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Shari'a Scholar

BRINKLEY MESSICK

Muhammad Khalid Masud's training in his chosen field, Islamic Studies, began with higher studies at Punjab University, in Lahore, and was completed with a Ph.D. from McGill University, in Montreal. In addition to his own active research and publication activities, and various other instructional positions in Pakistan and Nigeria, he has served in two key institutional posts that have had an enormous impact on Islamic Studies. The first of these was his membership in the innovative Committee on the Comparative Study of Muslim Societies (Social Science Research Council, New York), the second his inaugural directorship at ISIM.

Muhammad Khalid Masud's best-known work remains his meticulous and foundational study of the legal philosophy of Abu Ishaq al-Shatibi (d. 1388). A Maliki by interpretive school and a resident of Granada, Shatibi sought to analyse the *shari'a* with respect to what he termed its *maqasid*, its doctrinal aims or objectives. To this end Shatibi elaborated upon the concept of *maslaha*, literally, legal 'good' or 'benefit', and in the process he developed a medieval notion of legal dynamism that centuries later would prove central to modern Muslim discussions about the transformation of Islamic law. Masud's work on Shatibi commenced with his 1973 dissertation at McGill under Professor Charles Adams, the basis for his well-known 1977 book, which was revised and enlarged in his 1995 publication, *Shatibi's Philosophy of Islamic Law* (Islamic Research Institute, Islamabad). From the beginning of his career he contributed significantly to the revision of the major conventional Western assumption about Islamic law, namely, that it was immutable.

This work on a key medieval representative in the field of *usul al-fiqh*, or the theory of *shari'a* jurisprudence, was interestingly complemented by Masud's study of the interpretive thought of an important modern figure, Muhammad Iqbal (d. 1938). Initiated in 1977 with a research project assigned to him by the Islamic Research Institute, the project culminated, in 1995, in *Iqbal's Reconstruction of Ijtihad* (Lahore: Iqbal Academy; Islamabad: Islamic Research Institute). Masud's book focuses on Iqbal's lecture on 'The Principle of Movement in Islam', and in particular on Iqbal's 'process of reasoning'. This, it is explained, was 'not based on Greek logic of syllogism but was rather derived from a combination of the Qur'anic mode of exposition and the dialectics of Tasawwuf [mysticism].' 'That method of reasoning', he continues, 'is essentially emotive and intuitive rather than purely rational' (p. 6). Accordingly, 'Iqbal's study is a part of the continuing tradition of Muslim intellectuals' concern over the actual problems of Muslim society', while *ijtihad* (which Iqbal innovatively combined with *ijma'*, or consensus) represented for him 'a dynamic principle of Islam and its civilization' (p. 209). Like Shatibi in his period, Iqbal was a model Muslim intellectual whose 'approach enabled him to impart a new life to the basic components of the Islamic culture' (p. 5).

In his book on Iqbal, Masud characterizes his own method as historical, semantic, and contextual (p. 9), and he cites a line from Iqbal as his book's epigram: 'Our duty is carefully to watch the progress of human thought, and to maintain an independent critical attitude towards it.' At the end of his study of Iqbal, Masud brings the discussion up to the late twentieth century as he speaks pointedly about the contemporary Muslim predicament in Pakistan. The problem he sees centres on the aggrandizement of the ulama, Islamic intellectuals, which leads to a 'separation between religion and people, between *ulama* and *ummah*.' He continues to say that '[f]or the future of the Muslim *ummah*, particularly for Pakistan's society, it is imperative that such dangerous trends which lead toward establishing a church in Islam must be discouraged' (p. 210).

Fatwas and muftis

I first came to know Muhammad Khalid Masud in connection with the study of muftis and fatwas. Eventually, we co-edited, with David Powers, *Islamic Legal Interpretation: Muftis and their Fatwas* (Harvard, 1996). His interest in fatwas, however, dated back to his first work as a

On the occasion of his stepping down as the first Academic Director of ISIM and ISIM Chair at Leiden University, and to mark his resumption of full-time research, Brinkley Messick honours one of our leading international scholars of the *shari'a*, Muhammad Khalid Masud. Messick has been closely involved in Masud's research programme 'Social Construction of *Shari'a*', most recently in the workshop 'Anthropologies of Islamic Law' (see pg. 9).

graduate student, his 1969 M.A. thesis at McGill, which was on nineteenth-century Indian fatwas of the Deoband school. Later, he analysed the fatwas of Shatibi. Fatwas are non-binding opinions issued by jurists in response to questions, and Masud astutely sensed their great significance for the understanding of dynamism in Islamic law and civilization. When he joined the SSRC Committee on the Comparative Study of Muslim Societies, he was in a

position to propose and direct the first international conference on this interpretive institution, which was held in Granada in 1990.

A few years earlier, in 1984, Masud published a ground-breaking article on the theoretical culture of the mufti and fatwa-giving, 'Adab al-Mufti: The Muslim Understanding of Values, Characteristics and Role of a Mufti' (in B.D. Metcalf, ed., *Moral Conduct and Authority: The Place of Adab in South Asian Islam*, Berkeley, pp. 124–50).

His stated 'objective' in this article was 'to develop an analytical framework for studying the conceptual system of personal and moral authority among Muslims in South Asia' (p. 124). The somewhat better known *adab al-qadi* treatises and the *adab al-mufti* works Masud introduced us to in this article are specialized meta-literatures about the aims and orientations of the two key Muslim legal interpreters, the *shari'a* court judge and the mufti. In the patterned ideal reticence of a man of knowledge, a mufti 'should speak only when asked, and should give an opinion only in matters that have actually taken place'. He also 'has a right to refuse a fatwa in matters that he considers futile, imaginary or irrelevant' (p. 137). In addressing issues of authority and rank among historical muftis Masud also touches on the interesting phenomenon of apprenticeship (p. 134).

In our 1996 edited volume, in which each of the essays centres on particular fatwas, he contributed 'Apostasy and Judicial Separation in British India' (pp. 193–203). This study was my introduction to Mawlana Ashraf 'Ali Thanawi (1863–1943), the prominent and prolific South Asian Muslim scholar and mufti, whose fatwas are collected in an eighteen-volume work. Masud's overall aim in his choice of two of Thanawi's fatwas, one from 1913 and a revised one on the same topic from 1931, was, once again, to 'observe the process of legal change in Islamic law' (p. 195). The topic was apostasy and its implications for judicial divorce, and the key contextual change in the intervening period was the advent of intensive Christian missionary activity. Apostasy had not been a major issue earlier, but in the absence of other legal remedies, women suddenly began to use the stratagem of conversion to obtain automatic annulments and thus free themselves from difficult marriages. 'Anglo-Muhammadan and Hanafi laws prevailing in India considered the question of motive immaterial' (p.199), but in his revised fatwa Thanawi took motive into consideration, reversing himself to hold that apostasy could not be used as a device to obtain a legal separation. At the same time, however, Thanawi proposed adopting a more liberal Maliki school approach to judicial forms of divorce. This he did 'in a manner that posited a semblance of continuity with the past and that maintained the framework of Islamic law' (p. 203).

Migration and renewal

With an innovative article from 1990, Masud initiated yet another strand of inquiry, this time on Muslim travel: 'The Obligation to Migrate: The Doctrine of Hijra in Islamic Law' (in D.F. Eickelman and J. Piscatori, eds., *Muslim Travellers*, London, pp. 29–49). Although his work on travel began within his familiar paradigms of history and Islamic legal doctrine, it would grow in a dramatic new direction, one that addressed a modern global movement and that transcended the legal frame of reference. The product of this new research was a volume edited by Masud in 2000, *Travellers in Faith: Studies of the Tablighi Jama'at as a Transnational Movement for Faith Renewal* (Leiden: Brill). Like the work on muftis and fatwas, this project emerged from an initiative

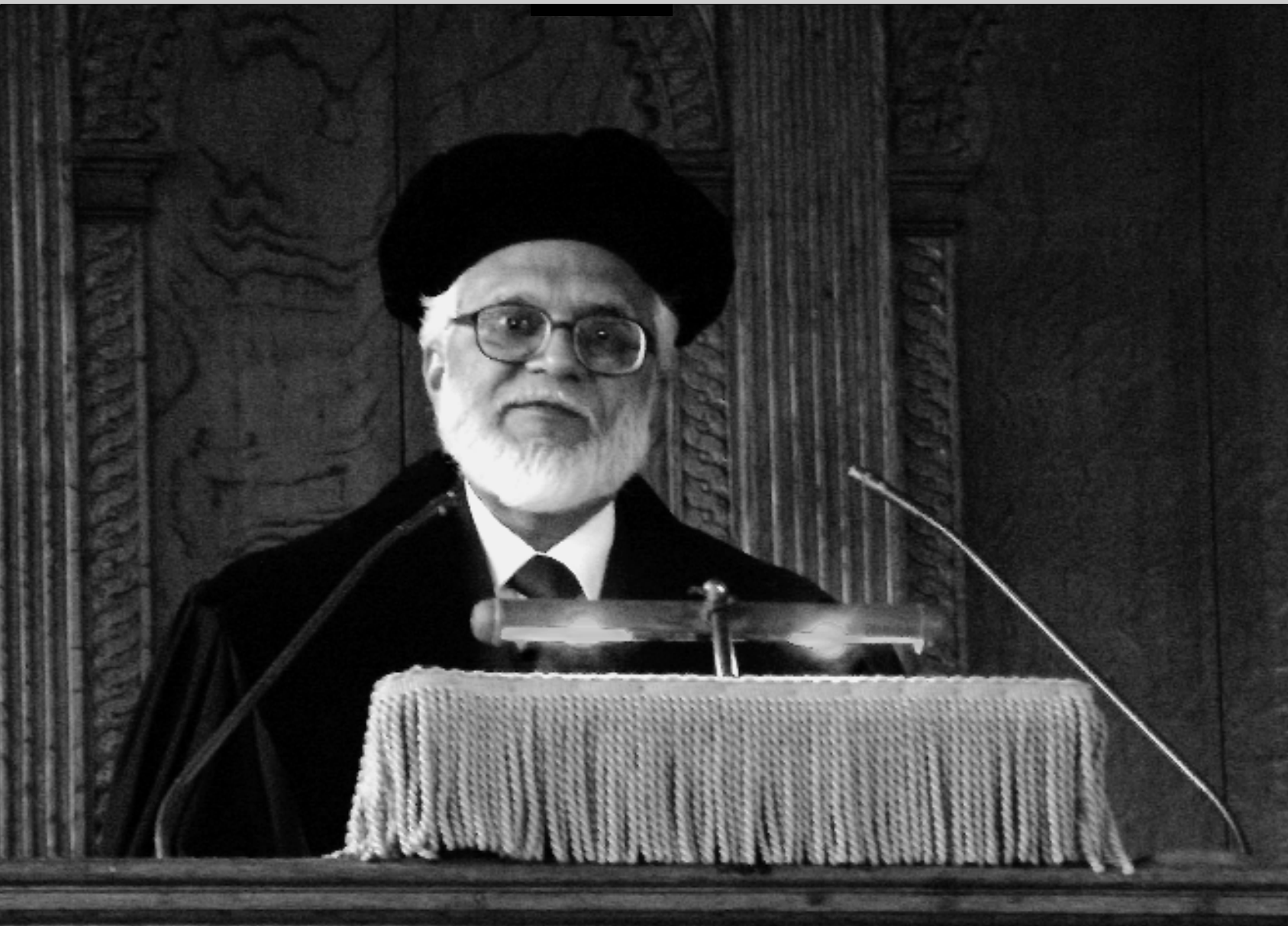


PHOTO: WIM VREEBURG, 2001

Professor Masud at his inaugural lecture, Leiden.

of the SSRC Committee on Comparative Study of Muslim Societies. Masud's contribution to this volume goes far beyond his editor's 'Preface' and his lengthy 'Introduction' and includes both Chapter One, on 'The Growth and Development of the Tablighi Jama'at in India' (pp. 3–43), and Chapter Four, on 'Ideology and Legitimacy' (pp. 79–118). In a series of case studies from the peripheries of this international movement, contributors to this excellent volume examine Tabligh activities in several countries in Europe, and also in Morocco, South Africa, and Canada. Together with contributions by Metcalf and Talib, Masud analyses the advent and the conceptual world of the Tablighis in their South Asian metropole.

Mawlana Thanawi, Masud's mufti of choice, also figures in the story of the rise of the Tablighi movement as some of his ideas were appropriated by its founders. Yet Thanawi saw *tabligh* and *da'wa*, the activities of 'communication' and 'calling' to the faith, as pertaining to the ulama alone, while the Tablighis saw them as the activities of common believers acting collectively, especially in travelling groups. Masud argues that 'the Tablighi Jama'at's stress on faith renewal and Muslim transnationalism reflects specifically South Asian concerns'. This he understands in terms of the fact that 'South Asia's intellectual encounter with the West began earlier than in the Arab world. It sensitized South Asian Muslims, more than others, to the threats to the faith, not only from Hinduism but also from modernity' (p. Lvi).

If one of his principal analytic concerns as an editor of the 1996 fatwa volume was to understand important features of the 'process of reasoning' employed by muftis, another characteristic, but less heralded contribution appears in that book's 'Appendix' (pp. 323–30). Prepared by Masud, this is described as 'a list of fatwas translated and analyzed in this book, classified according to the pattern and order of *al-Fatawa al-Islamiyya* (al-Azhar, 1982)'. One consistent expression of Masud's social scientific interests is an enthusiasm for classification and for the instructive

display of such information in charts and tables. Examples of his classificatory impulse are found throughout his writings: in the Shatibi book (p. 102), where a table 'shows, in detail, Shatibi's attitude towards the acceptance of social changes in his fatawa'; in his 'Adab al-Mufti' article (p. 150), where an appendix sets forth the 'scope of fatawa compared with Hadith and Fiqh'; in his chapter in the 1996 fatwa volume (p. 198), where 'the range of subjects covered' by Thanawi's fatwas is shown in numbers and percentages; and in the Tablighi book (p. xxviii), where a chart categorizes ten *da'wa* movements according to such features as country, registration of activities, Sufi connections, educational institutions, and militancy.

As the first ISIM Academic Director Muhammad Khalid Masud's contributions to the promotion of research on Islamic law have been numerous, recently including a conference on the qadi and the *shari'a* court and a workshop on the anthropology of Islamic law. In his inaugural lecture, *Muslim Jurists' Quest for the Normative Basis of Shari'a* (ISIM, 2000), Masud identified 'three major developments in the ongoing debate on *shari'a*' including 'the role of the ulama', 'the issue of equality', with an emphasis on gender, and 'human rights'. We may expect that in his future research he will make further distinctive contribution to such 'developments' in Islamic law. My own hope is that he will analyse the difficult problem of 'custom' in relation to the law, that he will hold to the promise of the last line of his Shatibi book (p. 255) where he refers to 'our next study on Shatibi's concept of *ada*'.

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