



Review Article

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General lines of the evolution of family right between Italy, Cuba, and Argentina

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ABSTRACT

The present review article aims to comparatively examine the evolution of family right in Italy, Argentina, and Cuba, three legal systems united by a common civil law matrix, but with divergent trajectories. The methodology employed is predominantly dogmatic, critical, and transversal, based on the historical-evolutionary analysis of codified sources and normative reforms under the approach of fundamental rights. The results reveal a paradigmatic shift from the traditional, monolithic, and patriarchal conception toward a plural, functional, and affective notion of the family. It is found that Argentina and Cuba exhibit advanced models that integrate family diversity, same-sex marriage, socio-affective filiation, and the depatriarchalization of law, while Italy maintains a more contained evolution, limited by constitutional rigidity. As a conclusion, the family is redefined as a dynamic and constructed legal category, whose recognition must prioritize affectivity, solidarity, and legal responsibility, guaranteeing equality, dignity, and the comprehensive protection of the rights of girls, boys, and adolescents.

Keywords: depatriarchalization; socio-affective filiation; family right; plural family; same-sex marriage.

Líneas generales de la evolución del derecho de familia entre Italia, Cuba y Argentina

RESUMEN

El presente artículo tiene por objetivo examinar comparativamente la evolución del derecho de familia en Italia, Argentina y Cuba, tres sistemas jurídicos unidos por una matriz civilista común, pero con trayectorias divergentes. La metodología empleada es predominantemente dogmática, crítica y transversal, basándose en el análisis histórico-evolutivo de las fuentes codificadoras y las reformas normativas bajo el enfoque de los derechos fundamentales. Los resultados revelan un giro paradigmático desde la concepción tradicional, monolítica y patriarcal hacia una noción plural, funcional y afectiva de la familia. Se constata que Argentina y Cuba exhiben modelos avanzados que integran la diversidad familiar, el matrimonio igualitario, la filiación socioafectiva y la despatriarcalización del derecho, mientras que Italia mantiene una evolución más contenida, limitada por la rigidez constitucional. Como conclusión, la familia se redefine como una categoría jurídica dinámica y construida, cuyo reconocimiento debe privilegiar la afectividad, la solidaridad y la responsabilidad jurídica, garantizando la igualdad, la dignidad y la protección integral de los derechos de niñas, niños y adolescentes.

Palabras clave: despatriarcalización; filiación socioafectiva; derecho de familia; familia plural; matrimonio igualitario.

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INTRODUCTION

The evolution of family law constitutes, in the contemporary scenario, one of the most significant spaces of legal, normative, and axiological transformation. Far from being reduced to a mere legal reflection of social changes, the family discipline evidences its constitutive dimension (Austin, 1962), insofar as it actively participates in the configuration of what each legal system decides to recognize and regulate as "family." In this sense, this study aims to comparatively examine the evolution of family law in three profoundly differentiated legal systems but united by a common civil law matrix: Italy, Argentina, and Cuba (Herrera and Gallardo, 2023; Herrera et al., 2023).

The choice of these three legal orders does not respond to a merely geographical criterion, but rather to the intention of confronting normative experiences that, from dissimilar ideological and legal traditions, have given rise to original legal solutions in response to the transformations of family relationships. Italy, as an exponent of a European codified law, strongly influenced by the Romanist tradition and the Napoleonic model, represents a classic paradigm of moderate legislative evolution, although increasingly permeated by constitutional influence (Perlingieri, 2020). Its Civil Code of 1942 (CCIT), although originally conceived in a markedly patriarchal and matrimonialist key, has been the object of profound rereadings and evolutionary interpretations in light of the Republican Constitution of 1948, particularly with regard to the principles of equality and personal dignity. This progressive adaptation to the constitutional framework has been accompanied, at the legislative level, by far-reaching reforms: first, the introduction of divorce in 1970, confirmed after a popular referendum; subsequently, the reform of family law in 1975, which entailed a true reconfiguration of conjugal and parental relationships; and, in more recent times, the reform of filiation of 2012 and 2013, aimed at the full equalization of all children..

Argentina, for its part, offers a model of legal democratization of family law starting from the consolidation of a rights-based constitutionalism following the 1994 reform and the incorporation of the so-called "block of constitutionality." This country has been characterized by a progressive opening of family law to new affective and parental realities, reflected both in legislative reforms, such as the new Civil and Commercial Code of 2015 (CCyCN), and in constitutional jurisprudence that has actively claimed the best interests of children and adolescents (NNA), substantive equality, and the recognition of non-traditional bonds. Argentina thus stands as a normative laboratory of inclusive and dynamic family law (Kemelmajer de Carlucci, 2010).

Cuba, finally, constitutes a peculiar model, where family law has traditionally been an instrument of social engineering and ideological affirmation of socialism. Since 1959, the family was conceived as a cell of revolutionary society, oriented toward the fulfillment of collective functions and the promotion of equality. Nevertheless, the Constitution of 2019 marks a radical change: it introduces a plural and inclusive conception of the family, which breaks with the previous homogenizing vision and recognizes the diversity of forms of coexistence. The Family Code (CDF) of 2022, approved through a popular referendum, represents the fullest realization of that constitutional mandate. It is today one of the most advanced texts in the field, as it articulates a relational and affective notion of legal bonds and recognizes a wide range of family structures.

METHODS

The methodology adopted in this work is predominantly dogmatic, although nuanced by a critical and transversal perspective. It is based on a historical-evolutionary analysis of family law in the three legal systems, considering their foundational moments, their codifying sources, and the normative milestones that have reconfigured their internal structure. This

analysis is complemented by a study of the main legislative reforms, with special attention to those that have modified the legal status of marriage, filiation, parenthood, de facto couples, and the composition of family units.

The comparative approach that informs this study is not limited to the descriptive juxtaposition of three legal trajectories, but rather is oriented toward identifying both convergences and structural tensions in the way the different legal systems normatively construct the family institution. This comparison allows, on the one hand, capturing the existence of global trends that cut across contemporary legal systems, such as the progressive depatriarchalization of family law, openness to non-marital bonds, or the centrality of the interests of children and adolescents (NNA); and, on the other hand, highlighting the particularities specific to each model, determined by historical, political, cultural, and constitutional factors.

In addition, a transversal approach guided by fundamental rights is adopted (Durán and Lalaguna, 2008). This implies not only analyzing the norms in a functional key, but also questioning their axiological foundations and their coherence with the principles of equality, personal autonomy, relational freedom, diversity, and protection of vulnerable persons. The family, understood as a legal category in permanent mutation, thus becomes a privileged field to observe the degree of materialization of constitutional rights in the daily life of citizens.

RESULTS

The family as a legal category: between social fact and normative creation

The notion of family has historically been the object of a double interpretation: as a pre-existing social reality, prior and external to law (Jémolo, 1966), and as a constructed legal category, shaped and delimited by the normative legal system itself. While the first conception finds support in discourses that invoke "nature" or "tradition" as the ontological foundation of family bonds, the contemporary evolution of family law shows that the legal recognition of certain affective ties and the exclusion of others do not respond to neutral empirical criteria, but rather to normative, axiologically oriented decisions that select, hierarchize, and produce relational structures with specific legal effects. In this sense, the family, more than a datum, constitutes a legal construction, whose configuration responds to a particular policy of the institutionalized recognition of affects.

Law does not, therefore, limit itself to acting as a mirror of society, but intervenes actively in the very constitution of what is familial. By establishing which relationships deserve legal protection, under what conditions, with what effects, and within which limits, the legal system delimits the perimeter of what is recognizable as family, and simultaneously renders invisible or marginalizes other forms of affective coexistence (Swennen & Croce, 2016). This performative dimension of family law requires a critical reconsideration of the sociological reflection thesis, as it reveals the constitutive power of law in the definition and validation of legitimate relational forms. In other words, law does not merely recognize the family: it produces it.

This thesis is particularly pertinent in contexts in which forms of family life have increasingly diversified, as occurs in contemporary societies. The emergence of family models that challenge the traditional nuclear structure single parenthoods, reconstituted families, homoparental families, co-parenting networks, non-conjugal affective bonds highlights the gap between inherited legal normativity and emerging social practices. Faced with this plurality of affective and cohabitation experiences, the maintenance of a monolithic legal definition of the family proves to be not only anachronistic, but also exclusionary and discriminatory (Kemelmajer de Carlucci, 2010).

The recognition of this distance between sociological reality and legal normativity requires rethinking the role of legal systems in determining what is familial. Far from limiting themselves to protecting given bonds, legal systems have historically functioned as instruments of social regulation that privilege certain relational models—usually centered on heterosexuality, conjugalit, and biological procreation—over others. Within this framework, the family becomes a normative device that orders the distribution of rights and duties, determines the subjects legitimized to exercise parental functions, establishes legal presumptions, and even shapes the entitlement to fundamental rights. Thus, the legal form of the family operates as a threshold of access to multiple spheres of normative protection.

Contemporary society, both in Europe and in much of Latin America (Esborraz, 2015), is characterized by a growing plurality of family and cohabitation forms (Sánchez González, 2004), which demands an urgent reconfiguration of the family as a legal category. This must be grounded in principles that prioritize the diversity of affective bonds, shifting the focus from formal structure to relational functions and affective content. It is not simply a matter of expanding a traditional model, but of rethinking the criteria that define the juridical nature of the family, recognizing it as a plural, functional, and contextual reality, capable of guaranteeing rights, solidarity, and the dignified development of its members (Barba, 2024).

Codificatory origins and historical-cultural foundations

The study of family law necessarily requires a careful look at its historical-cultural and codificatory roots, as these constitute the normative and conceptual substratum that has long determined the configuration of family institutions in Italy, Argentina, and Cuba. The genealogy of family law in these three legal systems exhibits a common matrix, deeply rooted in the heritage of Roman law and in the nineteenth-century codified tradition, which in turn has been shaped by the doctrinal and normative influence of canon law and the Napoleonic model. Understanding these roots is indispensable to comprehend the continuities and ruptures that mark the contemporary evolution of family law in the different national realities.

First, the fundamental structure that runs through these legal traditions traces back to the institution of the *pater familias* of Roman law, an emblematic and central figure that configured the family as a legal unit under patriarchal authority. The *pater familias* not only held authority over family members, but also concentrated rights and obligations ranging from the administration of common property to legal control over the person and life of the members of the domestic group. This legal figure embodied the primacy of male authority and the subordination of women and children, thus shaping a hierarchical, patriarchal, and markedly heteronormative family model.

This Roman scheme has permeated, to a greater or lesser extent, the modern civil systems that developed in Europe and Latin America. In particular, nineteenth-century codification (Barba, 2025) represented a crucial moment of systematization and consolidation of this legacy, adapting it to the sociohistorical circumstances of the time. In Italy, the Civil Code of 1865 and, later, the one promulgated in 1942 fall within the European civil law tradition, strongly influenced by the Napoleonic Code of 1804 and by canonical doctrine that permeated the conception of marriage and family. Italian law of the twentieth century, especially in its codified version, maintained as its core the heterosexual marital institution, founded on indissolubility and the subordination of women, articulating a family order that protected paternal authority and the traditional nuclear family model.

In Argentina, the Civil Code of 1869, drafted under the influence of the French Civil Code and Spanish law, also reproduced the traditional patriarchal and conjugal scheme,

enshrining marriage as the fundamental institution and reserving authority within the household to the male figure. However, the progressive reforms of the twentieth century and especially the comprehensive reform of the CCyCN in 2015 reveal a normative will of rupture and updating, aimed at overcoming patriarchal bases and incorporating the plurality of family forms present in contemporary society (Kemelmajer de Carlucci, 2023, p. 123).

In Cuba, normative history presents singular characteristics. The Family Code of 1975, adopted in the context of the revolutionary process, attempted to combine inherited legal tradition with the ideological principles of socialism, seeking gender equality, shared responsibility, and the social function of the family. Nevertheless, the model maintained a heteronormative nuclear structure with strong regulation of marriage and persistent parental authority, although nuanced by the State's will to intervene in family life. The CDF of 2022 represents a notable milestone in Cuban normative history, by explicitly incorporating principles of family diversity and individualized rights, without fully detaching itself from the codificatory roots that have structured the family model since the mid-twentieth century.

The point of departure in Italy, Argentina, and Cuba was common: a family law centered on heterosexual marriage (Acevedo Quiroz, 2011) as the fundamental core, based on traditional principles such as indissolubility and procreative purpose, which sustained patriarchal structures and limited women's autonomy. However, the point of arrival is very different. While in Italy these bases remain almost intact, reflecting persistent normative and cultural rigidity, in Argentina and Cuba a profound transformation has occurred. Both countries have incorporated significant reforms that reconfigure family law from equality, diversity and the promotion of a more plural and up-to-date conception.

Constitutional law and family: convergences and tensions

The constitutionalization of family law represents one of the most relevant and paradigmatic phenomena in the contemporary normative evolution of family institutions within the legal systems of Italy, Argentina, and Cuba. The incorporation of fundamental constitutional principles has triggered profound processes of transformation and reconfiguration in the legal recognition and protection of the family, overflowing the classic nineteenth-century categories based on closed and monolithic models, and thus opening the door to new configurations and legal conceptions that better respond to current social diversity. Nevertheless, this phenomenon is not free of tensions or contradictions, since the transition from a traditional, essentialist, and restrictive model to a pluralist and functional one involves a complex interplay of convergences and resistances that manifest themselves in constitutional texts, jurisprudential interpretation, and legislative practice.

In Italy, the constitutionalization of family law has had a limited impact in terms of expanding the legal concept of family. Although the Constitution promotes equality between men and women in various spheres, the constitutional conception of the family remains notably restrictive and, from a critical perspective, insufficient to respond to new social realities. Article 29 of the Italian Constitution expressly defines the family as a "natural society founded on marriage," a formula that has permeated and conditioned the entire family law system. This definition, anchored in a traditional bourgeois and heteronormative model, establishes a closed conceptual framework that legitimizes the primacy of heterosexual marriage as the exclusive core of the family, hindering the legal inclusion of other forms of coexistence and affective bonds that today make up the daily life of many people. Therefore, far from opening space to plurality, this provision has operated as a burden on normative evolution and the recognition of diverse families, limiting the capacity of Italian law to adapt to social change and to guarantee adequate and equitable protection to the multiple existing family configurations.

This constitutional rigidity generates a containment effect that translates into difficulties for the formal and material recognition, as families, of de facto couples, homoparental families, reconstituted families, and other non-marital forms, despite social realities that demonstrate the need for their inclusion. In this sense, the Italian Constitution represents a brake that prevents more dynamic and plural normative progress, making it difficult to align family law with the constitutional principles of equality, dignity, and free development of personality (Barba, 2024). The rigidity of Article 29 perpetuates an essentialist normative scheme that, although criticized, continues to dominate the interpretation and application of family law in Italy.

In marked contrast, the Cuban experience constitutes a paradigmatic and progressive example of the constitutionalization of family law, with an explicitly pluralist and inclusive approach (Pérez Gallardo, 2018). The Cuban Constitution of 2019 not only guarantees equality between men and women, but also expressly recognizes the diversity of families and their legal protection in broad terms. Article 81 clearly and emphatically establishes that “the State recognizes and protects families, whatever their form of organization,” specifying that they are constituted by legal or de facto bonds of an affective nature, founded on equality of rights, duties, and opportunities of their members. This innovative constitutional definition breaks with traditional molds and opens the way to legal recognition that responds to the complexity and plurality of contemporary family relationships (Pérez Gallardo, 2022a). Moreover, this constitutional vision has been materialized and reinforced through the approval of the CDF (Pérez Gallardo et al., 2023), drafted after a broad participatory and democratic process, which enshrines a relational, inclusive, and anti-discriminatory definition of the family.

The CDF explicitly recognizes diverse family structures not limited to marriage, including de facto unions, homoparental families, and other configurations based on affectivity, solidarity, and shared co-responsibility. In this way, Cuba has developed a family legal framework coherent with social plurality and substantive equality, where law fulfills a transformative function by validating and protecting the affective and relational complexity of families in all their diversity, overcoming rigid and essentialist conceptions of the past.

Argentina, for its part, presents a particular situation within this comparative scenario. Its Constitution does not contain specific provisions relating to the family or its legal definition, which could be interpreted as an absence or constitutional gap in the matter. However, although the Constitution does not directly address the concept of family, it marked an important turning point in the regulation of family law by explicitly incorporating the protection of equality and dignity as guiding principles of the legal order, together with the express recognition of human rights and individual guarantees. This constitutional basis has been fundamental to support subsequent normative and jurisprudential developments (Kemelmajer de Carlucci, 2023).

Thus, this constitutional absence has not been an obstacle for Argentine civil and commercial legislation to advance significantly in the recognition of family diversity and the guarantee-based protection of the rights of its members. The CCyCN of 2015 represents a relevant qualitative leap, by adopting a functional notion of the family, centered on affective bonds, solidarity, and shared responsibility, rather than exclusively on rigid formal or biological structures.

This legislation reflects an explicit commitment to equality and non-discrimination, as well as to the protection of the best interests of family members, privileging real life trajectories and effective forms of coexistence and kinship. In this sense, Argentina positions itself as an example of advanced normative development that, although lacking a direct constitutional

framework, has successfully integrated into its legislation principles and values consistent with contemporary social challenges.

A transversal element in these processes is the centrality of the principle of human dignity, which operates as the axiological foundation of the transformation of family law in the three legal systems. Dignity, understood as a supreme and inviolable value, acts both as a criterion of interpretation and as a limit against exclusionary or essentialist conceptions, and requires the effective protection of personal autonomy, substantive equality, and the recognition of relational diversity. Along with it, the free development of personality—closely linked to dignity—emerges as a key principle, guaranteeing the right of each individual to freely configure their affective, cohabititative, and parental relationships, without being subordinated to pre-established or discriminatory normative schemes.

In summary, the comparative analysis of these three legal systems shows dissimilar trajectories in the constitutionalization of family law and its impact on normative evolution. Italy remains lagging, with a Constitution that acts more as a burden than as a driver of change, limiting plural recognition and hindering the legal updating necessary to reflect current social reality. In contrast, Cuba and Argentina display greater openness, both from their constitutional and legislative frameworks, and integrate an inclusive, functional, and diverse vision of the family that responds to the complexity of contemporary human relationships.

The decline of marriage as the sole legitimate form of family

Contemporary family law is undergoing a process of profound transformation, marked by the progressive abandonment of the monopoly that marriage exercised for centuries as the sole legitimate way to constitute a family (Oliva Gómez, 2018). This deinstitutionalization of family life responds to social changes that have led to the legal recognition of diverse forms of cohabitation, overcoming the traditional, heteronormative, and patriarchal paradigm. In this context, a pluralist and functional conception of the family is affirmed, centered on affective bonds, stability, and co-responsibility, rather than on the legal form of the bond (Presno Linera, 2008).

From a comparative perspective, Italy, Argentina, and Cuba offer illustrative examples of this process, with notable differences in scope and depth.

In Italy, Law 76/2016, far from signifying a decisive advance, rather reflects resistance to change. Although it regulates civil unions between persons of the same sex and recognizes certain rights for de facto couples, it does so by expressly excluding them from the legal concept of “family,” classifying them as “formazioni sociali.” This deliberate exclusion shows a legislative will to preserve marriage as the only legitimate family model, despite the modernizing impulse of the Constitutional Court. Instead of full recognition, a parallel and subordinate regime is configured, confirming the persistence of an exclusionary and formalist vision.

In contrast, Argentina has adopted a progressive and guarantee-oriented approach. The recognition of equal marriage in 2010 and the regulation of cohabiting unions in the 2015 CCyCN consolidate a legal model sensitive to family diversity. The new Code abandons the formalism of the marital bond and values stable cohabitation as a legitimate nucleus of family relationships, granting rights and duties in areas such as property, parental responsibility, and social security. This regulation combines functional and protective elements, seeking to safeguard those who choose non-institutionalized family forms, in line with a constitutional approach based on human dignity and fundamental rights.

Cuba, for its part, constitutes a paradigmatic case of rupture with the monolithic model. The CDF, based on the 2019 Constitution, explicitly recognizes multiple family configurations, including de facto unions, same-sex couples, and reconstituted families, without establishing hierarchies among them. It is a functional, affective, and solidaristic regulation, which enshrines family pluralism from an active State perspective, committed to the promotion and protection of all family bonds, without exclusive privileges for marriage.

This pluralist shift in family law can be understood from different perspectives: the contractualist (Swennen & Croce, 2017), which interprets unions as voluntary agreements; the functionalist, which focuses on the affective and social reality of the bond; and the protectionist, which emphasizes the need for legal protection in situations of vulnerability (Pérez Gallardo et al., 2023). All converge in a common trend: shifting the center of gravity from legal form to the substantive content of the relationship.

Nevertheless, this process poses significant challenges. The coexistence of multiple family forms requires a coherent legal system that guarantees legal certainty without sacrificing equality. Tensions persist with traditional views that still privilege marriage, generating legislative and judicial resistance.

DISCUSSION

Structural transformations of the family: towards a plural notion

The evolution of family law in recent decades has been marked by an unavoidable process of expansion and diversification of the legal concept of family, which transcends traditional and hegemonic forms to make room for a multiplicity of family configurations that reflect profound contemporary demographic, cultural, and social changes. The family thus ceases to be a monolithic entity and becomes a plural and dynamic notion, capable of adapting to new affective and organizational realities. This structural transformation, which involves both the normative order and jurisprudential interpretation, is particularly visible in Italy, Argentina, and Cuba, three legal systems that, despite their historical and cultural differences, exhibit convergent trends in the expansion of the recognition of diverse family forms (Kemelmajer de Carlucci, 2023).

First, it is essential to highlight the growing legal recognition of single-parent families (Rodríguez Sumaza and Luengo Rodríguez, 2003), which constitute one of the family configurations with the greatest expansion in the current demographic context. The increasing presence of parents who individually assume parental responsibility, whether by choice or by circumstance, challenges the traditional paradigm centered on the couple as the structuring core of the family. In Italy, although legislation does not provide specific regulation for this type of family, jurisprudence and doctrine have gradually recognized the need to protect and guarantee the rights arising from these structures, especially in relation to the protection of NNA and the attribution of parental responsibilities. In Argentina, the CCyCN expressly incorporates the figure of the single-parent family, regulating the rights and duties of parents and ensuring the comprehensive protection of NNA, in line with constitutional principles and international human rights treaties. In Cuba, the new CDF recognizes and protects single-parent families within its broad and pluralistic conception, linked to a state policy of promoting equality and social solidarity.

On the other hand, the recognition of homoparental families represents one of the most significant milestones in the evolution of family law towards plurality. The overcoming of the heteronormative paradigm has driven the expansion of rights for same-sex couples and persons, particularly with regard to filiation and parenthood. Argentina, a pioneer in the region, has been consolidating an inclusive legal framework that recognizes equal marriage

since 2010 and guarantees access to adoption and assisted reproductive techniques for homoparental couples, configuring an advanced and protective normative model. In Cuba, the CDF expressly enshrines the right to equality of same-sex couples, including the possibility of joint adoption, which represents a substantial step towards full inclusion and non-discrimination in the family sphere. In Italy, although Law 76/2016 has regulated civil unions between persons of the same sex, it has done so under a logic of separation and not of equalization, by creating an autonomous legal figure with respect to marriage and deliberately avoiding qualifying it as a family. This recognition, although significant, remains limited, especially in aspects such as adoption and access to assisted reproductive techniques, which reflects an ambivalent and restrictive legislative stance that continues to generate intense doctrinal and jurisprudential debates.

In addition, the configuration of reconstituted families constitutes another relevant structural transformation (Barba, 2022a). This type of family, formed by the union of persons who bring children from previous relationships, poses new challenges for the law, particularly in matters of parental relationships, rights and duties among members, and protection of the best interest of NNA. In Argentina, the CCyCN regulates blended families, defining the stepparent as the spouse or cohabiting partner of the parent who lives with the minor child, and establishing that they must accompany, care for, educate, and protect the minor in a complementary manner to the biological parent (Herrera and Pérez Gallardo, 2023). The maintenance obligation of the stepparent is subsidiary and temporary, although in practice it may be flexible, and exceptionally required if its absence causes serious harm to the child after a significant role in cohabitation; furthermore, jurisprudence expands the notion of parent to include stepparents in decisions such as informed consent. In Cuba, the new CDF explicitly recognizes and protects blended families, emphasizing respect for diversity and the comprehensive well-being of children. It defines the stepparent as the spouse or registered de facto affective partner of the parent with custody and care of the minor, based on a stable affective bond and cohabitation in the household. A complementary collaborative role is established, with the possibility of judicial prevalence if it favors the best interest of the child. The CFC allows joint exercise or partial and temporary delegation of parental responsibility to the stepparent, with judicial authorization when appropriate (Herrera and Pérez Gallardo, 2023). The maintenance obligation is subsidiary and is activated only if ascendants cannot fulfill it, although the trust generated by their contribution is protected. In addition, it regulates that the stepparent may request custody, care, and a communication regime after the breakup, without distinguishing between marriage or de facto union (de Verda y Beamonte and Enríquez Sordo, 2023). In Italy, the phenomenon has gone practically unnoticed by the legislator, which has generated a significant regulatory vacuum. As a consequence, doctrine and, above all, jurisprudence have had to assume the task of offering appropriate responses to these realities, by developing interpretative solutions aimed at guaranteeing the protection of affective bonds and shared responsibility in the exercise of the parental function (Méndez Trujillo, 2022).

Families constituted through assisted reproduction, including those that resort to medical techniques to overcome biological barriers, constitute another facet of this normative expansion. These forms of family pose complex ethical, legal, and social challenges, which require from the legal order a balanced response between respect for reproductive autonomy, protection of the minor, and regulation of parental relationships. In Italy, although there is a restricted and conservative regulation in matters of assisted reproduction, jurisprudence has begun to delimit parental rights and duties in this area, with an approach centered on the marital couple. Argentina, with a broader and more progressive framework, recognizes the right of access to assisted reproductive techniques and regulates the parental effects of these practices, ensuring equality and non-discrimination. Cuba, for its part, has incorporated in its recent family legislation specific provisions on assisted reproduction, admitting, although

under strictly regulated conditions, gestational surrogacy as a legitimate way of constituting parenthood.

However, this normative openness is not exempt from complexities and limits. The fundamental question that emerges in this debate is whether every affective bond should be recognized as a family from the legal perspective. The answer to this question requires a delicate balance between the need to protect family diversity and to avoid the dilution of the legal concept of family, which could compromise legal certainty and normative effectiveness. The delimitation of the criteria that configure the family recognized by law is essential to preserve the coherence of the legal system and to guarantee the effective protection of its members.

In this sense, the law must avoid both exclusivist rigidity that ignores social plurality and excessive flexibility that could generate uncertainty and conflict. The plural notion of family must be articulated based on clear principles and parameters, which allow legitimate inclusion and reasonable exclusion, with special attention to the guarantee of fundamental rights and the protection of the most vulnerable subjects, particularly NNA.

Filiation, parenthood, and the best interest of NNA

The evolution of family law in matters of filiation and parenthood reflects a profound paradigmatic transformation that has displaced the exclusive preeminence of the biological bond towards a diversified and complex legal conception, in which filiation acquires social, intentional, and affective dimensions. This process, which has unfolded in differentiated ways in the legal systems of Italy, Argentina, and Cuba, highlights the growing recognition of the right of NNA to a protective family environment, the development of shared parental responsibility, and the centrality of the principle of the best interest of NNA, both in its substantive and procedural dimensions (Herrera et al., 2018).

The comparative analysis allows observing how the traditional concept of filiation, essentially linked to biological descent, has been reformulated to incorporate various forms of constitution of the filial bond. In Italy, the Civil Code of 1942, although it initially maintained filiation as an expression of biological truth, has gradually incorporated legal figures that transcend this approach, such as full adoption and special adoption, together with more recent treatment of filiation derived from assisted reproductive techniques. Italian constitutional and civil jurisprudence has been sensitive to the need to adapt regulation to new social and scientific realities, protecting the child and promoting their right to identity and to the recognition of their parental relationships, regardless of genetic origin (Barba, 2022b).

In Argentina, the process is even more advanced and systematic. The Civil and Commercial Code, reformed in 2015, introduces an expanded notion of filiation that recognizes not only biological filiation, but also filiation by will and adoptive filiation as legitimate and equivalent manifestations of the legal parental bond. This conception includes the recognition of intentional filiation in the context of assisted reproductive techniques (de la Torre, 2021), and establishes a clear regime for the protection of the rights of children born through these techniques, which reflects a commitment to equality of rights and comprehensive protection. In addition, Argentine regulations establish effective procedures for the recognition, challenge, and restoration of filiation, emphasizing the importance of respect for the best interest of the minor as a guiding criterion.

The CDF of Cuba, enacted in 2022, offers a plural, inclusive, and contemporary vision of filiation, and incorporates as legitimate sources not only natural procreation, adoption, and procreative will through assisted human reproduction techniques, but also socio-affectivity (Pérez Gallardo et al., 2023), understood as an autonomous legal bond. This recognition

elevates affection to the normative level, equating it with blood as a legitimate basis for establishing filial relationships, and aligns with international developments in human rights and with the diverse and dynamic Cuban family reality (Díaz Alabart, 2023). Socio-affective filiation is configured as a legal fact based on emotional and social bonds arising from cohabitation and the effective exercise of parental functions, dispensing with the existence of a biological nexus (Herrera and Pérez Gallardo, 2023). This model recognizes possession of status as fundamental proof of the filial bond and enables, for example, the assignment of the surname according to the real affective relationship, which reinforces a dynamic conception of personal identity, articulated between the legal and the experiential. The code also enshrines the possibility of multiparenthood and allows a person to be recognized as the child of more than two parental figures, whether for original or supervening causes, regardless of genetic data (Pérez Gallardo, 2022b). This normative openness responds to the complexities of the contemporary family framework and favors the inclusion of diverse parental models, sustained by affection, will, and responsibility. In matters of reproduction, solidary gestation is regulated under a strict regulatory framework guided by the principle of human dignity (González Ferrer, 2024). This practice is admitted solely for altruistic purposes, among persons with close affective or family bonds, subject to defined medical criteria and prior judicial authorization, thus guaranteeing the protection of all persons involved. Likewise, the normative text expressly prohibits all forms of discrimination in the filiation sphere, and ensures full equality of rights for all NNA, in accordance with the Cuban Constitution of 2019. Parenthood is conceived as a shared responsibility with profound ethical and social content, where the best interest of the minor acts as the guiding axis, and the State assumes an active role in the promotion and comprehensive protection of the rights of childhood and adolescence.

The principle of the best interest of NNA (García Rubio, 2020), which has gained preeminence in contemporary legislation, doctrine, and jurisprudence, constitutes the fundamental axis upon which the rules on filiation and parenthood are articulated. The best interest, conceived as a guiding principle, orients both the substantive content of parental rights and duties and the procedural guarantees that ensure their effective protection. In this sense, the interpretation and application of family law must prioritize the comprehensive well-being of the child, encompassing their physical, psychological, emotional, social, and cultural dimensions.

Equality, gender, and depatriarchalization of family law

The principle of equality has emerged as the fundamental axis for the reconfiguration and updating of family law in the comparative legal systems of Italy and South America, marking a clear rupture with the traditional patriarchal structures that governed family relations for centuries. This principle has not only implied the elimination of legal hierarchies between spouses and between sons and daughters—traditionally differentiated as legitimate, natural, and adoptive—but has also driven the construction of egalitarian models in the distribution of parental and conjugal responsibilities, and has laid the foundations for an authentic depatriarchalization of family law.

Historically, family law was structured around the hegemonic figure of the *pater familias*, whose attributions and patriarchal authority defined the internal relations of the family group. The prevalence of the male, both in his conjugal role and in authority over children, reflected a legal order of clear female subordination and discrimination against “illegitimate” descendants. In this context, equality was an absent or merely formal concept, since legal norms and practices reinforced and legitimized a hierarchical system that reproduced gender inequities and social exclusions.

The transition towards equality, by contrast, has required a profound review of these structures, aimed at guaranteeing full respect for the rights of all persons who are members

of the family (Kemelmajer de Carlucci and Molina de Juan, 2019; Roca Trías, 1999), with special attention to the elimination of discrimination based on gender, marital status, or filiation origin. In Italy, this transformation has manifested progressively, first through legal reforms that abolished legal distinctions between legitimate and natural children, as well as the equalization of rights and duties between spouses, and later through constitutional interpretation that has strengthened the principle of equality and protection against any form of discrimination.

In Argentina, the recognition of equality as a structural principle in family law has reached a notable normative and jurisprudential development. Following the constitutional reform of 1994 and the entry into force of the CCyCN in 2015, a legal model based on substantive equality among all family members was consolidated, eliminating all discrimination between children and enshrining parity between spouses and parents, without distinction of gender. Shared parental responsibility is established as a rule, and guarantees equitable participation in the upbringing and comprehensive development of children. This normative framework is complemented by reforms aimed at making visible and economically valuing care tasks, traditionally assigned to women, and at correcting patrimonial imbalances after the dissolution of relationships, through instruments such as economic compensation. Likewise, the figure of parental responsibility replaces the former *patria potestas* and reinforces the principle of equality in the exercise of parental rights and duties. Argentine legislation has also strengthened protection against intrafamily and gender violence through specific laws such as 24.417 and 26.485, which expand protection mechanisms and promote a less rigid and more sensitive judicial response to the vulnerability of affected persons (Tavip, 2023).

For its part, the new CDF constitutes a model of legal depatriarchalization and affirmation of substantive equality in the family sphere. It recognizes full equality between spouses and non-discrimination among children, and adopts a transversal gender approach that permeates all family relationships. In addition to guaranteeing equality of rights, duties, and opportunities among all members of the family nucleus, it broadens the notion of domestic violence as an expression of abusive hierarchical relationships, establishes liability for damages caused, prohibits adoption by aggressors, sanctions violent practices of child discipline, and excludes mediation in contexts of violence or discrimination (González Ferrer, 2024). This legal framework seeks to eradicate historical inequalities through the active promotion of shared parental responsibility, enhanced protection of women, and recognition of all forms of family, including single-parent families and those constituted by same-sex couples. Thus, Cuban legislation does not limit itself to proclaiming formal equality, but promotes a structural transformation aimed at dismantling patriarchy and building more just, solidary, and inclusive family relationships.

This structural change has been driven and reinforced not only by legislative action, but also by gender public policies, which constitute an essential engine for the reconfiguration of family law. These policies, aimed at promoting real equality, do not act solely on the normative plane, but also drive education, awareness, and the transformation of social practices that reproduce inequality. In Argentina, for example, the institutionalization of the gender perspective in family law has been accompanied by campaigns and programs for the prevention of family violence, the recognition of sexual and reproductive rights, and the promotion of shared responsibility in childrearing. In Italy, although the path has been more gradual, there are normative initiatives that incorporate this perspective and influence the interpretation of norms and the effective protection of victims of gender violence within the family sphere.

Nevertheless, despite the advances, tensions and challenges persist in the effective application of this principle. The persistence of patriarchal cultural practices, socioeconomic

inequality, and political and social resistance to the full incorporation of the gender perspective in family law constitute obstacles that require continuous and multidimensional action.

Equal marriage and LGBTIQ+ rights: between inclusion and resistance

The recognition of equal marriage constitutes one of the most significant milestones in the contemporary evolution of family law, not only in terms of legal inclusion of same-sex couples, but also as a paradigmatic symbol of the expansion of access to the family institution as a universal right. The comparison between the legal systems of Italy, Argentina, and Cuba reveals both convergences and tensions, and highlights the complexity inherent in the incorporation of LGBTIQ+ rights in diverse cultural, social, and political contexts, where the traditional family continues to be an object of defense and resistance.

Argentina was a pioneer in Latin America and one of the first nations worldwide to fully recognize marriage between persons of the same sex through Law 26.618 of 2010. This legislation not only granted the right to marry on equal terms with heterosexual couples, but also enabled joint adoption and derived filiation, as well as the extension of inheritance rights, social security, and tax benefits. This normative framework allowed progress towards the consolidation of affective citizenship, understood as the full integration of family diversity within the legal system, transcending the discriminatory barriers that historically excluded LGBTIQ+ couples from essential legal rights and recognitions. In addition, Argentine legislation was accompanied by active jurisprudence and public policies aimed at promoting equality and non-discrimination, which placed family law at the center of the human rights agenda.

In Cuba, the recent enactment of the CDF in 2022 has represented a qualitative leap in the constitutional and legal enshrinement of equal marriage. This regulation not only expressly recognizes marriage between persons of the same sex, but also incorporates a comprehensive rights-based approach, contemplating filiation through assisted reproduction, adoption by homoparental couples, as well as extensive regulation on protection, patrimonial rights, and social security. This normative process is framed within a state strategy aimed at modernizing family law and expanding recognition of diversity, in line with international human rights standards. The inclusion of equal marriage in the Cuban Constitution represents a recognition of family plurality as a constitutional value, which strengthens the protection of the dignity and autonomy of all persons, regardless of their sexual orientation or gender identity.

In contrast, the Italian situation reflects a more gradual and limited jurisprudential evolution. Although Italy has recognized in various judgments the existence of rights derived from civil unions between persons of the same sex, legally enshrined since Law 76/2016, which establishes “civil unions” for homosexual couples, it has not proceeded to the full legalization of equal marriage. It is expressly prohibited for these couples to adopt, although jurisprudence, through the figure of *adozione in casi particolari* (special adoption), has substantially admitted the possibility of parenthood (Barba, 2022b), especially in cases of children born through assisted human reproduction techniques or coming from previous relationships of one of the members of the couple.

The comparative analysis of these three contexts reveals the transcendence of equal marriage not only as a legal figure, but as an expression of a universal right to family, regardless of sexual orientation. This perspective implies recognizing the family no longer as the exclusive patrimony of the heterosexual union, but as an institution open to affective and structural diversity. The expansion of access to marriage and to related rights entails important legal implications, especially in matters of filiation, inheritance, social security, and affective citizenship.

Family and migration: transnational legal challenges

The contemporary migratory phenomenon radically transforms family structures and poses important challenges for legal systems, particularly in the field of family law. Transnational mobility not only alters the composition of family units, but also generates conflicts related to the recognition of bonds, the protection of rights, and the application of norms in heterogeneous legal contexts. Italy, Argentina, and Cuba represent three distinct but complementary models of legal response, which reflect their respective cultures, traditions, and political priorities.

One of the most urgent challenges is the protection of unaccompanied migrant minors, who face situations of high vulnerability. Italy adopts a rights-based approach, grounded in its Constitution and in international treaties, such as the Convention on the Rights of the Child, implementing measures of reception, guardianship, and integration. This model prioritizes the best interest of NNA, by recognizing their right to family identity and to reunification with their parents. However, at present, Italy is going through a difficult moment in this area, with signs of regression in the protection of the rights of migrant children, with limitations and practical difficulties becoming evident that put the effective protection of these vulnerable subjects at risk.

In Argentina, the response is framed within a rights-based and humanitarian tradition, with strong anchoring in the inter-American human rights system. The country explicitly recognizes family and cultural diversity, and ensures family unity through flexible norms and jurisprudence that favors integration and social inclusion.

Cuba, from its socialist approach, articulates protection for migrant minors from a solidary and universalist logic, ensuring recognition of family bonds formed abroad and facilitating reunification in a community and social key (Souto Fernández and Peña Lorenzo, 2023).

A particularly complex aspect is the legal recognition of transnational family bonds, which implies the resolution of normative conflicts and interaction between legal systems. Italy resorts to private international law and prioritizes criteria such as nationality or habitual residence, although facing practical difficulties and controversies regarding child protection. Argentina applies a more flexible logic and interprets norms extensively to guarantee family unity, even relativizing formal rules if this favors the interest of the minor and cultural inclusion. Cuba, without a complex private international law structure, operates from state centrality to facilitate family protection beyond borders, reaffirming its solidary and functional vision of the family.

In short, migration requires family law to be reconfigured to respond to multicultural, transnational, and dynamic contexts. Italy, Argentina, and Cuba move towards legal models that, from different perspectives, converge on the common objective of guaranteeing the dignity, identity, and rights of migrant families through inclusive, flexible normative responses grounded in human rights, despite the recent difficulties faced by Italy in matters of migrant child protection.

CONCLUSION

The evolution of family law in Italy and South America reveals a paradigmatic shift from essentialist and rigid conceptions toward a plural and functional approach, capable of integrating contemporary social diversity. This transition, evidenced in constitutional, normative, and jurisprudential developments, reflects the overcoming of a model centered exclusively on biological ties or formalized marital bonds toward a broader and more dynamic notion of family, conceived as a relational structure grounded in affectivity, solidarity, and legal responsibility.

The family is thus configured as a juridical category politically constructed by legal systems (Madrid Ramírez, 2024), which decide which forms of cohabitation to recognize, protect, or exclude. This approach implies understanding the family not as a static reality, but as an instrument for the realization of fundamental rights and social cohesion, particularly with regard to the most vulnerable persons, such as NNA. Affectivity, commitment, and cohabitation acquire centrality as legitimate juridical foundations for family protection, displacing traditional hierarchies (such as the primacy of marriage or the distinction between marital and non-marital children) in favor of a principle of equality and non-discrimination.

The comparative analysis shows how Italy, Argentina, and Cuba advance—through distinct political and juridical trajectories—toward the recognition of multiple family configurations, including single-parent families, same-sex parent families, reconstituted families, or de facto couples. This plurality requires from the law contextual sensitivity and normative adaptation, without renouncing fundamental principles such as dignity, equality, and integral protection.

The transformation of family law also entails growing interdisciplinarity and articulation with social, health, and educational public policies, which reinforce its promotive and not only reactive function. This integral perspective turns the family into a space of human and social development, whose juridical recognition is related to its capacity to sustain protective and affective bonds.

Finally, this functional and pluralist conception imposes a normative and practical challenge: to generate coherent, inclusive, and protective legal frameworks that respond both to the diversity of family ways of life and to the constitutional demands of social justice. Thus, family law is redefined as an open and dynamic normative field, which privileges the value of human relationships over their institutional form and is projected as a key tool for a more equal and cohesive society.

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