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Making the Immoral Moral: Consensual Unions and Birth Status in Cuban Law and Everyday Practice, 1940-1958

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Making the Immoral Moral: Consensual Unions and Birth Status in Cuban Law and Everyday Practice, 1940-1959¹

In 1944, four years after a new Cuban Constitution had been enacted, Josefa G. made several radical demands of the civil court judge in Havana based upon the new constitutional right to seek *equiparación de matrimonio civil*.² In the 1940 Constitution, the right to seek *equiparación de matrimonio civil* (hereafter *equiparación*) referred to an unmarried individual's right to ask a civil court to declare his or her consensual union equivalent to a legally contracted civil marriage.³ If a judge deemed a consensual union *equiparada* (equivalent), the unmarried defendant would then be able to make legal claims to the same rights and benefits that a legally married spouse was entitled. In this case, Josefa G. demanded that legal authorities formally recognize her past relationship with the deceased Gustavo M. as equivalent to a civil marriage. She argued that, although she and Gustavo had never married legally, their twenty-year relationship had “evolved to the most formal and honest level of marriages.”⁴ While Josefa asked for *equiparación*, she also explicitly insisted that the judge award her the same economic benefits that legally married spouses enjoyed; for her son's formally recorded birth status to be changed from **natural** (i.e. born to unmarried parents) to **legitimate** (i.e. born to married parents); and, for all the above changes to be inscribed in the appropriate civil registries.⁵

Because Josefa G. and Gustavo M. had not contracted legal marriage, Josefa and her son were disenfranchised from the right to claim benefits that legally married spouses and legitimate children could claim. If the court agreed to grant all of Josefa's specific requests, she and her son stood to gain financial **and** social benefits that they could not have asserted otherwise due to her unmarried civil status. Financially, Josefa would have been able to claim an inheritance from her deceased partner's estate, or a worker's or veteran's widow pension from either private businesses or the State—privileges that a legally married widow was entitled to upon the death of her spouse but that were withheld from unmarried women who had formed extra-legal unions. Additionally, if the court granted the reclassification of Josefa's son's birth status from natural to legitimate, it could enable him to claim a full inheritance from his father's estate instead of the 50 percent usually accorded to natural children. Finally, Josefa's request for her son's legitimacy may have been an attempt to attain

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the social benefits of a better moral standing and public reputation for her son because of the social stigma commonly attributed to Cubans of non-legitimate birth status.

If one looks four years back from Josefa G.'s 1944 court case to the Cuban Constituent Assembly's debates concerning its decision to include a constitutional clause for equiparación in the 1940 Constitution, it is clear that Assembly members had imagined ordinary Cuban women using their new right in very different ways and for very different reasons than Josefa used it in 1944. Assembly members had argued that it was unmarried women with children who had been taken advantage of and subsequently abandoned by irresponsible men who stood to benefit from this new constitutional right, not women whose loyal partners in consensual union had died. None had argued that couples who formed and maintained long-term consensual unions were deserving of the new right. And they framed their support of equiparación in terms of moral redress of women and children, not financial restitution. Indeed, Josefa's claims to equiparación were markedly different from the justifications that most Constituent Assembly members had espoused as they argued for the new right to seek equiparación. Josefa had not been abandoned by an irresponsible male partner. She and her partner had spent twenty years together and raised a son in their two-parent household. While it is uncertain whether her case was motivated by her desire for some form of moral restitution, it is clear that Josefa filed for equiparación in order to get what she felt she and her son deserved, i.e. the same benefits a legally married woman and her legitimate children could have claimed. This included, at the very least, the financial benefits withheld from them because legislators and much of elite society did not consider Cubans in consensual unions and their children to be models of sexual propriety.

The Cuban Constituent Assembly members' debates about equiparación and birth status, and evidence from ordinary citizens' judicial cases for equiparación, illuminate Cubans' struggles over the terms and meanings of sexual propriety, family, state formation and the persistence of social hierarchies during a period of democratic renovation in the 1930s and early 1940s. After the overthrow of Gerardo Machado's dictatorship by military general Fulgencio Batista in 1933, Cubans were eager to create a new democratic republic, but the legislators charged with that responsibility did not agree upon what exactly the task should entail. Some legislators, claiming there was a difference between **political** reform and **social** reform, were reluctant to enact laws that affected what they referred to as the "traditional Cuban family." By contrast, another group of lawmakers sought to abolish outdated notions of sexual propriety and honor embedded in established laws. Specifically, they hoped to grant legal rights and protections to unmarried couples and children of unmarried parents, as well as to eliminate the social stigma historically attributed to them. The tensions that surfaced as the Constituent Assembly members debated the constitutional clause for equiparación and an interrelated clause calling for the abolition of the classification and formal recording of citizens by birth status in religious and public records are the focus of the first half of this article. I highlight the differences between the opposing groups within the Assembly and analyze members' rationales for proposing or rejecting the different constitutional clauses concerning family and sexual propriety.

Additionally, a few Assembly members linked outdated norms of sexual propriety with the perpetuation of social hierarchies based upon racial distinctions. Legislators who struggled for the institutionalization of racial equality and anti-discrimination protections within the constitution believed that doing away with formal assignation and recording of birth status was a parallel and necessary process. These legislators treated legitimacy of birth and racial category as analogous and equally unjust bases for social discrimination, neither of which should persist in a modern and republican Cuba.

The linkage between birth status and race-based discrimination in Cuban society may have been even closer than the Constituent Assembly members' arguments suggest. Historian Michael Zeuske has argued that in post-emancipation Cuba, markers of birth status did part of the work of preserving social hierarchies previously based upon race and legal status, slave or free. Studying naming practices in legal documents, Zeuske suggests that illegitimate status, publically marked via the legally stipulated absence of a second (paternal) surname, was Cuban society's "open secret" and "hidden marker" of race indicating descent from enslaved Africans.⁶ If a person lacked a second surname, he or she was implicitly understood to be illegitimate, dishonorable, and at a minimum, not fully white. The Constituent Assembly's debates about birth status illuminate the how issues concerning sexual propriety and family were intertwined with anti-discrimination efforts during Cuban democratic state formation. The fact that the legislation finally enacted preserved key possibilities for discrimination based on mother's marital status and intimate history, despite fervent arguments over these issues, suggests the remarkable resilience of hierarchical judgments of female sexual virtue, which were affirmed by law even at a moment when egalitarian and anti-discriminatory political arguments were at their most potent.

In the second half of this article, I examine Cuban jurists' analyses of the constitutional clause for equiparación and specific court rulings on equiparación cases. Additionally, this section reviews the claims and testimonies brought to court by 21 Cubans who sought to benefit from equiparación.⁷ The court proceedings and testimonies from citizens who revealed the details of their intimate lives in court shed some light on the meanings of family, marriage, and consensual unions for legal authorities and ordinary Cubans. In the cases reviewed here, which make up the entire sample of equiparación cases that I was able to locate in Cuban provincial and municipal archives or which were summarized in published legal periodicals, the citizens who filed for equiparación were all women, and most sought to claim an inheritance from their deceased male partners. Some of these female petitioners, but not all, requested a formal change their children's birth status. Apparently financial, not moral, restitution was most important to these women. In light of this evidence, this article contrasts women's use of equiparación essentially to backdate their consensual unions so that they and their children could claim the financial benefits of inheritance with Constituent Assembly members' arguments that equiparación was, for the most part, an issue of moral restitution for citizens who did not marry legally and those born of extra-legal unions.

This study links the history of the family, honor, and sexuality to broader narratives of historical change and the production and reproduction of social hierarchies in modern Latin America.⁸ Nara Milanich has described how the role of family, kinship, and household is linked to the production and reproduction of social difference based upon class and color in Latin America.⁹ Fruitful scholarship in this vein has examined topics such as parental rights, children, child rearing, marriage and non-marriage, illegitimacy, social reproduction, and matrifocality. My study contributes to this line of inquiry by describing social conflicts concerning sexually propriety, marriage, and birth status during the Second Cuban Republic (1933-58).

Scholars of Cuban history have described the importance of race politics and struggles against racial discrimination to modern state formation,¹⁰ while others have illustrated how marriage was a mechanism by which racial and class endogamy was upheld in colonial and early twentieth century Cuba.¹¹ Yet few historians have reconciled Cuba's history of racial politics with that of family and sexual propriety during the Second Cuban Republic (1933-1958).¹² By paying attention to political debates and social reforms concerning the family and sexual propriety and interrelated issues of the struggle for racial equality during a

time of democratic renovation in Cuba, one can gain a deeper understanding of the meanings of modern Latin American democratic state formation. Results presented here illuminate the tensions between legislative authorities responsible for redefining the role of the State in relation to its citizens' intimate, family lives, and highlight ordinary Cuban citizens' active engagement in the extension and interpretation of new legal rights. Further, by focusing upon legislative debates about the formation of democratic legal structures, this study reveals the linkages that participants drew between the struggle for racial equality and efforts to eliminate social hierarchies based upon sexual and family propriety. These findings shed light on the limits of democratic nationbuilding due to lawmakers' conflicting efforts simultaneously to erase and to maintain social hierarchies based upon racism and patriarchy. Findings suggest possible avenues of inquiry for histories of gender and race in post-emancipation societies in Latin America and elsewhere.

The Second Cuban Republic and the 1940 Constitution

Historians refer to the “Second Cuban Republic” (1933-1958) to signal a brief episode of democratic renovation in the 1930s and ‘40s, and its subsequent dictatorship until 1959. After more than four centuries of Spanish colonization, Cubans had fought for and all but won independence from Spain only to have the U.S. military intervene in the Cuban War of Independence (1895-98) and undermine Cuban sovereignty via legal and extra-legal mechanisms until 1959. Throughout the first half of the twentieth century, top elected Cuban officials were backed by the U.S. government, and Cubans enacted constitutional amendments that enabled U.S. military intervention in and occupation of their country. In addition to political interference, strategic investment in Cuban economy by private U.S. parties, and Cubans’ cultural turn towards all things “American” reflected the deepening U.S. influence in Cuba. While Cuban independence from Spain had quickly evolved into a neo-colonial relationship with the U.S., after the 1933 revolution against dictator Gerardo Machado (1924-1933), Cubans strove to alter the terms relationship and become a self-governing democracy in the early 1930s to the mid-1940s.¹³

In 1933, military sergeant Fulgencio Batista led the coup to oust the president-turned-dictator Machado, initiating a widespread social movement to establish democratic governance. For many, building a true democratic republic in the 1930s and 1940s meant much more than a rejection of the lingering legacies of over four centuries of Spanish colonial rule; it also meant independence from the neo-colonial influence of the U.S. After the 1933 revolution, nothing was more symbolic of Cubans' desire to make a “Cuba for Cubans” than the creation of a new constitution in 1940.¹⁴

Soon after Batista's coup, new and old political factions began demanding a new constitution. Most Cubans considered the post-colonial 1901 Constitution to have been tainted by the various concessions statesmen had made to the U.S. military government during the first U.S. occupation of Cuba in 1899-1901. Legislators during Machado's governance had attempted to reform the 1901 Constitution by passing amendments yet it remained stigmatized and essentially stripped of legitimacy.¹⁵ Legislators attempted to reform the constitution twice in 1934 and 1935, but it was not until the end of the 1930s that the call for an entirely new constitution was heeded.

Contemporary scholars note that Batista, elected to his first presidential term in 1940, authorized and organized the writing of the new constitution in 1939 as a means of garnering public support and legitimating his leadership.¹⁶ Berta Álvarez asserts that the 1940 Constitution symbolized the fact that Cubans had begun to understand that the State, with its republican governing qualities, was a defender of collective interests.¹⁷ Scholars have also described the sweeping, liberal guarantees made by the lawmakers who wrote the 1940 Constitution. Some have examined Cubans' successful efforts to link racial equality and the

denunciation of racial discrimination to the Constitution.¹⁸ Others have paid close attention to party politics and class mobilization and argue that the 1940 Constitution represented a common recognition of the end of authoritarian rule.¹⁹ While many civil and social guarantees were written into the Constitution, enforcement of the social, economic, and political promises did not occur.²⁰

In November 1939, Cubans elected a total of seventy-six representatives from multiple political parties to act as the Constituent Assembly members. On May 9, 1940, the elected Assembly members began their discussion of the “Family and Culture” section, Articles 43 and 44 of the final draft of the Constitution.²¹ Assembly members were divided into groups called “Coordinating Commissions,” each group drafted a separate section of the constitution and submitted the drafts for review.²² Later, the Coordinating Commission's draft and any revisions or amendments proposed by different Assembly members were discussed and accepted or rejected by the Assembly.²³

For many of the Constituent Assembly members, their intent to found a true democratic state was inextricable from their desires to protect their own idealized form of sexual propriety: family units formalized by legal, civil marriage. Most Assembly members wanted to use legal reform to encourage citizens to contract legal marriage and motivate them to be, at the very least, financially responsible spouses and parents. To that end, lawmakers included a new section in the constitutional text entitled “Family and Culture” in which they tried to make guarantees that reflected their own moral views about couples who chose not to contract legal marriage, and about children of natural or illegitimate birth status. But determining who exactly should benefit from these new constitutional protections was no easy matter for Assembly members.

Two distinct groups of Assembly members, loosely bound by party affiliation, emerged as the Constituent Assembly discussed the text for the “Family and Culture” section. The first group, referred to here as “progressive” Assembly members, considered the writing of the new constitution an opportunity to erase from Cuban legal structures the existing privileges and protections that were based upon outdated notions of sexual propriety and race-based hierarchy.²⁴ They sought to expand the civil and constitutional rights and protections of citizens whose rights had been historically limited due to their stigmatized moral status (i.e. unmarried couples and persons of natural or illegitimate birth status). Some of them linked illegitimate status to racial discrimination and sought to eliminate its legal recording just as the recording of race had been abolished. The second group of legislators, referred to here as “traditional” Assembly members, expressed shock and dismay at the progressive members' proposals. For them, establishing democracy in Cuba did not require the removal of hierarchy within or between families: quite the contrary. These lawmakers were reluctant to enact any legal changes that would affect what they deemed the “traditional Cuban family.” They wanted a constitution that would encourage Cubans to contract legal marriage and would discourage sexual behavior outside of wedlock, not expand rights and protections to people whom these Assembly members deemed immoral.

Progressive Assembly members were usually affiliated with the Partido Revolucionario Cubano (PRC or Auténticos), the revolutionary party led by Ramón Grau San Martín that was founded in 1934 under the belief that “the struggle for Cuba's independence was still to be won,” and its affiliated party, Partido Acción Republicana (PAR).²⁵ Also joining and often leading the efforts of the progressive Assembly members were the representatives of the Unión Revolucionista Comunista (URC), the communist party headed by Juan Marinello Vidaurreta, an intellectual, writer, and one of the student activist leaders from the 1920s who became an important national figure. In contrast, the traditional Assembly members who tried to stymie the progressive group's efforts were mainly members of the Partido Liberal

(PL), Cuba's conservative but somewhat discredited political party that had roots in the movement for independence in the turn of the 19th century; the ABC Revolutionary Society (ABC) led by Jorge Mañach, a nationalist party formed in 1931 that supported capitalist development; and some members of the Auténticos.²⁶

Legal and Extra-legal Unions

One of the Assembly members' objectives was to encourage citizens to contract legal marriage. Traditional Assembly member Francisco Ichaso (ABC) summed up common sentiments when he said, "What do we want? To spread and invigorate matrimony in Cuba, so that more people, especially campesinos, marry legally."²⁷ Getting citizens to contract civil marriage had long been an interest of Cuban lawmakers. At the inception of the first Cuban Republic (1898-1932), legislators sought to encourage citizens to contract civil marriage in addition to religious marriage because they believed it would help secularize the State and set the nation on the path of "progress, reason, liberty, and democracy."²⁸ Consensual unions were not legally recognized until 1940. Before then, the State recognized only civil or religious marriages. In the 1940 Cuban Constitution, legislators stipulated that religious marriages must additionally be contracted through civil authorities in order to be considered legal. Nevertheless, as discussed above, after 1940, citizens who had formed consensual unions could go through the legal process of equiparación by which their unions would be deemed equivalent to legal marriages. Although the evidence available to the author does not suggest that this was a very common legal process, it does reveal that those few citizens who sought equiparación often won the rights to claim legal benefits they could not have previously claimed before the ratification of the 1940 Cuban Constitution.

Census data from the 1930s through the 1950s suggests that throughout the mid-twentieth century Cubans were not overly eager to contract civil marriage. Even after fees for civil marriage were eliminated in 1940, citizens did not rush to legalize their unions. In 1931, the percentage of the population of Cubans of marriageable age who were legally married was 32.9. This percentage rose slightly, to 33.5 percent in 1943 and 35.1 percent in 1953. Thus, from 1931 to 1953, the percentage of married people of the total population of marriageable age had increased by a total of only 2.4 percent.²⁹

Regional differences between the more urbanized Havana Province and the more rural Oriente province suggest that legislators understood civil marriage to have been indicative of modernity and the integration of citizens into the body politic. Rural Cubans in particular tended to shun legal marriage and form consensual unions. Comparing the two most populated provinces of Havana (largely urban) with the Oriente (largely rural), census statistics suggest dramatic regional differences between urban and rural Cubans' desires to legalize their familial unions.³⁰

From 1931 to 1943, the total population of married Havana province dwellers rose from 36.8 percent to 39.9 percent. In contrast, in the Oriente Province, the percentage of married people actually **decreased** from 27.2 percent in 1931 to 25.2 percent in 1943.³¹ Direct comparison of rural and urban populations is feasible based upon 1953 census data and it reveals the rural populations' continued reluctance to contract legal marriage. In 1953, 40.4 percent of urban dwellers of marriageable age throughout Cuba were married, while only 26.6 percent of rural dwellers of marriageable age throughout Cuba were married.³²

An estimate of the number of people engaged in consensual unions in the 1930s and 1940s cannot be calculated because census takers of the 1931 and 1943 censuses did not use the category of "consensual union," instead, they classified citizens as single, married, divorced, widowed, and "civil status unknown."³³ In 1953, the census included consensual unions in its tabulations and data suggests that Constituent Assembly members' preoccupation with

rural dwellers' reluctance to marry may have been well-founded. In 1953, 18.5 percent of all Cubans of marriageable age lived in consensual unions. But the Cuban rural population engaged in consensual unions at 27.3 percent, over twice the 13 percent of urban dwellers who engaged in consensual unions.

Should the State Protect the Family?

At the outset of the Constituent Assembly debates on the “Family and Culture” section, it was clear that not all Assembly members supported including a section that specifically addressed family issues in the Constitution.³⁴ Two traditional Assembly members, PL representatives Orestes Ferrara, veteran of the Cuban War of Independence and long-time politician, and José Manuel Cortina, both argued against its inclusion because they did not feel that the new republic state should regulate its citizens' intimate lives. Ferrara addressed the Assembly: “This is my fear: [the constitution will delineate] a great defense of individual rights and guarantees, but no citizen will be able to exercise these rights.”³⁵ He reasoned that legislation of family issues in the constitution would institute “totalitarian” governance of public activity. At the very least, Ferrara pleaded with the Constituent Assembly to leave out the sentence that stated, “The State will protect marriage, maternity, and family.”³⁶ In similar fashion, Cortina complained that “some Assembly members are so eager to... make this constitution a matter of details, so that it covers all economic, political, and social possibilities.”³⁷ He argued that laws intended to regulate family issues belonged in civil and penal codes, not constitutions, because codes were “subject to the constant creation and criticism of society” and could be modified.³⁸

Despite the front headed by Ferrara and Cortina, a majority of Assembly members argued that modern, democratic states most definitely had a role to play in citizens' social lives. For example, progressive Assembly member Ramón Zaydín (PAR) reasoned that almost all post-World-War I constitutions were “characterized not only by a nationalization of public powers, but a nationalization of public life.”³⁹ He asserted that the constitutional protection of marriage served to elevate matrimony from a moral level to a “legal level that encompasses it within civil legislation...to establish rights and responsibilities of families and the rights and responsibilities of married people to one another and to their children.”⁴⁰ Another progressive, lawyer Ramiro Capablanca (Auténticos), agreed that family issues should be part of the new constitution, casting Ferrara and Cortina as out-of-date by stating, “That old question about state interventionism...has been resolved in all modern constitutions.”⁴¹

It became clear that a majority of the Assembly members desired family issues to be included in the new constitution and that, for them, this was an essential role of a democratic nation when they voted overwhelmingly to reject Ferrara's proposal to do away with the entire Family and Culture section. Furthermore, they agreed to explicitly define the State's relation to citizens' family and sexual lives and included the disputed phrase stating that the State was responsible for the protection of family, maternity, and marriage.⁴²

Equiparación

Most Constituent Assembly members recognized that not all people engaged in consensual unions were immoral.⁴³ Because of this, they felt they should make laws that aided the women and children whom they believed were unjustly disenfranchised from claiming child support or inheritance due to the extra-legal circumstances of their marriage or birth. Nevertheless, Assembly members were conflicted about how to design laws that helped those that were “worthy” of legal protection but that did not help people who made “immoral” choices.

It is unclear just how much Assembly members knew about population trends in civil marriage or consensual unions as they wrote the new Constitution, yet most demonstrated their interest in promoting civil marriage when they collectively decided to make marriage officiated by a state authority free of charge. Assembly members hoped that by eliminating the financial cost of legal marriage, they would encourage more citizens to legalize their consensual unions, especially rural Cubans. Ramiro Capablanca (Auténticos) reasoned that many Cubans who engaged in consensual unions failed to marry legally because they lacked the monetary resources needed to do so.⁴⁴ Joaquín Martínez Sáenz (ABC) stated that making free, legal marriage a constitutional right was a defense of marriage and “the Constituent Assembly wants to facilitate marriage.”⁴⁵

But progressive Assembly members such as Alicia Hernández de la Barca (Auténticos) argued that simply making legal marriage free of charge would not sufficiently address nor solve the “problems” of consensual unions in Cuba. Hernández was one of three female Assembly members, and a participant in the feminist group Alianza Nacional Feminista. The “problems” Hernández referred to were both legal and social. Unmarried citizens were unable to assert legal claims for child support, alimony (i.e. the alimentary pension intended for a legally divorced, innocent ex-wife), or inheritance.⁴⁶ And society often stigmatized couples engaged in consensual unions and their offspring (i.e. natural or illegitimate children) as immoral.

In light of this, Hernández made a most radical proposal. She sought to revise the Coordinating Commission's original draft of the clause for equiparación, which stated, “The courts will determine, with total discretion, cases in which the union of persons with the legal capacity to marry each other, due to their stability and singularity, will be considered equivalent to civil marriage.”⁴⁷ The Coordinating Commission's draft was in itself a revolutionary approach to dealing with consensual unions, but it did require that people who chose to go through the legal process to prove to a judge the “stability and singularity” (*estabilidad y singularidad*). i.e. monogamy and long-term duration, of their partnership. If the Assembly members had decided to pass even the draft version of the text, they would have been the first lawmakers in Latin America to approve a constitution that enabled citizens in consensual unions to claim the same rights and privileges that legally married citizens could claim.⁴⁸ But for Alicia Hernández, the draft text did not go far enough.

Hernández pleaded with Constituent Assembly members to approve a different clause that would grant **all** Cubans who formed extra-legal, consensual unions the very same legal rights that were granted to legally married Cubans. She reasoned that “merely because a woman is in a free union does not justify that we deem her and her family outside of morality.”⁴⁹ Her revised proposal cut the courts completely out of the process: it read, “Any union of stable and singular character, between two people legally able to marry, will be considered before the Law, regarding the effects, obligations, and rights of each to the other and to their children, as if it were a civil marriage.”⁵⁰

Because her amendment eliminated the stipulation that a judge evaluate the sexual propriety of every consensual union in question, she framed her proposal as a just restitution of moral status for Cuban women who had not married their male partners. Hernández urged the Assembly members to relax their moral standards and consider the lives of the people for whom they were making laws. She admitted,

In some way my proposal goes against the basic and fundamental institution of matrimony, but even though we are in favor of marriage, as is fitting of men who make laws for people, we should calmly consider people's true situation. Taking into consideration that law derives from fact, these men have united here to write a Constitution which wipes clean the errors of the past and seeks a new path for the

future, [thus] it is necessary that they judiciously study the conditions of our surroundings and come to the conclusion that there are things in our lives and in our society to which we cannot in any way close our eyes, that we have to face valiantly.⁵¹

By asserting that a disjuncture existed between legislators' ideals and "social reality," Hernández argued that she was fighting for Cubans who were not commonly considered to be models of sexual propriety and, thus, were unjustly disenfranchised.

Hernández reasoned that mere legal sanction of a sexual union could not be the only proof that a person was a proper and moral citizen. She stated,

I have come to the Assembly to modestly defend, to the best of my ability, the Cuban woman, the married woman, the single woman, the white woman, the black woman, women of all kinds. I have to say that there are a great number of Cuban women in difficult and humiliating situations, who are as honorable and as deserving of merit as are other women, that just because she is in a free union, does not mean that we should consider her and her family immoral.⁵²

For Hernández, the only thing missing from honorable consensual unions was legally binding sanction of the state. She wanted to guarantee social equality for all citizens who had formed families outside of marriage.

Twenty-two out of the sixty-six Assembly members attending the session voted to approve Hernández's proposal. Most of those who voted in favor reasoned that it would oblige men in consensual unions to fulfill the same duties and responsibilities that married men were bound to fulfill and, therefore, would protect all women and children. For example, progressive Assembly member Capablanca argued that "although it [Hernández's amendment] seems paradoxical, far from being...an attack on marriage, it is actually a defense of it."⁵³ He explained, "When men know that they are responsible for women with whom they have a consensual union and for the children that result from these free unions, then they will not engage in consensual unions but in marriage."⁵⁴ Capablanca depicted men as almost inherently irresponsible, and implied that women needed State protection from them. Others echoed his rationale.

However, the majority of Assembly members, progressives and traditionals, balked at Hernández's suggestion, arguing that it was not conducive to democratic progress and would grant rights and privileges to undeserving, immoral citizens. Traditional Assembly member Cortina led a spirited struggle against Hernández's proposal, framing his dissent as a fight for modernity, progress, and civilization. He said that a constitutional guarantee to consider consensual unions comparable to legal marriages would essentially send Cuba off on a legal path divergent from that of "all civilized nations on earth" and "destroy...the matrimonial system, making [it] completely useless."⁵⁵ Cortina prophesied, "If this amendment were approved, we would produce an enormous confusion in legal married life, and we would take the consequences of the political revolution which we have just lived through, to sectors of our sentimental and family life, [sectors] which don't need to be transformed in the radical and perturbing way that is proposed."⁵⁶ For Cortina, the 1933 revolution was a political revolution, and subsequent reform should only affect politics: Social issues should be left alone.

Others who opposed Hernández's proposal invoked the sanctity of marriage as the reason. Future president (1948-1952) Carlos Prío Socarrás (Auténticos) stated that he would not vote for a measure that would make a mockery of marriage.⁵⁷ He argued that men "who flee from the obligations of legal marriage would flee from those same laws that create something similar to marriage."⁵⁸ Another Auténticos representative, José A. Fernández de

Castro, stated, “I could not ever be able to accept these consensual unions as a national institution, [it would serve] to relax our public customs even more.”⁵⁹

Many legislators rejected Hernández's proposal because they argued it would possibly grant rights and privileges to unworthy and immoral citizens. They argued that the Coordinating Committee's original draft that enabled a judge to evaluate whether or not a particular consensual union was worthy of equiparación already served to resolve many of the problems Hernández had described. Members such as Francisco Ichaso and Jorge Mañach (ABC) and Orestes Ferrara (PL) wanted a higher moral authority to take on this role.⁶⁰ Even if Hernandez's version would protect more women, Ferrara noted, it was in the best social interest for a judge to assess the “stable and singular nature” of the consensual union in question. Rafael Guas Inclán (PL), Batista supporter, stated that some unions, such as monogamous *campesino* couples who have up to twenty children, should be enabled to benefit from equiparación. But, Inclán rejected the idea that couples united for a short time for sexual or monetary reasons would be able to benefit from legal benefits and protections.⁶¹

Progressive legislator Ramón Zaydín (PAR) also supported the stipulation in the Coordinating Committee's original clause for equiparación that legal authorities evaluate the consensual union in question. Zaydín was eager to hold men in consensual unions legally responsible for the same things as married men. He contended that many unmarried men considered their female partners to be “instruments of pleasure” and that these men abandoned their partners after she had born him children and “had lost the freshness of beauty and youth.”⁶² Zaydín argued that equiparación as it was in the Coordinating Committee's version would adequately protect vulnerable women and children from these men's rogue actions by imposing upon all men in consensual unions the “responsibilities and obligations, and the duties” that they shirked.⁶³

Ultimately, the Coordinating Committee's original draft of the clause was enacted in the final constitutional text. Thus, Cubans in consensual unions were guaranteed the same rights as legally married Cubans only if they could prove to a civil court that their union was of “stable and singular nature,” in other words, a long-term, monogamous relationship that fit lawmakers' or judges' ideas of a model of sexual propriety or honorable moral standing. To qualify, a petitioner needed to provide evidence that would convince the civil court judge. But because the law did not define exactly what that meant, the fate of each individual case was left up to an individual judge's discretion.

Despite the fact that almost all Assembly members depicted women who would seek equiparación as vulnerable, poor, and in need of protection, none of them acknowledged the difficulty that women might have when trying to prove to Cuban courts that their consensual union was of stable and singular character. No descriptions of what consisted of viable proof of stability and singularity were discussed. Furthermore, the fact that it may have been difficult for women to take their cases to court—to hire legal representation, to pay for the process, to gather adequate evidence proving their relation was stable and monogamous, etc.—was not mentioned. Ironically, no Assembly member voiced a concern that the very women in consensual unions might not have the resources necessary to engage legal representation and take their case to court.

Illegitimacy: Protecting Children or Punishing Parents?

Classification of Cuban citizens by birth status was closely connected to equiparación because, theoretically, the birth status of children born to unmarried parents could be formally reclassified once a case of equiparación was granted by a judge. Because of this,

another important and intricately related part of the Family and Culture section of the constitution dealt explicitly with the assignation of birth status.

In Cuba, the issues of birth status and illegitimacy had been subject to much public debate since the beginning of the twentieth century.⁶⁴ In the 1920s, Cuban feminists organized and attended National Women's Congresses where the subject of illegitimacy caused divisions among conservative and radical feminists.⁶⁵ In 1928, House Representative and future 1940 Constituent Assembly member Rafael Guas Incán had proposed to eliminate recording birth status of citizens to the Cuban Congress. His proposal was rejected and the issue was deemed "too controversial to reintroduce until the constitutional assembly" in 1940.⁶⁶

Similar to equiparación, many progressive Constituent Assembly members contended that eliminating the classification and recording of citizens' birth status in civil and religious records was necessary to dismantle the colonial structures of social inequality which were embedded in the practice of categorizing citizens based upon the degree of morality that society accorded their parent's relationship. They equated the elimination of classification by birth status with the Constituent Assembly's earlier decision to promote racial equality and criminalize discrimination based upon race in Article 23 of the Constitution. Article 23 stated, "All Cubans are equal before the law. The Republic does not recognize any special rights or privileges. All discrimination due to sex, race, or class or any other motive harmful to human dignity is declared illegal. The law will establish sanctions for those who violate these norms."⁶⁷

Traditional Assembly members who opposed the progressives' efforts contended that to abolish the categorization and recording of birth status in formal, public records would discourage people from legalizing their unions, promote "free love," diminish public morality, and lower the Cuban birth rate. Unlike progressives, they did not treat birth status distinctions as parallel to racial discrimination—indeed, they did not mention questions of race at all. Instead, they depicted progressives' efforts as an affront and a challenge to traditional morality and family structure.

At the crux of this debate was an attempt to eliminate the practice of assigning and recording in public record children's status as legitimate, natural, or illegitimate at birth. The assignation of birth status had complicated effects upon Cuban citizens in terms of financial rights, parental responsibility, and social stigma. First, Cubans' birth status as legitimate, natural, or illegitimate affected his or her legal claim to paternal inheritance. An illegitimate Cuban was unable to claim an inheritance from his or her father.⁶⁸ A natural Cuban could claim 50 percent of an inheritance from his or her father, but only if the biological father had formally recognized him or her as his child via the formal process of *reconocimiento* (recognition of filial relationship).⁶⁹ Theoretically, a successful case of equiparación could enable the reclassification of the birth status of a child as a legitimate son or daughter who could then make full inheritance claims. The second issue was child support. If a child's paternity had not been officially recognized, a mother of a natural or illegitimate child could not seek legal redress if that child's father failed to fulfill his parental responsibilities and duties towards his children.

Third, reclassification of birth status could also combat social stigma attributed to him or her and inequitable treatment based upon social hierarchies of honor and status. Cuban society tended to stigmatize Cubans with illegitimate birth status because they were born to parents who had committed adultery and thus had violated cultural codes of honor as well as legal codes which criminalized adultery. A person's illegitimate status was recorded in public record. Additionally, illegitimate children were not allowed to use their paternal surname. Because Cubans used two surnames, their father's and their mother's, the lack of a second

surname usually indicated that the child was illegitimate. The problem of surnames as indicators of natural or illegitimate birth status was somewhat mitigated by legislation passed in 1927, which enabled natural children to use the complete paternal and maternal surname of the person who formally recognized him or her so that their non-legitimate status would not be publically revealed by their lack of two surnames.⁷⁰ Nevertheless, unless a father had formally recognized his child born out of wedlock, it was illegal to formally attribute the father's surname to his child.⁷¹

The Coordinating Commission's original draft of Article 44 was worded to eliminate the formal recording of birth. It stated:

Natural children have the same rights and duties that are determined in the preceding paragraph, in addition to those rights of inheritance that the law prescribes. To this effect children conceived out of wedlock to married parents will also be considered natural, as long as they have been recognized by the married parent, or if their filial relationship has been determined by the courts. / No declarations of legitimacy or illegitimacy of birth or the civil status of parents will be assigned to a person in inscriptions in the civil registry, nor will any statement, baptismal record, or certificates refer to a person's filial relationship.⁷²

Because the article stipulated civil code inheritance laws would be maintained, natural children may have been granted the same rights as legitimate children but they still could only inherit 50 percent of their father's estate. Illegitimate children would be considered natural and thus would be able to claim 50 percent of the father's estate, but only if the biological father had formally recognized him or her. Finally, the draft article determined that neither the civil status of the parents, nor the birth status of the child as legitimate, natural, or illegitimate could be recorded in public or religious records. Related legal issues concerning surnames were not addressed. Thus, the original draft eliminated the formal recording of birth status but simultaneously maintained differential inheritance based upon those categorizations.

Many Assembly members were conflicted as to how to resolve the obvious inconsistencies between birth status and inheritance. They wanted to eliminate the social stigma accorded to children of non-legitimate birth status, but at the same time discourage adults from committing adultery or from choosing not to contract legal marriage, behaviors they felt the laws concerning classification by birth status discouraged. They proposed at least seven different amendments to the original draft of Article 44 concerning this issue.⁷³ Progressive member Santiago Rey, with the support of Felipe Correoso, proposed the most radical amendment to the Coordinating Committee's draft. Other progressive Assembly members such as Ramón Zaydín (PAR), Miguel Parrado (Auténticos), and Juan Marinello (URC leader) made similar but not quite as radical proposals declaring all children equal in rights and responsibilities.⁷⁴

Santiago Rey, Partido Democrático Republicana representative from Santa Clara Province, War of Independence veteran, lawyer, and future member of President Batista's governing cabinets (1940-44 and 1954-58) submitted an amendment that stated, "Absolute equality of all children is established in name, in social consideration, and in inheritance; thus erasing all inequalities of any other character that might be in our legislation and especially, that which refers to distinctions in names that have been assigned until now."⁷⁵ His proposal was novel in two ways: First, unlike the Coordinating Commission's draft, Rey's text did not include the literal nomenclature "legitimate," "natural," and "illegitimate." Second, it would have definitively leveled inheritance claims of all children. Rey's proposal not only radically reformed the Coordinating Commission's draft but it was a complete break from the past.

Rey's proposal initiated much heated discussion among Assembly members, many of whom framed birth status discrimination as parallel to racial discrimination, social hierarchies reflecting a legacy of colonial rule that had no place in a modern egalitarian republic. Progressive Assembly members argued that the classification by birth status was both unjust and anachronistic, a remnant of the Spanish and Creole elite's desire to maintain hierarchies of honor. For example, Blas Roca (URC) responded to traditional Assembly members' protests against Rey's amendment by pointing out that "[w]hen slavery was abolished, no constitutional distinctions were made between slaves and freedpeople," implying that it would be similarly unjust to carry on with the categorization of children by birth status and that birth status was linked to categorization based upon racial differences.⁷⁶ Miguel Suárez (Auténticos) echoed these sentiments by contending that the law that categorized children by birth status sustained a "regime of castes that should be abolished in our democratic republic."⁷⁷ Suárez asked, "Why would we maintain this stigmatic distinction?"⁷⁸ He wondered aloud how legislators could possibly consider rejecting the abolition of categorization by birth status in light of the fact that Cubans had successfully managed to erase racial distinctions in the civil registries, and had more recently given support to consensual unions in the courts. Finally, Salvador García Agüero (URC), one of the five Assembly members of color, contended that maintaining classification by birth status was ultimately paradoxical because "the system of unequal rights based upon birth status in effect violated the constitutional guarantee of Article 23 that the Assembly members had passed earlier which did not admit discrimination in any case, especially if it damages the moral dignity of the individual."⁷⁹

Progressive Assembly member Zaydín, albeit defending his own proposal, argued that the categorization based on birth status was a part of Cuban culture; a culture he characterized as the product of a historically multiracial, slave-holding colony that encouraged men to behave as sexually irresponsible cads. Zaydín asserted that the elimination of the system of categorization by birth status would help right the historical wrongs of the colonial caste system and slave owners' sexual abuse of enslaved women that permeated Cuban society and created families that lived "at the margins of the law."⁸⁰ For him, birth status was of a piece with hierarchies based upon racial distinctions.

Most of the traditional Assembly members contended that their rejection of progressives' efforts to abolish classification of citizens by their birth status was a defense of the family, and they did not respond to the progressive's arguments that birth status classification was a mechanism that maintained social and racial hierarchies. They argued that legal rights based upon birth status classification served to reward citizens for their sexual propriety and sanction those who engaged in immoral behavior. Again, Cortina was most vocal and extreme in his opposition. He again accused progressives of trying to change what he believed was the appropriate and traditional order of the family. Cortina stated, "There are doctrines which deem the current organization of family to be retrograde, contrary to social progress, [and] which should be destroyed....[And] there are other men, such as myself, who believe that there are natural laws with insurmountable limits and that we don't need to duplicate those laws with legislation...which would definitively incur fatal consequences within social organization."⁸¹

In contrast to his earlier assertion that the purpose of the constitution was to make changes that ensured political democracy not alter social structures, Cortina now asserted that the constitution should actively guide social issues in order "to deliver protection, refuge, and honor to all citizens" while "keeping in mind historical and social structure of western civilization."⁸² He argued, "[U]ntil now this civilization and culture that we belong to has been organized by family groups with certain ceremonies and hierarchies and gradations that

keep a certain coherence.”⁸³ He accused Rey of trying to “destroy everything in society” simply because it was “archaic.”⁸⁴

Despite the efforts of some progressive Assembly members who compared categorization by birth status with racial discrimination, those traditional and progressive Assembly members who saw the birth status classification system as a defense of marriage held sway in the 1939 constitutional convention. Explaining his rejection of Rey's amendment as a defense of the family, Rafael Álvarez (PDR) said, “I have voted according to my convictions and principals and I think in some way this amendment is an attack on the traditional concept of the family.”⁸⁵ Jorge Mañach (ABC) stated that the “family is an instrument of society that serves to preserve the species...and the transmission of moral and cultural tradition” and that Rey's proposal would have altered this.⁸⁶ Finally, Martínez Saenz contended that the Constitutional Assembly was trying “to defend marriage, and one of the most powerful reasons that men realize they should marry is their recognition of their responsibility for their children....If marriage is part of the law, and adultery is illegal, then the consequences of law creates two types of children [legitimate and illegitimate] who can't be treated the same, is inevitable.”⁸⁷

For the most part, those in favor of Rey's amendment believed that redressing social inequality based upon moral and racial distinctions was more important than ensuring the idealized morality that Rey's detractors commended. Yet in the end, the assembly voted to adopt the drafting commission's proposed text, with no changes to remove or explain its internal contradictions. The result of this debate was a compromise of sorts: the creation of a contradictory constitutional article which abolished the categorization of children as legitimate, natural, or illegitimate in public records, but simultaneously maintained Civil Code inheritance laws based upon those very distinctions.

Equiparación Cases: The Law in Practice

Juridical treatises about the new constitutional right to seek equiparación and evidence of its use by ordinary Cubans in civil courts after 1940 are scarce in the existing historical record. Nevertheless, an examination of both sheds light on its meaning beyond that espoused by legislators who created and enacted the legal process.⁸⁸ Once the constitution was enacted, Cuban judicial authorities were instantly vested with the power to grant certain new legal rights to people in consensual unions and their children. Some citizens in consensual unions took advantage of the new legal avenue for equiparación and began to assert their rights to benefits that they could not possibly have asked for or won in court before 1940. In practice, the utility and purpose of equiparación for some citizens provides an interesting contrast to the rhetoric of the Constituent Assembly members who had argued for its inclusion in the constitutional text because it would provide the moral restitution of deserving citizens, as well as safeguard women who formed consensual unions with irresponsible men who abandoned their extra-legal families.

Eduardo Le Riverend Brusone, Havana's *Tribunal Supremo* judge (the highest provincial court), wrote extensively about equiparación in a 1944 law journal article. According to Le Riverend, the provision did exactly what traditional Constituent Assembly members such as José Manuel Cortina feared it would: It created “a new ‘form’ of marriage.”⁸⁹ “And as a result,” Le Riverend argued, “its effects are wide-ranging: economic, social, and juridical.”⁹⁰ As such, equiparación was a “new institution” that would “replace the numerous legal doubts...with clear rules.”⁹¹

For Le Riverend, the provision enabling the courts to make a civil marriage out of a consensual union was both revolutionary and nationalist in spirit. Furthermore, like some progressive Constituent Assembly members, Le Riverend considered equiparación to be on

par with the anti-discrimination clauses in the very same constitution. He wrote, “One of the greatest things that distinguishes our Constitution is the fulfillment of José Martí’s wishes: to attend to the full dignity of man. And in its realization, the new institution [i.e. equiparación] is in line with the (perhaps nationalist) principal of the equality of all Cubans, and the most universal [principal] of anti-discrimination.”⁹²

Le Riverend envisioned what he called the “social effects” of equiparación, including its related possibilities for reclassification of birth status, to be most important aspect of the constitutional clause. He argued that “the point of new legislative orientations, reflected in our Constitution, is the suppression of different historical injustices consisting in labels... that proclaimed the differences in birth status (children of crime, bastards, sacrileges, spurious, etc.) or the legality of the parental union.”⁹³ These “historical injustices” referred to the systems of social stratification based upon honor, race, and class embedded in Spanish colonial legal structures. Like progressive Assembly members, Le Riverend believed the laws concerning the family had the power to redress the past and eliminate social hierarchies based upon class and race.

Evidence from 21 court cases of equiparación found in Cuban provincial archives or summarized in legal periodicals sheds light on some of the reasons Cubans chose to seek equiparación in the 1940s and 1950s. Examples are drawn from cases from Camagüey and Havana Provinces, and were located in archived court records and case summaries printed in legal journals. These 21 cases make up the total of the equiparación cases that the author was able to review.⁹⁴ Until additional examples of cases are found, the low number of cases presented here suggests that Cubans did not commonly choose to undertake this legal process. In the sample, all petitioners were women. Some female plaintiffs repeatedly appealed lower court rulings against their cases, sometimes as far as the Tribunal Supremo. Although they are relatively few in number, they illustrate women's motivations for seeking equiparación, as well as the scrutiny with which some judges assessed laypeople's claims for equiparación and some of the difficulties that laypeople may have experienced while trying to convince a judge to deem his or her consensual union comparable to a civil marriage.

To win equiparación meant that a couple's extra-legal union would be formally recorded in the civil registry as a legitimate civil marriage. According to jurist Le Riverend, the change of civil status in the civil registry was the very “proof of the creation of the new institution.”⁹⁵ In cases where a male partner had died, this change in legal marital status could enable the woman to claim an inheritance from his estate, or a worker's or veteran's widow pensions from the State or private businesses. As discussed earlier in this essay, in 1944 Josefa G. asked the court for the equiparación of her twenty-year relationship with Gustavo M., claiming that her “extra-marital union had evolved to the same level of the most formal and honest of marriages.”⁹⁶ She explicitly requested not only the equiparación of her relationship, but she also wanted explicit recognition that she and her partner were bound to the same economic contract as legally married spouses, and that her son be granted legitimate birth status. Finally, she requested the inscription of all the above in the appropriate civil registries. Josefa G.'s detailed and meticulous demands suggest that to ensure the benefits of equiparación it was important that all formal records that could affect the plaintiff's, as well as his or her child's, future financial claims and social status be revised.

In 1947 in Camagüey, Cristina P. filed for equiparación for her relationship with her deceased partner, Samuel A., a War of Independence veteran, in hopes that she would be able to claim the pension awarded to veterans' widows.⁹⁷ Apparently, Cristina had not been able to collect the pension because she could not provide the courts with formal record of her marriage. Cristina testified that she and Samuel had married during the war but that

formal record of their marriage had been misplaced or destroyed due to circumstances of war. Cristina was able to produce various types of evidence to prove her case. For example, she had gathered testimony from friends and family who had attended her wedding and had witnessed her almost fifty-year-long relationship with her husband; her children were inscribed in the civil registry as her and Samuel's legitimate children; and her passport declared her a married woman.

Despite the abundance of evidence, the civil court judge ruled against Cristina P.'s case and indicated he did so in the interest of propriety. The judge argued that the constitutional right of equiparación "was not applicable in this case: first, because it can't be claimed retroactively [because Samuel P. had died before the 1940 Constitution had been ratified]... and second, because it would be insulting to treat this case as such because [the relationship] is above that of a vulgar concubinary union."⁹⁸ Cristina apparently decided it was worth whatever "insult" the lower court judge alluded to and appealed to a higher court to win her case in August 1948. With this favorable ruling of equiparación, Cristina succeeded in claiming the veteran's widow's pension in 1949. Because evidence indicates that Cristina's social circle considered her and Samuel to have been legally married, it seems likely that she did not seek equiparación for public recognition of moral status, but rather for the economic benefits she felt she was entitled to receive.

A 1956 case illustrates the direct economic benefits that women could receive in a positive ruling on their case for equiparación. In Camagüey, Julia C. sought equiparación so that she might claim her deceased husband's veteran's pension.⁹⁹ Julia had been married during the War of Independence but formal evidence of her marriage had disappeared from public record. Unlike Cristina's case, the judge ruled in the widow's favor at the initial hearing.

Women seeking equiparación asked not only for veteran's pensions but also for inheritance of personal property or their partner's employment compensation benefits. For example, in a 1945 case from Camagüey, washerwomen Justina P. had lived in a consensual union with agricultural laborer Manuel M. for over twenty years.¹⁰⁰ After Manuel's death, Justina took her case to court to claim her inheritance of his property. Once a lower court judge rejected Justina's claim for equiparación, she appealed to the Appellate Court, where the lower-court's initial sentence was overturned and Justina and Manuel's union was declared equiparada. In a 1942 Havana case, Paula T. had lived in a consensual union with her partner Felix M. for fourteen years, and she sought equiparación after he died in a work-related accident. Although the couple had not been legally married, the company had agreed to award Paula a compensatory pension. Yet, for reasons unknown, the State Ministry of Public Affairs would not allow the company to pay Paula the pension. Thus, Paula took her case to court, successfully presenting "indubitable proof" that their union "comparable to civil marriage 'in all economic and social consequences.'"¹⁰¹

When the progressive Constituent Assembly members had pushed for equiparación, they had expressed their hopes that the mere existence of right to equiparación would influence men to act more responsibly towards their female partners and children. They also argued that if the threat of legal action was not enough to influence men to stay with their consensual partners or at least support them financially in case of abandonment, equiparación was a legal and practical way to enforce and ensure male responsibility to their consensual families. Thus, these lawmakers implied that in cases where both partners of the consensual union were living but had separated, equiparación would entitle women to make claims to alimony and child support from the male partner just as a legally divorced wife would have been able to claim from her ex-husband. Additionally, some Assembly members had contended that equiparación protected children because it enabled them to claim legitimate birth status and full inheritance once their parent's union had been granted

equiparación. While it was possible that a couple seek equiparación while the couple was still together or while both partners were separated but alive, available evidence suggests that in most cases females sought equiparación after the death of their male partners.¹⁰²

Despite some of the Assembly members' expansive conjecturing about the possible benefits of equiparación, evidence suggests that obtaining legitimate birth status for children born to parents in consensual unions may not have been an automatic or expected outcome even when judges did grant equiparación. For example, in Josefa G.'s 1944 case discussed above, the one thing that the lower civil court judge denied was Josefa G.'s request to formally inscribe in civil records the legitimate birth status of her child. The judge argued that he couldn't "change the condition of the child, converting [his status of] natural for legitimate... because 'the son has to maintain the condition under which he was born.'"¹⁰³ He softened the blow by ruling in favor of equiparación and saying it would thus be easy for the child to claim partial inheritance as a "natural" child. Despite the new constitutional clause concerning birth status and illegitimacy, this judge decided that the child did not deserve legitimate birth status or an inheritance equal to that a legitimate child could claim because of the moral lapses of their parents.

Jurist Le Riverend disagreed with this particular judge's ruling on Josefa G.'s request for the change of birth status of her son. Le Riverend wrote that this sentence "maintains a restrictive stance towards the effects of equiparación, precisely in one of the aspects that is most inexplicable: the social [effects]. Here, [the judge] concedes hereditary and other rights of economic order, but denies the one social effect."¹⁰⁴ While Le Riverend argued that equiparación would actually help to combat social stigma, the judge's ruling in this case illustrates this may not have always been the case when put into practice.

More evidence suggests that some judges were not always sympathetic towards laypeople's efforts to use equiparación to change their children's birth status to legitimate. For example, in one 1945 case filed by Diana H. whose partner, Arturo C., had died, the courts were unwilling to change her children's birth status to legitimate.¹⁰⁵ Diana and Arturo had lived together from 1933 to 1943 and had had two children whom Diana requested be inscribed as legitimate in the appropriate civil records. The civil and appellate court judges first denied Diana's request for equiparación because judges claimed that they could not declare equiparación for a relationship that began before the 1940 law was in effect. In addition, the appellate court judge denied her request to legitimate the birth status of her children because he argued that the children had not been legally recognized by the father nor inscribed in any civil registry by either of the parents.

Even as Diana H. appealed and won her case for equiparación in the Tribunal Supremo, she was still unable to sway the legal authorities to formally record her children's birth status as legitimate.¹⁰⁶ The judges' ruling implies that, even after the constitutional clause against making distinctions of birth status and even in situations when economic benefit of inheritance was not at stake, some higher court judges still thought it appropriate and even necessary to distinguish status based upon birth.

Although some Assembly members intended for equiparación to set right the unfair treatment of people who formed extra-legal families, the law was written in such a way that it still carried the moral baggage that Hernández and others had wanted to excise. The law entitled courts to determine equiparación based upon the presiding judge's assessment of the "stable and singular nature" of the union in question, but it did not define exactly how stability or singularity could be determined. Therefore, judges' rulings for equiparación hinged upon their own particular notions of sexual propriety and morality. Jurist Le Riverend argued that the central problem confronting judges was how they could evaluate

the “quality” of the couple's union. Le Riverend argued that in order to be granted equiparación, the consensual union had to consist of sexual relations between a man and a woman who, by appearance, had an “ordinary or common marriage.”¹⁰⁷ Le Riverend wrote, “It is the quality of the union that the Court will liberally observe, attending to the circumstances of each case.”¹⁰⁸ Le Riverend assumed that even people who had engaged in short-term consensual unions could claim equiparación if the union was deemed to be stable. In fact, in a 1944 case, the Appellate court judge ruled in favor of a demand for equiparación of a woman who had been engaged in consensual union with her male partner for only thirteen months before he died. In this case, the court granted equiparación and “the same rights for the woman as those of a widow and ordered an inscription in the registry of her civil status.”¹⁰⁹

Unsurprisingly, judges had a difficult time being objective when determining the singularity and stability of a union and, the law essentially demanded that judges' moral preconceptions and biases inform their evaluations and rulings. Those judges who oversaw equiparación cases were supposed to evaluate the sexual propriety of the union based upon proof presented to the court by the plaintiff. Le Riverend reasoned that the requirement for the singularity of the union did not necessarily mean that a judge could interpret acts of infidelity of men as evidence that disproved singularity. He warned that judges should not interpret singularity as strict monogamy because, “men would utilize this as an escape hatch and deliberately and publicly tie any [sexual] adventure (even simulated) to distinct women, forever frustrating the rights of the one woman who should be able to obtain equiparación.”¹¹⁰ Le Riverend claimed that the term “singularidad” enabled judges to rule justly, preventing “the subterfuge of men” who would use their infidelity to argue that they were not engaged in a consensual union that should benefit from equiparación.¹¹¹ Le Riverend's rhetoric echoed that of Constituent Assembly members who argued that equiparación would protect women from irresponsible men.

Despite Le Riverend's broad interpretation of singularity, evidence suggests that judges did in fact rule against cases if the union in question did not live up to the judges' standards of sexual propriety. The court required statements from third-party witnesses regarding the plaintiff's union. For example, in a 1944 case brought by Concepción X. to the civil court of Western Havana, the judge denied her demand for equiparación despite

the copious testimonial proof that the plaintiff brought to justify that she lived with Leonardo de S. R. as his wife....Said proof is not enough to form a similar conviction of court's opinion because it was countered by the ample testimonial evidence brought forth by the defendants about the fact that the male lived alone for many years in the house in which he died, and in which he received the plaintiff in the same manner in which he received other women with whom he maintained carnal relations.¹¹²

Apparently, after hearing third-party testimonies, the court ordered an investigation of the dead man's home and found that “in said house there did not appear to be any furniture, clothes, or other articles of feminine use that would strengthen” the woman's claims.¹¹³ The judges wrote that “we should admit that there did exist a consensual union between the Concepción and Leonardo de S. R. underneath the same roof, although it would fulfill the condition of stability given the number of years the relation lasted, it does not appear to have existed in a state of singularity.”¹¹⁴ The judge ruled against Concepción.

Conclusion

Why did one judge in 1944 grant equiparación to a woman who had been with her partner only 13 months while three years later another denied Cristina P.'s case seemingly solid case of partnership for over fifty years? What did it mean to send policemen to search plaintiffs'

homes for evidence of monogamy? What were the costs, financial and personal, that these women had to bear in order to bring their cases to court? Why were judges happy to grant equiparación to women but reluctant to change the birth status of their children? The evidence presented here does not reveal the full answers to these questions that historians would like, but instead highlights the gulf between the rather lofty ideas about equiparación propounded by the legislators who enacted it, and its meaning and enforcement in everyday life. This gulf itself has much to tell us. As we saw above, the internal contradictions and lack of clear guidelines in the legislation were not the result of happenstance or inattention: rather, they were the outcome of legislators' ultimate unwillingness to let go of the legal distinctions between virtuous and disreputable conjugal practice, even at a moment when inherited hierarchies of all sorts had come under fire in Cuba.

The 1940 Constituent Assembly members' lively debates about laws regulating consensual unions and birth status highlight connected and contradictory claims regarding sexual propriety, family, race, and democratic state formation. Ultimately, Assembly members did in fact expand some of the protections and rights to benefit Cubans who before 1940 had not been considered worthy due to their "immoral" choices in sexual partnering or the circumstances of their birth. Nevertheless, despite some progressive Assembly members' efforts, "outdated" and "backward" privileges based upon sexual propriety and implicitly connected to racial discrimination remained an inherent part of Cuba's new democratic legal structures. In effect, children were blamed and punished for the circumstances of their birth. These findings illuminate the tensions and fissures that arose between different State authorities as they created the legal mechanisms that ironically lessened yet perpetuated patriarchal authority during the formation of the Second Cuban Republic.

With the enactment of equiparación, some women in consensual unions, and others who had merely lost formal record of their married civil status, attempted to use the constitutional provision to get what they wanted out of the familial relationships they formed: financial benefits for themselves and their children. Women used equiparación to backdate their relationships in order to claim military and labor pensions that would have been rightfully theirs had they chosen to marry legally. Contrasting starkly with many Constituent Assembly members' hopes that the provision for equiparación would serve to make rogue men who had abandoned their sexual partners and children responsible for the legally prescribed duties of Cuban husbands and fathers, as well as to provide women and children with a mechanism to regain or boost their moral status, judicial case evidence suggests that women rarely used equiparación to force their living errant partners to fulfill their responsibilities as husbands and fathers, and that jurists were as reluctant to cancel out illegitimate birth retroactively in individual cases as some legislators had been to erase such categorical distinctions from society as a whole for the future. Legislators' debates and ordinary Cubans' efforts to claim their newly extended rights lay bare some of the core contradictions at this moment of constitutional redefinition of Cuba as democratic nation dedicated to protecting the fundamental equality of its citizens, on the one hand, and the maintenance of discriminatory and disenfranchising social hierarchies on the other.

References

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2. Names of persons engaged in judicial trials have been changed.
3. Cubans commonly referred to consensual unions as *uniones libres* or *uniones consensuales*. I use the term consensual union to describe a man and a woman who willingly lived together as a couple.
4. Juzgado de Primera Instancia del Sur Habana, sentencia 4 febrero 1944, quoted in Eduardo Le Riverend Bruscone, "La unión no matrimonial, los bienes adquiridos en ella y el matrimonio anómalo: 2". *Revista Cubana de Derecho* julio-septiembre;1944 XVII(no. 71):232–33.
5. Le Riverend. Juzgado de Primera Instancia del Sur Habana, sentencia 4 febrero 1944. La unión no matrimonial :232–33. In the 1930s, Cuban civil law, based upon Spanish colonial law, maintained the categorization of Cuban citizens by their birth status as "legitimate" (born to married parents), "natural" (born to unmarried parents of single civil status), or "illegitimate" (born to parents of whom one or both were legally married to a third party). Birth status determined the differential treatment of people via formal laws and informal, social practice. Laws based upon birth status determined things such as inheritance. Birth status also influenced the ways that Cubans treated one another due to their ideas about the connections between birth status and a person's social and moral standing. Birth status is discussed in more detail below.
6. Zeuske, Michael. On Naming, Race-Marking, and Race-Making in Cuba. *New West Indian Guide* 2002;76(no. 3-4):211–42. cf. [PubMed: 21038708] Milanich, Nara. Historical Perspectives on Illegitimacy and Illegitimates in Latin America. In: Hecht, Tobias, editor. *Minor Omissions: Children in Latin American History and Society*. Madison: The University of Wisconsin Press; 2002. p. 72-101. Following Castilian Cuban culture, Cubans with legally married parents carried two surnames, the first from their father and the second from their mother. A natural or illegitimate child was not legally allowed to use their biological fathers' surname unless the father had formally declared his role in the parentage of the child in question. Furthermore, having the surname "Soa" implied the same thing because the notarial indication "sin otro apellido" (without second surname) had evolved to the surname "Soa."
7. In an extended research trip during 2003-4, I searched for records of equiparación cases in provincial archives in Camagüey, Guantanamo, Havana, Holguin, and Santiago de Cuba, and the Songo-La Maya municipal archive. Cuban archives are underfunded and many collections remain uncatalogued and suffer from environmental damage. Archivists, although extremely helpful, were often unable to locate requested documents. While equiparación cases were difficult to find, I am not entirely certain that more records do not exist. For this essay, I examined the archived judicial files of three equiparación cases in the Archivo Histórico Provincial Camagüey (hereafter AHP Camagüey). Evidence from the remaining cases discussed in this essay is based on case summaries printed in various issues of *Revista Cubana de Derecho*, or culled from jurist Eduardo Le Riverend's published analyses of judicial rulings on several cases in the same periodical. These cases were tried in Havana. While data concerning the number of equiparación cases filed per year per province and the sex of the petitioners would shed much light on many questions that arise from this analysis, I have been unable to uncover this information in any available published source in Cuba or the U.S.
8. A large body of literature follows this path of inquiry. For examples, see: Besse, Susan K. *Restructuring Patriarchy: The Modernization of Gender Inequality in Brazil, 1914-1940*. Chapel Hill: University of North Carolina Press; 1996. Caulfield, Sueann. *In Defense of Honor: Sexual Morality, Modernity and Nation in Early-Twentieth-Century Brazil*. Durham: Duke University Press; 2000. Findlay, Eileen J. *Imposing Decency: The Politics of Sexuality and Race in Puerto Rico, 1870-1920*. Durham: Duke University Press; 1999. Guy, Donna. *Sex and Danger in Buenos Aires: Prostitution, Family, and Nation in Argentina*. Lincoln: University of Nebraska Press; 1990. Putnam, Lara. *The Company They Kept: Migrants and the Politics of Gender in Caribbean Costa Rica, 1870-1960*. Chapel Hill: The University of North Carolina Press; 2002. Safa, Helen. *The Matrifocal Family and Patriarchal Ideology in Cuba and the Caribbean*. *Journal of Latin American Anthropology* 2005;10(no. 2):314–338. Kay Vaughan, Mary. *Modernizing Patriarchy: State Policies, Rural Households, and Women in Mexico, 1930-1940*. In: Dore, Elizabeth; Molyneux, Maxine, editors. *Hidden Histories of Gender and the State in Latin America*. Durham: Duke

- University Press; 2000. p. 194-214. and essays in Caulfield, Sueann; Chambers, Sarah; Putnam, Lara, editors. *Honor, Status, and Law in Modern Latin America*. Durham: Duke University Press; 2005.
9. Milanich, Nara. Whither Family History? A Road Map from Latin America. *American Historical Review* 2007;112(no. 2):439–58. See for references to exemplary scholarly models.
 10. Bronfman, Alejandra. *Measures of Equality: Social Science, Citizenship, and Race in Cuba, 1902-1940*. Chapel Hill: The University of North Carolina Press; 2004. Ferrer, Ada. *Insurgent Cuba: Race, Nation, and Revolution, 1868-1898*. Chapel Hill: The University of North Carolina Press; 1999. de la Fuente, Alejandro. *A Nation for All: Race, Inequality, and Politics in Twentieth-Century Cuba*. Chapel Hill: The University of North Carolina Press; 2001. Moore, Robin. *Nationalizing Blackness: Afrocubanismo and Artistic Revolution in Cuba, 1920-1940*. Pittsburgh: University of Pittsburgh Press; 1997.
 11. Martínez-Alier, Verena. *Marriage, Class and Colour in Nineteenth-Century Cuba: A Study of Racial Attitudes and Sexual Values in a Slave Society*. 2nd. Ann Arbor: The University of Michigan Press; 1989. née Stolcke Logan, Enid. The 1899 Cuban Marriage Law Controversy: Church, State, and Empire in the Crucible of Nation. *Journal of Social History* 2008;42(no. 2): 469–94.
 12. Stoner, K Lynn. *From the House to the Streets: The Cuban Women's Movement for Legal Reform, 1898-1940*. Durham: Duke University Press; 1991. Laying a solid foundation for Cuban gender history, Stoner's detailed study focused mainly on the efforts of a group of predominantly white, upper and middle-class women to achieve political rights in early twentieth-century Cuba, and did not elaborate on the connections of racial politics and feminism. Also see Vera Estrada, Ana, editor. *La familia y las ciencias sociales*. Havana: Centro de Investigación y Desarrollo de la Cultura Cubana Juan Marinello; 2003.
 13. Iglesias Utset, Marial. *Las metáforas del cambio en la vida cotidiana: Cuba, 1898-1902*. Havana: Ediciones Unión; 2002. Pérez, Louis A, Jr. *Cuba Under the Platt Amendment, 1902-1904*. Pittsburgh: University of Pittsburgh Press; 1986. Pérez, Louis A, Jr. *Cuba Between Reform and Revolution*. New York: Oxford University Press; 1988. Pérez, Louis A, Jr. *On Becoming Cuban: Identity, Nationality, and Culture*. Chapel Hill: The University of North Carolina Press; 1999. Whitney, Robert. *State and Revolution: Mass Mobilization and Political Change in Cuba, 1930-40*. Chapel Hill: University of North Carolina Press; 2001.
 14. Álvarez Martens, Berta. *Cuba entre revoluciones, reformas y constituciones (1935-1940)*. *Debates Americanos: Revista semestral de estudios históricos y socioculturales* enero-diciembre; 2002 12:20–28. Pérez. *Cuba Between Reform and Revolution*. Whitney. *State and Revolution*.
 15. Pérez. *Cuba: Between Reform and Revolution* :281. Bronfman. *Measures of Equality* :281.
 16. Bronfman. *Measures of Equality* :163–4. Whitney. *State and Revolution* Chapter 7
 17. Álvarez. *Cuba entre revoluciones*. :22.
 18. Bronfman. *Measures of Equality* Chapter 7 de la Fuente. *A Nation for All* Chapter 6
 19. Tabares del Real, José. *Fulgencio Batista y la Asamblea Constituyente de 1940*. Whitney. *State and Revolution*.
 20. Bronfman. *Measures of Equality*. Domínguez, Jorge I. *Cuba: Order and Revolution*. Cambridge: The Belknap Press; 1978. p. 81-3. de la Fuente. *A Nation for All*. Pérez. *Cuba: Between Reform and Revolution* :281.
 21. Lazcano y Mazón, Andrés M. *Constitución de Cuba 1940 (con los debates sobre su articulado y transitorias en la Convención Constituyente)*. Havana: Cultural y Sociedad Anónima; 1941. p. 52. All translations mine. The text I analyze is a literal transcription of those debates, organized by Lazcano. Cubans' elevation of family issues to the constitutional level was in line with the constitutional reforms of many other Latin American nations at the time. Constituent Assembly members as well as jurists made explicit comparisons to other constitutions as they debated, wrote, and studied their own 1940 Constitution. For drafts and ratified versions of Articles 43 and 44 from the 1940 Constitution, see Lazcano. *Constitución de Cuba 1940*. In the Coordinating Commission's draft and in the Constitutional Assembly Sessions, the articles were referred to as Article 53 and 54 respectively.
 22. Cuba. *Reglamento de la Convención Constituyente*. Havana: n.p.; 1940.

23. For each amendment, two members were granted time to argue in favor of the proposal and two members were granted time to argue against it. Members were given an opportunity to explain their votes.
24. My grouping of Constituent Assembly members as traditional or progressive reflects their words and actions only during the debates for the Family and Culture section. For characterizations of the Constituent Assembly see, Álvarez Martens, Berta. La Constituyente de 1940 es una lección de madurez nacional: El periodo 1935-1940 en la historia de Cuba. In: Guanche, Julio César, editor. La imaginación contra la norma: Ocho enfoques sobre la República de 1902. Havana: Centro Cultural Pablo de la Torriente Brau; 2004. p. 27-28. de la Fuente. A Nation for All. Pérez. Cuba: Between Reform and Revolution :281. Tabares. Batista. :77. The Constituent Assembly was made up of representatives of nine political parties who either supported Batista, or not. It was not uncommon for distinct and opposing parties to end up voting similarly on certain issues based upon ideology rather than partisanship. Nevertheless, partisan politics may have held some sway over Assembly members because sessions were open to the public, broadcast on the radio, and reported upon in national and local presses.
25. Whitney. State and Revolution :142. "Independence" for the PRC referred to independence from U.S governmental and business interests.
26. Bronfman. Measures of Equality Chapter 7 Farber, Samuel. Revolution and Reaction in Cuba, 1933-1960: A Political Sociology from Machado to Castro. Middletown: Wesleyan University Press; 1976. Whitney. State and Revolution.
27. Lazcano. Constitución de Cuba 1940 :52.
28. Logan. The 1899 Cuban Marriage Law Controversy. :480. In 1899, the U.S. military government ordered that only marriages authorized by a secular authority would be considered legal unions. Due to pressure from the Catholic Church, which had been the only institution previously authorized to perform marriage, the order was rescinded.
29. Percentage calculations mine, see Arvey, Sarah R. PhD diss. Vol. Chapter 2. University of Michigan; 2007. 'Labyrinths of Love': Sexual Propriety, Family, and Social Reform in the Second Cuban Republic, 1933-1958. For all statistics concerning marriage, divorce, and consensual unions, calculations are based on populations of those of age to be legally married: Boys could contract legal marriage at fourteen years and girls at twelve. Cuba. Censo de 1943. Havana: P. Fernández y Compañía; 1943. p. 938-43. Table 17 Cuba. Censo de población, vivienda y electoral: 28 de enero 1953. Havana: P. Fernández y Compañía; 1953. p. 83-8. Table 30 Cuba. Censo de población, vivienda y electoral: 28 de enero 1953. Havana: P. Fernández y Compañía; 1953. p. 83-8. Table 30
30. The 1943 census did not calculate civil status differences between the rural and urban populations; therefore I compare the Havana and the Oriente Provinces for 1931 and 1943.
31. Data from Cuba. Censo de 1943. Havana: P. Fernández y Compañía; 1943. p. 938-43. Table 17
32. Data from Cuba. Censo de población, vivienda y electoral: 28 de enero 1953. Havana: P. Fernández y Compañía; 1953. p. 83-8. Table 30
33. Cuba. Censo de la República de Cuba bajo la administración provisional de los Estados Unidos. Washington, DC: Office of the Census; 1907. Cuba. Censo de la República de Cuba 1919. Havana: Maza, Arroyo y Caso; 1920. Censuses enumerated before 1931 recorded consensual union data. In 1907, 8.6 percent of the total population of marriageable age was recorded with a marital status of "union of mutual consent" (*consentimiento mutuo*). In 1919, 6.1 percent of the total population of marriageable age was recorded with a marital status of "united without legal sanction" (*unidos sin sanción legal*).
34. Álvarez. Cuba entre revoluciones. :20–26. Lazcano, Andrés M. Las constituciones de Cuba. Madrid: Ediciones Cultura Hispánica; 1952. p. 225 Cuban Assembly members' efforts to address family issues in the constitution responded not only to public debates in Cuba that began in the early 1900s, but also reflected global trends in constitution-making in the early mid-century.
35. Lazcano. Constitución de Cuba 1940 :5.
36. Ibid., 2.
37. Ibid., 23. José Manuel Cortina acted as Secretary of State during Batista's first presidency.
38. Ibid.

39. Ibid., 11.
40. Ibid., 12.
41. Ibid., 16.
42. Ibid., 15.
43. Constituent Assembly members referred to consensual unions by the Latin term “matrimonio de ‘usus,’” which implied the cohabitation of a man and a woman for over a year and a day.
44. Ibid., 22.
45. Ibid., 124.
46. The 1934 divorce law stipulated that men and women, if deemed not guilty for the cause of divorce, could claim alimony. The 1940 Cuban Constitution limited this by enabling only non-guilty women to make an alimony claim.
47. Lazcano. Constitución de Cuba 1940 :2. In the draft, the article was referred to as Article 53.
48. Lavrin, Asunción. Women, Feminism, and Social Change in Argentina, Chile, and Uruguay, 1890-1940. Lincoln: University of Nebraska Press; 1995. Lazcano. Las constituciones de Cuba : 230-1. Peaslee, Amos J. Constitutions of Nations. Vol. 1-3. Concord, NH: Rumford Press; 1950.
49. Ibid., 46.
50. Ibid., 42.
51. Ibid., 46.
52. Ibid., 46.
53. Ibid., 50.
54. Ibid.
55. Ibid., 44-45.
56. Ibid., 45.
57. Ibid., 63.
58. Ibid., 64.
59. Ibid., 51.
60. Ibid., 52-53.
61. Ibid., 68-69.
62. Ibid., 58.
63. Ibid., 58.
64. Cuba. Censo de 1943 :957. Stoner. From the House to the Streets :63-64. According to Stoner, in 1919, 24 percent of the total Cuban population was illegitimate, with high rates among rural Cubans of color. According to the 1943 Census, a total of 1,207,451 (or 25 percent of the total population) of all Cubans were of either natural or illegitimate birth status. Thus, over twenty years, non-legitimate births had not diminished. How the Cuban Census Bureau calculated this is unclear given that the 1940 Constitution eliminated the formal recording of birth status. Table 20 categorizes Cubans as “born out of wedlock” (*hijos extra-matrimoniales*) or “born within wedlock” (*hijos matrimoniales*). I count all Cubans born out of wedlock as one group, assuming that they could be either natural or illegitimate.
65. See Guy, Donna. The Pan American Child Congresses, 1916-1942: Pan Americanism, Child Reform, and the Welfare State in Latin America. *Journal of Family History* 1998;23(no. 3):272-291. Stoner. From the House to the Streets. See Guy and Stoner for accounts of this activism.
66. Stoner. From the House to the Streets :161.
67. Bronfman. Measures of Equality :174. For detailed accounts of the Constituent Assembly debates on the protections against racial discrimination, see Bronfman. Measures of Equality Chapter 7 de la Fuente. A Nation for All Chapter 6
68. For inheritance laws, see Cuba. Código Civil. In: Sánchez Roca, Mariano, editor. Leyes civiles y su jurisprudencia. Vol. 1. Havana: Editorial Lex; 1951. p. 840-48. Arts. 800-33
69. For laws regulating the legal recognition of paternity, see Cuba. Título V “De la paternidad y filiación,” Capítulo II-IV. Código Civil. Arts. 115-142. Legitimation or *reconocimiento* (recognition of filial relationship) was a civil process by which a person of natural or illegitimate birth status gained official permission to change his or her birth status to natural or legitimate. Usually filial

relations had to be admitted by the parent who had not been named on the person's birth certificate, or other proof of filial relations accepted by the authorities.

70. Cuba. Código Civil :262. Art. 134.
71. Zeuske. On Naming, Race-Marking, and Race-Making in Cuba. :216.
72. For the draft and ratified version of Article 44, see Lazcano. Constitución de Cuba 1940:86.
73. Stoner. From the House to the Streets :160–5. Stoner characterizes the Constituent Assembly member's debates about illegitimacy as political posturing of representatives of different political parties.
74. Ibid., 90.
75. Ibid.
76. Ibid., 108.
77. Ibid., 129.
78. Ibid., 128-29.
79. Ibid., 149-50.
80. Ibid., 136-37.
81. Ibid., 102.
82. Ibid., 99.
83. Ibid.
84. Ibid., 103-4.
85. Ibid., 117.
86. Ibid., 120.
87. Ibid., 124-25.
88. For depictions of the courts as arenas of negotiation between legal authorities and ordinary citizens, see Caulfield. In Defense of Honor. Cubano Iguina, Astrid. Rituals of Violence in 19th-Century Puerto Rico: Individual Conflict, Gender, and the Law. Gainesville: University Press of Florida; 2006. Diaz, Arlene J. Female Citizens, Patriarchs, and the Law in Venezuela, 1786-1904. Lincoln: University of Nebraska Press; 2004.
89. Le Riverend. La unión no-matrimonial :205.
90. Ibid., 205.
91. Ibid., 201.
92. Ibid., 230.
93. Ibid., 214.
94. See footnote 7 above for more detailed information.
95. Le Riverend. La unión no-matrimonial :205.
96. Le Riverend. Juzgado de Primera Instancia del Sur Habana, sentencia 4 febrero de 1944. La unión no-matrimonial :232–33.
97. AHP Camagüey. Fondo 95, legajo 1579, expediente 22402, marzo 1947–septiembre 1948.
98. AHP Camagüey. Fondo del Audiencia de Camagüey, legajo 1579, exp. 22402. junio 12; 1947
99. AHP Camagüey. Fondo del Audiencia de Camagüey, legajo 1472, expediente 22403. junio-septiembre; 1956
100. AHP Camagüey. Fondo del Audiencia de Camagüey, legajo 224, expediente 3304, enero 1944-junio 1945.
101. Le Riverend. Juzgado de Primera Instancia del Sur de Habana, sentencia 26 marzo 1943. La unión no-matrimonial :231.
102. None of the cases I examined were filed by “abandoned” women in hopes of making their ex-partners economically responsible to them and their children.
103. Le Riverend. Juzgado de Primera Instancia del Sur Habana, sentencia 4 febrero 1944. La unión no-matrimonial :233.
104. La Riverend. La unión no-matrimonial :234.
105. Tribunal Supremo, sentencia no. 45 de 9 abril 1945. Revista Cubana de Derecho abril-junio; 1945 XIX(no. 74):162–66.

106. Tribunal Supremo, sentencia no. 45 de 9 abril 1945. *Revista Cubana de Derecho* abril-junio;1945 XIX(no. 74):162–66. quoted in.
107. Le Riverend. La unión no-matrimonial :203.
108. Ibid.
109. Le Riverend. Audiencia de la Habana, sentencia 175 de 27 abril 1944. La unión no-matrimonial : 234.
110. Le Riverend. La unión no-matrimonial :204.
111. Ibid.
112. Juzgado de Primera Instancia del Oeste de Habana, sentencia 6 septiembre 1944. *Revista Cubana de Derecho* julio-septiembre;1944 XVII(no. 71):252.
113. Juzgado de Primera Instancia del Oeste de Habana, sentencia 6 septiembre 1944. *Revista Cubana de Derecho* julio-septiembre;1944 XVII(no. 71):252–53.
114. Juzgado de Primera Instancia del Oeste de Habana, sentencia 6 septiembre 1944. *Revista Cubana de Derecho* julio-septiembre;1944 XVII(no. 71):255.