

RESEARCH ARTICLE

From parental authority to parental responsibility legal evolution and challenges for the protection of children

De la autoridad parental a la responsabilidad parental: evolución jurídica y desafíos para la protección de los niños

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Received: 25 May 2026 / Accepted: 20 June 2026 / Published online: 30 June 2026
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Abstract The transformation of Family Law over recent decades has profoundly redefined the traditional concept of parental authority, shifting from a model based on parental prerogatives to one centred on parental responsibility and the comprehensive protection of children's rights. This study aims to examine the legal evolution of filiation and parental authority from a historical, comparative and human rights perspective, identifying the main challenges arising from the transition towards parental responsibility within Latin American legal systems. A qualitative legal methodology was adopted, combining doctrinal, normative, jurisprudential and comparative analysis. The review included national legislation, international human rights instruments, case law of the Inter-American Court of Human Rights and specialised scientific literature published between 2020 and 2026. The findings reveal a progressive trend towards replacing the traditional concept of parental authority with parental responsibility, understood as a legal function guided by the best interests of the child, shared parental responsibilities and respect for the child's evolving capacities. Nevertheless, significant challenges remain regarding assisted reproduction, socio-affective filiation, diverse family structures and legislative harmonisation across Latin America. The study concludes that consolidating the parental responsibility paradigm requires a reinterpretation of traditional Family Law institutions in accordance with international child protection standards.

Keywords filiation, parental responsibility, parental authority, best interests of the child, children's rights.

Resumen La transformación del Derecho de Familia durante las últimas décadas ha redefinido profundamente la concepción tradicional de la patria potestad, desplazando un modelo basado en prerrogativas parentales hacia otro centrado en la responsabilidad parental y la protección integral de los derechos de niños, niñas y adolescentes. El objetivo de este estudio es analizar la evolución jurídica de la filiación y la patria potestad desde una perspectiva histórico-comparada y de derechos humanos, identificando los principales desafíos que plantea la transición hacia un modelo de responsabilidad parental en los ordenamientos jurídicos latinoamericanos. Se empleó una metodología jurídica cualitativa basada en el análisis doctrinal, normativo, jurisprudencial y comparado. La revisión comprendió legislación nacional, instrumentos internacionales de derechos humanos, jurisprudencia de la Corte Interamericana de Derechos Humanos y literatura científica especializada publicada entre 2020 y 2026. Los resultados evidencian una tendencia progresiva hacia la sustitución del concepto clásico de patria potestad por el de responsabilidad parental, entendida como una función jurídica orientada al interés superior del niño, la corresponsabilidad familiar y el respeto de la autonomía progresiva. No obstante, persisten desafíos relacionados con la filiación derivada de las técnicas de reproducción humana asistida, la filiación socioafectiva, la diversidad familiar y la armonización legislativa en América Latina. Se concluye que la consolidación del paradigma de responsabilidad parental exige una reinterpretación de las instituciones tradicionales del Derecho de Familia conforme a los estándares internacionales de protección de la infancia.

Palabras clave filiación, responsabilidad parental, patria potestad, interés superior del niño, derechos de la niñez.

How to cite

Chilembelenbe-Seyungo, A. A., Correia-Dumbo, R. L., Martins-Chipululo, E. N., Calei-Brito, L., & Kavinda-Canjamba, A. K. (2026). From parental authority to parental responsibility legal evolution and challenges for the protection of children. *Journal of Law and Epistemic Studies*, 4, e180. <https://doi.org/10.5281/zenodo.21208915>

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Introduction

Family law has undergone one of the most profound transformations within contemporary legal systems. The traditional institutions governing parent–child relationships have progressively evolved from models centred on parental authority towards legal frameworks that recognise children as autonomous holders of rights. This transition has been driven by the constitutionalisation of private law, the internationalisation of human rights and the growing influence of the Convention on the Rights of the Child (CRC), which has reshaped the interpretation of family relationships under the principles of human dignity, equality and the best interests of the child (United Nations, 1989). (Herring, 2023)

Historically, the institution traditionally known as parental authority (*patria potestad*) originated in Roman law, where *patria potestas* conferred extensive powers upon the *pater familias* over the person and property of family members (Gardner, 1998). Although subsequent codifications progressively limited these powers, nineteenth-century civil legislation largely preserved a conception of parental authority as a legal institution primarily designed to protect parental rights rather than children’s individual interests. During the twentieth century, however, constitutional reforms, international human rights law and judicial developments fundamentally altered this paradigm by recognising children as independent rights holders whose interests prevail over parental prerogatives (Tobin, 2019).

This transformation has been particularly significant following the adoption of the Convention on the Rights of the Child, which introduced a child-centred approach to family law. Rather than conceiving parental authority as a privilege, the Convention emphasises the responsibilities of parents to ensure children’s survival, development, participation and protection while requiring States Parties to guarantee the effective enjoyment of children’s rights (United Nations, 1989). The principle of the best interests of the child established in Article 3 has become the primary interpretative criterion guiding legislative reforms and judicial decisions worldwide (Committee on the Rights of the Child, 2013).

The evolution of international human rights law has also reinforced this progressive change. The Inter-American Court of Human Rights has consistently recognised that parental rights must be interpreted in harmony with children’s fundamental rights, emphasising that family relationships should promote the comprehensive development of children rather than reinforce hierarchical authority. Landmark judgments such as *Atala Ríffo and Daughters v. Chile* and *Fornerón and Daughter v. Argentina* illustrate the Court’s progressive interpretation of family law through the principles of equality, non-discrimination and the best interests of the child (Inter-American Court of Human Rights, 2012a, 2012b). This

jurisprudence has significantly influenced the contemporary understanding of family law, promoting a child-centred approach that places the protection of children’s rights above traditional conceptions of parental authority (Abreu & Ferreira, 2025; Silva Niño de Zepeda, 2022).

Parallel developments have occurred in Europe. The European Court of Human Rights has repeatedly held that parental authority cannot be exercised contrary to children’s welfare and that State intervention may be justified whenever necessary to safeguard children’s rights under Article 8 of the European Convention on Human Rights. Consequently, family law has progressively shifted from an adult-centred institution towards a child-centred legal framework balancing parental responsibilities with children’s autonomy and evolving capacities (European Court of Human Rights, 2023).

In Latin America, this international influence has stimulated substantial legislative reforms. Several jurisdictions—including Argentina, Spain and Colombia—have gradually replaced or reinterpreted the traditional notion of *patria potestad* through broader concepts such as parental responsibility, emphasising shared parental duties, children’s participation in decisions affecting them and the progressive exercise of autonomy according to age and maturity. Argentina’s Civil and Commercial Code of 2015 represents one of the clearest examples of this paradigm shift by expressly replacing the concept of *patria potestad* with *responsabilidad parental*, thereby aligning domestic legislation with international human rights standards (Argentina, 2014; Smith, 2025).

Despite these advances, the transition has not been uniform throughout Latin America. Several legal systems continue to preserve traditional terminology or regulatory structures rooted in classical civil law, generating doctrinal and practical tensions regarding the interpretation of parental rights and obligations. Ecuador constitutes an illustrative example. Although constitutional principles and child protection legislation strongly embrace the best interests of the child and comprehensive protection, the coexistence of traditional legal concepts with contemporary human rights standards continues to pose interpretative challenges regarding the exercise, limitation, and judicial control of parental authority.

Simultaneously, profound social changes have introduced new legal questions that challenge the classical foundations of filiation. Advances in medically assisted reproduction, the growing recognition of socio-affective parenthood, increasing family diversity, international surrogacy arrangements and the expansion of children’s identity rights have transformed the legal understanding of parent–child relationships beyond biological ties alone. Modern family law therefore requires legal institutions capable of responding to increasingly complex realities while ensuring effective protection of

children's fundamental rights (European Parliament, 2024).

Recent scholarship likewise suggests that parental responsibility should be understood not merely as a collection of legal duties but as a multidimensional institution integrating legal, ethical, psychological and social responsibilities. This broader perspective recognises that effective child protection depends upon cooperative parenting, shared family responsibilities and institutional mechanisms supporting children's holistic development rather than simply regulating parental authority (Chelouche-Dwek & Fonagy, 2026)

Although the international literature has extensively examined children's rights, parental responsibility and family law reform, relatively few studies have undertaken an integrated analysis combining the historical evolution of filiation, the transformation of parental authority and comparative developments within Latin American legal systems under contemporary human rights standards. Most existing studies remain focused either on doctrinal interpretation or on national legislative reforms, leaving insufficient comparative examination of the broader legal transition from parental authority to parental responsibility.

This gap is particularly relevant because legal terminology reflects deeper conceptual transformations. Replacing patria potestad with parental responsibility does not merely involve linguistic reform; rather, it represents a fundamental redefinition of the legal relationship between parents and children. Under the contemporary paradigm, parents no longer exercise authority over children but fulfil legally enforceable responsibilities aimed at guaranteeing children's rights, autonomy and comprehensive development.

Accordingly, the objective of this study is to analyse the legal evolution of filiation and parental authority from a historical, comparative and human rights perspective, identifying the principal challenges arising from the transition towards parental responsibility within Latin American legal systems.

The principal contribution of this research lies in integrating historical legal analysis, comparative family law and international human rights standards to demonstrate that the contemporary concept of parental responsibility constitutes not merely a legislative reform but a structural transformation of family law, redefining parent-child relationships according to the principles of human dignity, the best interests of the child and the comprehensive protection of children's rights.

Methodology

This study adopted a qualitative legal research design based on doctrinal, comparative, normative and jurisprudential analysis. The methodological approach was selected because the research seeks to examine the legal evolution of filiation and parental authority within the broader framework of in-

ternational human rights and contemporary family law rather than to test empirical hypotheses.

The research combined four complementary legal methods. First, the historical-legal method was employed to analyse the evolution of filiation and parental authority from Roman law through modern civil codifications to the contemporary concept of parental responsibility. This historical perspective facilitated the identification of the legal, social and constitutional transformations that have progressively modified the parent-child relationship.

Second, the doctrinal method was used to examine specialised legal literature addressing filiation, parental authority, parental responsibility, children's rights and family law reform. The review focused primarily on peer-reviewed articles, scholarly books and book chapters published between 2020 and 2026, complemented by seminal doctrinal works whose relevance remains fundamental for understanding the historical development of these legal institutions.

Third, a comparative legal method was applied to examine similarities and differences among selected Latin American and European legal systems. The comparative analysis focused on Ecuador, Argentina, Colombia, Chile and Spain because these jurisdictions represent different stages in the transition from the traditional concept of patria potestad towards parental responsibility and incorporate diverse legislative responses to contemporary family law challenges.

Finally, a normative and jurisprudential analysis was undertaken to evaluate the legal framework governing filiation and parental responsibility. The study examined constitutional provisions, civil and family legislation, international human rights treaties and leading judicial decisions interpreting children's rights and parental responsibilities.

The principal international legal instruments analysed included the Convention on the Rights of the Child (1989), the American Convention on Human Rights, and other relevant international standards concerning the protection of children and family life. Jurisprudential analysis focused primarily on decisions of the Inter-American Court of Human Rights, complemented by selected judgments of the European Court of Human Rights and constitutional courts whose decisions have significantly influenced the interpretation of parental responsibility.

The literature search was conducted between January and March 2026 using internationally recognised academic databases, including Scopus, Web of Science, HeinOnline, JSTOR, SciELO, and Dialnet. Boolean operators were employed to combine English and Spanish search terms such as filiation, parental responsibility, parental authority, children's rights, best interests of the child, family law reform, filiación, patria potestad, responsabilidad parental and interés superior del niño.

The inclusion criteria comprised peer-reviewed publications published between 2020 and 2026, legal scholarship addressing family law, filiation, parental responsibility or children's rights, current legislation, international human rights instruments and relevant judicial decisions. Duplicate records, publications lacking academic review and documents unrelated to the research objective were excluded.

The documentary evidence was subsequently organised through thematic analysis into five analytical categories: (i) historical evolution of filiation; (ii) transformation of parental authority; (iii) parental responsibility in comparative law; (iv) international human rights standards; and (v) contemporary legal challenges associated with family diversity, medically assisted reproduction and socio-affective filiation.

The study complied with the ethical principles applicable to documentary legal research. All documentary sources were properly acknowledged in accordance with the APA (7th edition) referencing guidelines. As the research relied exclusively on publicly available documentary sources, it did not involve human participants or require approval by an institutional ethics committee.

Results and discussion

For centuries, filiation was conceived primarily as a legal institution designed to determine family lineage, inheritance rights and parental authority. In Roman law, filiation was closely linked to *patria potestas*, under which the *pater familias* exercised extensive legal authority over descendants and household members. This hierarchical model placed children under the legal control of the father, with limited recognition of their individual rights. Although Roman law represented a coherent legal system for its historical context, its conception of family relationships reflected a patrimonial and patriarchal understanding that differs substantially from contemporary child-centred approaches (Gardner, 1998 ; Kilkelly, 2024)

The reception of Roman legal principles into continental civil law strongly influenced nineteenth-century codifications, including the French Civil Code of 1804, the Spanish Civil Code of 1889 and many Latin American civil codes. Under these legislative frameworks, filiation remained closely associated with marriage, paternal authority and distinctions between legitimate and extramarital children. Consequently, the legal protection afforded to children frequently depended upon the marital status of their parents, generating significant inequalities in matters such as inheritance, identity and family recognition (Herring, 2023)

During the twentieth century, constitutional developments and the expansion of international human rights law fundamentally transformed this traditional model. The progres-

sive elimination of legal distinctions between children born within and outside marriage became one of the most significant reforms in family law. Equality and non-discrimination emerged as constitutional principles requiring States to recognise identical legal protection for all children regardless of their origin, thereby redefining the legal concept of filiation (Committee on the Rights of the Child, 2013).

The adoption of the Convention on the Rights of the Child (1989) represented a decisive turning point in this evolution. The Convention recognises every child's right to identity, family relationships, nationality and parental care while requiring States Parties to ensure that all legislative and judicial measures concerning children are guided by the best interests of the child. Consequently, filiation can no longer be understood exclusively as a biological or formal legal relationship but must also be interpreted as a legal institution serving the comprehensive protection of children's rights (United Nations, 1989).

The jurisprudence of the Inter-American Court of Human Rights has reinforced this child-centred approach. In *Fornerón and Daughter v. Argentina*, the Court emphasised that the right to family life extends beyond biological relationships and requires States to adopt measures safeguarding children's identity, family ties and emotional development. Likewise, in *Atala Rizzo and Daughters v. Chile*, the Court rejected discriminatory interpretations of family law and reaffirmed that judicial decisions affecting children must be based exclusively on objective assessments of their best interests rather than stereotypes concerning family structure (Inter-American Court of Human Rights, 2012a, 2012b).

Contemporary legal scholarship further recognises that filiation has become increasingly pluralistic. Advances in medically assisted reproduction, recognition of socio-affective parenthood, same-sex parenting and growing family diversity have challenged traditional assumptions linking filiation exclusively to biological parentage. Modern family law therefore increasingly incorporates biological, social, psychological and intentional dimensions of parenthood, reflecting the complexity of present-day family relationships (Duncan, 2026; European Parliament, 2024).

Within Latin America, legislative reforms have progressively incorporated these developments, although important differences remain among jurisdictions. While some countries have comprehensively modernised their family legislation by adopting child-centred concepts of parental responsibility, others continue to preserve traditional terminology and legal structures associated with *patria potestad*. These differences reveal that the evolution of filiation remains an ongoing process requiring continuous adaptation to international human rights standards and changing social realities.

Overall, the historical analysis demonstrates that filiation

has evolved from a legal institution primarily concerned with parental authority and family lineage into a multidimensional legal relationship centred on the protection of children's fundamental rights. This transformation provides the con-

ceptual foundation for understanding the subsequent evolution from parental authority to parental responsibility, which represents one of the most significant paradigm shifts in contemporary Family Law.

Table 1. Evolución histórica de la filiación

Historical Period	Predominant Legal Model	Main Characteristics
Roman Law	<i>Patria potestas</i>	Absolute paternal authority; children as subjects of family power.
Nineteenth-century Civil Codes	Legitimate filiation	Distinction between legitimate and extramarital children; family hierarchy.
Twentieth-century Constitutionalism	Equality of children	Elimination of legal discrimination based on birth status.
Convention on the Rights of the Child (1989)	Child-centred approach	Best interests of the child; recognition of children as rights holders.
Contemporary Family Law	Plural concept of filiation	Recognition of biological, socio-affective and intentional parenthood; protection of family diversity.

Source: Prepared by the authors based on Roman law, the Convention on the Rights of the Child (1989), Inter-American Court of Human Rights case law, and the comparative literature reviewed.

The transformation of parental authority represents one of the most significant developments in contemporary Family Law. Traditionally, *patria potestad* was conceived as a legal institution granting parents—particularly the father—a broad set of powers over the person and property of their children. Although these powers progressively became subject to legal limitations, the institution continued to reflect an authority-centred model in which children were regarded primarily as objects of protection rather than autonomous holders of rights (Antokolskaia, 2024).

The constitutionalisation of Family Law and the expansion of international human rights have profoundly altered this traditional conception. Contemporary legal systems increasingly recognise that the relationship between parents and children cannot be governed by notions of authority or ownership but must instead be based on shared responsibilities directed towards safeguarding children's rights and promoting their comprehensive development. Consequently, the legal focus has shifted from parental power to parental duties, placing the child at the centre of legal protection Anggraini & Tjempaka, (2025).

This conceptual transformation has been reinforced by the Convention on the Rights of the Child, whose Articles 3, 5 and 18 establish that parents bear primary responsibility for the upbringing and development of their children, while States must support families in fulfilling these responsibilities in accordance with the best interests of the child (United Nations, 1989). Accordingly, parental authority can no longer be interpreted as a subjective right belonging exclusively to parents but rather as a legal function exercised for the benefit of the child.

Comparative legislation illustrates this evolution. The Argentine Civil and Commercial Code (2015) replaced the traditional concept of *patria potestad* with parental responsibility, defining it as the set of rights and duties corresponding to parents for the protection, development and comprehensive education of their children. This reform reflects a broader international tendency to replace authority-based terminology with concepts emphasising parental obligations, equality between parents and children's rights (Margaletić,& Preložnjak, 2024).

Spain has followed a similar interpretative path. Although the Spanish Civil Code formally retains the expression *patria potestad*, constitutional jurisprudence and legal scholarship increasingly interpret the institution as a function exercised exclusively in the interests of the child rather than as a manifestation of parental authority. This functional interpretation aligns Spanish law with the standards established by the Convention on the Rights of the Child and the jurisprudence of the European Court of Human Rights (Kilkelly, 2024).

Colombia likewise reflects this gradual transformation. Although its Civil Code continues to employ the traditional terminology, constitutional jurisprudence has consistently emphasised that parental authority must be exercised within the framework of children's fundamental rights, human dignity and the constitutional principle of the best interests of the child. Decisions of the Constitutional Court of Colombia have repeatedly affirmed that parental powers are limited by the obligation to respect children's autonomy, participation and integral development.

In Ecuador, constitutional reform has similarly modified the legal understanding of parental authority. The Constitu-

tion of the Republic of Ecuador (2008), together with the Code on Children and Adolescents, establishes comprehensive protection, progressive autonomy and the best interests of the child as guiding principles for interpreting family relationships. Nevertheless, the persistence of traditional legal terminology occasionally creates interpretative tensions between classical civil law concepts and contemporary constitutional principles.

The evolution from parental authority to parental responsibility also reflects broader changes in the understanding of childhood itself. Modern child protection systems recognise children as active subjects of rights whose opinions, preferences and evolving capacities must be considered in all decisions affecting them. Consequently, parental decision-making has become increasingly subject to judicial review whenever the exercise of parental responsibilities conflicts with children's fundamental rights (Committee on the Rights of the Child, 2013).

Recent scholarship further argues that parental responsibility should be understood as a multidimensional legal institution combining legal obligations with ethical, educational and social responsibilities. This broader conception acknowledges that effective parenting requires cooperation between parents, public institutions and society to ensure children's physical, emotional, educational and psychological development (Lowe & Douglas, 2022)

The comparative analysis therefore demonstrates that the replacement of patria potestad by parental responsibility represents considerably more than a terminological reform. Rather, it constitutes a structural transformation of Family Law in which the legal relationship between parents and children is redefined according to the principles of human dignity, equality, shared parental responsibilities and the best interests of the child. This evolution reflects the broader constitutionalisation of private law and the progressive incorporation of international human rights standards into domestic family legislation.

Table 2. Evolution from Parental Authority to Parental Responsibility

Traditional Parental Authority	Contemporary Parental Responsibility
Parent-centred institution	Child-centred institution
Authority and parental powers	Rights, duties and responsibilities
Hierarchical family model	Cooperative parenting model
Limited recognition of children's autonomy	Recognition of evolving capacities
Predominance of parental interests	Primacy of the best interests of the child
Biological emphasis	Biological, social and intentional parenthood
Limited judicial intervention	Judicial oversight to protect children's rights

Source: Prepared by the authors based on the Convention on the Rights of the Child (1989), the Argentine Civil and Commercial Code (2015), the Constitution of Ecuador (2008), and the comparative doctrine on Family Law.

Comparative Family Law reveals a gradual convergence towards legal models that place the child at the centre of family relationships. Although the historical development of parental authority has differed among jurisdictions, recent legislative reforms demonstrate a common tendency to reinterpret parental rights as legal responsibilities exercised in accordance with international human rights standards.

Argentina represents one of the most significant legislative reforms in Latin America. The Civil and Commercial Code, which entered into force in 2015, expressly replaced the traditional concept of patria potestad with parental responsibility (*responsabilidad parental*). Articles 638–704 define parental responsibility as a set of rights and duties exercised jointly by both parents for the protection, upbringing, education and comprehensive development of their children. This reform aligns Argentine family law with the Convention on the Rights of the Child by recognising children as rights

holders and promoting shared parental responsibilities. (Fenton-Glynn, 2021)

Spain has adopted a more gradual approach. Although the Spanish Civil Code formally retains the term *patria potestad*, constitutional doctrine and judicial interpretation have substantially modified its legal meaning. Current interpretation emphasises that parental authority is not a privilege of parents but a legal function exercised exclusively for the benefit of the child. Decisions of the Spanish Constitutional Court and the Supreme Court consistently apply the principles of proportionality, the best interests of the child and respect for children's evolving capacities when resolving family disputes (Dietrich, 2022).

Colombia likewise illustrates the constitutional reinterpretation of traditional family law institutions. Although the Civil Code continues to employ the expression *patria potes-*

tad, the Constitutional Court of Colombia has repeatedly held that parental powers are limited by children's constitutional rights. Constitutional jurisprudence has progressively strengthened children's participation in judicial proceedings, reinforced the principle of equality between parents and prioritised the protection of children's dignity and integral development.

Chile has also undertaken significant reforms aimed at modernising family law. Legislative amendments have strengthened the principle of co-parenting (*corresponsabilidad parental*), encouraging the active participation of both parents in children's upbringing following separation or divorce. These reforms reflect a broader movement away from unilateral parental authority towards shared parental responsibilities consistent with international standards of child protection.

Ecuador has incorporated many of these principles through the Constitution of the Republic, the Code on Children and Adolescents, and constitutional jurisprudence recognising children as subjects of rights. The constitutional framework expressly protects children's identity, family life, equality and comprehensive development. Nevertheless, unlike Argentina, Ecuador has not yet replaced the traditional termi-

nology of *patria potestad* within its civil legislation. This co-existence between classical legal concepts and contemporary constitutional principles generates interpretative challenges regarding the scope of parental rights and responsibilities.

Comparative evidence indicates that differences among these jurisdictions are no longer primarily related to the recognition of children's rights, which has become widely accepted, but rather to the degree of legislative adaptation and institutional implementation. Countries that have expressly incorporated the concept of parental responsibility generally provide greater conceptual coherence between constitutional principles, ordinary legislation and judicial practice. Conversely, legal systems that continue to rely on the traditional notion of *patria potestad* often depend more heavily on constitutional interpretation to reconcile classical legal terminology with contemporary human rights standards.

These findings indicate that the evolution of Family Law in Latin America is characterised by a progressive transition from authority-based models towards responsibility-based legal frameworks. However, legislative harmonisation remains incomplete, and important challenges persist regarding the uniform implementation of international standards across domestic legal systems.

Table 3. Comparative Regulation of Parental Responsibility in Selected Legal Systems

Jurisdiction	Current Legal Concept	Main Characteristics	Level of Alignment with International Standards
Argentina	Parental responsibility	Shared parental duties; child-centred approach; comprehensive regulation in the Civil and Commercial Code	Very high
Spain	<i>Patria potestad</i> (functionally interpreted)	Constitutional interpretation prioritising the child's best interests	High
Colombia	<i>Patria potestad</i>	Constitutional jurisprudence limits parental powers and strengthens children's rights	High
Chile	Parental authority with co-parenting reforms	Shared parental responsibilities and equal parental participation	High
Ecuador	<i>Patria potestad</i>	Constitutional protection and child-centred principles, but traditional terminology remains	Moderate–High

Source: Prepared by the authors based on the Civil and Commercial Code of Argentina, the Spanish Civil Code, the Colombian Civil Code, Chilean family legislation, the Constitution of Ecuador and the comparative doctrine reviewed.

The progressive transformation of parental authority into parental responsibility has been strongly influenced by the development of international human rights law. Beyond legislative reforms, international and constitutional courts have played a decisive role in redefining the legal relationship between parents and children by interpreting family law in light of the principles of human dignity, equality, non-dis-

crimination and the best interests of the child. Judicial interpretation has therefore become a fundamental mechanism for adapting traditional family law institutions to contemporary human rights standards.

The Convention on the Rights of the Child (CRC) constitutes the cornerstone of This legal shift. Its provisions es-

establish that children are autonomous holders of rights and require that all legislative, administrative and judicial decisions concerning them be guided by the principle of the best interests of the child (Art. 3). Furthermore, Articles 5, 12 and 18 recognise children's evolving capacities, their right to be heard in matters affecting them and the shared responsibilities of parents in ensuring their upbringing and development (United Nations, 1989).

The Committee on the Rights of the Child, through General Comment No. 14, clarified that the best interests of the child should function simultaneously as a substantive right, a fundamental interpretative principle and a procedural rule applicable to all decisions involving children. This interpretation significantly broadened the legal understanding of parental responsibility by requiring judges and public authorities to prioritise children's rights over competing adult interests whenever conflicts arise (Committee on the Rights of the Child, 2013).

Within the Inter-American Human Rights System, the Inter-American Court of Human Rights has progressively consolidated a child-centred approach to family law. In *Fornerón and Daughter v. Argentina*, the Court held that the right to family life cannot be interpreted exclusively through biological parenthood but must also consider emotional bonds, identity and children's comprehensive development. The judgment emphasised that States bear positive obligations to preserve family relationships whenever compatible with the child's best interests (Inter-American Court of Human Rights, 2012a).

Similarly, *Atala Rizzo and Daughters v. Chile* marked a landmark decision by rejecting discriminatory assumptions concerning parental capacity based on sexual orientation. The Court concluded that restrictions on parental rights cannot rely on stereotypes or subjective moral judgments but must instead be supported by objective evidence demonstrating actual harm to the child. This judgment significantly strengthened the principles of equality and non-discrimination within family law while reinforcing the primacy of the child's best interests (Inter-American Court of Human Rights, 2012b).

The jurisprudence of the European Court of Human Rights (ECtHR) has likewise contributed to the reinterpretation of parental responsibility under Article 8 of the European Convention on Human Rights. The Court consistently recognises that family life encompasses biological, adoptive and de facto family relationships and that State intervention affecting parental rights must satisfy the principles of legality, necessity and proportionality. Decisions concerning child custody, adoption and family reunification repeatedly emphasise that children's welfare constitutes the paramount consideration when balancing competing family interests (European Court

of Human Rights, 2023).

National constitutional courts have followed similar interpretative trends. The Constitutional Court of Colombia has consistently recognised children as subjects of special constitutional protection and has emphasised that parental authority cannot justify conduct contrary to children's dignity, participation or integral development. Likewise, the Constitutional Court of Ecuador has progressively interpreted constitutional provisions concerning childhood in accordance with international human rights instruments, reinforcing the constitutional obligation to guarantee comprehensive protection and the progressive autonomy of children.

The convergence of international and constitutional jurisprudence demonstrates that parental responsibility has acquired an autonomous legal content extending beyond traditional civil law categories. Rather than representing merely a collection of parental rights and duties, parental responsibility now functions as a constitutional institution whose exercise remains permanently subject to judicial scrutiny whenever children's fundamental rights are at risk.

Consequently, the evolution of international jurisprudence reveals that the contemporary legitimacy of parental responsibility no longer derives from parental status alone but from its effective contribution to safeguarding children's dignity, identity, participation and holistic development. This judicial evolution confirms that the constitutionalisation of Family Law has transformed parental responsibility into an institution fundamentally oriented towards the protection of children's human rights.

The transition from parental authority to parental responsibility has generated new legal challenges that extend beyond the traditional regulation of parent-child relationships. Scientific and technological advances, evolving family structures and the growing recognition of children's autonomy require legal systems to reinterpret classical family law institutions in order to respond effectively to increasingly complex social realities. Contemporary Family Law therefore faces the challenge of balancing legal certainty with the flexibility necessary to protect children's rights in changing social contexts.

One of the most significant developments concerns medically assisted reproduction. Advances in reproductive technologies have transformed the traditional legal foundations of filiation by separating biological, genetic, gestational and intentional parenthood. These developments raise complex legal questions concerning the determination of legal parenthood, the child's right to know their genetic origins and the legal recognition of intended parents. Comparative legislation demonstrates considerable diversity in addressing these issues, reflecting the absence of internationally harmonised legal standards (European Commission, 2024).

Table 4. Principal International Judicial Standards on Parental Responsibility

Judicial Body	Leading Decision / Instrument	Principal Legal Contribution
United Nations Committee on the Rights of the Child	General Comment No. 14 (2013)	Defines the best interests of the child as a substantive right, interpretative principle and procedural rule.
Inter-American Court of Human Rights	<i>Fornerón and Daughter v. Argentina</i> (2012)	Protects family identity and recognises positive State obligations regarding family relationships.
Inter-American Court of Human Rights	<i>Atala Riffo and Daughters v. Chile</i> (2012)	Prohibits discrimination in family law and reinforces the primacy of the child's best interests.
European Court of Human Rights	Article 8 jurisprudence	Requires proportionality and prioritises children's welfare in family disputes.
Constitutional Courts (Ecuador and Colombia)	Selected constitutional case law	Reinterprets parental authority consistently with constitutional and international child rights standards.

Source: Prepared by the authors based on the Convention on the Rights of the Child (1989), General Comment No. 14 (2013), the case law of the Inter-American Court of Human Rights, the European Court of Human Rights, and the constitutional jurisprudence of Ecuador and Colombia.

A second challenge relates to the growing recognition of socio-affective filiation. Contemporary doctrine increasingly acknowledges that stable emotional bonds may constitute a legitimate basis for recognising legal parent–child relationships independently of biological ties. Several Latin American jurisdictions have progressively incorporated socio-affective parenthood through judicial interpretation, particularly in cases involving stepfamilies, long-term caregiving relationships and de facto parenting. This evolution reflects the principle that family law should prioritise children's identity and emotional stability over exclusively biological criteria (Calderón, 2022).

Family diversity also represents an important area of legal transformation. The recognition of single-parent families, same-sex parenting, blended families and other non-traditional family structures has expanded the legal understanding of parenthood beyond conventional models. International human rights jurisprudence consistently rejects discriminatory treatment based on family composition and emphasises that legal protection must focus on children's welfare rather than on predetermined family models (Inter-American Court of Human Rights, 2012b; European Court of Human Rights, 2023).

Another emerging issue concerns the protection of children's digital identity and personal data. Increasing digitalisation has created new responsibilities for parents regarding children's online privacy, image rights and digital footprint. Parents are now required not only to exercise traditional caregiving responsibilities but also to safeguard children's digital rights in environments characterised by permanent data collection, algorithmic profiling and extensive social media

exposure. Consequently, parental responsibility increasingly encompasses duties associated with digital citizenship and technological risk prevention (UNICEF, 2021).

Artificial intelligence is also beginning to influence family law. Although AI systems cannot replace judicial decision-making in matters involving children's rights, they are increasingly employed in case management, legal information retrieval, risk assessment and the administration of child protection services. These developments create opportunities for improving judicial efficiency while simultaneously raising concerns regarding transparency, algorithmic bias, accountability and procedural fairness. International organisations have therefore stressed that AI should remain subject to human oversight whenever decisions affect children's fundamental rights (UNESCO, 2021; Council of Europe, 2024).

Comparative analysis demonstrates that existing family legislation has not fully adapted to these emerging realities. While international human rights standards provide general principles for protecting children's rights, many domestic legal systems continue to regulate parental responsibility through legislative frameworks originally designed for traditional family structures. This regulatory gap may generate legal uncertainty in cases involving assisted reproduction, transnational parenthood, digital identity or new forms of caregiving relationships.

The evidence reviewed therefore suggests that the future development of Family Law should move beyond merely replacing the terminology of patria potestad with parental responsibility. Instead, legal systems must develop comprehensive regulatory frameworks capable of addressing the increasing complexity of contemporary parenthood

while ensuring full compliance with international human rights standards. This evolution requires greater legislative harmonisation, stronger judicial protection and multidisciplinary approaches integrating legal, psychological, technological and social perspectives.

Ultimately, parental responsibility should be understood as a dynamic legal institution whose content evolves alongside social change. Its legitimacy depends not upon preserving traditional family models but upon its capacity to guarantee children's dignity, identity, participation and holistic development within increasingly diverse family environments.

The findings of this study confirm that the legal evolution of filiation and parental responsibility reflects one of the most significant transformations within contemporary Family Law. The transition from patria potestad to parental responsibility is not merely a terminological modification but rather a profound conceptual shift resulting from the constitutionalisation of private law and the progressive incorporation of international human rights standards into domestic legal systems.

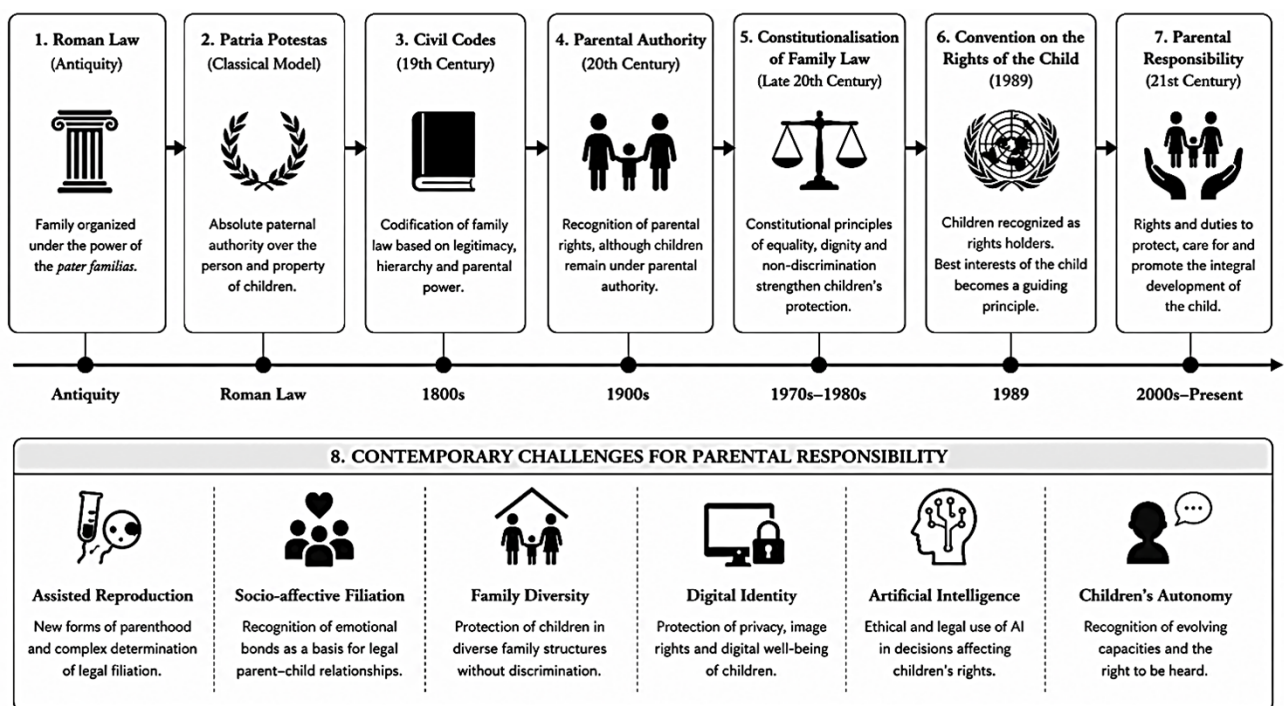


Figure 1. Evolution of Parent-Child Legal Relationships.

Sources: Prepared by the authors based on the Roman Law, the Convention on the Rights of the Child (1989), comparative human rights standards, comparative legislation and doctrine on Family Law.

The historical analysis demonstrates that the traditional institution of patria potestas was originally conceived as a legal mechanism designed to protect family authority and patrimonial interests. However, the emergence of constitutional principles centred on human dignity, equality and the recognition of children as autonomous rights holders fundamentally altered the legal basis of parent-child relationships. Consequently, parental responsibility has progressively replaced authority as the organising principle of contemporary family law, transforming parental powers into legally enforceable duties exercised exclusively for the benefit of the child (Couzens, 2025; Freeman & Taylor, 2025).

The comparative analysis further indicates that Latin

American legal systems have advanced unevenly in this transition. Argentina represents the clearest example of legislative adaptation through the explicit incorporation of parental responsibility into its Civil and Commercial Code. Spain and Colombia have largely achieved similar results through constitutional interpretation and judicial development, despite formally retaining the traditional concept of patria potestad. Ecuador, by contrast, has embraced constitutional principles consistent with international human rights standards but still preserves terminology and regulatory structures that occasionally generate interpretative inconsistencies between constitutional law and ordinary civil legislation.

These differences suggest that effective implementation of

children's rights depends not solely upon legislative reform but also upon judicial interpretation and institutional capacity. The comparative experience demonstrates that legal terminology acquires practical significance when accompanied by coherent constitutional interpretation, specialised family courts, child-centred procedural guarantees and public policies supporting families in the exercise of parental responsibilities. Accordingly, replacing patria potestad with parental responsibility should be understood as part of a broader institutional transformation rather than an isolated legislative amendment.

Another significant finding concerns the growing complexity of contemporary filiation. Scientific advances in assisted reproduction, increasing recognition of socio-affective parenthood and the diversification of family structures have substantially expanded the legal concept of parenthood beyond biological affiliation. These developments challenge legal systems to reconcile technological innovation with children's rights to identity, family life and legal certainty. The analysis therefore suggests that future legislative reforms should adopt flexible legal frameworks capable of accommodating multiple forms of parenthood while preserving the

paramount importance of the child's best interests.

The emergence of digital technologies introduces an additional dimension to parental responsibility. Parents are increasingly expected to safeguard children's digital identity, online privacy and informational autonomy in environments characterised by permanent digital interaction and algorithmic decision-making. Consequently, parental responsibility now encompasses obligations that were absent from traditional family law, requiring closer integration between family law, data protection law and children's digital rights.

The findings also highlight the growing influence of international human rights jurisprudence on domestic family law. The case law of the Inter-American Court of Human Rights and the European Court of Human Rights demonstrates a clear tendency towards interpreting parental rights through the lens of children's fundamental rights rather than parental authority. This judicial evolution reinforces the conclusion that parental responsibility has become a constitutional institution whose legitimacy derives from its capacity to promote children's comprehensive development and effective enjoyment of their rights.

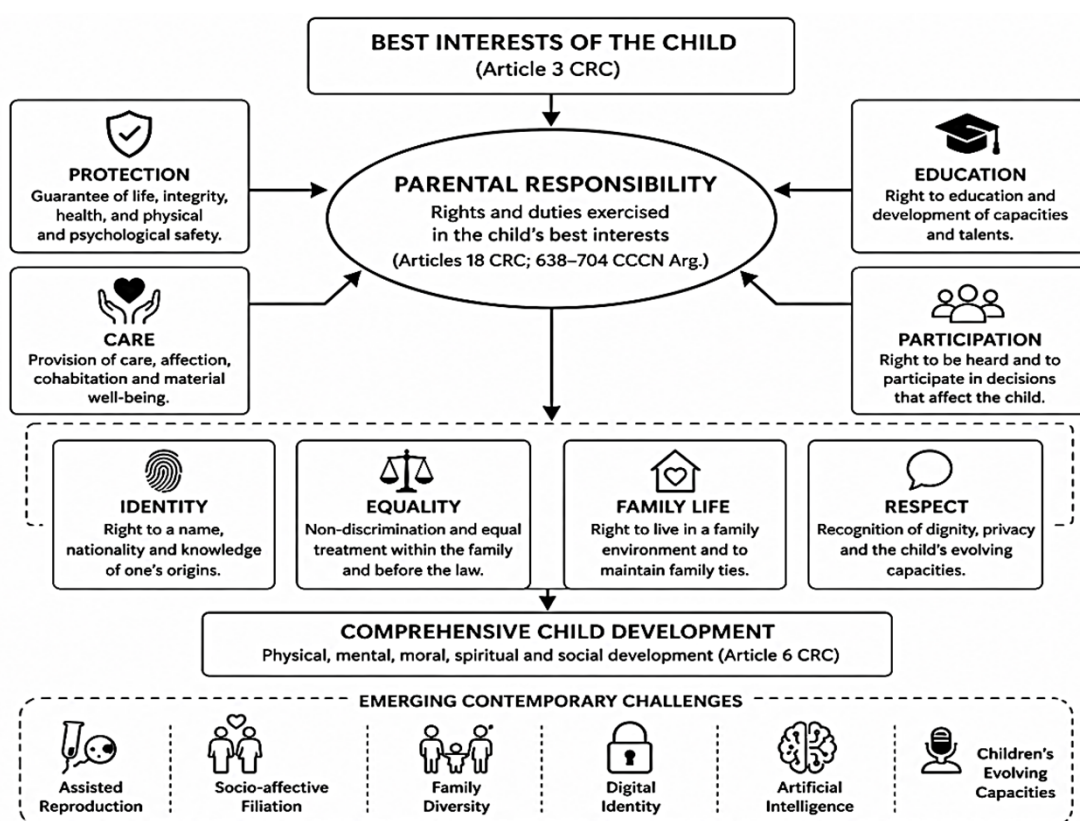


Figure 2. Contemporary Model of Parental Responsibility

Sources: Prepared by the authors based on the Convention on the Rights of the Child (1989), comparative family law, and the international human rights standards analysed in this study.

From a theoretical perspective, the study supports the proposition that parental responsibility should be understood as a dynamic legal institution whose content evolves alongside social, technological and cultural change. Unlike the traditional concept of *patria potestad*, which primarily regulated hierarchical family authority, parental responsibility functions as a multidimensional legal framework integrating constitutional principles, human rights obligations and interdisciplinary knowledge concerning child development and family welfare.

Therefore, the evolution analysed throughout this study demonstrates that contemporary Family Law is moving towards a model in which legal institutions are evaluated according to their effectiveness in protecting children's rights rather than their historical continuity. This paradigm shift not only redefines the legal relationship between parents and children but also requires continuous legislative adaptation to emerging social realities and international human rights standards.

Conclusions

This study analysed the legal evolution of filiation and parental authority from a historical, comparative and human rights perspective, demonstrating that contemporary Family Law has undergone a profound conceptual transformation. The traditional institution of *patria potestas*, originally conceived as a mechanism of parental authority and family hierarchy, has progressively evolved into the concept of parental responsibility, understood as a legal institution centred on the protection of children's rights and the promotion of their comprehensive development.

The comparative analysis confirms that this transformation has not occurred uniformly across Latin American legal systems. Argentina represents the most explicit legislative transition by formally adopting the concept of parental responsibility, whereas Spain, Colombia and Ecuador have largely relied on constitutional interpretation and judicial development to adapt traditional legal concepts to contemporary human rights standards. These findings indicate that the effectiveness of children's legal protection depends not only on legislative reform but also on the coherence between constitutional principles, ordinary legislation and judicial interpretation.

From the perspective of international human rights law, the study demonstrates that the Convention on the Rights of the Child and the jurisprudence of the Inter-American Court of Human Rights and the European Court of Human Rights have fundamentally redefined the legal relationship between parents and children. The principle of the best interests of the child has become the central criterion governing the interpretation and exercise of parental responsibilities, replacing

authority-based approaches with models founded on dignity, equality, participation and the progressive autonomy of children.

The research also identifies emerging legal challenges that require continued legislative and doctrinal development. Medically assisted reproduction, socio-affective filiation, diverse family structures, children's digital identity and the increasing use of artificial intelligence in family-related decision-making demonstrate that parental responsibility is a dynamic legal institution whose content must continuously evolve to respond to technological innovation and social transformation while preserving children's fundamental rights.

The principal contribution of this article lies in integrating historical analysis, comparative law and international human rights to demonstrate that the transition from parental authority to parental responsibility represents a structural transformation of contemporary Family Law rather than a simple terminological change. This perspective contributes to the ongoing doctrinal debate by proposing that parental responsibility should be understood as a constitutional institution whose legitimacy derives from its capacity to guarantee the comprehensive protection of children's rights.

Although the study was limited to documentary, normative and jurisprudential analysis, the findings provide a robust theoretical framework for future empirical research. Further studies could examine how parental responsibility is implemented in judicial practice, evaluate the effectiveness of legislative reforms across different jurisdictions and explore the legal implications of emerging technologies for the protection of children's rights in increasingly digital family environments.

Ultimately, the consolidation of parental responsibility requires legal systems to move beyond traditional conceptions of parental authority towards child-centred models that fully integrate constitutional principles, international human rights standards and the realities of contemporary family life. Only through this comprehensive approach will Family Law be able to respond effectively to the evolving needs of children and families in the twenty-first century.

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Conflicts of interest

The authors declare that they have no conflicts of interest.

Author contributions

Alfredo A. Chilembelenbe-Seyungo, Rosária L. Correia-Dumbo, Eunice N. Martins-Chipululo, Luís Calei-Brito, and Alberto K. Kavinda-Canjamba: Conceptualization, data curation, formal analysis, investigation, methodology, supervision, validation, visualization, drafting the original manuscript and writing, review, and editing.

Data availability statement

The datasets used and/or analyzed during the current study are available from the corresponding author on reasonable request.

Statement on the use of AI

The authors acknowledge the use of generative AI and AI-assisted technologies to improve the readability and clarity of the article.

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