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Judging the Judge: Judicial Competence in 19th Century Iran

Zahir BHALLOO

Abstract: This paper investigates the impact of the dominant Imāmī Šī‘ī Uṣūlī doctrinal model in nineteenth century Iran of the jurist (*muḡtahid*) as arbiter (*qāḍī al-taḥkīm*) on judicial practice. By drawing on a “litigant archive” from this period, I discuss one problem that emerged from the dominant doctrinal model. It became possible for litigants to challenge the validity of a *ḥukm* by claiming they did not recognize the scholar who issued the *ḥukm* to be a *muḡtahid* and hence judicially competent. This ultimately forced Uṣūlī writers to come up with a juridical framework where one recognized *muḡtahid* would have to confirm the emergence of another one in cases where a scholar’s juristic qualifications (*iḡtihād*) were challenged. In practice, as I demonstrate, even if a scholar’s judicial competence as a *muḡtahid* was confirmed by another recognized *muḡtahid*, it was still no guarantee that the scholar’s *ḥukm* would be enforced.

Keywords: Decentralization, judicial competence, *qāḍā’*, Uṣūlī, mujtahid, judgement, Qājār, Iran.

Résumé : Cet article examine l’impact du modèle doctrinal chiite imamite uṣūlite, dominant dans l’Iran du XIX^e siècle, selon lequel le juriste qualifié (*muḡtahid*) agissait comme arbitre (*qāḍī al-taḥkīm*) dans la procédure judiciaire. M’appuyant sur des « archives de plaideur » datant de cette période, j’analyse un des problèmes posés par ce modèle. Il était possible, pour les plaideurs, de remettre en cause la validité d’un *ḥukm* en prétendant ne pas reconnaître comme *muḡtahid*, et donc comme judiciairement compétent, le savant qui l’avait prononcé. Ceci obligea les auteurs uṣūlites à développer un cadre juridique dans lequel un *muḡtahid* reconnu devait confirmer le statut d’un autre dans le cas où les qualifications juridiques (*iḡtihād*) de ce dernier se verraient contestées. Je démontre qu’en pratique, même si la compétence judiciaire d’un savant *muḡtahid* était confirmée par un autre *muḡtahid* reconnu, l’application du *ḥukm* prononcé par le savant n’était pas garantie.

Mots-clés : Décentralisation, compétence judiciaire, judicature, uṣūlī, *muḡtahid*, jugement, Qadjars, Iran.

الملخص : يبحث هذا المقال في تأثير النظرية الإمامية الشيعية الأصولية وهو النموذج المذهبي الذي كان سائداً في إيران خلال القرن التاسع عشر حيث كان يسمح للمجتهد القيام بدور المحكم (قاضي التحكيم) في الإجراءات القضائية. واستناداً إلى السجلات القضائية التي تعود إلى تلك الفترة أقدم تحليلاً لإحدى المشاكل التي يسببها هذا النموذج إذ كان بإمكان الخصوم إعادة النظر والتشكيك بصحة الحكم وذلك عبر الادعاء بأن من أصدر الحكم غير معترف به كمجتهد وبالتالي غير مؤهل قضائياً. لذلك اضطرّ المؤلفون الأصوليون إلى الخروج بإطار فقهي جديد يكون فيه على المجتهد المعترف به أصلاً التأكيد على أهلية مجتهد آخر تعرضت مؤهلاته القانونية (اجتهاد) للطعن. ويظهر المقال أنه من الناحية العملية حتى لو تمّ التأكيد على أهلية أحد المجتهدين من قبل مجتهد آخر معترف به فإن ذلك لا يضمن الأخذ بالحكم الذي أصدره.

الكلمات المحورية : لامركزية، الصلاحيات القضائية، القضاء، الأصوليون، المجتهد، الحكم، الدولة القاجارية، إيران.

N. Calder's seminal 1980 thesis explored for the first time the distinctive Imāmī or Twelver Šī'ī conception of judicial administration. Unlike Sunnī judicial theory which stressed the necessity of judicial appointment (*tawliya*) by the *de facto* political power, the Imāmīs from the very beginning considered judicial appointment by any authority other than the Imām or his representative illegitimate. While the Imām was present, he or his representative would directly appoint *šar'ī* judges (*qaḍī-s*). During the Imām's absence, judicial authority (*wilāyat al-qaḍā'*) based on authoritative texts — reports narrated from the Sixth Imām Ja'far al-Šādiq (d. 148/765) — was interpreted to have been delegated to Imāmī scholars (*'ulamā'*) who possessed the requisite qualities (*šarā'it*) for judicial activity (*qaḍā'*).¹

Precisely what these requisite qualities were was repeatedly debated by Imāmī writers. The Uṣūlīs held that the scholar had to possess the qualities of a jurist (*muḡtahid*) in order to exercise valid judicial activity.² The Aḥbārī school, a movement which rose to prominence in the eleventh/seventeenth century, placed greater emphasis on the scholar's ability to read, interpret and transmit the reports (*aḥbār*) of the Twelve infallible Šī'ī Imāms.³ The Aḥbārīs, like the earliest Imāmī writers, did not consider it necessary for a *šar'ī* judge to be a *muḡtahid*.⁴

Though the Uṣūlī and Aḥbārī positions may have differed on the requisite qualities a scholar required to exercise valid judicial activity, both held that judicial appointment by *de facto* governments was a usurpation of the prerogative of the Imām. Nevertheless as Calder and Gleave have demonstrated, Uṣūlī and Aḥbārī writers did try to find ways to accommodate, at various times, centralized state-sponsored judicial administration. This was done through recourse to concepts such as dissimulation (*taqīya*) and the distinction between rulers who were illegitimate (*ḡā'ir*) and oppressive (*zālim*) and those who were illegitimate (*ḡā'ir*) but just (*'ādil*).⁵

While the attempts made by Imāmī writers to accommodate a centralized judicial administration due to the exigencies of the Mongol or Safavid state has received some attention, another doctrinal trend, which seems to have its origins among Uṣūlī writers in the Safavid period, has yet to be examined. The focus of this line of reasoning was to accommodate the arbitration (*taḥkīm*) of the jurist (*muḡtahid*) into Imāmī Uṣūlī theory.

This decentralizing current seems to have reached its height in the Qāḡār era (1785-1925). As in the case of judicial appointment by the *de facto* political power, however, judicial 'appointment' by individual litigants was seen to be a usurpation of the Imām's prerogative. Nevertheless it was argued that if the arbiter (*qaḍī al-taḥkīm*) possessed the qualities of a jurist or *muḡtahid* then his arbitration (*taḥkīm*) was valid. This is because though

1. CALDER 1980, p. 70-73 and TYAN 1960, p. 177.

2. GLEAVE 2007, p. 237-238.

3. GLEAVE 2007, p. 239.

4. CALDER 1989, p. 59-60.

5. CALDER 1987, p. 92-96 and GLEAVE 2007, p. 249-251.

the scholar was in practice mutually ‘appointed’ by the litigants (*marḍī al-ṭarafayn*) to act as an arbiter, in reality, due to his possession of the requisite qualities, his ‘appointment’ derived from the reports of delegation by the sixth Imām.

It is not clear when this Uṣūlī theoretical accommodation of the validity of the arbitration (*taḥkīm*) of the *muḡtahid* began to affect actual judicial practice. In the Safavid era, it seems this doctrine, which effectively proposed a decentralized system of private ‘ulamā’-run šarī acourts of arbitration and settlement, may not yet have been as influential as its alternative: an ‘accommodated’ centralized state-sponsored judicial administration.

With the fall of the Safavid dynasty in 1722, however, and in particular in the aftermath of the Uṣūlī doctrinal victory over the Aḥbārī school in the mid-eighteenth century, the role of the jurist as arbiter was now debated by Uṣūlī jurists in a way that had hitherto not occurred. Many procedural questions remained unresolved, in particular, those relating to the shift in the nature and function of the *ḥukm* in litigation. The *ḥukm* was no longer the final judicial decision of an appointed Imāmī *qāḍī* in a lawsuit. The workings of the ‘*ḥukm*’ of the Uṣūlī *muḡtahid* in his role as an independent arbiter (*qāḍī al-taḥkīm*) now had to be clarified. Could a non-*muḡtahid* act as an arbiter? Equally important, the jurisdiction of the Uṣūlī *muḡtahid* asked to act as an arbiter over criminal matters had to be defined more clearly than had been done previously.⁶

It seems that it was through discussions on such procedural questions that an early notion of a hierarchy of most learned (*a’lam*) Imāmī clerics who would act as sources of religious emulation (*marḡa’ al-taqlīd*) developed in the Qāḡār era and the groundwork was laid for an extension of the jurist’s authority over political affairs central to Ḥumaynī’s doctrine of *wilāyat al-faqīh*.

The aim of this essay, however, will be to assess in a preliminary way what impact the dominant Qāḡār Uṣūlī doctrinal model of the *muḡtahid* as arbiter had on the status and function of the *ḥukm* in Qāḡār šarī’a litigation. I propose to do this by drawing on a ‘litigant archive’ from this period. One problem that emerged from the dominant doctrinal model was that it became possible for litigants to challenge the validity of a *ḥukm* by claiming they did not consider the cleric who issued the ruling to be a *muḡtahid*. This ultimately forced Qāḡār era jurists to come up with a procedural framework for decentralized judicial practice where recognized *muḡtahid*-s would have to decide on the *iḡtihād* of a given cleric if it was challenged in a dispute. In practice, as I hope to demonstrate, the certification of a cleric’s *iḡtihād* by a recognized *muḡtahid* was still no guarantee that the cleric’s *ḥukm* would be enforced.

6. See for example Al-Šaftī, *Maqāla fī taḥqīq iqāmat al-ḥudūd*.

1. The Dirāzġīsū *sayyid*-s versus ‘Abbās Ḥān Qāġār

The problem of *iġtihād* was central to a land ownership dispute that occurred in mid-nineteenth century Iran between a local group of descendants of the Prophet (*sayyid*-s) known as the Dirāzġīsū and ‘Abbās Ḥān Qāġār Bēġlerbēġī, the governor of Astarābād.⁷ The Dirāzġīsū claimed that two villages in ‘Abbās Ḥān’s possession, Čūplānī and Mīr-Maḥalla, located outside the town of Astarābād, were part of an endowment (*waqf*) founded in the Safavid period by their ancestor, Mīr Rūḥullāh al-Ḥusaynī. As the hereditary trustees and beneficiaries of Mīr Rūḥullāh’s *waqf*, the *sayyid*-s challenged ‘Abbās Ḥān’s possession of the two villages.⁸

Litigation by the *sayyid*-s focused on the *ḥukm*-s of two clerics who supported their claim to ownership. The first *ḥukm* was issued by a cleric based in Iṣfahān named Āqā Muḥammad Mahdī (d. 1278/1861-62). Āqā Muḥammad Mahdī was little known in Astarābād, but he had exceedingly good connections. He was the son-in-law of Muḥammad Bāqir Šaftī (d. 1260/1844) and the son of Muḥammad Ibrāhīm Kalbāsī (d. 1261/1844-45). Šaftī and Kalbāsī were both renowned jurists living in Iṣfahān.⁹ The second *ḥukm* had been issued by a revered, but by the time of litigation, dead local cleric of Astarābād named Ḥāġġī Mullā Riḍā Astarābādī (d. c. 1251/1835).

In what follows, I will use documents¹⁰ from the archive of the Dirāzġīsū *sayyid*-s to reconstruct their *šarī’a* litigation in the dispute, from around 1251-1267/1835-1850, in response to ‘Abbās Ḥān’s refusal to acknowledge the *iġtihād* of Āqā Muḥammad Mahdī and Ḥāġġī Mullā Riḍā Astarābādī and hence the validity of their *ḥukm*-s.

2. The *ḥukm* of Āqā Muḥammad Mahdī

Stage 1: Šaftī’s endorsement

The earliest dated document that sheds light on Dirāzġīsū *šarī’a* litigation against ‘Abbās Ḥān is a transcript of Āqā Muḥammad Mahdī’s *ḥukm*.¹¹ The *ḥukm* is dated 25 Muḥarram 1251/23 May 1835. It certifies the claim of the Dirāzġīsū *sayyid*-s. Čūplānī and Mīr-Maḥalla were *waqf* and belonged to them. The text of the ruling is neither preceded by a summary

7. Modern day Gurgān in North Eastern Iran.

8. The lands belonging to Čūplānī and Mīr-Maḥalla were used to cultivate husked rice (*šaltūk*). Their boundaries, water rights and ownership were repeatedly contested since Safavid times, see *Az Āstārā*, VIII, p. 222-230.

9. For Šaftī see Tunikābunī, *Qiṣaṣ al-‘ulamā’*, p. 135-168 and SCHNEIDER 2002. For Kalbāsī (also Karbāsī), see Tunikābunī, *Qiṣaṣ*, p. 117-122 and Al-Ḥwānsārī, *Rawḍat al-Jannāt*, I, p. 83-89.

10. The Dirāzġīsū documents were transcribed in the 1970s and published by Manūčihir Sutūda and Masīḥ Ḍabīhī, see *Az Āstārā*, VI and VII.

11. For the text of the *ḥukm*, see *Az Āstārā*, VI, p. 213-214.

of claims made by the claimant nor the reply of the defendant.¹² This suggests that the *ḥukm* was probably issued in the absence of the defendant, ‘Abbās Ḥān.¹³

There is no evidence to indicate that Āqā Muḥammad Mahdī was an appointed judge in Isfahan.¹⁴ In practice, as an independent scholar, Āqā Muḥammad Mahdī’s judicial authority was therefore largely based on his perceived legal qualifications and the willingness of the Qāḡār authorities to enforce his *ḥukm*. In theory, according to the dominant Uṣūlī doctrine, a scholar had to be a qualified jurist in order to issue a valid *ḥukm*. But was Āqā Muḥammad Mahdī a qualified jurist? The scribe who prepared the transcript of his *ḥukm* for the Dirāzgīsū certainly thought so. After quoting Āqā Muḥammad Mahdī’s name he adds the expression *muḡtahid al-‘aṣr wa-l-zamān* (the jurist of the age).¹⁵ As we shall see ‘Abbās Ḥān who probably received one of these transcripts was less certain.

An official decree (*farmān*) from the šāh in Tehran suggests that the *ḥukm* of Āqā Muḥammad Mahdī had no discernible effect in Astarābād.¹⁶ This is confirmed by an endorsement (*imḡā’-i ḥukm*) of the validity of Āqā Muḥammad Mahdī’s *ḥukm* dated 3 Ġumādā II 1253/4 September 1837.¹⁷ This endorsement, copied along with the text of Āqā Muḥammad Mahdī’s *ḥukm*, was issued by Āqā Muḥammad Mahdī’s father-in-law, Muḥammad Bāqir Šaftī. The fact that the Dirāzgīsū had to seek an endorsement of Āqā Muḥammad Mahdī’s *ḥukm* two years after it was issued, suggests that not everyone in Astarābād acknowledged Āqā Muḥammad Mahdī’s judicial authority. The endorsement by Muḥammad Bāqir Šaftī on the other hand was a different matter. Šaftī’s position as the pre-eminent jurist of Iran perhaps of the entire Šīr world meant the validity of his sentence was difficult, perhaps impossible, to challenge.

The timing of Šaftī’s endorsement could not have been better. ‘Abbās Ḥān was no longer in power in Astarābād.¹⁸ The new governor, Muḥammad Nāṣir Ḥān, belonged to the rival Develū Qāḡār clan. The Develū Qāḡārs had long fought ‘Abbās Ḥān’s Quyūnlū Qāḡār

12. If issued after litigation in which the two sides were present, the *ḥukm* was usually preceded by a summary of claims made by each side and evidence they had presented before the scholar, see WERNER 2000, p. 372-375 and *Panḡāh wa yak ‘arīḡa*, p. 29-39.

13. Imāmī scholars agreed that adjudication against an absent side was valid for civil claims. The absent side retained the right to have its evidence reviewed if it appeared in court (*yakūnu l-ḡā’ib ‘alā ḡuḡḡatihi law ḡaḡara*), see SANGALAḠĪ 1347/1968, p. 186-187. In the decentralized Qāḡār context, appearing in court meant submitting to the arbitration of a scholar both sides accepted, see *Tārīḡ-i Bigdīlī*, p. 292-293.

14. Al-Ḥwānsārī, *Rawḡat al-Jannāt*, I, 89. For Āqā Muḥammad Mahdī’s role in an endowment dispute in Tehran, see KONDO 2003, p. 119.

15. *Az Āstārā*, VII, p. 213.

16. *Az Āstārā*, VII, p. 143-144.

17. *Az Āstārā*, VII, p. 213-214. This transcript (*sawād*) of Āqā Muḥammad Mahdī’s *ḥukm* and the endorsement by Šaftī in the Dirāzgīsū archive must have been prepared before 1260/1844, when Šaftī was still alive, because the scribe adds the expression *dāma zilluhu wa zuyyida faḡluhu wa tawfiḡātuḡu* (may God extend his shadow and increase his prosperity and success) after Šaftī’s name.

18. ‘Abbās Ḥān’s rule over Astarābād lasted approximately four years from around 1833-1837, see *Az Āstārā*, VII, p. 143-144, p. 158 and I’timād al-Saltana, *Tārīḡ-i Muntazam-i Nāṣirī*, p. 1636.

clan for the governance of Astarābād.¹⁹ Muḥammad Nāṣir Ḥān was more sympathetic to the Dirāzgīsū cause. Provincial government decrees in the Dirāzgīsū archive suggest that ‘possession’ of the two villages was delivered to the *sayyid*-s shortly after Šaftī endorsed Aqā Muḥammad Mahdī’s *ḥukm*.²⁰

‘Abbās Ḥān could have challenged Aqā Muḥammad Mahdī’s *ḥukm* and even Šaftī’s endorsement by agreeing to submit to arbitration with the Dirāzgīsū.²¹ In general, when one side in a dispute had been able to legally certify their claim before a scholar, the other side had to submit to arbitration or negotiate an amicable settlement (*ṣulḥ*) in order to prevent confiscation of the disputed object. ‘Abbās Ḥān, however, did not agree to arbitration or an amicable settlement at this stage of litigation. It was a wise move. ‘Abbās Ḥān might have lost control of the two villages permanently if he risked a hasty arbitration after a jurist of Šaftī’s calibre upheld the Dirāzgīsū claim. There was also no need for an amicable settlement. As one Astarābādī cleric who supported ‘Abbās Ḥān noted, the Dirāzgīsū claim to Čūplānī and Mīr-Maḥalla rested entirely on the sentence of Muḥammad Bāqir Šaftī.²² This remark suggests that doubts about the validity of Aqā Muḥammad Mahdī’s own *ḥukm* had not yet been settled.

The problem only intensified after Muḥammad Bāqir Šaftī’s death in 1261/1844. Now that Šaftī was dead was Aqā Muḥammad Mahdī’s *ḥukm* still valid? Šaftī’s failure to explicitly clarify that Aqā Muḥammad Mahdī was a qualified jurist forced the Dirāzgīsū to return to Iṣfahān. The Dirāzgīsū would turn this time to Aqā Muḥammad Mahdī’s father, Muḥammad Ibrāhīm Kalbāsī. It was just as well. ‘Abbās Ḥān had exploited the opportunity presented by Šaftī’s death to ‘repossess’ Čūplānī and Mīr-Maḥalla.²³

Stage 2: Kalbāsī’s certification of iğtihād

The next stage of litigation by the Dirāzgīsū can be worked out from an important document in the Dirāzgīsū archive.²⁴ The document contains the text of a petition written by the Dirāzgīsū to Aqā Muḥammad Mahdī’s father, Muḥammad Ibrāhīm Kalbāsī. According to the petition, the Dirāzgīsū had enjoyed ‘possession’ of the two *waqf* villages

19. For the Quyūnlū-Develū Qāğār rivalry, see HAMBLY 1991, p. 104-43.

20. *Az Āstārā*, VII, p. 162. It is likely that the lands in fact remained in ‘Abbās Ḥān’s possession. ‘Abbās Ḥān was temporarily compelled, however, by the new provincial government to send the Dirāzgīsū a share of revenues and thus acknowledge their right to ‘ownership’ as the trustees and beneficiaries of Mīr Rūḥullāh’s *waqf*.

21. Muḥammad Nāṣir Ḥān did offer ‘Abbās Ḥān the option of arbitration with the Dirāzgīsū over their respective claims to the lands, see *Az Āstārā*, VII, p. 162.

22. *Az Āstārā*, VI, p. 229: “the basis of the ‘possession’ [of Čūplānī and Mīr-Maḥallah] by Sayyid Faḍlullāh [the Dirāzgīsū] was the *ḥukm* of the late Proof of Islam [Muḥammad Bāqir Šaftī] and nothing else, and that [*ḥukm*] has now become invalid” (*āqā sayyid faḍlullāh mustanad-i taṣarruf-i ū ḥukm-i marḥūm ḥuğğat al-islām būda u bas wa ān bī i’tibār šud*). This remark would also appear to suggest that endorsements were not considered to be valid after the death of a jurist in Qāğār *šarī’a* litigation.

23. *Az Āstārā*, VI, p. 215.

24. *Az Āstārā*, VI, p. 215-218.

for some years but after the death of Muḥammad Bāqir Šaftī, ‘Abbās Ḥān had ‘repossessed’ the villages without submitting to arbitration.²⁵

There is evidence from other documents in the Dirāzgīsū archive to suggest that several notable clerics of Astarābād and the Caspian region had issued ‘*ḥukm*-s’ which certified that Čūplānī and Mīr-Maḥalla belonged to ‘Abbās Ḥān.²⁶ These ‘*ḥukm*-s’ were probably identical to Aqā Muḥammad Mahdī’s ‘*ḥukm*’ to the Dirāzgīsū. They merely certified the claim of the claimant in the absence of the other side. Only the roles were reversed. It was ‘Abbās Ḥān this time who acting as the ‘claimant’ had presented his evidence to these clerics that the two villages were being illegally ‘possessed’ by the ‘defendant’ — the Dirāzgīsū.

This process could in fact go on for years with both sides collecting large numbers of such ‘*ḥukm*-s’ issued in the absence of the other side until they finally agreed to submit to arbitration or negotiate an amicable settlement (*ṣulḥ*). During this time the disputed object could change hands several times depending on the relative influence the litigants could bring to bear on the Qāḡār political authorities responsible for enforcement. The sharp distinction therefore between the ‘claimant’ and the ‘defendant’ in more centralized judicial systems such as in the Ottoman world quickly became blurred in the Qāḡār Iranian context.

The Dirāzgīsū petition to Muḥammad Ibrāhīm Kalbāsī is interesting because it suggests that had ‘Abbās Ḥān agreed to arbitration and won he was legally entitled to the lands. It was ‘Abbās Ḥān’s ‘repossession’ without recourse to arbitration (*bidūna tarāfu*) that was problematic for the Dirāzgīsū. In other words, though the judicial process was informal and therefore constantly negotiable, there was nevertheless a sense, among participants, of correct procedure.

As far as ‘Abbās Ḥān was concerned, however, Aqā Muḥammad Mahdī’s *ḥukm* which had allegedly established the Dirāzgīsū claim was not issued by a qualified jurist. The *ḥukm* was therefore invalid. It might have had some validity due to the endorsement by the well-known jurist Muḥammad Bāqir Šaftī. Now that Šaftī was dead, however, ‘Abbās Ḥān was free to ‘repossess’ the lands based on *ḥukm*-s he had obtained certifying the two villages were private property. There was no need for recourse to arbitration.

It is this reasoning which explains the second part of the petition of the Dirāzgīsū to Aqā Muḥammad Mahdī’s father, Muḥammad Ibrāhīm Kalbāsī. The Dirāzgīsū wanted to know whether Aqā Muḥammad Mahdī’s *ḥukm* was still valid after Šaftī’s death and hence that ‘Abbās Ḥān’s ‘repossession’ without recourse to arbitration was illegal. What the Dirāzgīsū were after was an explicit certification from Kalbāsī that his son, Aqā Muḥammad Mahdī, was a qualified jurist and thus capable of *independently* issuing a valid *ḥukm* (*nāfiḍ al-ḥukm*).

Kalbāsī provides the Dirāzgīsū with precisely the certification they required. Kalbāsī notes that after the death of Muḥammad Bāqir Šaftī he considered Aqā Muḥammad Mahdī to be the most knowledgeable (*al-lam*) scholar alive in jurisprudence (*fiqh*). Kalbāsī also

25. Az *Āstārā*, VI, 215.

26. Az *Āstārā*, VI, p. 229 and Az *Āstārā*, VII, p. 584.

references a section of the famous report of ‘Umar b. Ḥaṇẓala from the sixth Šī‘ī Imām Ḡa‘far al-Šādiq (d. 148/765) which according to Uṣūlī doctrine established the judicial authority of the qualified jurist.²⁷ By referencing this report Kalbāsī was making it clear that Aqā Muḥammad Mahdī was a qualified jurist. According to Kalbāsī this meant that Aqā Muḥammad Mahdī’s rulings were always (*har-gāh*) legally valid and binding (*lāzim al-ittibā‘*).²⁸ The validity of Aqā Muḥammad Mahdī *ḥukm*, including his *ḥukm* to the Dirāzgīsū, was not contingent upon the endorsement of another living jurist like Šaftī.

Now that the Dirāzgīsū had confirmed that Aqā Muḥammad Mahdī was a qualified jurist whose *ḥukm* was valid, it did not matter whether Šaftī was dead or alive, ‘Abbās Ḥān would have no choice but to submit to arbitration. This at least is what the Dirāzgīsū hoped for at the end of this stage of litigation. Other documents in the Dirāzgīsū archive, however, suggest that getting ‘Abbās Ḥān to submit to arbitration using the *ḥukm* of Aqā Muḥammad Mahdī failed.²⁹

Though the Dirāzgīsū continued to maintain that Aqā Muḥammad Mahdī was a qualified jurist and that his *ḥukm* was valid, at least three documents suggest that the Dirāzgīsū were ultimately forced to devise a new plan of action against their opponent. This involved reviving a controversial *ḥukm* that had been issued in the 1790s by a local Astarābādī cleric, Ḥāğğī Mullā Riḍā Astarābādī.

The *ḥukm* of Ḥāğğī Mullā Riḍā Astarābādī

Stage 3: Certifying Ḥāğğī Mullā Riḍā Astarābādī’s iğtihād

The shift in the focus of the Dirāzgīsū litigation to the *ḥukm* of another cleric seems to be related to the main problem that had arisen in the dispute: what happened if one side considered a scholar to be a jurist and the other side did not? This was summed up later by the sentence ‘so and so does not recognise so and so to be a *muğtahid* but we do’.³⁰ It seems that ‘Abbās Ḥān’s continued refusal to accept that Aqā Muḥammad Mahdī was a qualified jurist, despite Kalbāsī’s certification, forced the Dirāzgīsū to look for a *ḥukm* issued by a cleric who ‘Abbās Ḥān did consider to be a jurist.

The cleric chosen by the Dirāzgīsū was Ḥāğğī Mullā Riḍā Astarābādī, an outstanding local scholar of Astarābād of the previous generation. Ḥāğğī Mullā Riḍā Astarābādī had issued a *ḥukm* in favour of the Dirāzgīsū claim against ‘Abbās Ḥān’s predecessors Riḍā Ḥān and Imām Qulī Ḥān.³¹ Since ‘Abbās Ḥān’s possession of the villages was derived from Riḍā

27. For the Arabic text and a translation of the report of ‘Umar b. Ḥaṇẓala, see CALDER 1980, p. 71-72. See also the translation in GLEAVE 2000, p. 119-120.

28. *Az Āstārā*, VI, p. 216.

29. See in particular *Az Āstārā*, VII, p. 584-585.

30. *Az Āstārā*, VII, p. 425: *fulān āqā rā fulānī muğtahid na-mīdānad mā-hā muğtahid mī-dānīm*.

31. *Az Āstārā*, VII, p. 444.

Ḥān and Imām Qulī Ḥan, it was argued that Ḥāḡḡī Mullā Riḍā Astarābādī's *ḥukm* applied to him as well.³²

Moreover most people in Astarābād could remember the fact that 'Abbās Ḥān had enforced some of Ḥāḡḡī Mullā Riḍā Astarābādī's *ḥukm*-s when he was in power as governor of Astarābād. This, at least for the Dirāzgīsū, was conclusive proof that 'Abbās Ḥān considered Ḥāḡḡī Mullā Riḍā Astarābādī capable of independently issuing a valid *ḥukm* and hence of being a qualified jurist.

In order to ensure 'Abbās Ḥān had no room to manoeuvre the Dirāzgīsū prepared a document³³ in which they requested the leading clerics of Astarābād to certify that Ḥāḡḡī Mullā Riḍā Astarābādī had issued a *ḥukm* in support of the Dirāzgīsū claim; that Ḥāḡḡī Mullā Riḍā Astarābādī was a qualified jurist and that 'Abbās Ḥān had enforced his *ḥukm*-s when he was alive (see fig. 1).

The certifications of the Astarābādī clerics in the document provides fascinating insight into what was understood by the term *muḡtahid* in the context of *ṣarī'a* litigation. Mullā 'Abbās 'Alī and Āqā Sayyid Muḥammad Mīr-Karīmī note for instance that Ḥāḡḡī Mullā Riḍā Astarābādī was a *muḡtahid* whose *ḥukm* was probative in the town of Astarābād.³⁴ Šarīatmadār Ahūnd Mullā Muḥammad 'Alī Ašrafī felt that Ḥāḡḡī Mullā Riḍā Astarābādī was someone whose *ḥukm* was probative throughout the province (*wilāya*) of Astarābād.³⁵ The most generous description comes from 'abduhu 'abbās 'alī who says Ḥāḡḡī Mullā Riḍā's *ḥukm* was probative (*nāfiẓ*) in all places.³⁶ These certifications suggest an implicit acknowledgement that clerics who were only locally recognised as *muḡtahid*-s were not in fact capable, in practice, of issuing a *ḥukm* in litigation that was probative beyond their home-town or region.

The certifications of the Astarābādī clerics also suggest that there was a perceived link between the enforcement of *ḥukm*-s and a scholar's status as a *muḡtahid*. Mullā 'Alī Akbar notes for example that Ḥāḡḡī Mullā Riḍā Astarābādī possessed all the qualities of a *muḡtahid* and his *ḥukm* in litigation was valid.³⁷ Mullā 'Alī Akbar notes further that not only did he personally follow Ḥāḡḡī's *ḥukm*-s but he had occasion to enforce them upon others.³⁸ In other words the practical enforcement of a scholar's *ḥukm* was an important indication in this period that he had achieved the rank of a *muḡtahid*. More importantly if you enforced a scholar's *ḥukm* it meant you acknowledged he was a *muḡtahid*. This is precisely what some of the other Astarābādī clerics confirmed with regard to 'Abbās Ḥān. 'Abbās Ḥān used to enforce Ḥāḡḡī's *ḥukm*-s when he was the governor of Astarābād. In fact he even enforced

32. Az Āstārā, VII, p. 445.

33. Az Āstārā, VII, p. 248-252.

34. Az Āstārā, VII, p. 250: *marḥūm ḥāḡḡī muḡtahid wa nāfiḍ al-ḥukm dar astarābād būd.*

35. Az Āstārā, VII, p. 250: *dar īn wilāyat nāfiḍ al-ḥukm būdand.*

36. Az Āstārā, VII, p. 251: *dar īn wilāyat wa sā'ir-i buldān bi-lā rayb wa šakk.*

37. Az Āstārā, VII, p. 252.

38. Az Āstārā, VII, p. 252: *ḥukm-i ū rā bar ḥūd wa ghayra jāri mī-namūdām.*

the *ḥukm*-s of clerics of lower rank (*past-tar*).³⁹ There could be no doubt therefore that ‘Abbās Ḥān considered Ḥāğğī Mullā Riḍā Astarābādī capable of independently issuing a valid *ḥukm* in litigation (*nāfiḏ al-ḥukm*) and hence of being a *muğtahid*.⁴⁰

	Astarābādī ‘ulamā’	Certification of the issuance of the <i>ḥukm</i> by Ḥāğğī Mullā Riḍā	Certification Ḥāğğī Mullā Riḍā was a <i>muğtahid</i> / <i>nāfiḏ al-ḥukm</i>	Certification of ‘Abbās Ḥān’s recognition of Ḥāğğī Mullā Riḍā’s <i>iğtihād</i> /enforcement of his <i>ḥukm</i> -s
1.	Āqā Sayyid Ğā’far al-Ḥusaynī	x	-	x
2.	Naşrullāh al-Ḥusaynī	x	-	-
3.	Mullā ‘Abbās ‘Alī	x	x	x
4.	Mullā Riḍā ‘Alī Čiyākandī	x	x	x
5.	Mullā Aḥmad	x	x	x
6.	Āqā Sayyid Muḥammad Mīr-Karīmī	x	x	x
7.	Āqā Sayyid Taqī Mīr-Karīmī	-	x	-
8.	‘Abduhu ‘Abbās ‘Alī 1241	x	x	-
8.	Mullā Ishāq	x	x	-
9.	‘Abduhu al-Rāğī Mullā Riḍā	x	-	-
10.	Šarī’atmadār Āḥūnd Mullā Muḥammad ‘Alī Ašrafī	x	x	-
11.	Muḥammad Taqī	x	x	-
12.	Mullā ‘Alī Akbar	x	x	-

Fig. 1 – x = Certifications by the ‘ulamā’ of Astarābād

Remarkably despite these certifications, in 1264/1848 and again two years later in 1267/1850-1851, the Dirāzgisū were still asking local Astarābādī scholars to confirm that Ḥāğğī Mullā Riḍā Astarābādī was a qualified jurist capable of independently issuing a valid *ḥukm* (*nāfiḏ al-ḥukm*).⁴¹ The new certifications one again emphasised that Ḥāğğī Mullā Riḍā Astarābādī was a scholar whose *ḥukm*-s were being acted upon.⁴² Whereas the certification of Aqā Muḥammad Mahdī’s *iğtihād* was probably required because he was a relatively unknown scholar living far away, Ḥāğğī Mullā Riḍā Astarābādī according to the biographical sources had been one of the leading clerics of Astarābād.⁴³ He had been a student of Bihbahānī (d. 1205/1791), the leading Uşūlī jurist in Iraq.⁴⁴ When Ḥāğğī Mullā Riḍā returned home from his studies he took an active part in the *šarī’a* affairs of Astarābād

39. Az Āstārā, VII, p. 250.

40. Az Āstārā, VII, 249: wa ‘abbās ḥān iṣān rā muğtahid-i nāfiḏ al-ḥukm mī-dānistān šakkī wa šubha-ī nīst.

41. Az Āstārā, VI, p. 219-220 and Az Āstārā, VII, p. 179.

42. Az Āstārā, VII, p. 179: aḥkām-i iṣān [...] ma ‘mūl būd.

43. Al-Astarābādī, Šarḥ-i ḥāl-i ‘ulamā’, p. 149-154.

44. Al-Astarābādī, Šarḥ-i ḥāl-i ‘ulamā’, p. 150. For Bihbahānī see Tunikābunī, Qīṣaṣ, p. 198-204 and ALGAR 1989, p. 98-99.

but does not seem to have been formally called a *muḡtahid* by his contemporaries, as some scholars were when they returned to Iran.⁴⁵

During the late eighteenth and early nineteenth century, when Ḥāḡḡī Mullā Riḍā Astarābādī was active, the term *muḡtahid* was still reserved for a handful of leading Uṣūlī scholars even though it became more widely applied during the course of the nineteenth century.⁴⁶ This might explain why, especially after Ḥāḡḡī Mullā Riḍā Astarābādī's death, it became possible to challenge his status as a *muḡtahid*.

The fact that Ḥāḡḡī Mullā Riḍā Astarābādī was not formally called a *muḡtahid* by his contemporaries during his lifetime does not of course mean he was not a qualified jurist. This seems to have been the Dirāzgīsū argument. The Dirāzgīsū were keen to obtain certifications of Ḥāḡḡī Mullā Riḍā Astarābādī's *iḡtihād* from the few remaining Astarābādī clerics who still remembered him. One of them, a contemporary of Ḥāḡḡī Mullā Riḍā Astarābādī, certified that he had not seen any one doubt Ḥāḡḡī Mullā Riḍā Astarābādī's *iḡtihād* when Ḥāḡḡī was alive.⁴⁷

The Dirāzgīsū were in fact largely successful in establishing Ḥāḡḡī Mullā Riḍā Astarābādī's credentials as a qualified jurist. Doubts over Ḥāḡḡī Mullā Riḍā Astarābādī's *iḡtihād* did not emerge in subsequent litigation. As it became impossible to challenge the validity of Ḥāḡḡī Mullā Riḍā Astarābādī's *ḥukm* on the basis of his qualifications as a jurist, litigation in the next and final stage of the dispute centred on the circumstances in which the *ḥukm* had been issued. This proved to be a far more difficult problem to resolve. The doctrinal blurring of the roles of the *qāḍī* and the *muftī* in the figure of the independent Uṣūlī scholar jurist (*muḡtahid*) made it easier to challenge the probative force of *ḥukm*-s. This was especially the case when the scholar who issued the ruling was dead and it was not explicit from the text of the *ḥukm* whether he had acted as a *qāḍī* or a *muftī*.

Like Aqā Muḥammad Mahdī, Ḥāḡḡī Mullā Riḍā Astarābādī was approached by the Dirāzgīsū as an independent scholar. If so then his *ḥukm* to them was either to be construed as the opinion of a qualified jurist or the legal certification of the claim of one side issued in the absence of the other side, or the outcome of arbitration with both sides present. Though a legal certification of a claim issued in the absence of one side (*ḥukm bar ḡā'ib*) was considered valid, it was reversible if the absent side agreed to submit to arbitration and won or if the two sides negotiated an amicable settlement. Conversely a *ḥukm* that was the outcome of arbitration with both sides present (*dar ḥuḍūr-i ṭarafayn*) was not easily reversible and, at least in theory, brought closure to the dispute.

For the Dirāzgīsū, Ḥāḡḡī Mullā Riḍā Astarābādī's *ḥukm* had been issued to them as the outcome of arbitration with both sides present. It had thus settled the dispute decisively in their favour. 'Abbās Ḥān's descendants argued however that it was merely Ḥāḡḡī's non-

45. See the example of Mīrzā Aḥmad (d. 1265/1848-49), who is called a *muḡtahid* by his contemporaries and in official documents when he returned from Iraq to his home-town Tabrīz, in WERNER 2000, p. 240.

46. WERNER 2000, p. 239-241.

47. Az *Āstārā*, VII, p. 252.

binding opinion to the Dīrāzġīsū on the case.⁴⁸ Since the text of the *ḥukm* was ambiguous⁴⁹ and the circumstances in which it had been written could not be easily worked out, the Dīrāzġīsū were ultimately left with no choice but to negotiate an amicable settlement (*ṣulḥ*) with ‘Abbās Ḥān’s descendants on largely unfavourable terms.⁵⁰

Conclusion

Judicial appointment was the prerogative of the Šī‘ī Imām or his representative (*nā‘ib*) not *de facto* governments.⁵¹ During the Imām’s absence it was a scholar’s possession of the requisite qualities for judicial activity which rendered his acts valid.⁵² For the dominant Uṣūlī school of Twelver Šī‘ī jurisprudence these were the qualities possessed by the qualified jurist or *muḡtahid*.⁵³

According to the Safavid era Uṣūlī writer, Šahīd II (d. 960/1559), whether a given scholar possessed the requisite qualities of a *muḡtahid* was to be established via the testimony of two just witnesses (*bi-šahādat ‘adlayn*) or the common report of a group (*šiyā’*) whose truth-telling prevailed as a supposition.⁵⁴ The testimony in both cases did not have to be validated before a judge such that one judge confirmed the emergence of a new judge.⁵⁵ The judicial competence of the scholar simply became established for all those who heard the testimony of the witnesses regarding it.⁵⁶

If ‘Abbās Ḥān had become aware either through common report or the testimony of two just witnesses that Aqā Muḥammad Mahdī and Ḥāġġī Mullā Riḍā Astarābādī were *muḡtahid*-s, he clearly denied it. This was clearly a problem with the informal process envisaged by Šahīd II. Qāḡār era Uṣūlīs, like Mīrzā-yi Qummī (d. 1231/1816) and Mullā Aḥmad Narāqī (d. 1245/1829), realised that the only way to reconcile the doctrinal ideal with actual practice was to propose a formal procedure.

Qummī and Narāqī argued that in the context of *šarī‘a* litigation one judicially competent scholar would have to confirm the emergence of another one if doubts were

48. Az *Āstārā*, VI, p. 220-225 and Az *Āstārā*, VII, p. 560-561.

49. For the text of the ruling see Az *Āstārā*, VII, p. 248.

50. Az *Āstārā*, VII, p. 122-123. The Dīrāzġīsū had to settle for slightly more than half of Čūplānī which they ‘revived’ as *waqf*. ‘Abbās Ḥān’s descendants retained the remainder of Čūplānī and all of the much larger and more valuable village of Mīr-Maḥalla as private property.

51. CALDER 1980, p. 70.

52. CALDER 1980, p. 90.

53. For a list of these qualities see for example CALDER 1980, p. 241-242, GLEAVE 2002, p. 104-106.

54. CALDER 1980, p. 84 and for the similar Aḥbārī view, GLEAVE 2000.

55. CALDER 1980, p. 85.

56. CALDER 1980, p. 84. According to Šahīd II, judicial competence could not be established by the report of a single individual, nor by the scholar’s own claim even if it was supported by circumstantial evidence (*qarā‘in*), nor by a written document (*walā bi-l-ḥaṭṭ*) even if such a document were to be free from forgery.

raised over judicial competence.⁵⁷ According to Qummī and Narāqī separate litigation over judicial competence (*qadh wa ġarḥ-i ḥākim*) would have to occur each time the judicial competence of a scholar was not fully established for both sides.⁵⁸ This litigation had to take place before a second scholar whose judicial competence both sides accepted (*musallam-i ṭarafayn*). The second scholar would have to issue a *ḥukm* on the first scholar's fitness to judge.⁵⁹ This procedure assumed, of course, that there was always a senior scholar at hand whose judicial competence was not in doubt who could decide on the judicial competence of a scholar whose competence was in doubt.

This type of litigation over judicial competence was perhaps less common in a more centralized judicial system with state appointed judges such as in the Ottoman world. In the decentralized Qāḡār context, however, where litigants were free to refer to independent scholars and where the validity of a *ḥukm* in litigation was doctrinally contingent upon the possession of requisite qualities, it seems to have become increasingly significant.

Litigation of this kind was particularly relevant in cases where a powerful litigant like 'Abbās Ḥān tried to deny judicial competence as a legal strategy to circumvent the enforcement of the *ḥukm* of a scholar. This seems to have been why the Dirāzḡīsū had to get the well-known jurist Šaftī to endorse the validity of the *ḥukm* of Āqā Muḥammad Maḥdī and then later had to ask another senior jurist, Kalbāsī, to certify that Āqā Muḥammad Maḥdī, was a qualified jurist and thus capable of independently issuing a valid *ḥukm* (*nāfid al-ḥukm*). In theory, Kalbāsī's certification should have settled doubts over Āqā Muḥammad Maḥdī's juristic qualifications and hence the validity of his *ḥukm* to the Dirāzḡīsū. In practice, as we saw, despite Kalbāsī's certification of Āqā Muḥammad Maḥdī's *iğtihād*, 'Abbās Ḥān still refused to accept he was a qualified jurist.

This in turn forced the Dirāzḡīsū to try and revive the *ḥukm* of Ḥāḡḡī Mullā Riḍā Astarābādī. Astarābādī's *ḥukm* was hardly ideal as later litigation in the dispute would reveal. Its text was ambiguous. No one was quite sure in what circumstances it had been issued to the Dirāzḡīsū in the 1790s. Nevertheless it was considered appropriate because 'Abbās Ḥān had enforced *ḥukm*-s of Ḥāḡḡī Mullā Riḍā Astarābādī in the past. This meant 'Abbās Ḥān could not deny, as he had done in the case of Āqā Muḥammad Maḥdī, that he did not consider Ḥāḡḡī Mullā Riḍā Astarābādī to be capable of independently issuing a valid *ḥukm* and hence of being a qualified jurist.

There was a close link made here between the scholar's ability to independently issue a valid *ḥukm* and his status as a qualified jurist.⁶⁰ This seems to have been an important effect of Uṣūlī doctrine on judicial practice. When precisely this perception became widespread

57. Al-Ğūšqānī, *Rasā'il*, II, p. 357-370. I am indebted to H. Modaressi for drawing my attention to this important Uṣūlī discussion.

58. Al-Ğūšqānī, *Rasā'il*, II, p. 362. Qummī and Narāqī did not agree on the validity of a *ḥukm* issued before litigation over judicial competence had taken place. Qummī held that the *ḥukm* remained probative while Narāqī argued that it was invalid, see Al-Ğūšqānī, *Rasā'il*, II, p. 363, 365.

59. Al-Ğūšqānī, *Rasā'il*, II, p. 365.

60. KONDO 2009, p. 57.

is difficult to determine. Besides the examples of Aqā Muhammad Mahdī and Ḥāğğī Mullā Riḍa Astarābādī, another early certification of this kind was issued by the renowned Uṣūlī jurist, Šayḥ Muḥammad Ḥasan Nağafī Šāḥib Ğawāhir (d. 1228/1850). Šāḥib Ğawāhir who lived in Nağaf, Iraq, confirmed, during the proceedings of a *waqf* dispute in Tehran, that a certain Āḥūnd Mullā ‘Alī Aşğar was a qualified jurist whose *ḥukm* was valid.⁶¹

Though Uṣūlī writers agreed that only the *ḥukm* of an absolute jurist (*muğtahid muṭlaq*), a scholar capable of exercising *iğtihād* in all areas of the law, was valid in litigation, concessions were nevertheless made to accommodate this requirement to the exigencies of practice. Several prominent Uṣūlīs accepted the validity of the *ḥukm* a partial jurist (*muğtahid mutağazz’i*), a scholar who was only qualified to exercise *iğtihād* in some areas of the law but not others, if access to an absolute jurist was difficult.⁶² In the late eighteenth and early nineteenth century, Narāqī, Qummī and later Šāḥib Ğawāhir and Šayḥ Murtaḍā Anşārī (d. 1281/1864), held that the *ḥukm* of a partial jurist in litigation was valid even if an absolute jurist was available and accessible.⁶³ This was because the juristic ability of the partial jurist was, in areas of the law where he was qualified to exercise *iğtihād*, equivalent to or in some cases perhaps even superior to that of the available absolute jurist.

Moreover there was an important debate among Qāğār era Uṣūlī jurists whether a non-*muğtahid* follower (*muqallid*) of a *muğtahid* could issue a valid *ḥukm* in litigation based on the opinions of his *muğtahid* on the particulars of a case. Narāqī for example held that the *ḥukm* of a non-*muğtahid* follower (*muqallid*) was valid if the *muqallid* had the permission of his *muğtahid* before arbitration occurred and if both the litigants were also *muqallid*-s of the same *muğtahid*. If, however, the *muğtahid* was available and accessible the litigants had to turn to him instead of to the *muqallid* due to the necessity of referring to the most learned.⁶⁴ According to Šāḥib Ğawāhir, however, a *muğtahid* could authorise his *muqallid* to decide cases based on his opinions.⁶⁵ The authorised *muqallid* thus did not require his *muğtahid*’s permission in each case to issue a valid *ḥukm* nor was it necessary for litigants to refer to the *muğtahid* if the *muğtahid* was available. Šayḥ Murtaḍā Anşārī, however, rejected Šāḥib Ğawāhir’s position and sought to prove that, with or without the authorisation (*tawkīl*) of his *muğtahid*, a *muqallid*’s *ḥukm* in litigation was invalid.⁶⁶

It is likely that such theoretical hair splitting among Uṣūlī jurists over the amount of *iğtihād* a scholar required to issue a valid *ḥukm* was not relevant in day-to-day Qāğār *šarī’a* litigation. As Narāqī himself noted most people referred their cases to ordinary clerics without making a distinction between who was a qualified jurist and who was

61. KONDO 2009, p. 57.

62. See for example Muḥammad Bāqir Sabzawārī (d. 1090/1679) in GLEAVE 2000, p. 115.

63. Al-Qummī, *Al-Rasā’il*, II, p. 601, Al-Narāqī, *Mustanad al-šī’a*, II, p. 518, Al-Nağafī, *Ğawāhir*, XL, p. 34, Al-Anşārī, *Al-Qaḍā’ wa al-šahādāt*, XXIII, p. 32. For the views of two notable twentieth century Uṣūlīs, al-Ḥūmaynī (d. 1989) and al-Ḥūṭī (d. 1992), see GLEAVE 2002, p. 111.

64. Al-Ğūşqānī, *Rasā’il*, II, p. 356-357 and Al-Narāqī, *Mustanad al-šī’a*, II, p. 517-518.

65. Al-Nağafī, *Ğawāhir*, XL, p. 19.

66. Al-Anşārī, *Al-Qaḍā’ wa al-šahādāt*, XXIII, p. 39-40.

not.⁶⁷ Certifications of the *iğtihād* of scholars could, however, become significant in more complex and often decentralized Qāğār *šarī'a* litigation. In such situations it became common practice to have the validity of the *ḥukm* of a less well-known scholar endorsed by one or more recognised jurists. These types of endorsements were termed *imḍā'-i ḥukm*. The endorsement of a scholar's *ḥukm* by a well-known jurist did not necessarily mean that the scholar who issued the *ḥukm* was himself a qualified jurist capable of independently issuing a valid *ḥukm*. This explains why despite Muḥammad Bāqir Šaftī's endorsement of Aqā Muḥammad Mahdī's ruling, the Dirāzgisū still needed a more explicit certification of Aqā Muḥammad Mahdī's *iğtihād* from his father, Kalbāsī. Litigation by the Dirāzgisū also seems to suggest that endorsements, in this case the one issued by Šaftī, lost their probative force after the death of the jurist.

Parallel to the rise of *imḍā'-i ḥukm* and certifications of *iğtihād* in Qāğār *šarī'a* litigation, was the phenomenon of licences (*iğāza*) in this period that certified that a scholar had attained the rank of a *muğtahid*.⁶⁸ As Kondo has demonstrated possessing a licence did not mean that the scholar was in fact a qualified jurist.⁶⁹ There was, however, a popular perception that possessing an *iğāza* of *iğtihād* meant someone was a *muğtahid*.

In the same way for most ordinary people the fact that a scholar had reached the stage where he issued *ḥukm*-s meant, in accordance with the dominant doctrine, that he must be a qualified jurist. This was probably why the scribe who prepared the transcript of Aqā Muḥammad Mahdī's *ḥukm* in the 1840s added he was 'the jurist of the age'. As in the case of possessing an *iğāza* of *iğtihād*, however, the fact that a scholar issued *ḥukm*-s in litigation did not necessarily mean that he was a qualified jurist. In reality, there were many Qāğār scholars whose *ḥukm*-s were regularly enforced by the Qāğār authorities who certainly did not possess the qualities of a qualified jurist. At the same time there were other scholars who never issued *ḥukm*-s or whose *ḥukm*-s were not enforced by the authorities who were qualified jurists.

This seems to have become relevant in the case of Ḥāğğī Mullā Riḍā Astarābādī. Astarābādī's *ḥukm* in favour of the Dirāzgisū issued during the time of Riḍa Ḥān and Imām Qulī Ḥān was not enforced.⁷⁰ It is likely that after Ḥāğğī Mullā Riḍā Astarābādī's death this was interpreted to mean that it was because he was not a qualified jurist. This might explain why the Dirāzgisū tried to obtain confirmations that Ḥāğğī Mullā Riḍā Astarābādī had issued other *ḥukm*-s while he was alive which were enforced.

In concluding, litigation by the Dirāzgisū focused on trying to establish the juristic qualifications, and hence judicial competence, of two scholars who certified their claim in a land dispute. By doing this the Dirāzgisū hoped to have a valid *ḥukm* in their hands

67. Al-Ğūšqānī, *Rasā'il*, II, p. 369.

68. For examples, see KONDO 2009, p. 59-65. See also the *iğāza* of *iğtihād* issued by Šādiq Ṭabāṭabā'ī Muğtahid-i Sangalağī (d. 1300/1883) on 29 Zū al-Ḥiğğa 1284/22 April 1868 in *Asnād-i Maḥkama*, p. 93.

69. KONDO 2009, p. 60.

70. Az *Āstārā* VII, p. 444.

which could be used to compel their opponent to submit to arbitration over two villages they claimed as an ancient family *waqf*. The significance of such litigation over the judicial competence of scholars can be attributed to the unopposed dominance of Uṣulī doctrine in Iran during this period and judicial decentralization which seems to have occurred after the fall of the Safavids in 1722.

Whether or not the centralizing judicial reforms of the Nāṣirī era (1848-1896) which began from about the middle of the nineteenth century helped to reduce some of the ambivalence and uncertainty over the binding force of *ḥukm*-s in *šarī'a* litigation remains to be investigated. The 1930 Pahlavī era regulations for judicial procedure in Iran still specified that all centrally appointed *šarī'a* courts would have to be presided over by a qualified jurist.⁷¹ Since determining whether a cleric possessed all the requisite qualities of a qualified jurist remained subjective, judicial competence could, in a Twelver Šī'ī Uṣulī context, potentially always be challenged during the occultation of the Imām. Nevertheless the theoretical accommodation of Qāḡār Uṣulī jurists had opened the door to a more centralized *šarī'a* court system administered by *šarī'* judges who did not necessarily have to be absolute jurists.

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71. LAMBTON 1991, p. 21.

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