

## A Critical Inquiry into Emancipatory Jurisprudence and Women's Role in Islamic Civilization

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### **Abstract**

This study examines the concept of emancipatory fiqh, which repositions women as active agents in shaping civilization within an Islamic framework. It seeks to free women from gender-biased interpretations of Islamic law that have historically constrained their participation in social, economic, and political spheres. Employing a qualitative and literature-based approach, the research analyzes women's civilizational roles as reflected in the Qur'an, Hadith, and contemporary scholarly discourse. The study identifies a jurisprudential gap—the absence of gender sensitivity in classical Islamic legal methodology—that has perpetuated the marginalization of women's rights and contributions. To address this gap, the research introduces two responsive theoretical innovations: first, the articulation of emancipatory struggle as an alternative paradigm in Islamic jurisprudence, elevating gender justice to a normative legal principle; and second, the integration of this paradigm within the *maqāṣid al-shari‘ah*, establishing gender equality as a core legal objective guiding *ijtihād*. Epistemologically, the study calls for a reform of Islamic legal thought, shifting from patriarchal textualism to a *maqāṣid*-based, inclusive, and participatory framework that legitimizes women's lived experiences as sources of legal insight. Ultimately, emancipatory fiqh represents a methodological reconstruction aimed at developing an Islamic legal system grounded in gender justice and responsive to contemporary social transformation.

**Keywords:** *Emancipatory Fiqh, Gender Justice, Ijtihad Reform, Maqāṣid al-Shari‘ah, Women and Civilization*

### **Introduction**

Discourse on the role of women in Islam is often entangled in a longstanding tension between the normative authority of classical Islamic jurisprudence and the dynamic social context, which has historically relegated women to subordinate roles.<sup>1</sup> *Fiqh* (Islamic jurisprudence) is a product of the thoughts of scholars, and has strong legitimacy to provide legal guidance for Muslims. On the contrary, *fiqh* is often considered static and less responsive to social realities, especially those related to the position of women in society. This poses a challenge in efforts to integrate the values of women's emancipation with Islamic teachings.

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<sup>1</sup> Qasim Amin, *The Liberation of Women and The New Woman: Two Documents in the History of Egyptian Feminism*, dalam *The Liberation of Women*, 1 ed. (American University in Cairo Press, 2000), 34–37.

To ensure that Islamic law offers truly effective solutions, it is essential to give thoughtful consideration to both the challenges within Islamic legal discourse and the realities of contemporary society. The ultimate purpose of Islamic law is to address the broader concerns of humanity and provide just, compassionate solutions for all.<sup>2</sup> Solutions to societal problems that prioritize ethical and human values represent a crucial effort to address urgent and contemporary issues. The development of policy must be grounded not only in legal reasoning about what is right or wrong, but also supported by the social sciences, cultural understanding, and ethical considerations—especially if we seek to preserve and advance human civilization.<sup>3</sup>

In the study of Islamic law (*Fiqh*), to solve the problems of mankind, the text of the manuscript is always used as the main source. Therefore, problems related to various aspects of human life must be resolved, returned, and placed under the authority of the text.<sup>4</sup> Thus, the ongoing social, political, economic, educational, cultural, and humanitarian problems are ended by referring to the text contained in the *nash*.<sup>5</sup> The history of the study and application of Islamic law (*fiqh*) has never been consistent because there are several groups of opinions (*madhab*) that direct each person to follow the legal principles according to the situation in which they find themselves. There are differences of opinion about Islamic law which shows how different the determination of law is according to the culture and society of the people.<sup>6</sup>

Scholars from each school of thought derive Islamic law based on the outcomes of their respective *ijtihad*. Of course there are differences of opinion (*ikhtilaf*) during the process. Scholars of Islamic jurisprudence have long recognized that differences of opinion (*ikhtilaf*) among scholars are inevitable. Such diversity arises from the objective nature of interpreting Islamic law, shaped by each scholar's distinct intellectual and methodological background. Moreover, these jurists never claim absolute correctness for their own views; instead, they acknowledge the legitimacy of differing interpretations and allow Muslims to follow the opinions they believe to be most convincing in accordance with their own understanding and conscience.<sup>7</sup>

Islamic jurists hold varying views regarding the legal rulings related to women in Islamic law. The foundational texts serve as the primary reference, reflecting the belief that Islamic law is rooted in divine revelation. However, in practice, these texts also function as

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<sup>2</sup> Nashrun Jauhari, “Fiqh Prioritas sebagai Instrumen Ijtihād Maqāṣidī Perspektif Yūsuf al-Qarāḍawī dan Urgensinya di Era Kontemporer,” *Maraji: Jurnal Ilmu Keislaman*, advance online publication, 2016, 133, <https://doi.org/10.36835/maraji.v3i1.65>.

<sup>3</sup> Abdul Mukti Thabrani, “Ijtihad Politik Umar Ibn Al-Khattab (Implementasi Fiqh Kontekstual dalam Pemerintahan Islam),” *Nuansa: Jurnal Penelitian Ilmu Sosial dan Keagamaan Islam*, advance online publication, 2015, 261, <https://doi.org/10.19105/nuansa.v12i2.770>.

<sup>4</sup> Khaled M Abou El Fadl, *Atas Nama Tuhan: Otoriter ke Fiqih Otoritatif TR - Yasin*, R. Cecep Luikan (PT. Serambi Ilmu Semesta, 2013), 123.

<sup>5</sup> Fatkhul Mubin, “Tafsir Emansipatoris: Pembumian Metodologi Tafsir Pembebasan,” *Mumtaz: Jurnal Studi Al-Qur'an dan Keislaman*, advance online publication, 2019, 133, <https://doi.org/10.36671/mumtaz.v3i1.37>.

<sup>6</sup> Mohammad Takdir, “Membumikan Fiqh Antroposentrism: Paradigma Baru Pengembangan Hukum Islam Yang Progresif,” *Ahkam: Jurnal Hukum Islam*, advance online publication, 2019, 92–93, <https://doi.org/10.21274/ahkam.2019.7.1.91-116>.

<sup>7</sup> Thal'at Afifi, *Adab al-Ikhtilafat al-Fiqhiyah wa Atsrahū fi al-'Amali al-Islamiyah al-Mu'ashir* (Dar al-Salam, 2010), 9.

moral inspiration—guiding social action toward the establishment of a just, honest, and humane society. One of the key objectives of Islamic law is to develop legal frameworks that address and overcome the social constraints historically placed on women.

It is imperative to critically and urgently reexamine classical Islamic legal concepts (*fiqh*) related to women. Unlike the Qur'an and *Sunnah*, *fiqh* is the result of *ijtihad*—human interpretation—not divine revelation. Therefore, careful attention must be paid to who the *mujtahid* is, the purpose of their interpretation, and the knowledge and context they bring to their legal reasoning. These factors play a significant role in shaping *fiqh*. In essence, *fiqh* emerges from the historical and societal conditions in which it was developed. The interaction between the *mujtahid* and their social, cultural, and political environment forms the foundation of all *fiqh* thought and legal decisions.<sup>8</sup>

Emancipatory *fiqh* has emerged as a discourse aimed at reinterpreting Islamic law through a more contextual, gender-equitable, and progressive lens. This approach not only affirms the equal rights of men and women, but also underscores the strategic and transformative role of women in the development of civilization.<sup>9</sup>

Moreover, Islamic history demonstrates that figures such as Khadijah bint Khuwailid, Aisha bint Abu Bakr, and others made significant contributions not only in their roles as wives or mothers, but also in the spheres of economics, education, and leadership.<sup>10</sup> Women in Islamic history did not only act as companions or supporters, they also acted as leaders, scientists, fighters, and inspirators. They showed that gender equality is an important part of Islamic teachings.

However, in practice, patriarchal social and cultural constructs have often restricted women's freedom. Many classical interpretations of Islamic jurisprudence continue to limit women's potential, both in public and domestic spheres.<sup>11</sup> This reality underscores the need to reinterpret Islamic jurisprudence so that it can serve as a normative foundation that fully supports women's empowerment in a holistic and integrated manner.<sup>12</sup>

This study seeks to explore the concept of emancipatory *fiqh* as a means of fostering collective awareness regarding the vital role of women in shaping a civilized, inclusive, and just society. *Fiqh* has the potential to serve as a dynamic medium for accommodating social change by actively involving women in community development processes. It is hoped that this research will contribute to deconstructing gender-biased interpretations of classical *fiqh*, while offering a contemporary paradigm that is more aligned with present-day challenges. This approach positions women not merely as legal subjects, but as active

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<sup>8</sup> Muhammad Ngizzul Muttaqin dkk., *Fiqih Emansipatoris (Membangun Metodologi Fiqih Pembelaan Bagi Perempuan)* (t.t.), 126.

<sup>9</sup> Ashima Faidati dkk., "Kekerasan dalam Rumah Tangga dalam Perspektif Fikih Emansipatoris," *Ahkam: Jurnal Hukum Islam* 10, no. 1 (2022): 99.

<sup>10</sup> Erika Amanda, "The Position Of Women In The Political Field: In The Islamic View Of The Time Of The Prophet Muhammad saw," *Al-Masail: Journal of Islamic Studies*, advance online publication, 2023, 39, <https://doi.org/10.61677/al-masail.vi.73>.

<sup>11</sup> Iska Nur Indira Dewi dan Rini Rinawati, "Representasi Peran Perempuan pada Konteks Patriarki dalam Film 'Yuni,'" *Jurnal Riset Jurnalistik dan Media Digital*, 2024, 36, <https://doi.org/10.29313/jrjmd.v4i1.3712>.

<sup>12</sup> Masykuri Abdillah dan Mun'im A Sirry, *Hukum Yang Memihak Kepentingan Laki-Laki: Perempuan Dalam Kitab Fiqh BT - Mutiara Terpendam: Perempuan Dalam Liteatur Islam Klasik*, ed. oleh Ali Munhanif (Gramedia, 2002).

agents of change who can contribute to the advancement of civilization based on the principles of humanity, justice, and equality.

## Method

This study employs a qualitative research approach, specifically library research (library-based study), to analyze the concept of emancipatory *fiqh* and its potential in advancing gender justice within Islamic legal discourse. This approach is appropriate because qualitative methods allow for an in-depth understanding of social phenomena, particularly those related to interpretive frameworks and normative legal traditions. Qualitative research is suited for exploring complex concepts through the analysis of texts, contexts, and meanings, enabling researchers to gain rich insights into the subject matter.<sup>13</sup>

The primary method used in this research is textual analysis. This involves a critical examination of classical and contemporary Islamic legal texts, including the Qur'an, hadith, and the works of *fujahā* (Islamic jurists). The research also draws on modern interpretations by scholars who have contributed to the discourse of gender and Islamic law, all of whom emphasize the importance of contextualizing Islamic texts to reflect principles of justice and equality.<sup>14 15 16</sup> As Barlas argues, "The Qur'an does not teach gender inequality, but patriarchal interpretations of the Qur'an have often served to legitimate it".<sup>17</sup>

To analyze the texts, this study applies a hermeneutical approach, focusing on understanding the intent and socio-historical context behind the formation of *fiqh*. Hermeneutics allows the researcher to go beyond literal readings of the text and instead explore how legal interpretations are shaped by the cultural, political, and intellectual environments of the jurists. Islamic legal thought cannot be separated from its socio-historical context; he advocates for a "double movement" approach—moving from the present to the past to understand the original intent, and then back to the present to apply its ethical message in contemporary settings.<sup>18</sup>

The research also incorporates feminist legal theory as an analytical lens. This framework is used to critique gender-biased assumptions within classical *fiqh* and explore the potential of emancipatory *fiqh* as a transformative tool. Islamic legal tradition is not inherently discriminatory, but rather shaped by patriarchal interpretations over time. She contends that gender justice must be grounded in both ethical readings of Islamic sources and an awareness of modern social realities.<sup>19</sup>

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<sup>13</sup> John W Creswell, "Qualitative Inquiry & Choosing Among Five Approaches Research Design (4th Ed)," dalam *SAGE Publications*, preprint, 2014.

<sup>14</sup> F Mernissi, *The Veil And The Male Elite: A Feminist Interpretation Of Women's Rights In Islam* (Basic Books, 1992).

<sup>15</sup> Asma Barlas, *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an* (University of Texas Press, 2019).

<sup>16</sup> Amina Wadud, *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective*. (Oxford, 2019).

<sup>17</sup> Barlas, *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an*.

<sup>18</sup> F Rahman, *Islam and Modernity: Transformation of an Intellectual Tradition*, Center for Middle Eastern Studies Chicago, Ill.: Publications of the Center for Middle Eastern Studies (University of Chicago Press, 1982).

<sup>19</sup> Ziba Mir-Hosseini, *Journeys Toward Gender Equality in Islam* (Oneworld, 2020).

Data sources include classical legal texts (such as fiqh manuals and commentaries), modern scholarly works, journal articles, and publications related to Islamic feminism, gender studies, and Islamic legal reform. These sources are examined through thematic coding to identify recurring patterns, interpretive frameworks, and emancipatory narratives that challenge traditional legal constraints on women. By integrating textual, contextual, and theoretical analysis, this study aims to produce a nuanced understanding of emancipatory *fiqh* and its potential as a normative legal framework that promotes justice, equality, and the active participation of women in shaping Islamic civilization.

### **Emancipatory *Fiqh*: A Gender-Equitable Approach to Contemporary *Ijtihad***

Islamic law is a comprehensive legal system, whose completeness is demonstrated by its regulations that govern all aspects of human life.<sup>20</sup> This includes discussions on the role of women in the development of civilization. The foundational basis of emancipatory fiqh lies in Qur'anic verses that emphasize the equality of men and women in the sight of Allah. As stated in Surah Al-Hujurat (49:13), it is piety—not gender—that determines a person's worth. The Prophet Muhammad's hadith that demonstrate respect and recognition for women further reinforce this principle. The example of Aisha bint Abu Bakr, who exercised her own *ijtihad* and contributed significantly to Islamic knowledge, serves as a powerful model for the inclusion of women in the evolution of *fiqh*.<sup>21</sup>

The interpretation of Islam as a perfected religion, as mentioned in Surah Al-Ma'idadah (5:3), has been subject to various understandings among Muslims. When interpreted textually, the term 'perfected' is often taken to mean that it requires no further change. Unfortunately, this has led some to conflate the *ijtibadi* aspects of Islamic law with the immutable elements of *shari'ah*, treating them as equally unquestionable. In the study of Islamic law, it is important to distinguish between the unchanging sources—the Qur'an and the Prophet's hadith—which have remained intact since their revelation—and the human interpretations derived from them. The Prophet Muhammad (peace be upon him) was the final messenger, and with his passing, the era of revelation ended. However, change occurs through the process of interpreting the Qur'an and Sunnah as sources of law, issuing legal rulings or *fatwas* based on them, and adapting those rulings to new contexts. It is not the Qur'an and hadith that evolve, but rather the scholarly interpretations (*fatwas*) that respond to the needs of the time.

Islamic law may be subject to change under certain conditions. First, there must be a legitimate demand for change from society; without such a demand or necessity, legal reform is not justified. Second, the law in question must not pertain to the core principles of *mahdah* (ritual) worship, which are fixed and non-negotiable. Third, the law must not be *qath'i* (definitive in its evidence and meaning); if a ruling is *qath'i*, it is considered absolute and therefore not subject to change. Fourth, any legal reform must be firmly grounded in

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<sup>20</sup> Sya'ban Mauluddin, "Karakteristik Hukum Islam (Konsep Dan Implementasinya)," *Jurnal Ilmiah Al-Syir'ah*, advance online publication, 2016, <https://doi.org/10.30984/as.v2i1.218>.

<sup>21</sup> Yusuf al-Qaradhawi, *Fatwa-Fatwa Kontemporer*, 2 TR-Yasin, As'ad (Gema Insani Press, 2008), 542.

valid *shari'i* (Islamic legal) evidence, ensuring that the process of change remains within the framework of Islamic jurisprudence.<sup>22</sup>

Discussions on emancipatory fiqh center around the principle of gender justice. This concept has emerged as both a form of practical jurisprudence and a foundational basis for the implementation of *shari'ah*. Emancipatory fiqh represents the outcome of scholarly *ijtihad* in interpreting *shari'ah* through both *naqli* (textual) and *'aqli* (rational) evidence. As a result of this interpretive process, scholars may hold differing views on the role and position of women in contemporary society, particularly within the Indonesian context. Similarly, perspectives on women's issues in classical Islamic jurisprudence—during the time of the Prophet, the caliphs, and the *tabi'in*—may differ significantly from those found in modern interpretations of fiqh.

*Fiqh* is a product of Islamic law, and the need for social transformation is ever-present. Therefore, the *ijtihad* of scholars must be responsive and capable of addressing the evolving needs of humanity. Consequently, *shari'ah* and *fiqh* must play an active role in addressing the complex challenges faced by society, particularly in the context of modernization and globalization.<sup>23</sup> One of the principles in the construction of emancipatory *fiqh ijtidad* is to involve women to participate in the legal decision-making process.

The concept of emancipatory *fiqh* is generally understood as a representation of Islamic law that governs all aspects of human behavior as an expression of submission to Allah SWT. More specifically, emancipatory *fiqh* refers to legal interpretations concerning women and the regulations that affect their roles in various aspects of life, guided by the principles of *maqasid al-shari'ah* (the objectives of Islamic law). Its core aim is to promote social justice, particularly for marginalized groups, including women, by ensuring their rights and dignities are upheld within the framework of Islamic jurisprudence.<sup>24</sup> Thus, emancipatory fiqh is the result of understanding or *ijtihad* in this context.

## Revitalization of Gender Roles through Emancipatory Fiqh in Classical Islamic Thought

Many classical and contemporary fiqh texts extensively discuss issues related to women—both those unique to women and those shared with men. Topics such as pregnancy, childbirth, breastfeeding, postpartum recovery, menstruation, purification, prayer, inheritance, marriage, financial transactions, and criminal matters are addressed in dedicated chapters. For instance, the legal provisions concerning the *'iddah* (waiting period) for women differ significantly from those for men, as Islamic law does not regulate an *'iddah* period for men. In Islamic jurisprudence, *'iddah* is categorized into two types: one for women whose husbands have passed away, and another for women who are divorced or separated while their husbands are still alive. This waiting period is calculated based on

<sup>22</sup> Toha Andiko, "Pembaharuan Hukum Keluarga di Dunia Islam (Analisis Terhadap Regulasi Poligami dan Keberanjakannya dari fikih)," *Nuansa* 12, no. 2 (2019): 2.

<sup>23</sup> Rizal Darwis, "Pemikiran Ibnu Qayyim al-Jauziyah terhadap Paradigma Perubahan Hukum," *Adzka: Jurnal Hukum dan Ekonomi Islam* 05, no. 1 (2017): 68.

<sup>24</sup> Muttaqin Muhammad Ngizzul dan Iffatin Nur, "Fiqih Jalan Tengah (Mempertemukan Maqashid Syari'ah, Hukum, dan Realitas Sosial)," *Zawiyah: Jurnal Pemikiran Islam* 5, no. 2 (2019): 212.

childbirth or a specified number of months, depending on the situation. Ultimately, women's fiqh receives special consideration in the formulation and determination of legal rulings, reflecting the unique circumstances surrounding women's lives.<sup>25</sup>

However, the provisions of Islamic law that apply exclusively to women constitute only a small portion of women's overall social lives, as presented in many classical scholarly works. Historically, the formulation of Islamic law has been predominantly shaped by male scholars. As a result, discussions on gender-specific topics—such as menstruation—were largely authored from a male perspective. Consequently, much of the content in Islamic legal texts reflects a male-centered interpretation of religious life. For example, in many Muslim households in Indonesia, the husband is often regarded as the ultimate decision-maker. He is given priority in various matters, and the wife is expected to fully comply with his decisions. If she challenges his authority, she may be accused of *nusyuz* (disobedience), which carries legal and social consequences.<sup>26</sup>

Men are often positioned as public beings who dominate and access the private spheres of women, whereas women are traditionally viewed as individuals whose roles are ideally confined to the private domain. This perspective is reflected in various legal rulings and interpretations found in classical *fiqh* literature concerning women.<sup>27</sup>

The public sphere is typically defined as spaces where social interaction occurs freely, such as offices, schools, markets, factories, and mosques. In contrast, the private sphere refers to domestic spaces where interaction is generally limited to individuals who share mahram relationships through blood or marriage. Traditionally, the public sphere has been constructed as the domain of men, where they fulfill their role as breadwinners. Conversely, the household is viewed as the appropriate sphere for women's activities. This division is rooted in classical interpretations of Islamic jurisprudence, which regard earning a livelihood as an absolute obligation for men, while discouraging women from participating in economic activities outside the home.<sup>28</sup>

One of the rules found in classical Islamic jurisprudence (*fiqh*) prohibits women from leaving the house without their husband's permission, even for virtuous or beneficial purposes. This is an example of how classical fiqh can restrict women's mobility and participation in public life. Furthermore, in some interpretations of classical Islamic law, the authority of a husband is considered so dominant that it can even affect or override the standing of the wife's own parents, reflecting the deeply patriarchal structure embedded in certain legal discourses of the time.<sup>29</sup> Undoubtedly, this understanding of classical Islamic law (*fiqh*) has caused disputes in Indonesian society, especially because of its unchangeable

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<sup>25</sup> Zulfatun Ni'mah, "Fiqh Perubahan Untuk Perempuan (Upaya Menjawab Keusangan dan Kekosongan Hukum Bagi Perempuan)," *Jurnal Muwazah* 1, no. 1 (2009): 43.

<sup>26</sup> Lahaji Lahaji dan Sulaiman Ibrahim, "Fiqh Perempuan Keindonesiaan," *Al-Bayyinah*, advance online publication, 2019, <https://doi.org/10.35673/al-bayyinah.v3i1.127>.

<sup>27</sup> Syafiq Hasyim, *Hal-hal yang Tak Terpikirkan tentang Isu-isu Keperempuanan dalam Islam*, (Bandung), Mizan, 2013, 190.

<sup>28</sup> Ni'mah, "Fiqh Perubahan Untuk Perempuan (Upaya Menjawab Keusangan dan Kekosongan Hukum Bagi Perempuan)," 43.

<sup>29</sup> Imam Nawawi, *'Uqd al-Lujayn Fi Bayani Hujuq al-Zaujaini* (Al-Hidayah, t.t.), 16.

nature and inability to be applied to ideals and reality. So, a new formula is needed to solve problems when reality conflicts with ideals.

### **Women's Liberation: Construction of Emancipatory Fiqh in the Contemporary Era**

Four primary sources serve as foundational references for the development of Islamic thought: *fiqh*, the *fatwas* of scholars, jurisprudence, and legislation. *Fiqh* is a product of *ijtihad* and holds an essential position in Islamic legal tradition. Thus, to disregard *fiqh*—including women's *fiqh*—is tantamount to neglecting a significant portion of Islamic teachings. This is because the core Islamic sources, namely the Qur'an and Hadith, consistently affirm the presence and relevance of women. Their inclusion reflects the necessity of positioning women appropriately within Islamic discourse, recognizing their roles not only in domestic spaces but also in broader social contexts.

The Arab people are known to have possessed a form of civilization prior to the advent of Islam. According to some scholars, this pre-Islamic civilization encompassed elements of religion, culture, politics, and economics. This era is commonly referred to as the *Jahiliyyah* period, or the 'Age of Ignorance,' denoting the cultural and moral state of Arab society before the revelation of Islam.<sup>30</sup> Verses in the Qur'an such as Ali 'Imran [3]:154, Al-Ma'idah [5]:50, and Al-Fath [48]:26 offer insight into the conditions and characteristics of Arab society during the *Jahiliyyah* period. These verses describe a society that, while possessing elements of spiritual belief and civilizational norms, was also marked by practices contrary to Islamic ethics. Among them was the lifestyle of *tabarruj*—a display of physical beauty and adornment intended to attract sexual desire<sup>31</sup>—which is criticized in Islamic teachings as a reflection of moral decline during that era.<sup>32</sup>

The devaluation of women's status and role was one of the deeply rooted negative customs in pre-Islamic Arabian society. Women were often regarded as commodities, lacking autonomy and dignity. They were subjected to systemic discrimination and were frequently denied basic human rights. In fact, some prevailing views at the time considered women to be inferior beings with no entitlement to legal or social recognition.<sup>33</sup> Furthermore, women were not permitted to inherit from their parents or husbands. Marital relationships were loosely regulated, and men and women were not strictly bound by formal marriage contracts. If a woman was abandoned by her husband, her status could be transferred to his close relative or even his eldest son. In stark contrast, a married man held a position of authority comparable to that of a king. One of the most inhumane practices of certain Arab tribes during the *Jahiliyyah* period was the burial of infant daughters alive. Although not all tribes practiced this custom, some did, driven by the belief that daughters were a source of economic burden and posed a risk during wartime. If defeated, families

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<sup>30</sup> Yuangga Kurnia Yahya dan Universitas Darussalam Gontor, "Pengaruh Penyebaran Islam di Timur Tengah dan Afrika Utara: Studi Geobudaya dan Geopolitik," *Al-Tsaqafa* 16, no. 1 (2019): 44–62, <https://doi.org/10.15575/al-tsaqafa.v16i1.4272>.

<sup>31</sup> Kecia Ali, *Sexual Ethics and Islam: Feminist Reflections on Qur'an, Hadith, and Jurisprudence* (Oneworld, 2016).

<sup>32</sup> Aksin Wijaya, "Hermeneutika Al-Qur'an: Memburu Pesan Manusia dalam Al-Qur'an," *Ulumuna*, advance online publication, 2011, <https://doi.org/10.20414/ujis.v15i2.196>.

<sup>33</sup> Dedi Supriyadi, *Sejarah Peradaban Islam* (Pustak Setia, 2016), 50.

feared their daughters would be captured by the enemy, and they considered death preferable to captivity.<sup>34</sup>

Islam is also a religion of renewal, and the message brought by the Prophet Muhammad (peace be upon him) serves as divine guidance from Allah SWT to correct the moral and spiritual deviations of humanity. As such, Islam is the true religion, divinely ordained, and will remain accepted by Allah SWT until the end of time. During the twenty-first century, there has been a significant paradigm shift that has initiated a renewal of Islamic thought.<sup>35</sup> This shift has also been accompanied by the emergence of new issues in Islamic law in the modern era, requiring contemporary mujtahids to address these challenges and determine their legal status in order to respond effectively to the concerns of the Muslim community.

It is undeniable that the current renewal of Islamic law has encouraged mujtahids to formulate legal decisions that respond to contemporary societal challenges, including the crucial area of family law. Social transformations have significantly shaped the issues that have emerged and continue to evolve in this century, highlighting the need for Islamic legal interpretations that are both relevant and responsive to changing realities. Based on the explanation above, it is evident that understanding Islamic reform from the perspective of family law is essential to prevent misconceptions about Islam as the true and divinely accepted religion. Islam offers equal opportunities to all of its followers to become the best and most pious individuals, regardless of gender or socioeconomic status.

Wahbah al-Zuhaili firmly asserted that the privileges Islam grants to women reflect the religion's commitment to preserving their dignity and human value, while affirming their independence. Islam provides women with broad freedoms to act, think, and express their views, holding them fully accountable for their actions, just as men are. It elevates women from the depths of historical injustice and removes the stigma imposed upon them by earlier religious traditions. In every aspect of humanity, Islam regards women as equal to men. Women have the right to seek knowledge, work, teach, and take full responsibility for managing family affairs.<sup>36</sup> One of the fundamental aspects of universal human rights is the protection of the rights of women and girls. A key objective of the international community is to eliminate all forms of discrimination against them, ensuring their full equality and enabling their active participation in political, civil, economic, social, and cultural spheres at national, regional, and international levels.

### **Women's Role in the Advancement of Civilization**

Every conceptual framework is always supported by a foundation or argument that serves as the formal basis for its formulation. Husein Muhammad, for example, presents selected textual references in the field of women's jurisprudence to support the principle of gender equality.

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<sup>34</sup> Yahya dan Gontor, "Pengaruh Penyebaran Islam di Timur Tengah dan Afrika Utara: Studi Geobudaya dan Geopolitik," 44–62.

<sup>35</sup> Koko Abdul Kodir, *Metodologi Studi Islam* (Pustak Setia, 2017), 15.

<sup>36</sup> Wahbah Zuhaily, *Kebebasan Dalam Islam* (Pustaka al-Kautsar, 2005), 270–80.

**Table 1. Qur'anic Foundations of Human Dignity and Equal Reward****The Evidence of the Qur'an**

QS Al Hujurat: 13	Indeed, Allah created you from one man and a woman, and then We made them into nations and tribes so that they might know each other. Indeed, the most pious person is the most noble.
QS An Nahl: 97	Whoever does good, whether male or female, while a believer, will be rewarded by Allah in a better way. This verse emphasizes that faith is necessary for doing good and that everyone gets the same reward.
QS At Taubah: 71	Men and women of faith help each other. both strive to do good, avoid evil deeds, uphold prayers, pay zakat, and obey Allah and His Messenger, the Most Mighty, the Most Wise.
QS Al Dzariyat: 56	Allah did not create humans and jinn except to worship Him.
QS Al Baqarah: 35	"O Prophet Adam, dwell in Paradise, eat as much as you like, and do not approach this tree, lest you be among the wrongdoers," said Allah.
QS Ghafir: 40	All believers who do good will enter Paradise with unlimited sustenance. However, Allah will not reward those who do bad except in a comparable way.
QS Al An'am: 165	Indeed, your Lord is all-punitive, all-forgiving, and most merciful; It is He who made the caliphs on earth, and He raised your rank above others to test you on what He has given you.

In many Muslim-majority countries, women are often not actively involved in public life and are frequently marginalized. However, the core teachings of Islam aim to restore a balanced situation in which women enjoy the same rights as men, free from discrimination or subjugation. Both men and women were created with the same purpose—to worship Allah—and are equally valued in fulfilling this divine obligation.

The relationship between men and women, as reflected in the aforementioned verse, is also emphasized in the perspectives of scholars such as Husein Muhammad and Musdah Mulia. Their interpretations highlight that Islamic law assigns equal responsibilities to both men and women. Commands and prohibitions are applied without distinction, and the potential for receiving rewards or facing consequences is balanced between the two. This affirms that Islam does not support discrimination against women and upholds the principle of equality for all individuals.<sup>37</sup>

Women are unique creations of God—gentle, yet strong. In the advancement of a nation's civilization, women play a vital role. They give birth to and nurture the generation that will shape the future of society. For this reason, women are often referred to as the 'pillar of the nation.' The quality of each generation is greatly influenced by the education and upbringing provided by mothers. When a woman fulfills her role as a mother with dedication, she contributes to the emergence of a strong and capable generation that will lead the country forward. Conversely, if this role is neglected, it can negatively impact the

<sup>37</sup> Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (IIIT, 2022), 127.

nation's future. Women are honored by Allah for their invaluable and irreplaceable contributions.<sup>38</sup>

When women are able to carry out their duties as *ummu warobatul bait*, or "mothers and housekeepers", they will play an important role in building the nation's civilization. In addition, a clear system supports it to enable them to produce a brilliant generation that will be resilient and contribute greatly to the development and progress of the country.<sup>39</sup>

Like the women during the golden age of Islam, Khadijah—the beloved wife of the Prophet Muhammad—was a pillar of strength and unwavering support in his mission to spread Islam. She stood by him through times of joy and sorrow, offering not only emotional support but also sacrificing all her wealth for the sake of his *da'wah* (preaching). Her dedication and faith were instrumental in the early development of Islam. As a result of her values and guidance, she raised intelligent sons and daughters who made significant contributions to the advancement of the Islamic faith.

Another remarkable figure is Al-Khansa, a courageous mother who exemplified unwavering faith by allowing her sons to go to *jihad*, even as all four of them were martyred on the battlefield. Al-Shifa', who served as a Qadhi Hisbah (a judge overseeing public morality and market regulation) during the caliphate of Umar ibn al-Khattab, was a distinguished sahabiyah known for her firm and fair judgments. In addition to these figures, many other women companions (*sahabiyat*) made significant contributions to the development of Islamic civilization. These accounts reflect the critical role that women played in shaping and advancing the civilization of the Islamic world.

Women hold a unique and vital position in comparison to men, particularly due to their role as primary educators and early character builders of children. Within the family, women typically fulfill three key roles: as wives, mothers, and daughters. Each of these roles carries distinct duties and responsibilities, contributing significantly to the development and well-being of both the family unit and society as a whole.

In Islam, women are granted a highly honorable and noble position. Men and women share the same rights and obligations, though they are entrusted with different roles and responsibilities. This distinction reflects the natural roles assigned to women in accordance with their inherent qualities and dignity within Islamic teachings.<sup>40</sup>

**Women as Mothers:** The family is a fundamental social institution that plays a vital role in ensuring the well-being and continuity of its members, particularly children, who represent the next generation of the nation. As the primary environment for a child's development, the family significantly influences the formation of the child's personality. In this context, the role of the mother is essential in shaping the child's character and education, even in cases where the father may be less involved.

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<sup>38</sup> Ahmad Muhtadi Anshor dan Muhammad Ngizzul Muttaqin, "Implementasi Pemikiran Fiqih Prioritas Yusuf Al-Qardhawi Sebagai Upaya Membangun Kebijakan Berbasis Kemanusiaan," *Al-Maslahah : Jurnal Ilmu Syariah*, advance online publication, 2020, <https://doi.org/10.24260/al-maslahah.v16i1.1543>.

<sup>39</sup> Anisa Nurcahyani dan M. Falikul Isbah, "Perempuan dan Ekonomi Digital: Peluang Kewirausahaan Baru dan Negosiasi Peran berbasis Gender," *PALASTREN Jurnal Studi Gender*, advance online publication, 2020, <https://doi.org/10.21043/palastren.v13i1.6382>.

<sup>40</sup> M Koderi, *Bolehkah Perempuan Menjadi Imam Negara* (Gema Insani Press, 1999), 102.

Instead, Women as Wives: In the role of a wife, a woman serves as a companion and emotional support to her husband. She provides a safe space to discuss and reflect on the challenges he faces, helping to ease his burdens and support him in finding solutions. This emotional partnership contributes to reducing the psychological pressure on the husband and reinforces the stability of the family unit.

While, Women as social creatures: Women are naturally social creatures who cannot separate themselves from their relationships with others. To fulfill social needs, you must establish relationships with others.<sup>41</sup>

### Implementation of Emancipatory Fiqh in Building Civilization

Essentially, society is in a constant state of transformation, leading to what is known as "social change," which continuously shapes social life. Consequently, every phase of social transformation brings about demands for change and renewal across various sectors, including *fiqh*, which plays a central role in guiding human—especially Muslim—life. Therefore, Islamic law must possess a flexible and adaptive character, capable of responding to the evolving socio-cultural context. This inherent adaptability allows for legal interpretations to shift across time and place. For this reason, Islamic law is often described as dynamic and responsive to change.<sup>42</sup>

Islamic law (*fiqh*) was established with two fundamental objectives to shape the understanding of *sharia*. First, it seeks to guide the conduct of every Muslim based on the principles of *aqidah* (faith), *sharia* (law), and *akhlaq* (morality). Second, it aims to construct a society rooted in justice and equality. In essence, *fiqh* should be responsive, contextual, and socially oriented, rather than static, formalistic, or detached. The application of *ijtihad*, especially one rooted in the spirit of *tayyin'* (the legislative spirit) and the objectives of *sharia* (*maqasid al-shariah*), is essential for grasping the true substance and purpose of Islamic law. Therefore, developing a new and more contextual understanding of contemporary social realities—particularly those relating to changes in Islamic legal perspectives on women—is of critical importance.

**Table 2. Evolution of Women's Roles in Islamic Jurisprudence: Classical vs Contemporary Views**

Classical Fiqh	Contemporary Jurisdiction
1. The determination of Islamic law is mostly dominated by male scholars. Even special discussions about women such as menstruation and pregnancy are written by men so that the determination of law is based on the perspective of men.	1. Female clerics are starting to grow and flourish
2. The law of marriage for men and being married/married for women. In this case, marriage is not seen as a legal act of two people, but only the husband is given a larger portion.	2. The culture of women's freedom in seeking higher education like men

<sup>41</sup> Koderi, *Bolehkah Perempuan Menjadi Imam Negara*, 103–4.

<sup>42</sup> Ibn Qayyim al-Jauziyyah, *I'lam al-Muwaqqi'in 'An Rabb al-'Alamin* (Dar al-Kutub al-Ilmiah, 2010), 3:11.

3. In a household, the man who has the highest decision-making position is the man, if the wife disobeys, she will be subject to <i>nusyuz</i> sanctions.	3. Nowadays, women have filled many important positions in public activities.
4. Public areas are depicted as men's places, conversely, domestic areas are women's areas of activity.	4. Nowadays, women have filled many important positions in public activities.
5. Prohibition on leaving the house without the husband's permission, even for good purposes	5. Cooperate with each other in domestic affairs
6. Sexual relations in the household provide an understanding of the relationship between subject and object (serving and being served), not in the context of the rights that both have to serve each other.	6. The position of women is often the backbone of the family because their husbands cannot fulfill their obligations.

The concepts of "gender" and "sex" are essentially used to differentiate the biological and social distinctions between men and women, particularly within feminist analysis. While the terms "gender" and "sex" may appear synonymous in linguistic terms—both referring to categories of sex—the root of gender injustice often lies in the misinterpretation of gender as being identical to biological sex. This conflation leads to the belief that social roles and characteristics are biologically determined, rather than socially constructed, thereby justifying inequality and limiting the potential of individuals based on their sex.

While differences between men and women may persist, they must remain within reasonable limits and must not compromise the principles of freedom and responsibility that are fundamental to individual and social human rights. Women's education continues to be a powerful tool for guiding society toward the right path. This is because women play a vital role in daily life—not only in the sphere of education but also in shaping society as a whole.<sup>43</sup>

Gender-responsive education does not seek to elevate women above men, but rather to empower women by promoting a more equitable distribution of power in society. The goal is to ensure that no group dominates another, while fostering greater independence and inner strength among individuals. The Islamic concept of gender relations advocates for justice within society and reflects a harmonious pattern among human beings, nature, and God. Islamic education encourages an understanding of balance, harmony, alignment, and divinity—both in human relationships and in interactions with the natural world. Only through this understanding can individuals fulfill their role as caliphs on Earth, and it is through this fulfillment that they may attain the true status of abid (devoted servant of God).

The call for gender equality must be grounded in the Islamic tradition. When the Prophet's wife, Umm Salamah, asked, "*Why are men who migrate always mentioned in the Qur'an, while women are not?*" her question reflected a desire for recognition of women's

<sup>43</sup> Fatima Mernissi, *The Forgotten Queens of Islam* (Mizan, 1994), 127.

contributions. In response, Allah revealed a verse in Surah Ali-Imran (3:195), affirming that both men and women are equal in the sight of God regarding their good deeds. The verse states: *"Indeed, I do not let the deeds of any doer among you be lost, whether male or female—you are of one another. So those who emigrated, were expelled from their homes, were harmed in My cause, fought and were killed—I will surely remove their misdeeds and admit them into gardens beneath which rivers flow."* This response firmly establishes that the efforts of women are equally valued and rewarded by Allah.<sup>44</sup>

The position of women within the household is a significant social concern that continues to affect women in various ways. Often, women's roles are perceived as being confined solely to domestic responsibilities as mothers and wives. In many cases, wives who seek to claim their rightful entitlements—rights that are often denied by their husbands—are left vulnerable to violence and silenced from expressing their opinions. Islamic emancipatory law, grounded in divine revelation, upholds the principle that women are equal partners with men in the family, promoting mutual respect, justice, and shared responsibility within the household.<sup>45</sup>

According to classical Islamic law (*fiqh*), men are responsible for providing for all the needs and sustenance of their families. Conversely, managing and maintaining the husband's wealth and the outcomes of his business are considered the primary responsibilities of the wife. In many developed societies, a "good" woman is often defined as one who excels in household management—ensuring a clean and orderly home, preparing nutritious meals, supporting her children's academic success, and fulfilling various domestic duties. On the other hand, women who are perceived as unable to fulfill these roles are often labeled as "bad" or inadequate, reflecting deeply ingrained gender norms and expectations.<sup>46</sup>

In classical Islamic jurisprudence discourse, the story of the Companion Umar ibn al-Khattab, who remained silent when scolded by his wife, is often cited as a reference. This narrative suggests that Umar acknowledged and appreciated his wife's contributions to the household, recognizing the significance of her domestic labor. His silence is interpreted as a form of gratitude and emotional restraint, reflecting his awareness of the value of her efforts. Notably, this account implies that Umar may not have considered such tasks as solely the wife's obligations, but rather appreciated them as voluntary acts of service. However, many retellings of this story focus more on the husband's emotional response to his wife's complaints than on a critical analysis of his own responsibilities within the household. This emphasis tends to reinforce the idea that a husband's stress arises from the wife's dissatisfaction, rather than from any neglect of his own duties.<sup>47</sup>

According to this traditional understanding, women who fail to fulfill household duties are often disregarded and left without textual or legal protection. In contrast, Islamic

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<sup>44</sup> Ministry of Religion of the Republic of Indonesia, *Al-Qur'an and its Translation, Revised Edition* (Research and Development and Training Agency, Ministry of Religion of the Republic of Indonesia, 2019).

<sup>45</sup> Ahmad Aqib, "Penafsiran Tafsir Emansipatoris dalam al-Qur'an (Perspektif Pemikiran Siti Musdah Muia)," *Al-Fanar: Jurnal Ilmu Al-Qur'an dan Tafsir* 2, no. 2 (2019): 66.

<sup>46</sup> Ni'mah, "Fiqh Perubahan Untuk Perempuan (Upaya Menjawab Keusangan dan Kekosongan Hukum Bagi Perempuan)," 43.

<sup>47</sup> Mudhofar Badri, *Panduan Pengajaran Fiqih Perempuan di Pesantren* (YKF, 2010), 216.

classical texts explicitly warn of hellfire for wives who are considered disobedient or who refuse to follow their husbands' commands. Such a framework reveals inconsistencies within classical fiqh, particularly when viewed in the context of modern society, where the roles of husbands and wives increasingly overlap in both private and public spheres. Today, women actively participate in politics, bureaucracy, business, and various professional sectors. However, women's involvement in public life is often met with challenges—especially economic pressures, such as insufficient household income, a consumer-driven social environment, and the need for self-actualization through education and career. In many cases, women even become the primary breadwinners, earning higher salaries than their husbands. Yet despite these realities, traditional formulations of fiqh often fail to reflect the changing dynamics of contemporary Muslim families.

When examining classical Islamic jurisprudence, it becomes evident that there are no clear provisions regarding the management or distribution of a wife's income. The prevailing assumptions in these texts revolve around normative family structures, where the husband is the breadwinner and the wife remains at home. As a result, women earning income in the public sphere is often perceived not as a sign of progress or empowerment, but rather as an anomaly—or even a deviation—from the ideal Islamic family and social system. Consequently, classical fiqh does not provide any legal formulation that affirms a wife's right or obligation to manage household affairs if she is the primary provider. There is no legal recognition of her potential role as the head of the family, even in situations where the husband is incapacitated or unable to fulfill his responsibilities. A wife's financial contribution is typically regarded merely as a salary, without altering the foundational legal assumptions about authority and responsibility within the family.

When a husband is unable to fulfill his responsibilities, the foundational argument in classical Islamic jurisprudence—that men are naturally stronger and therefore designated as family leaders due to their financial role—is rendered ineffective. Despite a husband's incapacity to provide, the notion of male leadership remains deeply embedded in both classical fiqh and societal perceptions. Even when the wife becomes the sole breadwinner due to the husband's unemployment, classical jurisprudence does not recognize her as the head or "father" of the household. In such scenarios, it is the wife who bears the heaviest burden, as she is expected to manage both professional responsibilities and domestic duties simultaneously, without a corresponding shift in authority or recognition within the legal framework.<sup>48</sup>

The human rights of individuals, particularly women, have often been compromised by the justifications traditionally imposed upon them. In light of this, there is a pressing need for *ijtihad* (independent reasoning) in the realm of emancipatory Islamic law. This emancipatory fiqh *ijtihad* is centered on two primary objectives: the realization of *maslahah al-'usrah* (the welfare of the family) and the integration of cultural principles. These cultural ideals, grounded in current social realities, serve not only as a guide for daily life but also as proof that fiqh can remain a living, just, and relevant legal system across time and into the

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<sup>48</sup> Muhamad Tisna Nugraha, "Aisyah sebagai figur emansipasi perempuan dunia," *Raheema, Jurnal Studi Gender dan Anak*, 2019, 220.

future.<sup>49</sup> Cultural idealism does not mean forcing oneself not to follow divine rules; on the contrary, cultural idealism justifies the values found in divine rules.

One essential aspect of *maqāṣid al-shari‘ah* (the higher objectives of Islamic law) is *maṣlahah al-‘usrah*, which refers to the protection and welfare of the family. In society, women's roles and activities are often centered around enhancing the well-being of the household. Human beings were created to live in a state of *sakinah* (tranquility), *mawaddah* (affection), and *rahmah* (compassion) within the sacred bond of marriage, in line with divine wisdom. To achieve happiness within this framework, it is necessary for husbands and wives to engage in mutual communication and share responsibilities. A key value in this regard is recognizing and entrusting women with the right to participate equally in social and economic activities alongside men, as a means to foster peace, harmony, and fulfillment within the family.<sup>50</sup>

## Conclusion

Emancipatory fiqh seeks to address the limitations and outdated perspectives found in classical Islamic legal discourse, particularly those restricting women's roles and activities. It aims to align Islamic legal thought with evolving cultural ideals and the pursuit of *maṣlahah al-‘usrah*—the concept of domestic well-being and harmony. This approach emphasizes the need to respond to contemporary societal changes, especially those concerning women's increasing involvement in public life. Domestic tranquility (*maṣlahah al-‘usrah*) is viewed as both a guiding principle and a substantive objective to be realized. In this context, if a woman's participation in the public sphere (such as through employment) contributes positively to the stability and welfare of the household, then such activities are not only permissible but also desirable. The ultimate goal of emancipatory fiqh is to ensure that legal rulings—especially those concerning women's rights and roles—remain relevant, justifiable, and aligned with the overarching objectives of Islamic law (*maqāṣid al-shari‘ah*), particularly the realization of public and familial welfare.

Emancipatory fiqh seeks to address the limitations and outdated perspectives found in classical Islamic legal discourse, particularly those restricting women's roles and activities. It aims to align Islamic legal thought with evolving cultural ideals and the pursuit of *maṣlahah al-‘usrah*, the concept of domestic well-being and harmony. This approach emphasizes the need to respond to contemporary societal changes, especially those concerning women's increasing involvement in public life. Domestic tranquility (*maṣlahah al-‘usrah*) is viewed as both a guiding principle and a substantive objective to be realized. In this context, if a woman's participation in the public sphere such as through employment, leadership, or social contribution positively supports the stability and welfare of the household, then such activities are not only permissible but also commendable within the framework of Islamic ethics. The ultimate goal of emancipatory fiqh is to ensure that legal rulings concerning women's rights and roles remain relevant, justifiable, and consistent

<sup>49</sup> Saefur - Rochmat, “Paradigma Feminisme Islam: Keluarga Sebagai Suatu Team,” *Mozaiq: Jurnal Ilmu-Ilmu Sosial dan Humaniora*, advance online publication, 2015, 10, <https://doi.org/10.21831/moz.v2i1.5540>.

<sup>50</sup> Fauzi, *Hak Asasi Manusia dalam Fikih Kontemporer* (Prenadamedia Group, 2018), 151–52.

with the overarching objectives of Islamic law (*maqāṣid al-shari‘ah*), particularly the realization of both public and familial welfare. To operationalize these ideals, this study develops a conceptual framework a “Model of Integrative Emancipatory Fiqh” that harmonizes *maṣlahah al-‘usrah*, *maqāṣid al-shari‘ah*, and gender equity. This model envisions a dynamic jurisprudential system in which gender justice functions as an integral dimension of legal reasoning, ensuring that every legal interpretation contributes simultaneously to human dignity, family welfare, and societal balance in accordance with Islamic ethical universality.

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