

**RŪḤ AL-SHARĪCAH: A PRELIMINARY ENQUIRY INTO THE ORIGIN AND USAGE  
OF A NOTORIOUSLY COMMON TERM**

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<b>Abstract</b>	<p><i>The term rūḥ al-sharīcah, (to be translated as the spirit, soul, or essence of the sharīcah,) and related terms seem to be commonplace in modern and post-modern-age Arabic medium Islamic literature – without the existence of a proper definition. It is the objective of this paper to present an elective overview of its usage in classical and contemporary Islamic sciences literature, to find the roots of the term and to give an explanation for its seemingly inflationary appearance, as well as to investigate the problematic of using ambiguous terminology and offer possible reasons. Methodologically, the authors have conducted a comprehensive literature review in classical and modern sources with the assistance of databases (al-maktabah al-shāmilah) to accomplish this task. The authors have been able to identify some documentation of the usage of related terms (rūḥ al-mas'alah) in classical literature, while the term rūḥ al-sharīcah is first documented in the Tafsīr al-Manār, an influential work of the early 20th century, and has continuously grown after this time. In addition, the term is used in a plethora of different meanings without a proper attempt at definition. In conclusion, the paper emphasizes the necessity of differentiating between proper and improper usage of terms against the background of Islamic legal culture.</i></p> <p>Keywords: <i>Rūḥ, Maqāṣid, Spirit, Soul, Sharīcah.</i></p>
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## INTRODUCTION

The importance of proper language and specific scientific terminology has been pivotal in the Islamic world from the first centuries AH. Concepts of the Islamic sciences may have been obvious for the first generations of Muslims. Around the middle of the second century AH, most of the definitions in the Islamic sciences we know and still use today came about. This was due to a perceived importance to clarify concepts for the coming generations vis-à-vis the expansion of the Islamic State, the entry of people of non-Arabic origin into its fold, but also with the beginning preoccupation of the scientific heritage left by previous cultures, the need to establish the own thought in comparison to others. Cultural techniques of compilation and discussion that have been found in other cultures may have contributed to the process.

The philosopher Al-Fārābī (950AD) states that a flourishing civilization is not possible without a culture of scientific terms (Āl Yāsīn, 1985: 14). If the usage of terminology can, as Al-Fārābī suggested, indeed be a measure to assess the state of civilization at a certain point in time, one may be inclined to ask what the often unqualified usage of terminology says about the societies we live in today. Today's societies are often referred to as "knowledge societies" due to the availability of a previously unimaginable amount of

scientific (and other) information, often accessible upon pressing a finger on the keys of a computer. Is it suitable for a knowledge society to use terminology indiscriminately?

“Understanding the technical term is half of the science” (*Majmu‘ah min al-Mu‘allifin*, 2017: 9). The correct terminology is, indeed, a factor in producing the correct results, while a mistake in the initial technical term and definition may lead to errors in the result.

Definitions of terms, however, may differ slightly, even in the Islamic sciences. The intellectual history of Islamic thought showcases difference of opinion on the understanding of many concepts, such as *qaḍā’* and *qadar*, for instance. Different legal schools have produced varying methodologies in deriving the Islamic legal rule, and may have produced different terminologies (to name but one, the Hanafi differentiation between *wājib* and *fard*; the various categories of *tahrīm*, or the Ibadi concept of *sunnah wājibah* (Kindi & Bouzenita, 2018: 7). This is not as problematic as some may infer (*Majmu‘ah min al-Mu‘allifin*, 2017:10), as terminology may be an expression of concepts subject to *ijtihād*. Unanimous agreement on all technical terms is not to be expected, just like unanimous agreement on an *ijtihādī* legal rule is not feasible.

The knowledge of differences in the categorization and terminology and their development is indispensable for the student of the history of Islamic law and its schools. Upon comparison between usages of technical terminology in different eras, the proper meaning within its time and intellectual context needs to be taken into consideration as well. The term “*makrūh*” (disliked), for instance, may be used to the meaning of “prohibited” in early *fiqh* treatises (Bouzenita, 2001: 183ff). The lack of consideration of these different connotations may lead to misunderstandings.

On a different note, importation of technical terms from a different cultural and ideological background may prove to be a pitfall: While not problematic if there is a completely corresponding innate concept on the “importing” side; a mismatch in concepts may lead to the importation of an “alien” (generally: “Western”) concept into (generally) Islamic culture. These terms may indeed cause confusion in the intellectual fabric.

The thriving science of logic (*mantīq*) was soon to establish conditions for scientific definitions that are still in usage today. For obvious scientific and educational reasons, university courses in any specialization still start with the most important relevant definitions. Scientific definitions are based on a consensus of the learned community, and they may evolve with new discoveries. In the Islamic sciences, definitions usually have evidences in the Qur’an or Sunnah or *Ijmā‘*. Different opinions exist on whether technical terms are *tawfīqī* (agreed upon) or *tawqīfī* (revealed); or a mixture of both (Ibn Qudāmah, 1993: 543).

The Qur’an warns the believers not to use the non-Muslims’ terminology if in contradiction with Islamic concepts:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَقُولُوا رَاعِنَا وَقُولُوا انظُرْنَا وَاسْمَعُوا ۗ وَلِلْكَافِرِينَ عَذَابٌ أَلِيمٌ﴾

Meaning: “O you who believe, do not say “*rā‘inā*”, but rather say “*unẓurnā*” instead, and listen! A painful punishment is for the disbelievers.” (al-Quran. al-Baqarah: 104)

The eminent scholar Al-Qurṭubī mentions in his exegesis of this verse (Al-Qurṭubī, 1993:1/55ff) that the expression “*rā‘inā*”, “Consider us” in Arabic, was used by the Jews to ridicule the Prophet as it was a derogatory term in their language. Revelation therefore corrected the term and forbade Muslims to use it. Al-Qurṭubī infers from this the command to avoid terminology that may be derogatory. He also sees in it an aspect of *sadd al-dharā‘i‘*, blocking the (otherwise) lawful means leading to something unlawful (Al-Qurṭubī, 1993:1/56).

With regards to terminology, we may infer from this the need to check the terminology we use for appropriateness and to not take over potentially improper terminology from divergent contexts or cultures.

### THE TERM RŪḤ IN CLASSICAL USAGE

The early standard work on definitions, Jurjānī's (d. 1413AD) *Ta'rifāt*, has three entries on the term "rūḥ": *al-rūḥ al-insānī*; the human rūḥ; *al-rūḥ al-ḥayawānī*; the animal rūḥ; and *al-rūḥ al-a'zam*, the ulterior rūḥ. The Qur'an itself is most explicit on the difficulty of defining rūḥ:

﴿وَيَسْأَلُونَكَ عَنِ الرُّوحِ ۗ قُلِ الرُّوحُ مِنْ أَمْرِ رَبِّي وَمَا أُوتِيتُمْ مِنَ الْعِلْمِ إِلَّا قَلِيلًا﴾

Meaning: "And they ask you about rūḥ: Say, the rūḥ is from the matter of my Lord, and you have been given but little knowledge." (al-Quran. al-Isrā': 85)

The renowned Kuwaiti Fiqh encyclopedia has several entries on the term rūḥ; "Rūḥ is what the human being lives by, Allah *ta'ālā* has not informed anybody about it (*Wizārat al-Awqāf wa al-Shu'ūn al-Dīniyyah*, 1983-2006:18/263). The term rūḥ may, according to the context, be used to designate the human (or animal) immortal soul, what distinguishes the animate being from the inanimate object; or the angel Jibrīl (a.s.).

Rūḥ is somehow secretive, as it cannot be defined or located. The concept of rūḥ exceeds human ratiocination. Philosophical discussions on the meaning and essence of rūḥ had a pervasive presence in Islamic philosophical literature (*Majmū'ah Min al-Bāḥithīn*, n.d.: 4/167).

In classical usage, it is not generally used to describe concepts or inanimate objects. A look at contemporary usages of the term, however, gives a different picture. The (contemporary) *Mu'jam muṣṭalahāt al-'ulūm al-shar'iyyah* mentions, next to the standard definitions (the soul, Jibrīl a.s. and revelation) the rather modernist expressions *rūḥ al-jamā'ah* and *al-rūḥ al-ma'nawiyyah*. Both are taken from social sciences rather than Islamic sciences (*Majmū'ah min al-mu'allifīn*, 2017:1/857f).

According to our research, the search term "*rūḥ al-sharī'ah*" yielded 153600 mentions in the electronic *Maktabah shāmilah* (2023), and 9,050,000 results on google as of September 2023. An eclectic reading of some of the more specialized entries has, however, not lead us to an attempt at a proper definition of the term.

Book titles such as "*Rūḥ al-sharī'ah al-islāmiyyah*", the Arabic translation of "*L'esprit du droit musulman*" (Jean-Paul Charnay & Dalloz, 2008), are reminiscent of classical works on the philosophy of law that have been prominent in Western scholarship; Montesquieu's "*L'esprit des lois*" (in retro-translation "*rūḥ al-sharā'ic*") may be regarded as an early milestone for this genre. May part of the contemporary usage in Arabic writings be due to a translation of these titles, and probably a simultaneous importation of a concept in the (Western) philosophy of law?

Can the term cater for the most basic conditions of a definition ("*ta'rif*") in the Islamic sciences (as specified in the science of logic (*ilm al-manṭiq*), namely being both exclusive (*mānīc*) and inclusive (*jāmi'c*) so as to exclude any unfitting trait or characteristic and include all the necessary specifics for clarity in the scientific discourse; being clear-cut and not ambiguous, not containing contradictions or opposites? Has there ever been an attempt at doing so?

Astonishingly, the term is often referred in contemporary specialized and popular Islamic science literature by specialists who, traditionally, go to great lengths in offering detailed and very specific definitions for their terminology. How is it, therefore, possible, that the term "*rūḥ al-sharī'ah*" is in quasi inflationary usage without proper definition or investigation?

There seems to be a tendency to introduce classical works projecting modern terminology and concepts. While classical scholars did not use the term *rūḥ al-sharī'ah* in their books, the introductory notes appear to interpret their own understanding of it into the classics.

While Imam al-Shātibī (1388AD), the possibly most important authority on *maqāṣid*, the Higher Objectives of Islamic Law, for instance, does not mention the term *rūḥ al-sharī'ah* in his book *Al-Muwāfaqāt* once (rūḥ is mentioned in its different meanings

nearly a dozen times), the introduction to his book gives him – after Imam al-Shāfi‘ī - the credit to have “acknowledged what is called *rūḥ al-sharī‘ah*, or *rūḥ al-qānūn*, through his interest in the higher objectives of the *sharī‘ah*.” (Al-Shātibī, 1997:22). An obvious posterior projection. Al-Shātibī, however, uses the term “*rūḥ al-mas’alah*” in his discussion of the evidences of a legal rule and may thereby represent the earliest related find. “The evidence to a case (*mas’alah*) can also be established in a different way, namely the *rūḥ al-mas’alah*”. (Al-Shātibī, 1997: 2/81). It seems that the intention here is the wisdom (*ḥikmah*) of a legal rule, or a rationale (*‘illah*) that is not obvious and needs to be derived.

He also refers to “*rūḥ al-‘ilm*” which he defines as its application (“*al-‘ama*”; “to act according to it”): “And, third: The available evidences that indicate that the *rūḥ* of knowledge is (in its) application, if it weren’t for that, knowledge would be bare and useless.” (Al-Shātibī, 1997: 1/75); the term seems to stand for ‘the secret of knowledge lies in its application’.

Typically, we find another reference to the term in the introduction to Ibn Qayyim al-Jawziyyah’s (1350AD) “*‘Ilām al-Muwaqqi‘īn*” describing his *ijtihād*: “He relied on the spirit of the Islamic *sharī‘ah* (*rūḥ al-sharī‘ah*) and on its just wisdom” (Al-Jawziyyah, 2019: 58); and, again, in the Introduction to Al-Juwaynī’s (1350AD) *Nihāyat al-Maṭlab fī Dirāyat al-Madhhab*. In the description and analysis of his *ijtihād*, we are informed that: “He also looked into realities and aims, and these are the spirit of *shar‘* (*rūḥ al-shar‘*)” (Al-Juwaynī, 2007: 257, 254, 255).

#### MODERN AND CONTEMPORARY USAGE

A vigorous inquiry into the first documented usage of the term “*rūḥ sharī‘ah*” leads us to the school of Jamāl al-Dīn Al-Afghānī (d.1897), Muhammad Abduh (d.1905) and his disciple Rashid Rida (d.1935), centuries after the classics we mentioned before. The epochal and very influential work “*Tafsīr al-Manār*” mentions the term in different instances; two of them (Riḍā, 1990: 2/196; 3/88) in a clearly *maqāṣid*-based approach.

The first mention is interwoven in the discussion of the prohibition of *ribā* (interest): “The spirit (*rūḥ*) of *sharī‘ah* teaches us in this way that the human being is expected to acquire his wealth through legitimate lawful means that do not harm anyone [...]” (Riḍā, 1990:2/196)

In the second instance, the author complains of the prevailing literalism of his day, the attachment to the form of the *sharī‘ah* rather than the consideration of its objectives.

“And the era of ‘Īsā was the time where people took the spirit of the religion (*rūḥ al-dīn*) and the Islamic *sharī‘ah* to solve issues without clinging to technicalities (*rusūm*) and appearances.” (Riḍā, 1990: 3/88) If this indeed proves to be the first mention of the term *rūḥ al-sharī‘ah* – without a proper definition - , we need to take into consideration the significance of the rationalist, *maqāṣid*-based approach of Abduh’s school against a perceived literalism of his era, as the usage seems to be subject to a snowball effect after this point in time.

The third (but chronologically oldest) documented mention we were able to find invokes the metaphor of the *sharī‘ah* as a living being that Jamāl al-Dīn Al-Afghānī (d.1897), spiritual father of Abduh and his movement, addresses a letter to. The letter is published in *Al-Manār* under the title “Two political letters of the wise man of Islam, Jamāl al-Dīn”. The letter was sent from Basra to the “Head of the *Mujtahidīn*” in Samarra and reads: “This is a letter addressed to the soul (*rūḥ*) of the Muhammadan *sharī‘ah*, wherever it is to be found”, to later specify that he indeed means the scholars of this *sharī‘ah* he sends the letter to. The letter is dated 1892 (Riḍā, 1990: 10-11/270). It is, indeed, a euphemism to describe the scholars of *sharī‘ah* as its soul, and a metaphoric portrayal of the *sharī‘ah* as a body.

The term *rūḥ* in the above mentioned context invokes the idea of a living organism, a being that moves, has shortcomings, mistakes, as well as strengths. A being that evolves. All of these may have been intended with the choice, particularly against the background of the reformist movement Al-Afghānī, Abduh and his disciples stand for.

What remains, however, is the concern that a basically legitimate attempt at introducing terminology turns out into an attempt at finding rubber band like categories that stretch according to the zeitgeist of the day.

But is the usage of the term “spirit of Islam” (or: spirit of the *sharī‘ah*) really a “rationalist secular betrayal”, as Al-Ḥalabī states (Al-Ḥalabī, n.d.: 66), a trick to introduce un-Islamic ideas into Islam and its law, or is it in line with concepts and vocabulary used by generations of scholars?

It is essential to peruse the different usages of the term first. We alluded to a snowball effect (starting from the documented references in *Tafsīr al-Manār*) in contemporary usage before - An elective reading of contemporary sources in different branches of the Islamic sciences may prove this point. Al-Rāfi‘ī, in his book on Prophetic language (*balāghah nabawiyyah*), states: “As to his (the Prophet’s) (linguistic) style, I find in it, for myself, the spirit of *sharī‘ah* (*rūḥ al- sharī‘ah*), its system and determination [...]” (Al-Rāfi‘ī, 1933: 30) .

An introductory book to *sharī‘ah* entitled “*Ma‘ālim al- sharī‘ah al- islāmiyyah*”, first print in 1975, has a separate chapter entitled “*rūḥ al- sharī‘ah al-islāmiyyah*”. In the introduction of this chapter, the author refers to Al-Shāṭibī as one of the best scholars to infer the “spirit of the *sharī‘ah*” in his *Muwāfaqāt* in a way that may be referred to as contemporary or modern (Al-Ṣāliḥ, 1975: 57). The author introduces his chapter with a reference to the Qur’an:

﴿وَكَذَلِكَ أَوْحَيْنَا إِلَيْكَ رُوحًا مِّنْ أَمْرِنَا﴾

Meaning: “And We also revealed to you a *rūḥ* of our order...” (al-Quran. al-Shūrā, 52) ;

The term *rūḥ* here, according to one interpretation, signifying the Qur’an. While a definition of the term *rūḥ al- sharī‘ah* is not to be found, the author explains mechanisms of the *sharī‘ah* in the context of its objectives (*maqāṣid*) in a way that is reflective of his age. The term is consecutively used, permeating contemporary books of *fiqh* and textbooks:

A book entitled “*Al-Fiqh wa al-Sharī‘ah*”, distributed on the webpage of the Saudi Arabian Ministry of Religious Affairs, states in its introduction: “and the Islamic *fiqh*, which is the spirit (*rūḥ*) of the *sharī‘ah* and its foundation, remained albeit fourteen hundred years passing since its inception.” (*Wizārat al-Awqāf al-Sa‘ūdīyyah*, n.d.: 1).

In a treatise on family law, Rayyān states: “... and what is in accordance with the spirit (*rūḥ*) of *sharī‘ah* is that the marriage contract is only valid using the term *nikāḥ* and *tazwīj* and what is derived from them.” (Rayyān, n.d.: 102). In a statement published in 1946 in the *Majallat al-Risālah*, Al-Zayyāt states: “The dictum that confining marriage to one wife is among the most important aims the Islamic *sharī‘ah* acknowledges and prefers and has clearcut evidences to its effect which show the spirit (*rūḥ*) of the *sharī‘ah* ...” (Al-Zayyāt, 1946: no. 672/562).

In the field of *siyāsah shar‘iyyah*, the administration of Islamic policies, the Medina International University textbook reads: “Whenever the *siyāsah shar‘iyyah* or its rules are free from this contradiction to the detailed texts, and are in accordance to the spirit (*rūḥ*) of the *sharī‘ah*, and its general guidelines, it is an Islamic system” (Manāhij Jāmi‘at al-Madīnah al-‘Ālamīyyah, n.d.: 11).

In a discussion on the treatment of prisoners of war in his book *al-Waḥī al-Muḥammadī*, Muḥammad Rashīd Riḍā (d. 1935) states in 1934 “and thereby it is known that it is the spirit of the Islamic *sharī‘ah* to give preference to kindness and *Iḥsān* if possible.” (Riḍā, 2005: 244).

In his study on “*Shūrā* in the Islamic *sharī‘ah*” (2006), al-Mahdī discusses the system of political supervision in case it “is not in accordance with *sharī‘ah* guidelines and the spirit of Islamic *sharī‘ah*” (al-Mahdī, 2016: 108).

In his *Dustūr al-Akhlāq fī al-Qur‘ān*, Muḥammad ‘Abd Allāh Darrāz mentions the term in relation to the rationalisation of the Islamic legal rule (*ta‘līl*) (Darrāz, 1998: 10/48), and again: “The duty to preserve the general system, and to defend shared rights, and

prevent obvious injustice, lies upon the *Ummah* alone. Every single one of us has to observe his inner position and that the spirit (*rūḥ*) of the *sharī'ah* is realized with its accordance.”

Wahbah al-Zuhaylī, in his “*al-Fiqh al-Islāmī wa Adillatuhu*”, mentions two conditions for the Imam to adopt an *ijtihād*, among them that “the reflections conform to the spirit (*rūḥ*) of the *sharī'ah* and its general higher objectives.” (Al-Zuhaylī, n.d.: 8/188).

One would expect to find more explicit detail on the meaning of *rūḥ al-sharī'ah* in treatises on the foundations of legislation (*uṣūl al-fiqh*); explicit definitions are, however, rare. Finally, the *Majallat al-Buḥūth al-Islāmiyyah* defines the *ḥikmah* or wisdom of legislation as “the spirit (*rūḥ*) of the texts of the *sharī'ah*, only those who have been rightly guided by Allah understand its secret.” (*Al-Ri'āṣah al-Āmmah li-Idārat al-Buḥūth al-Ilmiyyah wa al-Iftā' wa al-Da'wah wa al-Irshād*, n.d.: 34/185). This find may indeed be the closest to an attempt at definition.

It is (perhaps) expectable to find references to the term in the *tajdīd* or reformist dialogue. Accordingly, we come across book titles like: “Development is the spirit (*rūḥ*) of the Islamic *Sharī'ah*” (*Al-Taṭawwur Rūḥ al-Sharī'ah al-Islāmiyyah*) (Maḥmūd Sharqāwī, 1969).

Abd al-Qādir 'Audah, in his book “Islam Between the Ignorance of its Children and the Inability of its Scholars (*al-Islam Bayna Jahl Abnā'ihī wa 'Ijzi 'Ulamā'ihī*)” complains about certain people who do not have sufficient background knowledge in the Islamic sciences, but publish limited studies with limited understanding, “and rarely do you find among them someone who understands the spirit (*rūḥ*) of the Islamic *sharī'ah* in its reality” ('Audah, 1985:40).

The “Algerian cultural history” mentions, in its categorisations, a book entitled “The Spirit (*rūḥ*) and Philosophy of the Islamic *Sharī'ah*” written by a certain Abū Bakr 'Abd al-Salām, who is described as “one of that group of people who were influenced by French culture, while at the same time conserving their links to the Arabic Islamic heritage” (Sa'īd Allāh, 1998:7/164). The influence may indeed have extended to the choice of words in the title.

The exegetic work Zahrat al-Tafāsīr spells the following out: “And the Qur'an is indeed the spirit of the *sharī'ah*” (Abū Zahrah, n.d.:8/447). Muḥammad al-Khiḍr Ḥussain writes, in a similar vein: “It (the Qur'an) is the foundation that has the spirit of the law (*rūḥ al-sharī'ah*) transpire from in its most complete meaning.” (Al-Khiḍr Ḥussain, 2010: 25/6).

Zahrat al-Tafāsīr mentions: “And there is a matter the scholars of *fiqh* have difference of opinion in: Is retaliation (*qiṣās*) applicable in beating, as it is applicable in wounds? This is the apparent from the spirit (*rūḥ*) of the *sharī'ah* and what its texts indicate, and what the upright ancestors implemented, may Allah be pleased with them” (Abū Zahrah, n.d.: 8/447, 4/2212). The context clearly indicates that he refers to the *ḥikmah* or wisdom behind legislating an Islamic legal rule.

Mannā' Al-Qaṭṭān, during his explanation of the term “*tafsīr bi al-Ra'yī*”, a type of Qur'anic exegesis that solely relies on intellectual interpretation mentions “the understanding that is in accordance with the spirit (*rūḥ*) of the *sharī'ah*” (al-Qaṭṭān, 2000:362).

From the preceding choice of references to the term in modern and post-modern Arabic literature, a variety of meanings given to the term transpires. While we have not been able to find a specific definition to the term, contributing to its obscurity and lack of transparency, it is obvious that references to the term are either made with regards to the objectives of the *sharī'ah* generally or the *ḥikmah*(wisdom), the (generally not apparent) reason to establish the particular Islamic legal rule, specifically. Most references, however, are way more ambiguous than this. Different authors use the term to mean *fiqh*, development, the Qur'an, or the Prophetic linguistic style, or “to give preference to kindness”, respectively.

*Criticism* on the (indiscriminate) usage of the term is not far. Al-Sufyānī mentions that the citation of “*rūḥ al-sharī'ah*” by some contemporaries is not constructive, and not pertinent to the foundations of Islamic law, as it is influenced by Western thought and

attempts to interpret the text based on “freedom of thought”. He quotes Al-Mawdudi’s division of the term into, first, the authentic spirit of *sharī‘ah* and *fiqh* which we have inherited from the first scholars and which may go back to an origin of the Qur’an, Sunnah, *Ijmā‘* or understanding of these scholars; and, second, a spirit (*rūḥ*) that is alien to Islam, has been introduced from outside and is used to interpret the texts of *sharī‘ah* on this alien basis; the latter is to be rejected as it leads to leaving the obedience towards Allah s.w.t. (al-Sufyānī, 1988: 267).

Hussain Aḥmad Amīn is quoted (and then criticized) as saying that the “absorption of the spirit (*rūḥ*) of Islam – rather than holding fast to its scattered particular rules – guarantees that the compass guiding us takes us the right way” (al-Ḥalabī, n.d. : 33). This approach has been classified as a “rationalist secular deception”, as it invokes that an absorption of the spirit is sufficient and makes the abiding by its rules redundant (al-Ḥalabī, n.d.: 33).

Interestingly, the preface to *Mu‘jam Muṣṭalaḥāt al-‘Ulūm al-Sharīyyah*, previously mentioned for its insistence on proper terminology, denotes the technical term (*muṣṭalaḥ*) as the spirit (*rūḥ*) of the scientific text (*Majmū‘ah Min al-Mu‘allifīn*, 2017: 10), thereby adding to our list.

The “*Mu‘jam al-Manāhī al-Lafẓiyyah*”, a dictionary of improper usage of terminology, mentions “*rūḥ al-sharī‘ah*” and “*rūḥ al-islām*” as well as “*ruhāniyyah*” (spirituality) as generalized cultural terms that have entered contemporary scholarly jargon without having any basis in the *sharī‘ah*. The author ascribes the term to “Sufi parlance”. Although having a bright appeal, they are, upon scrutiny, shallow phrases that may even contradict Islamic concepts (Abū Zaid, 1996: 285).

In “*Mustadrak ‘alā al-Manāhī al-Lafẓiyyah*”, a refutation of the book previously mentioned, al-Kharāshī retorts these accusations. Attempting to define the term *rūḥ al-islām*, he resorts to the definition of Muḥammad Abū Zahrah and writes: “It is “what the *Mujtahid* understands of a set of texts, taken together, in a way that gives a new meaning, a new principle, without there being a detailed text to the effect that the *Mujtahid* derived from that set of texts.” What he implies here is the *Mujtahid*’s work in detecting the *ḥikmah* (wisdom) or *maqāṣid* of a number of legal rules (Al-Kharāshī, 2005: 37).

Based on some guidelines that he interprets accordingly, such as “The origin of all things is their permissibility, there is no prohibition without a text”, that new things are generally permissible as long as they do not contradict to any text; the permissibility for Muslims to benefit from others, there is, from his point of view, no contradiction to the usage of the term *rūḥ al-islām* (or *rūḥ al-sharī‘ah*, for that matter). He sees a benefit in the knowledge of the “spirit of Islam” on the *maqāṣid* level, with the caveat that whatever new principle is introduced, is not in contradiction with the Islamic texts. The function of “*rūḥ al-islām*”, therefore, is not to annihilate any legal rule, or to introduce a legal rule that is in contradiction to the specific evidences (Al-Kharāshī, 2006: 36ff).

We cannot follow that argumentation without discussion. While his detailed arguments may be correct if they stand on their own, they need to be implemented with boundaries and guidelines and under a detailed knowledge of the history of thought and difference in worldviews – and, definitely, cannot be used to advocate a usage of undefined terminology.

The contemporary discussion about the usage of the term seems typical of the culture clash that takes place in contemporary Muslim scholarship and academia and can often be found in the discussion of cases varying from bioethics to banking. While the “permissive” side will most likely argue on the basis of the original permissiveness (*al-ibāḥah al-aṣliyyah*) of things (and broaden the concept so as to incorporate actions and concepts), the “stringent” side will most likely reject it due to the lack of evidence in the sources, or in an attempt to counteract the (real or projected) intentions of the first side.

Instead of attempting to take sides, it may be advisable to demand a proper methodology in the choice and usage of technical terms in scientific writings; and to advise for caution in the usage of non-technical terms that may turn out to be ambiguous. While

the usage of the term *rūḥ al- sharīʿah* by (contemporary) experts of *maqāṣid* may have a certain meaning in the area of their specialization, anything but a proper definition is (be it intended or not) secretive and potentially misleading. A proper attempt at definition, on the other side, can be a foundation for a scientific discussion and review of the term. Any attempt at scientifically discussing undefined terms may prove to be fighting windmills.

The usage of obscure terms, in turn, leads to obscurity in concepts. If the “spirit of Islamic law” can be referred without revision of the scientific community, the affiliated legal concepts will be subject to ambiguity, and may ultimately lead to a changing of concepts where change is not permissible. An indiscriminate repetition of the term in general and specialized literature, finally, contributes to a conceptual framing of the knowledge recipient that may prove difficult to untangle.

## CONCLUSIONS

While the introduction of new terminology for newly arising concepts, or even a revision of already existing terminology for known concepts may not categorically be denied; new terminology should not be introduced for the sake of creating ambiguities, or obscuring Islamic concepts. The most common contemporary usages of the term *rūḥ al- sharīʿah* we encountered do not contribute to a clarification of concepts due to a lack of definition.

The term *rūḥ al- sharīʿah*, or *rūḥ al-islām*, as we have shown, was first introduced by a modernist reformist school. Al-Afghani’s addressing of Muslim scholars of *fiqh* as the “spirit of the *sharīʿah*” is a metaphor that boards at anthropomorphism. Rida’s references of the term are obviously in the context of *maqāṣid*; invoking the inner meanings and objectives of the *sharīʿah* rather than its (perceived) ‘mere hollow shape’. While this may have made sense against the background of their age, the question remains whether this device is indeed methodologically justifiable.

As a matter of fact, we were only able to specify one classical usage of the term *rūḥ* with regards to the *sharīʿah*, being Al-Shāṭibī’s expression *rūḥ al-mas’alah*, which seems to refer to the *ḥikmah* of a legal rule. In this sense, some contemporary *maqāṣid* based treatises can be found to refer the same usage of the term *rūḥ al- sharīʿah*. Other references of the term in the specialized literature, containing equations or comparisons, are rather innocuous.

The (little) amount of pre-modern usage of the term *rūḥ* in conjunction with Islamic law and its usage in some specialized, *maqāṣid* based treatises, is, from our point of view, only problematic due to its lack of definition. The case resembles, somehow, the usage of the term *istiḥsān* in the time of Imam al-Shāfiʿī. The later vehemently rejected *istiḥsān*, as it appears, in his saying “*man istaḥsana faqad sharaʿa*” (Whoever resorts to *istiḥsān* has acted as a Lawgiver, thereby accusing those scholars who resorted to juristic preference (*istiḥsān*) of *shirk*. A major aspect of this vehement rejection may have been a lack of clear definition (on the part of his contemporaries) of what *istiḥsān* is (Khalāf, n.d.: 79). In this sense, it would have been advisable to clearly define the term – as scholars usually did – so as not to leave room for ambiguities.

With the onset of modernity and post-modernity, however, we clearly see an inflation in the term’s usage that does not assist conceptual clarity and is potentially misleading.

We therefore conclude and advise that technical terms in the Islamic sciences (and elsewhere) need to be properly defined so as to avoid ambiguities.

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