostensible reasons of the British invasion of 1819 was to protect

²² For all of these interpretations, see McLeod, *Sovereignty, Power, Control*, pp. 24-25.

²³ Bombay Political Department to Political Agent in Kutch, 20 Feb. 1873, quoted in P. Gaisford (Resident for the States of Western India) to Political Department, 14 Aug. 1943, OIOC, R/1/1/4006. The top British representative in Kutch was the Resident in Kutch (1819-1840), the Political Agent in Kutch (1840-1924), the Agent to the Governor-General in the States of Western India (1924-1937), the Resident in the States of Western India (1937-1944) and the

the rights of the Bhayat from the Maharao. The preamble to the Treaty was explicit on this point:

AIn consequence ... of the hostile conduct of the said Rao towards the Honourable Company, and his tyranny and oppression to his Bhayat, it has become necessary....²⁴ Once they defeated Bharmalji, this claim more or less obligated the British to show that unlike the former Rao they fully respected the rights and privileges of the Bhayat, making what had been an excuse for war into a reality. This would explain why they allowed the Bhayat to elect the new Maharao; why they appointed two members of the Bhayat to the council of regency; why they included the guarantee in the Treaty; and why that Treaty was concluded by nine members of the Bhayat but not a single representative of the Maharao.²⁵

II

In 1834 the Government of Bombay agreed to grant ruling powers to Desalji II, the infant whom the Bhayat had chosen as Maharao of Kutch in 1819 and who was now on the verge of his nineteenth birthday. Henry Pottinger, the British Resident in Kutch, drew up a new treaty abolishing the council of regency and giving Desalji charge of the government. The treaty was signed by the Resident and by ten Jagirdars, but not by Desalji himself. It further enhanced the power of the Jagirdars, with a provision that the Maharao would henceforth rule under the constitutional and

Resident at Baroda and for the States of Western India and Gujarat (1944-1947).

²⁴ Treaty between the East India Company and the Maharao of Kutch, 13 Oct. 1819, in Aitchison, *Collection of Treaties*, 6:115-119.

²⁵ Cf. Wyllie, ARao of Kutch, pp. 258-260. Wyllie comments (p. 260) that ACaptain McMurdo [who drafted the Treaty] was possessed with a strong partiality towards the Bháyád, and the result of these feelings ... was that the utmost advantages of British interference were secured to the Járejá Chiefs, while ... burthens were heaped on His Highness the Ráo....

established advice of his ministers and the members of the Jhareja Bhayat.²⁶ This meant that the Maharao could not make major changes in policy or law without consulting the nobles. The political officer Wyllie comments that this clause is a remarkable one, and I doubt if a parallel case is to be found for it in any other Indian Treaty.²⁷ Pottinger may have included this requirement because he realised that it could be unsafe to exclude the Bhayat from the central administration, in which they had participated through the regency for the last fifteen years. He may also have envisaged a Kutch that would develop along the same constitutional lines as Britain had done; as Wyllie put it, the Government of Bombay believed that our obligations and our interests alike lay in the development of the limiting power of the Bhayat on the Maharao.²⁸

For the next quarter century, relations between the Bhayat and Maharao Desalji were turbulent. The Bhayat used the British guarantee to reject all of the Maharao's attempts to interfere in the affairs of their estates: they refused to carry out administrative reforms, sometimes plundered villages on the Maharao's Khalsa lands, and even denied that they were subjects of the Maharao. Desalji for his part tried to reduce the Jagirdars to obedience. He knew that he could not do so by armed force, as his ancestors might have done. Instead, he adapted to modern realities: he acquired the estates of bankrupt nobles by purchase and mortgage; he overrode their judicial authority by bringing the inhabitants of their estates before his own law courts; and he refused to consult them before making policies and laws. The Bhayat responded by invoking the British guarantee. The

²⁶ Article 1, Treaty between the Honourable East India Company and the Government of Kutch, 5 July 1834, in Aitchison, *Collection of Treaties*, 6:125-126.

²⁷ Wyllie, ARao of Kutch, p. 272.

²⁸ Wyllie, ARao of Kutch, p. 272/

Government of Bombay intervened several times on behalf of the nobles, but the question of the relationship between the Bhayat and the Maharao had not been settled by the time Desalji died in 1860.²⁹

The new Maharao, Desalji's son Pragmalji II, continued his father's efforts against the Bhayat, levying fines on them for various infractions and interfering in the activities of their law courts. Pragmalji's accession coincided with the appointment of a new British Political Agent (as the Resident in Kutch had been renamed in 1840), Major A.Y. Shortt. Shortt was known among his colleagues for his strong sympathies towards the Bhayat.³⁰ Between 1863 and 1865, he drafted a series of reports in which he set out what he believed were the legitimate rights of the Bhayat, and called for the Government of Bombay to intervene to uphold them against the encroachments of the Maharao.³¹ In his final memorandum, Shortt

laid down as premises that the normal position of the feudatories within the limits of their own estates was one of complete independence; that by the deeds of guarantee issued to them in 1819 we were bound to preserve that independence; and that up to the present time we had failed in our obligation, and rather from the absence of any policy than the pursuit of a contrary policy, had allowed their independence to be in many ways infringed by the Darbár.³²

In Shortt's view, the most important manifestation of that independence was in the administration

²⁹ See Wyllie, ARao of Kutch, pp. 278-287.

³⁰ See Wyllie, ARao of Kutch, especially pp. 287 and 302.

³¹ See Wyllie, ARao of Kutch, pp. 287-296.

³² Wyllie, ARao of Kutch, p. 295.

of justice. He believed that the Bhayat had the inherent right to settle all civil disputes that arose on their estates, and to try any criminal case in which the defendant was not eligible for the death penalty. (Capital offences were, he admitted, under the jurisdiction of the Maharao.) To secure to the Bhayat these rights, Shortt first proposed to draw up a full list of those nobles who, as heirs to the original recipients of the guarantee, should be allowed to exercise judicial powers.

But there was a problem. The Kutch Bhayat did not practise primogeniture. This meant that when a Jagirdar died, his lands were divided among his sons. As a result, the number of guaranteed members of the Bhayat increased steadily, reaching 139 by the 1870s.³³ The repeated partitions left many nobles with tiny holdings, from which they derived virtually no revenue. Shortt felt that if an estate was too small and too poor, its Jagirdar would be unable to dispense justice fairly. In some ways the situation had a parallel in the Saurashtra peninsula south of Kutch, which was divided into numerous Princely and Chiefly States, many of them very small indeed. In 1863 the Paramount Power grouped all of the Rulers in Saurashtra into eight classes, based mainly on the size of their holdings. The Princes of the largest States were given full judicial powers, meaning that their courts could decide any civil or criminal case. The pettiest Chiefs were entirely deprived of their jurisdictional authority; their courts were shut down, and all disputes and crimes that originated in their territories went to courts run by local representatives of the British Paramount Power. The several score Rulers between these two extremes were given partial powers: their courts could handle

³³ It is unclear how many Jagirdars there were in Kutch at the time that the guarantee was issued. There may have been as many as 250; see Wyllie, ARao of Kutch, p. 261. Shortt, however, insisted that the number of Jagirdars greatly increased between 1819 and 1865; *ibid.*, p. 295.

minor offences, and lawsuits involving small sums of money, while larger questions went to the British-run courts.³⁴

Shortt now proposed to extend a version of this system to Kutch. The Maharao was to run the courts in his Khalsa lands. The Bhayat were to be divided into those who were competent to exercise judicial powers, and those who were not. The latter would pool their jurisdiction, through the creation of a Council comprising twelve members of the Bhayat. This would serve as the law court for civil and criminal cases that arose on the lands of the non-jurisdictional nobles.

Maharao Pragmalji, however, rejected the proposal as detracting from his sovereignty.³⁵ He successfully appealed against its implementation right to the Secretary of State in London. In 1868 he similarly rejected a revised plan, going so far as to send his Diwan to England to present his objections.³⁶ Then, in 1872, he signified that he was prepared to come to terms. Further discussions ended in 1875 with an agreement called the Kutch Bhayat Settlement, which was concerned solely with the judicial system. It provided for the division of the Bhayat into five classes, with powers ranging from First Class (the right to try crimes in which the maximum possible sentence was anything below seven years' imprisonment or a fine of 6,000 koris, and to hear all civil cases) to Fifth Class (no judicial powers). (Kutch used its own currency, the Kori; there were between three and four koris to the rupee.) Any civil or criminal case beyond a given noble's powers would be heard by a new Jadeja Court of five judges, namely the Dewan or Deputy Dewan of Kutch and four members of the Bhayat; here, the British gave in to Pragmalji's demand to choose the members of

³⁴ See McLeod, *Sovereignty, Power, Control*, p. 119.

³⁵ See Wyllie, *ARao of Kutch*, pp. 297-299.

the court. (There was to be no jury.) Furthermore, with a few exceptions the Jadeja Court would serve as the court of appeal from decisions made by the courts of the Jagirdars; and it was given jurisdiction over all cases involving a guarantee-holding member of the Bhayat, or in which one party lived on a Bhayati estate and the other either on another estate or on the Maharao's Khalsa lands.

Decisions of the Jadeja Court might be appealed to the Maharao himself. If the aggrieved party was a guarantee-holder and the case involved the possession of land and his old right of dues, he was entitled to a second appeal to the Government of Bombay.³⁷

Maharao Pragmalji died in January 1876, a few months after the Kutch Bhayat Settlement had been finalised. In 1877 a count was made of the number of villages on each Jagirdar's land, a village being defined as a settlement of at least seventy-five houses. The guarantee-holders were then placed into the different classes described in the Settlement, according to the number of villages they held. The Jagirdar of Roha was found to have 26 villages, and was placed in the First Class. No estate had the requisite number of villages to fit into the Second Class; five Jagirdars, with between one and five villages, were placed in the Third Class, eight in the Fourth Class, and the remainder were found too small to exercise judicial powers and were put in the Fifth Class.³⁸ The

³⁶ See Williams, *Black Hills*, p. 240.

³⁷ The Kutch Bhayat Settlement, 1875, in Aitchison, *Collection of Treaties*, 6:129-132. See also *ibid.*, 6:83. The Jadeja Court was modelled on the Rajasthanik Sabha Court, which existed from 1873 to 1899 to settle disputes between the Rulers of Saurashtra and their nobles; see *ibid.*, 6:9-10 and v-viii. (It should not be necessary to point out that until 1949, the word Rajasthan was used in India in its correct sense of a land of kings, and did not specifically apply to the modern state of that name.)

³⁸ The fourteen jurisdictional Jagirdars were those of Roha (First Class); Adesar, Chitrod, Wandhia, Vinjhan and Palanswa (Third Class); and Gedi, Nagrecha, Nara, Vijpar, Kumbhardi, Bambhanai, Jadodar and Kera (Fourth Class). For the number of villages in each estate in 1877,

Kutch Bhayat Settlement thereupon went into effect.

The settlement of 1877 may be best seen as an attempt by the Paramount Power to establish a balance of power between the Maharao of Kutch and his Bhayat. By the time Pragmalji came to the throne in 1860, the two parties were constantly clashing with one another. In 1867, J.W.S. Wyllie wrote that Affairs in Kutch have fallen so altogether out of gear that ... A new constitution has to be created for Kutch....³⁹ This was soon after the Revolt of 1857, when the British were courting the goodwill of the Indian Princes by, among other things, rigorously respecting their rights. This was difficult in Kutch, though, where the Paramount Power was committed to upholding the rights of both the Maharao and the Bhayat. As a result,

The British Government determined to maintain the Chiefs [of the Bhayat] in the full enjoyment of their possessions and rights as they existed ... in 1819, and to mediate between the Rao and his Bhayat so as to maintain the equilibrium of power as it existed at the time of the Treaty. On the other hand, it was necessary to encourage and strengthen the Rao in the exercise of all his legitimate rights.⁴⁰

And the Kutch Bhayat Settlement was probably the best solution to this problem, even if (like all compromises) it left neither party entirely happy.

see ARevision of jurisdictional powers of the guarantee holders of Cutch. 2. Reports by Mr. I.N. Mehta, Special Officer, appointed by the Cutch Darbar to enquire into the landed possessions of each jurisdictional holder and their annual income, OIOC, R/1/1/4291.

³⁹ Wyllie, ARao of Kutch, p. 302. Wyllie is, of course, using Aconstitution in its proper sense of AThe mode in which a state is constituted, and not with the American meaning of a piece of paper describing that mode.

III

In 1877, the Paramount Power ordered that the members of the Bhayat must pay nazarana (succession dues) to the Maharao of Kutch on inheriting their estates, in recognition of their subordination to him; if a noble failed to pay nazarana, the British guarantee would not apply to him.⁴¹ And on receiving the approval of the Secretary of State for the Kutch Bhayat Settlement, the Government of India instructed the authorities in Bombay to

inform them [the Bhayat] that the continuance of the guarantee in each individual case will depend on their faithful allegiance to the Darbar, the performance of such duties as may in the opinion of Government be attached to their tenures, and the general good administration and government of their estates.⁴²

If a Jagirdar broke these conditions, the Paramount Power was prepared to allow the Kutch government or Darbar to intervene in the management of his estate. For example, in 1879, the Government of Bombay approved the temporary withdrawal of the judicial and police powers of the Jagirdar of Palanswa, who had extorted money from the inhabitants of his estate and had neglected to take action against widespread thievery.⁴³

Nevertheless, the Kutch Bhayat were virtually the autonomous rulers of their estates. This placed practical and symbolic limitations on Maharao Khengarji III, who succeeded his father

⁴⁰ Aitchison, *Collection of Treaties*, 6:82.

⁴¹ Aitchison, *Collection of Treaties*, 6:81; H.M. Abud (Political Agent in Kutch) to Jadeja Virsalji Ratanji of Jadodar, 19 Aug. 1908, OIOC, R/1/1/4006.

⁴² Government of Bombay to Political Agent in Kutch, 20 Feb. 1873, quoted in Gaisford to Political Department, 14 Aug. 1943, OIOC, R/1/1/4006.

⁴³ Resolution of the Government of Bombay, Political Department, 27 Mar. 1879, OIOC,

Pragmalji II in 1876. In practical terms, he collected no taxes from the half of Kutch that was held by guaranteed nobles, other than customary payments (nazarana and marriage dues) and levies for such purposes as vaccination against smallpox. His police had no authority in Bhayati estates.

While the Maharao was the court of appeal from decisions of the Jadeja Court, the normal courts of Kutch State had no jurisdiction over the inhabitants of the lands of the guaranteed Bhayat. The Kutch Bhayat Settlement interpreted the guarantee of 1819 as the right of a guarantee-holder to appeal to the Government of Bombay against any decision of the Maharao touching on their estates and rights, which (at least potentially) exempted them from the authority of their monarch. As a result, the Kutch treasury was chronically short of funds; much of the population could obtain justice only from either their own Jagirdar, or the equally amateur judges of the Jadeja Court; and the Maharao enjoyed less than full sovereignty, the upholding of which was perhaps the principal goal of the Indian princes during the period of British Paramountcy.⁴⁴ All this was an infringement of his *izzat*, his honour; in the same way, maintaining *their* autonomy was central to the *izzat* of the Jagirdars.⁴⁵ L.F. Rushbrook Williams summed up the effects of the power of the Bhayat on the State:

First, it prevented the Rulers of Kutch from building up in the nineteenth century the efficient administration which the country needed; secondly it occupied their time and

R/1/1/4006.

⁴⁴ See McLeod, *Sovereignty, Power, Control*, especially pp. 28-31; W.F. Webb (Dewan of Kutch) to V.M.H. Cox (Secretary to Resident for the States of Western India), 8/10 July 1943, OIOC, R/1/1/4006; Williams, *The Black Hills*, pp. 232, 238-239, 241, 252-253.

⁴⁵ For the relationship between a Ruler's sovereignty and his *izzat*, see *Sovereignty, Power, Control*, especially p. 31. For the need of a Jagirdar to maintain autonomy as an element

engrossed their activity almost to the exclusion of other matters.⁴⁶

Maharao Khengarji III died on 15 January 1942, after a reign of sixty-six years. He was succeeded by his son Vijayarajji. The new Ruler resolved to take on the Bhayat. The Paramount Power was more prepared to allow this than at any time since 1819. By the time the Second World War began in 1939, the transfer of India from the rule of the British to that of the Indian National Congress was clearly imminent. Many of the leaders of Congress made no secret of their hostility to the Indian States. The British believed that they were obligated to strengthen the States in various ways so as to assure them a chance of survival in independent India. In consequence, they forced administrative reforms to defuse hostility to unpopular Princes, and merged hundreds of hopelessly small States in Gujarat into larger neighbours.⁴⁷ The new attitude doubtless made the British more willing to consider requests from Kutch to reduce the weakness caused by the autonomy of the Bhayat; in 1945, P.J. Patrick, an official of the India Office in London, commented that in the past British political officers dealing with Kutch were expected

to supervise the Ruler's relations with the guaranteed Jagirdars and prevent oppression.

Nowadays this is not so essential. We should like to see Cutch exercise as much authority as possible in the Jagirs [estates].⁴⁸

Equally important, the British were to some degree indebted to the new Maharao. The last year of

in *his izzat*, see Rubin, *Feudal Revolt*, pp. 47, 53.

⁴⁶ Williams, *Black Hills*, p. 241.

⁴⁷ See McLeod, *Sovereignty, Power, Control*, especially pp. 57-60, 115-165, 185-189.

⁴⁸ Minute by P.J. Patrick (India Office), 14 Feb. 1945, OIOC, L/P&S/13/896. In Jaipur, British support of a centralising Darbar against the Jagirdars began two decades before it did in Kutch, in part because individual Britons played a much larger role in the internal government of

Khengarji III's reign was clouded by the discovery of widespread smuggling from Kutch ports, which was judged to be serious enough to be detrimental to the Allied war effort. In September 1941 a British officer, W.F. Webb, was imposed as Dewan on Khengarji, and launched a fullscale overhaul of the State administration. Khengarji was furious; but his son Vijayarajji gave his support to the new Dewan and the reforms, and on succeeding his father four months later continued his cooperation.⁴⁹ This probably made the Paramount Power willing to repay the Maharao by cooperating in *his* projects.

Vijayarajji decided to begin with the judicial powers of the fourteen jurisdictional nobles, leaving the remaining non-jurisdictional guarantee-holders (whose number had fallen slightly to 113, from 125 at the time of the Kutch Bhayat Settlement) for the time being. The jurisdictional Jagirdars' right to administer their own courts was the most glaring limitation on the Maharao's sovereignty. It was probably also the most vulnerable of the Jagirdars' privileges, given the basis on which judicial powers were determined. Within a few months of his accession, the Maharao ordered a State official named Indravadan Mehta to make a fresh count of the number of villages in each jurisdictional Chief's holding. As in 1877, Avillage was defined as a settlement of at least seventy-five inhabited houses. With the approval of the Resident, Sir Edmund Gibson, the Maharao Vijayarajji ordered that Mehta only count those villages which were in existence at the time of the original British guarantee in 1819.⁵⁰ A devastating earthquake a few months after the guarantee was

Jaipur than they did in Kutch; see Rubin, *Feudal Revolt*, pp. 28-35.

⁴⁹ See McLeod, *Sovereignty, Power, Control*, 222-229.

⁵⁰ See C.P. Hancock (Resident at Baroda and for the States of Western India and Gujarat) to L.C.L. Griffin (Secretary to Crown Representative), 2 May 1945, OIOC, R/1/1/4291.

issued, and subsequent population shifts, meant that while the number of inhabitants of Kutch had increased during the century and a quarter since the guarantee, a large number of them lived in new settlements, and many old villages had been wholly or partially abandoned. The decision to count only villages that had remained inhabited since 1819 ensured that the estates of many if not all of the jurisdictional Jagirdars would be found smaller than they had been in 1877, justifying the reduction or elimination of their judicial powers. The holders of a number of the smaller jurisdictional estates were immediately issued with Ashow cause notices, ordering them to explain why their powers should *not* be withdrawn.⁵¹

One Jagirdar, however, held so large an estate that it was unlikely he could be deprived of his powers simply on the grounds that he lacked sufficient villages. This was Hamirsinhji, the Jadeja Jagirdar of Roha in western Kutch. Hamirsinhji had more villages than the other thirteen jurisdictional chiefs put together. His ancestor had been one of the leaders of the Bhayat at the time of the Treaty of 1819, and in consequence was one of the two guarantee-holders named to the Council of Regency that ruled Kutch from 1819 to 1834. On the classification of judicial powers in 1877 a later ancestor of Hamirsinhji's was the only chief to be placed in the First Class. Perhaps precisely because of their high standing, the Jagirdars of Roha had periodically clashed with the Maharaos of Kutch.

Their rivalry took a violent turn in 1934, when Hamirsinhji sent men to take over a farm that both he and Maharao Khengarji claimed to have purchased. Matters escalated, and a gun battle took place between the Roha men and the Kutch State Police in which seven of Hamirsinhji's party were

⁵¹ Jagirdar Hamirsinhji of Roha to Gaisford, 16 June 1943, OIOC, R/1/1/4006.

killed or wounded. The Jagirdar appealed for British intervention, but this was not granted as he had not taken the property dispute to the Jadeja Court, the proper forum for deciding such matters. In the end, Hamirsinhji was forced to tender a humiliating apology to Maharao Khengarji, and renounced all claim to the land in question.⁵²

After the death of Khengarji, Hamirsinhji apparently hoped that the new Maharao Vijayarajji would be less watchful than the old one. At any rate, around this time the British Resident, Gibson's successor Colonel Gaisford, discussed the Jagirdar of Roha with Vijayarajji, and reported that

His Highness held the view that within a few months of ascending the *gadi* [throne] a situation had arisen wherein he was faced with the open defiance of his authority by the most powerful of the Cutch feudatories and that on the result of this conflict depended the entire future relationship between the Maharao and his Bhayat.⁵³

Fortuitously for the Maharao, at this very moment a suitable pretext presented itself for taking decisive action against Hamirsinhji. In 1939, the house of a relative of one of the Roha Jagirdar's top officials was burgled. Hamirsinhji's police arrested a local youth, a goldsmith's son named Popat. Popat died while being questioned in the Roha fort. It was clear from the condition of his body that he had been beaten by the police, and his father believed that the beating had caused his death. Hamirsinhji's Karbhari or minister Laxmichand Devchand Patel, on the other hand, filed a report stating that Popat had died as a result of poison that he had taken, apparently to escape the beating.

⁵² For this episode, see OIOC, R/2/642/348.

⁵³ Gaisford to Political Department, 14 Aug. 1943, OIOC, R/1/1/4006.

(As suicide was a crime, all cases had to be reported.) The following year the dead youth's father made his way to Bombay. There, he engaged a pleader who drew up a formal request for an investigation into the circumstances of Popat's death. The Maharao probably did not need much prompting to act on the request. In 1941 the Kutch government brought charges against the three officers who had questioned Popat, for voluntarily causing hurt to extort a confession, and causing the disappearance of evidence. The Karbhari Laxmichand was charged with giving false evidence for filing the report of suicide.⁵⁴

These were serious charges, and the case was heard by the Jadeja Court. The judges, the Maharao's Deputy Dewan and the guarantee-holders who sat with him on the court, rendered their decision in April 1942. They freed Karbhari Laxmichand, finding that the evidence did not confirm that he had given false evidence, and acquitted the Roha police officers of disposing of evidence. But the three policemen *were* convicted of using torture against Popat, and were each sentenced to six months' rigorous imprisonment and a fine of 200 koris.⁵⁵

The three Roha officers appealed against their conviction. The Kutch State also appealed, in this case against the acquittal of the officers and the Karbhari on the charges relating to evidence.

Under the terms of the Kutch Bhayat Settlement, appeals from decisions of the Jadeja Court were heard by the Maharao, who normally delegated his judicial functions to the Dewan or chief minister.

⁵⁴ For this episode, see OIOC, R/1/1/4006. The charges were under Sections 330 (causing hurt to extort a confession), 201 (causing the disappearance of evidence), and 193 (giving false evidence) of the Indian Penal Code. The Code was originally applicable only to the parts of India under direct British rule, but the Rulers of Kutch and many other States had implemented a modified version in their territories.

⁵⁵ Jadeja Court, Criminal Case No. 24 of St 1997/Criminal Decision No. 34 of St 1998,

The appeal was accordingly heard by the British Dewan of Kutch, W.F. Webb, whose appointment had been forced on old Maharao Khengarji the previous year. In July 1942, Webb upheld the findings of the Jadeja Court. However, he pointed out that whether Popat had died as a result of the beating or had taken poison to end his torment, the police were unquestionably responsible for his death. He therefore doubled their prison sentences and increased their fines. Almost as an aside, Webb's decision commented that

Both the method of the investigation of the death of the deceased Popat and the action taken by the Karbhari are highly reprehensible. Neither the Roha Jagirdar nor the Karbhari took any action to bring the police to book: in fact efforts have been made to white-wash them.⁵⁶

For some months, Vijayarajji and Webb had doubtless looking for ammunition to use against the Hamirsinhji. As the court of appeal in Kutch, Webb was supposed to maintain neutrality in hearing cases. As Dewan, however, he was second in command to Maharao Vijayarajji in the State administration. His criticism of Karbhari Laxmichand (whose acquittal he had just confirmed) and of Jagirdar Hamirsinhji (who had never been charged with anything) did not, perhaps, belong in the decision of an appeals court. It was however, a powerful weapon, and the Dewan and the Maharao struck quickly. They informed the Resident, Colonel Gaisford, that they intended to strip Hamirsinhji of his judicial and police powers for a period of five years, alleging that he had shown himself unfit to hold them both in the clash over the land dispute in 1934 (which the Kutch

OIOC, R/1/1/4006.

⁵⁶ Shri Hazur [Kutch State] Court, Guarantee Criminal Regular Appeal No. 7 of 1998/Judgment No. 48 of 1999 and Guarantee Criminal Revision No. 12 of 1998/Judgment No. 49 of 1999, 21 July 1942, OIOC, R/1/1/4006.

authorities now referred to as an attempted insurrection) and in his conduct during the investigation of Popat's death.⁵⁷

I have already suggested that by 1942, the Paramount Power was more prepared than ever before to help the Maharao of Kutch against his Bhayat. Nevertheless, since 1819 judicial powers had been included among the Apossessions of the Bhayat that were guaranteed by the British. The latter therefore could not allow Hamirsinhji to lose his jurisdiction merely because Vijayarajji and Webb claimed he was unfit to exercise it. At Gaisford's suggestion, the Kutch Darbar adopted a tactic used by the Political Department against Rulers whom it wanted to remove from power. This was a Commission of Enquiry, a trial of a Ruler who had been accused of wrongdoing. If it found him guilty, the Commission could recommend an appropriate punishment. Commissions were only set up unless conviction was certain, but they provided a seemingly impartial basis on which to intervene in the internal affairs of States.⁵⁸

Vijayarajji and Webb too were certain of a conviction, which they sought to ensure in May 1943 by appointing a Commission consisting of three of the Maharao's top officials. The Commissioners were charged with determining whether Hamirsinhji did in fact Aincite an armed rebellion ... against the Kutch Darbar in 1934, and whether he did Aactively help or did connive at the conduct of his Karbhari, Police Officers and other subordinate officials and servants in covering

⁵⁷ Gaisford to Griffin, 31 Dec. 1942, OIOC, R/1/1/4006. At this point, the parallels to the situation described by Rubin are striking: the immediate cause of the Sikar agitation of 1938 was the decision of the Jaipur government to deprive the State's most powerful Jagirdar, the Rao Raja of Sikar, of his administrative powers for ten years; see Rubin, *Feudal Revolt*, pp. 39-41.

⁵⁸ For establishment of the Commission, see Gaisford to Griffin, 31 Dec. 1942, and Deputy Secretary (Political) to Gaisford, 16 Jan. 1943, both OIOC, R/1/1/4006. For

up the reasons for Popat's death. If the Commission convicted the Jagirdar on either count, it was further to determine whether the Jagirdar is a proper and fit person to exercise the civil and criminal jurisdiction with which he is invested as Jagirdar of Roha.⁵⁹ The hearings were to open in nineteen days' time; Hamirsinhji was given a week and a half to provide the names of his defence witnesses, and a list of the documents he intended to produce before the Commission.⁶⁰ The panicked Jagirdar requested a postponement, on the grounds that he wanted to consult a lawyer. Probably because he was confident it would not affect the outcome of the hearing, Webb granted the request.⁶¹

The unfortunate Hamirsinhji now played right into the hands of the Maharao and Dewan. He sought advice from one of the leading advocates in the British civil station of Rajkot in Saurashtra. The lawyer could not represent the Jagirdar before the Commission of Enquiry, where only pleaders licensed by the Kutch State might appear. He therefore decided to attack the very existence of the Commission, and on Hamirsinhji's behalf submitted two representations to the Resident, asking him to stop the enquiry. The representations started out well: the Commission was only a pretext to deprive me of my independent judicial powers in pursuance of a policy which the Cutch Darbar have recently initiated.... The fact that its three members were Kutch State officials is not such as to inspire confidence in their impartiality and independence of judgment. Of the two episodes under investigation by the Commission, the 1934 dispute had been amicably settled almost ten years earlier, while with regard to Popat's death there is no evidence in the

Commissions of Enquiry in general, see McLeod, *Sovereignty, Power, Control*, 183-185.

⁵⁹ Order of W.F. Webb (Dewan of Kutch), 8 May 1943, OIOC, R/1/1/4006.

⁶⁰ Webb to Hamirsinhji, 10 May 1943, OIOC, R/1/1/4006.

⁶¹ See Gaisford to Political Department, 14 Aug. 1943, OIOC, R/1/1/4006.

record of the trial of that case to suggest that I actively helped or connived at the conduct of my Karbhari, police officers and other subordinate officials and servants....⁶²

If he had stopped there, the lawyer might have won sympathy for his client, if nothing more. However, the core of the representations adopted an argument that the Resident, Colonel Gaisford, had explicitly warned Hamirsinhji to avoid. This was a claim that Roha was actually an independent State, not a part of Kutch, and that the powers to appoint such a Commission can belong only to the Paramount Power—the British Government. This contention was supported with selective quotations from nineteenth-century British officials, and mental gymnastics to explain away such uncomfortable realities as the fact that Roha was subject to Kutch laws and under the authority of the Jadeja Court.⁶³ The claim to independence was patently ridiculous. It was also a gift to the Jagirdar's enemies, as from the beginning the British guarantee had been contingent on the loyalty of the Bhayat to the Maharao, or in the words of the Treaty of 1819, their performing the services due from them to His Highness the Rao's Government. On learning of the representation, the Dewan Webb wrote to Gaisford that

In the circumstances, the barest requirements of a good and efficient Government compel His Highness's Government to ask that the British Guarantee to Roha should be withdrawn.

Any punishment to the Jagirdar short of the forfeiture of the guarantee would still leave the

⁶² Hamirsinhji to Gaisford, 16 June 1943, OIOC, R/1/1/4006, and Supplementary Representation of Hamirsinhji, 1 July 1943, OIOC, R/1/1/4006.

⁶³ Hamirsinhji to Gaisford, 16 June 1943, OIOC, R/1/1/4006. For Gaisford's warning, see Gaisford to Political Department, 14 Aug. 1943, *ibid.* The argument was an odd one to take, as five years earlier the Rao Raja of Sikar had made a similar and equally unsuccessful claim about the Commission of Enquiry established by the Jaipur Darbar to investigate *his*

way open in future for a Jagirdar to defy all legitimate exercises of authority by His Highness on the plea that he is an independent Ruler and owes no allegiance to His Highness.⁶⁴

While agreeing that the repudiation now made by the Roha Jagirdar [of his allegiance to the Maharao] is in my opinion sufficient to disqualify him forthwith from the further enjoyment of that guarantee, however, Gaisford doubted that the Jagirdar himself has fully realised the serious implications of all the statements attributed to him in the two representations written in English and submitted to me in his name by this Advocate.⁶⁵ He followed up by explaining those implications to Hamirsinhji, who agreed to withdraw his claims to independence, to reaffirm his allegiance to Vijayarajji, and to make an unconditional apology to the Maharao.⁶⁶ Gaisford still favoured depriving Hamirsinhji of his jurisdictional powers through the Commission of Enquiry rather than a summary removal of them. He further proposed remodelling the Commission so as to make it seem more impartial, by appointing as its chairman a well qualified judicial officer entirely unconnected with the State, and someone acceptable to Hamirsinhji as one of its two remaining members.⁶⁷

Vijayarajji, Webb, and the latter's successor as Dewan S.V. Mukerjea (who took over in October 1943), however, insisted that the statements made by the Roha Jagirdar ... are in themselves so outrageous that, in spite of the apology, his jurisdictional and police powers should be withdrawn summarily without resorting to the proposed Commission of Enquiry.⁶⁸ This may

administration; Rubin, *Feudal Revolt*, pp. 58-59.

⁶⁴ Webb to Cox, 2 Aug. 1943, OIOC, R/1/1/4006.

⁶⁵ Gaisford to Political Department, 14 Aug. 1943, OIOC, R/1/1/4006.

⁶⁶ Gaisford to Griffin, 29 Nov. 1943, OIOC, R/1/1/4006.

⁶⁷ Cox to Webb, 29 June 1943, OIOC, R/1/1/4006.

⁶⁸ Gaisford to Griffin, 29 Nov. 1943, OIOC, R/1/1/4006.

have reflected growing doubts as to whether the Commission would actually convict Hamirsinhji, particularly if its personnel were changed in accordance with Gaisford's suggestion. It may equally have been because the whole notion of a Commission was based on the assumption that the Jagirdar was entitled to exercise jurisdictional powers unless specific grounds to the contrary could be proved. An immediate removal of the guarantee, on the other hand, would deprive Hamirsinhji of the right to jurisdiction no matter how capably he might exercise it.

IV

The Resident and the Maharao were agreed on stripping Hamirsinhji of his powers, but their dispute over on how to do so stalled further advance towards their common goal. In the end, the Political Department in Delhi came up with a solution to the disagreement. It will be recalled that in 1942, Maharao Vijayarajji had appointed an official named Indravadan Mehta to count the number of villages held by each Jagirdar, and that Avillage was defined in such a way that the estates of most of the fourteen jurisdictional guarantee holders would be found too small to permit the continued exercise of judicial powers. The Political Department proposed that Mehta's

enquiry should be specifically directed in a manner which may be expected to eliminate the jurisdiction of all concerned. If that line of action is taken, it would appear to be a waste of time and money to institute a separate enquiry into the misdeeds of the Jagirdar of Roha....⁶⁹

After some debate, the Resident, the Kutch State and the Political Department agreed that Mehta would finish his count of villages. He would then carry a second study, this time along the lines

suggested by the Political Department on the broader Aquestion whether any of the jurisdiction holders possessed, or can ever be expected to possess, the capacity to discharge their responsibilities in a manner suitable to modern conditions on the basis of their annual income.⁷⁰

The reason that the Darbar agreed to this course may have been the fact that the Roha estate was so large that, as already noted, a simple count of villages would leave Hamirsinhji (if no one else) entitled to retain his powers, as he would unquestionably still have more villages than any of the other Jagirdars who had been recognised as jurisdictional in 1877. The relationship between income and the right to judicial powers, on the other hand, had never been defined, which would make it more difficult for any Jagirdar to challenge whatever Mehta determined as the cut-off mark. As Delhi pointed out, if the second enquiry found that the Roha Jagirdar has not sufficient resources adequately to discharge his responsibilities, his jurisdiction would have to be withdrawn on this account and there would no longer be any purpose in holding a Commission of Enquiry.⁷¹

The wisdom of this suggestion became apparent when in March 1944 Mehta submitted his first report. Thanks to the decision to count only those villages that had been continuously inhabited since 1819, he found a drastic falling off in the number of villages in almost every estate: in Roha, Hamirsinhji's villages had decreased from the 26 reported in 1877 to 11; Chitrod, the second-ranking estate, had fallen from four to one; Palanswa, in the third place, from five to none, and so on. On these grounds, the Kutch Darbar was prepared to deprive ten of the fourteen jurisdictional Jagirdars

⁶⁹ F.F. Pearson (Political Department) to Gaisford, 27 Dec. 1943, OIOC, R/1/1/4006.

⁷⁰ Pearson to Gaisford, 27 Dec. 1943, and Griffin to Gaisford, 7 June 1944, both OIOC, R/1/1/4006; Hancock to Griffin, 2 May 1945, OIOC, R/1/1/4291.

⁷¹ Griffin to Gaisford, 7 June 1944, OIOC, R/1/1/4006.

of all their judicial powers, and reduce the power of the remainder; Hamirsinhji, for example, could legitimately be demoted from the First Class to the Second, which would cut his criminal jurisdiction from cases in which the maximum sentence was seven years or a fine of 6,000 koris, to two years or 2,000 koris.⁷² This would still leave him with some powers, though, and pending Mehta's completion of his second report, no action was taken on the question of judicial powers.

A year later, in March 1945, Mehta submitted his findings on the income of the Jagirdars. These proved to be tiny: Adesar's annual revenue was just 84,310 koris or 24,089 rupees, Chitrod's 19,597 rupees, Wandhia's 18,204, and so on; by comparison, the revenues of the Maharao's government, which were collected only from the Khalsa half of Kutch, were in the neighbourhood of three million rupees. S.K. Nayampalli, Dewan of Kutch since April 1944, immediately requested the Crown Representative to remove the jurisdictional powers of thirteen of the fourteen Jagirdars on the grounds that their incomes were inadequate. Roha was still a problem: Hamirsinhji's revenue of 2,04,230 Koris or 58,351 rupees was perhaps not low enough to make him unfit to administer justice (there were States in other parts of India with smaller revenues). Nayampalli, however, boldly included the premier Jagirdar on his list, not because of his poverty but because he had shown himself incapable of exercising judicial powers.⁷³

The old Resident Colonel Gaisford had opposed depriving Hamirsinhji of his powers without justification either on the grounds of inadequate revenues or following a guilty verdict by

⁷² S.V. Mukerjea (Dewan of Kutch) to Cox, 10/17 Mar. 1944, enclosing the first Report of Indravadan Mehta, OIOC, R/1/1/4291.

⁷³ S.K. Nayampalli (Dewan of Kutch) to D.Y. Fell (Secretary to Resident at Baroda and for the States of Western India and Gujarat), 14 Mar. 1945, enclosing the second Report of

the Commission; and the previous year, the Political Department had stipulated that Aif ... it transpires that the Roha Jagirdar's resources are sufficient, a Commission of Enquiry into his conduct should then be held.⁷⁴ Now, however, Gaisford's successor Colonel Hancock urged Delhi to acquiesce in Nayampalli's request to deprive Hamirsinhji of his powers along with the other jurisdictional Jagirdars, precisely on the grounds that if this were not done the time-wasting formalities of a Commission of Enquiry would have to be held.⁷⁵ The Political Department agreed, and in July 1945 Lord Wavell, the Crown Representative (this was the office held by the Viceroy in his relations with the Indian States under the constitution of 1935), approved the withdrawal of the judicial powers of all fourteen of the jurisdictional Jagirdars of Kutch.⁷⁶

Hancock, the Resident, was openly hostile to the Bhayat, writing that from 1819 onwards until almost the present day it has been the set purpose of the British Government to protect and preserve the Bhayats against their overlord, the Ruler of the Cutch State. In the process, I submit, that, whether owing to the zeal of local officers or the skill with which the Bhayati cases were presented, the Bhayats have in fact been guaranteed in the full enjoyment of more than their possessions to which alone Article 16 of the 1819 Treaty entitles them.

In order to decide what line would now be appropriate and correct, one has to study political practice during the last two or three years. That, in my experience, has tended to

Indravadan Mehta, OIOC, R/1/1/4291.

⁷⁴ Griffin to Gaisford, 7 June 1944, OIOC, R/1/1/4006.

⁷⁵ Hancock to Griffin, 2 May 1945, OIOC, R/1/1/4291.

⁷⁶ L.G. Coke Wallis (for Griffin) to Hancock, 19 July 1945, OIOC, R/1/1/4291.

support Darbars of Indian States in their legitimate desires to resume both possessions and rights which former Rulers have, often wantonly, distributed to relatives or favourites.

Judged by such a policy, the correct line in this Cutch case where we find the Cutch Darbar crippled financially and administratively by a numerous, illiterate and irresponsible Bhayat is surely to recover what is legitimately theirs, notwithstanding the past political practice to the contrary.⁷⁷

Nevertheless, this does not explain why were the Resident and Delhi now prepared to take away Hamirsinhji's powers without even the pretense of first proving that he deserved it. The most likely reason is that time was running out if Kutch were to be strengthened so as to survive the end of British rule. It was over two years since the appointment of the abortive Commission of Enquiry, which had been established at the suggestion of the then-Resident Gaisford. It was almost eighteen months since the Political Department had suggested that Mehta's study be skewed so as to eliminate the jurisdiction of all concerned. In other words, for a considerable time the Paramount Power had shared the Kutch Darbar's desire to take action against the Jagirdar of Roha and his fellow jurisdictional guarantee-holders. British officials were certainly aware that it was their fault that nothing had yet been done. Lord Wavell approved the withdrawal of all jurisdictional powers just five days after the end of his meeting at Shimla with the leaders of the Indian National Congress and the All-India Muslim League to work out a formula for the independence of India. Independence, and the coming to power of the anti-Princely Congress, was around the corner.

⁷⁷ Hancock to Griffin, 15 Sept. 1945, OIOC, R/1/1/4319.

V

The elimination of the judicial powers of the jurisdictional Jagirdars marked the beginning of the end of the Kutch Bhayat, but only the beginning. As of July 1945, the Bhayat still enjoyed fiscal autonomy (they taxed the inhabitants of their estates as they pleased, and spent everything they collected). The Settlement of 1875 remained in effect, which meant that the Bhayat still administered justice in their half of Kutch; all that the elimination of jurisdiction had done was to place the fourteen top-ranking Jagirdars alongside their 113 fellows in the Settlement's Fifth Class, giving the Jadeja Court authority to decide *all* civil and criminal questions that arose in their estates rather than merely the ones beyond their jurisdictional capacity. (It will be borne in mind that four of the five members of the Court were drawn from the Bhayat.) Executive power was still in the hands of the Bhayat, whose members retained the British guarantee of their full enjoyment of their possessions.

In sanctioning the withdrawal of jurisdictional powers, the Political Department had also signalled its approval of a financial settlement with the Bhayat, meaning some means of transferring to the Maharao's government at least part of the revenue collected by the Jagirdars from the people of their estates.⁷⁸ In November 1945, Hancock, the Maharao, and the principal officials of the State agreed that each guarantee-holder would henceforth pay a percentage of his revenues as an annual contribution towards the cost of administrative services of the State, the scale being graduated according to income. To support the State finances until the rate could be determined, the ten wealthiest Jagirdars of Mehta's second report were to pay an immediate levy. The Political Department's only worry was that if a member of the Bhayat refused to pay his contribution, and

the Kutch State took the normal action in cases of non-payment of taxes and seized his land, the affected Jagirdar might invoke the British guarantee of his Apossessions. Vijayarajji's government assured Delhi that the Paramount Power had long ago approved the State's taking such action against guarantee-holders who were debtors, and in November 1946 the Secretary of State assented to the new financial arrangements.⁷⁹

Meanwhile, the Maharao and his Dewan Nayampalli had continued the attack on the judicial powers of the Bhayat. Those powers had given Kutch two parallel court systems. In the Khalsa areas, the Maharao chose the judges of the lower civil and criminal courts of the subdivisions of the State, and of the Varishth Adalat or High Court. He himself served as the highest court of appeal, although he customarily let the Dewan decide appeals. In areas controlled by the Bhayat, on the other hand, the Jadeja Court took the place of the lower and Varishth Courts; appeals again lay to the Maharao, with a Jagirdar enjoying a second appeal to the Paramount Power in Acases involving the possession of land and his old right of dues. The Maharao had to confirm all sentences of death or of transportation for life, and of imprisonment for fourteen years or more, from both the Varishth Adalat and the Jadeja Court.⁸⁰

The withdrawal of judicial powers from the fourteen jurisdictional members of the Bhayat

⁷⁸ Coke Wallis (for Griffin) to Hancock, 19 July 1945, OIOC, R/1/1/4291.

⁷⁹ See Hancock to Griffin, 3 Nov. 1945; J.S.H. Shattock (Political Department) to Hancock, 27 Feb. 1946; Hancock to Griffin, 17 Apr. 1946; Griffin to Secretary, Political Department, India Office, 16 Sept. 1946; Chisholm (India Office) to Griffin, 24 Nov. 1946; and Creagh Coen to Hancock, 18 Dec. 1946, all OIOC, R/1/1/4291. The new arrangements were officially announced by a Notification of Nayampalli's in early 1947; see Hancock to Griffin, 29 Jan. 1947; and Creagh Coen to Hancock, 17 Feb. 1947, both *ibid*.

⁸⁰ For a brief sketch of the judicial system in Kutch, see *Imperial Gazetteer of India* (26

had raised a question that the Paramount Power may not have foreseen. As an officer of the Political Department commented some months later, if an individual Jagirdar was considered incapable of administering justice to the inhabitants of his own estate, why did he become capable once he sat with three of his peers in the Jadeja Court?⁸¹ Presumably in anticipation of this realisation, Vijayarajji and Nayampalli had prepared a plan for overhauling the State judicial system even before Wavell approved the withdrawal of individual jurisdiction. It involved adopting the court structure of British India, replacing the Maharao's lower courts and the Jadeja Court with District and Sessions Courts, and the Maharao's Varishth Adalat and personal appeals court with a new State High Court. Judges at both levels would be expected to meet the qualifications of their counterparts in British India.⁸² This would leave no room for the amateur judges of the Bhayat.

Hancock strongly supported the proposed reforms, which were duly approved by the Political Department and the Secretary of State. Despite Nayampalli and Hancock's wishes to the contrary, Delhi and Whitehall insisted on maintaining the right of the Bhayat to appeal to the Paramount Power. After some negotiation, however, they agreed to water down the guarantee: the old right to an appeal in any case involving the possession of land and [a Jagirdar's] old right of dues was changed to an appeal only when his property is interfered with *arbitrarily* by the State. With this reservation, the Kutch Bhayat Settlement was abrogated at the end of 1946, and the Jadeja Court was abolished.⁸³

volumes, Oxford, 1907-1909), 11:82-83.

⁸¹ Notes by Shattock, 13 Oct. 1945, OIOC, R/1/1/4319.

⁸² Nayampalli to Fell, 7 May 1945, OIOC, R/1/1/4319.

⁸³ Hancock to Griffin, 15 Sept. 1945 and 19 Mar. 1946; Shattock (for Griffin) to

VI

By early 1947, the Kutch Bhayat had lost their fiscal autonomy and their judicial functions. The only remnant of their special status was the guarantee of an appeal. This lapsed on the ending of British Paramountcy on 14 August 1947, and the Bhayat entered independent India (to which Vijayarajji had acceded on 11 August) as nothing more exalted than ordinary landlords, administering their estates and collecting revenue on the sufferance of the Maharao. Vijayarajji had finally attained mastery of Kutch, 128 years after the Treaty of 1819 had enshrined the effective division of his State into two parts.

I have suggested that the reason the British Paramount Power came to accept a reduction in the rights of the Kutch Jagirdars during the 1940s was the attempt to strengthen Kutch so as to improve its chances of surviving as a separate monarchical State after the end of British rule. As with all of the Indian States, this attempt failed. By the end of 1947, the new government of India had reversed earlier promises to maintain Princely autonomy, and had begun the two-year-process of merging the States into the former Provinces of British India, or integrating groups of States into new units. Maharao Vijayarajji died in February 1948. His son Madansinhji ruled for just three months before he was compelled to hand over his government to a Chief Commissioner appointed by the government in Delhi. Kutch retained its political identity until 1956, as what would today

Hancock, 5 July 1946; E.F. Lydall (Secretary to Resident at Baroda and for the States of Western India and Gujarat) to Griffin, 30 July 1946; Griffin to Secretary, Political Department, India Office, 16 Sept. 1946; Chisholm to Griffin, 27 Sept. 1946; Creagh Coen (for Griffin) to Hancock, 18 Dec. 1946; Notification by Nayampalli, undated [Dec. 1946], all OIOC, R/1/1/4319. The italics in the quotation are mine. BThe Kutch Bhayat Settlement had given the guarantee-holders a right of appeal to the Government of Bombay; this was transferred to the Government of India

be called a Union Territory, but the rule of the Jadejas was over. Within a short time, independent India's policy of Zamindari Abolition had also ended the existence of the estates of the Bhayat.⁸⁴

Historians who justify the study of the past on the basis of its relevance to the present will find an examination of the relations between the Maharaos of Kutch and their Bhayat to be pretty pointless. But many of us with an interest in the Indian States reject that view of history. I would suggest that this paper has done several things. In the first place, it has illustrated yet again the Rulers' constant pursuit of *izzat* and the maintenance of various forms of sovereignty, and the Paramount Power's shifting conceptions of the control that *it* sought to uphold. In 1819, the object was to gain control of Kutch, which necessitated giving the guarantee to the Bhayat (the perception of a necessity is not in doubt, although as I have suggested just how it was thought to operate is unclear). In the 1860s and on to the institution of the Kutch Bhayat Settlement in 1877, what the British wanted to control was India as a whole, by keeping élites of various descriptions more or less content with their rule. By 1942, the end of British rule was in sight; now, the idea was simply to control the situation as well as could be done, and one element of this was maintaining past undertakings to the Indian States by taking steps to assure their survival in an independent India.

Beyond this, my paper has shown just how important the judiciary could be in Princely India. In the 1860s and 1870s both the Political Agent Major Shortt and the authors of the Kutch Bhayat Settlement took the view that the exercise of judicial powers was the most important element

in 1924 and the Crown Representative in 1937.

⁸⁴ In Jaipur, matters took a different course. The last stand of the Jagirdars, the Sikar agitation, was overcome in 1938. The Jaipur state thereafter had eleven years before the merger of the State in 1949 in which to centralise power at the expense of the Jagirdars, as compared to

of the independence of the Bhayat. In the 1870s and again in the 1940s, lengthy and expensive enquiries were held to determine just which nobles could actually exercise those powers. For the Kutch Darbar, the question was never really whether the guarantee holders were qualified to exercise jurisdictional powers, but whether anyone besides the Maharao should. The very first step in Maharao Vijayarajji's goal of exercising full sovereignty over Kutch was eliminating the Bhayat's jurisdiction, both individual and through the Jadeja Court; and the Kutch authorities' interest in Popat's death was clearly motivated as much by politics as by a desire to see justice done.

In other words, all parties were apparently agreed that operating a court system was the most important single symbol of autonomy or sovereignty, and the law was an arena for political conflicts as well as purely legal ones. This may surprise us at first, until we remember that in a society where there are no social programmes, little public education, and few large-scale public works, and where armed forces are almost unknown, the courts are often the only branch of the government with which people regularly come into contact (besides the tax-collector).

We have also seen another aspect of the judiciary, which may be equally surprising. This is the degree to which the law seems to have been accepted as the legitimate arbiter of disputes. Thus, the father of Popat obtained the assistance of a lawyer in Bombay to reopen the investigation into his son's death. The Roha police officers exercised their right to appeal against their conviction by the Jadeja Court. When Hamirsinhji was called before the Commission of Enquiry, he hired a lawyer to represent him; and perhaps the sequel to this in a way helps explain why the legal system was accepted, when the lawyer's attempt to exempt the Jagirdar from the jurisdiction of the Commission

backfired rather badly. In any case, the rise and fall of the Kutch Bhayat is closely bound up with the judicial system, and I hope that my paper has shed light on two aspects of the history of Princely India. One is the relationship between Indian Princes and their nobles, and the ways in which this changed through the interaction of those two parties and of the British Paramount Power.

The other is the workings of the law in Princely India, as both a symbol of sovereignty and a basis of *izzat* and as an accepted means of resolving conflict.