

**MARRIAGE AND THE NOTION OF CONSENT  
IN EARLY AMERICAN LAW**

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ABSTRACT

Marriage and family relations have been in the focus of law since the beginnings of American legal history. Many legal historians underline that during the colonial period the family played very important role and therefore the growth of stable families was generally a top priority for early colonial governments. This was one of the ways to help the development of colony and the creation of stable society. Besides, differences in origin and evolution of colonies influenced the shape of law and that is why many institutions were not uniformly regulated. Therefore the research on the development of law in British colonies in North America deserves special interest.

The author's intention was to answer the question whether the early colonial laws contained the requirement to obtain the consent before marriage, and if so – how it was regulated. In the first part, the article is focused on the analysis of the legal regulations from colonial British America, dealing with the relation of the notion of consent and marriage. In the second part, there were presented issues like the consent for slave marriages, groundless lack of parental consent and the consequences of marriage without consent as well as withdrawal of given consent.

**Key words:** colonial America, marriage laws, consent to marriage, marriage in the United States

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## 1. INTRODUCTION

Law has been concerned with marriage and the family since ages ago. Legal regulations pertaining to such important aspects of life close to all human beings constitute interesting research material. Thanks to legal knowledge, the history of a given country can be understood, but also, what is more significant - its inhabitants may likewise be understood. In this regard, the colonial period in American history deserves special attention. It was then that the identity of the American nation was formed and the foundations of a new country were shaped. The first settlers who left their mother countries and arrived in North America were guided by various motives including economic, political and religious ones. The new country was supposed to be an oasis, a shelter or a beginning of a completely different life in an economic or social sense.

The British colonies in North America varied among each other due to many reasons, including the fact that their legal status was diverse (crown colony, proprietorship, chartered colony), and that they often had significantly different natural (geographical) and ideological conditions. The differences in the development of various regions influenced the way the law was shaped. As a consequence, their institutions were not uniformly regulated. As Lawrence Friedman has written, the colonies had their “specific adaptation of English law to local problems, experience and habits”<sup>1</sup> and “legal cultures differed in different colonies”<sup>2</sup>. Therefore the research on the development of legal regulations, especially dealing with family relations in the British colonies in North America, deserves special interest. During that time, the family played a very important role. No one can disagree with John Demos, who has stated that it was the basic unit of social, economic and even of political life<sup>3</sup>. This is why the development of stable families and marriage as the basis of it, were generally a top priority of the early colonies.

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<sup>1</sup> Lawrence M. Friedman, *A history of American Law*, New York 1973, p. 31.

<sup>2</sup> *Ibidem*, p. 16.

<sup>3</sup> John Demos, *A little Commonwealth. Family life in Plymouth colony*, Oxford 2000, p. 183-184.

The aim of the paper is to answer the question whether the early colonial laws contained the requirement to obtain the consent before marriage, and if so – how it was regulated. The issues like legal regulation of the notion of consent, the consent for slave marriages, groundless lack of parental consent and the consequences of marriage without consent as well as withdrawal of given consent will be discussed, mainly on the grounds of some of the first colonial laws.

## 2. CONSENT AS A LEGAL REQUIREMENT FOR MARRIAGE

Marriage has traditionally been viewed and defined as a union which is legally recognized, by which a man and a woman form a family unit and by which they receive special legal rights and obligations. All British colonies in North America recognized marriage as a civil contract based on the mutual consent of both parties, despite differences in religious meaning and the significance that was attached to it in some areas. The common law set some basis for marriage but also colonial legislatures passed proper laws dealing with this issue. Nicholas L. Syrett has emphasized that such colonial laws demonstrate that the colonists had (or had not) some concerns about different aspects of marriage and family relations – such as, for example, parental control over children’s ability to marry. He also acknowledges that the differences in origins of the colonies affected the legal regulations. The southern colonies (which were founded mainly for commercial reasons) issued legislation focused on marital property matters, while the northern (which were a haven for those fleeing religious persecution) concentrated more on the issue of parental control, and finally the middle colonies (which were settled for much more various reasons) promulgated legislation centered upon the age below which parental consent was required<sup>4</sup>.

The colonial couple generally had to fulfil specified requirements in order to marry. The validity of marriage depended on those formalities.

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<sup>4</sup> Nicholas L. Syrett, *American Child Bride - A History of Minors and Marriage in the United States*, The University of North Carolina Press, Chapel Hill 2016, p. 23, 24.

Not only the mutual consent of a man and a woman, but also the consent of their parents (or in some situations other authorized people like guardians, masters of slaves, or city magistrates) played an important role. It was mainly a customary requirement, but in some colonies it was required by a written legal rule<sup>5</sup>. Hence it can be found in some early matrimonial laws enacted in the colonies.

One of the first regulations on this subject came from Virginia. In 1619, the following rule was adopted there: “*No maid or woman servant, either now resident in the colony or hereafter to come, shall contract herself in marriage without either the consent of her parents or her master or masters or of the magistrate and minister of the place both together. And whatsoever minister shall marry or contract any such persons without some of the aforesaid consents shall be subject to the severe censure of the Governor and Council of Estate*”<sup>6</sup>.

The emphasis here is put only on a woman, who was obliged to obtain consent in order to enter into marriage. The group of individuals who are authorized to give such consent has been listed. And the failure to comply with this requirement resulted in severe censure for a minister who celebrated a marriage without the consent. Thirteen years later, in 1632 some new marriage laws were passed in Virginia. According to them, permission from parents or guardians (verbal or written in a form of testimony) was obligatory for not only women but also for men who were younger than twenty-one<sup>7</sup>. No marriage was to be celebrated without such consent. Furthermore, in 1705 it was specified how the consent should be given: “*the consent shall be personally given before the clerk, or signified under the hand and seal of the parent or guardian, and attested by two witnesses*”<sup>8</sup>.

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<sup>5</sup> Jerome R. Reich, *Colonial America*, Prentice-Hall 2000, p. 199.

<sup>6</sup> *Law Enacted by the First General Assembly of Virginia, August 2-4, 1619* [in:] Donald D. Lutz, *Colonial Origins of the American Constitution. A documentary history*, Indianapolis 1998, p. 334.

<sup>7</sup> *Laws of Virginia, September, 1632, Act. V* [in:] William W. Hening, *The Statutes at Large, being a collection of all laws of Virginia from the First Session of the Legislature, in the year 1619*, vol. 1, New York 1823, p. 181.

<sup>8</sup> *An Act Concerning Marriages, October 1705* [in:] William W. Hening, *The Statutes at Large, being a collection of all laws of Virginia from the First Session of the Legislature, in the year 1619*, vol. 3, New York 1823, p. 443.

Similarly, Plymouth Colony enacted in 1636 that “*none bee allowed to marry that are under the Couert of Parents but by their Consent and approbation but incase consent cannot bee had then it shalbee with the consent of the Gou<sup>r</sup> or some assistant to whom the psons are knowne whose Care it shalbee to see the marriage bee fit before it bee allowed by him*”<sup>9</sup>.

The General Court in Plymouth colony decided in 1645 that the mutual consent of two parties together with the consent of parents or guardians (if there were any) and a solemn promise of marriage made in due time to each other before two competent witnesses is required to enter into lawful marriage contract<sup>10</sup>.

In Rhode Island the law from 1647 imposed on a man the obligation to first acquaint the parents of his wife-to be and then “*upon their consenting thereto he shall have baines of matrimony set up in a publick place*”<sup>11</sup> for specific period of time. Moreover this legislation passed in Rhode Island also declared that “*the taking away, deflouring or contracting in marriage a maid under sixteen years of age, against the will of, or unknown to the Father or Mother of the Maid, is a kind of stealing her*”<sup>12</sup>.

*The Connecticut Code of Laws of 1650* paid attention to the problem that many people used to make rash and hasty decisions about marriage which had a negative influence on their families and friends. Therefore to avoid such situations, it was ordered that the purpose of the marriage should be properly announced and published in a public place before the couple enter into marriage<sup>13</sup>. It was of great importance to announce an

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<sup>9</sup> *Records of the Colony of New Plymouth in New England, Laws 1623-1682*, ed. by David Pulsifer, Boston 1861, p. 190.

<sup>10</sup> *Ibidem*, p. 46.

<sup>11</sup> *Laws and Acts of the Colony of Rhode Island, From its First Settlement 1636-1705*, ed. by Sidney S. Rider, Providence, Rhode Island 1806, p. 12.

<sup>12</sup> Carol Berkin, Leslie Horowitz, *Women's Voices, Women's Lives: Documents in Early American History*, Boston 1998, p. 62.

<sup>13</sup> “*Forasmuch as many persons intangle themselues [by] rashe and inconsiderate contracts for their future joininge in Marriage Covenant, to the great trouble and greife of themselues and their freinds; for the preventing thereof, It is ordered by the Authority of this Courte, that whoseuer intends to joine themselues in Marriage Covenant shall cause their purpose of contract to bee published in some publique place, and at some publique meeting in the severall Townes where such persons dwell, at the least eight dayes before they enter into such contract whereby they ingage themselues each to other, and that they shall forbear to joine in Marriage Covenant at*

upcoming wedding ceremony, mainly because quite often one of the partners used to be married earlier either in Europe or America<sup>14</sup>. The second significant provision from that Connecticut Code required the consent of parents, guardians or masters, under pain of penalty when it was not obtained<sup>15</sup>.

According to the New Haven colony laws from 1656 it was a crime to even “*attempt, or to indeavour to inveigle, or draw the affections of any Maide, or Maideservant, whether Daughter, Kinswoman, or in other Relation [...] without the consent of Father, Master, Guardian, Governor [...] or any other person who had the control over her, whether it be by speech, writing, message, company-keeping, unncecessary familiarity, disorderly night meetings, sinful dalliance, gifts, or any other way, directly or indirectly*”<sup>16</sup>.

The early marriage laws of New Jersey from 1668 required from a clearly listed group of people - “*son, daughter, maid or servant*” to obtain the consent of their “*parents, masters or overseers*” in order to marry<sup>17</sup>.

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least eight dayes after the said contract.” *Code of Laws, established by The General Court, May 1650* [in:] *The Public Records of the Colony of Connecticut prior to the Union with New Haven Colony, May 1665*, by J. Hammond Trumbull, Hartford 1850, vol. 1: April 1636-April 1665, p. 540.

<sup>14</sup> Jerome R. Reich, *op.cit.*, p. 200-201.

<sup>15</sup> “*And it is also ordered and declared, that no person whatsoever, male or female, not being at his or her owne dispose, or that remaineth vnder the gouernement of parents, masters or guardians, or such like, shall either make, or giue interteinment to, any motion or sute in way of marriage without the knowledge and consent of those they stand in such relation to, vnder the seure censure of the Courte in case of delinquency, not attending this order; nor shall any third person or persons intermeddle in making any motion to any such, without the knowledge and consent of those vnder whose gouernment they are, vnder the same penalty.*” *Code of Laws, established by The General Court, May 1650* [in:] *The Public Records of the Colony of Connecticut prior to the Union with New Haven Colony, May 1665*, by J. Hammond Trumbull, *op.cit.*, p. 540.

<sup>16</sup> *Records of the colony or jurisdiction of New Haven, from May, 1653, to the union. Together with New Haven code of 1656*, by Charles J. Hoadly, Hartford 1858, Printed by Case, Lockwood and Company, p. 600, available online: <https://archive.org/details/recordsofcolony00newh> [visited 01.02.2015]

<sup>17</sup> *Documents relating to the Colonial History of the State of New Jersey, vol. XXII, Marriage Records 1665-1800*, by William Nelson, Paterson 1900, p. LXXVIII.

Another example comes from Massachusetts. *An Act For The Orderly Consummating Of Marriages*<sup>18</sup> was enacted in 1692, which in the first section has qualified consent as an obligatory requirement: “*That every justice of the peace within the county where he resides, and every settled minister in any town, shall and are hereby respectively impowred and authorized to solemnize marriages, within their respective towns and counties, betwixt persons that may lawfully enter into such relation, having the consent of those whose immediate care and government they are under, and being likewise first published by asking their banns at three several publick meetings in both the towns where such parties respectively dwell, or by posting up their names and intention at some publick place in each of the said towns, fairly written, there to stand by the space of fourteen days, and producing certificate of such publishment under the hand of the town clerk or constable of such towns respectively. And the fee to be paid for every marriage, shall be three shillings, and for publishment and certificate thereof, one shilling*”.

*The Charter of Liberties and Frame of Government of the Province of Pennsylvania* issued in 1682, among requirements for a legitimate marriage procedure like the presence of witnesses or proper formal registration, mentions the consultations with parents or guardians as the first step<sup>19</sup>. It seems this could be recognized as the way to obtain the consent for marriage.

However, some authors underline that when a man and woman were free people and wanted to marry at a specific age – which was the legal age – they did not have to obtain parental or guardian consent. For example, according to Jerome Reich, the obligation to obtain parental consent appeared only in the situation when a man was younger than 21 years old and a woman – 16<sup>20</sup>. Yet they still had to announce in public their intent to marry in the form prescribed by law.

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<sup>18</sup> Available online: <http://archives.lib.state.ma.us/actsResolves/1692/1692acts0025.pdf> [visited 01.02.2015]

<sup>19</sup> *Charter of Liberties and Frame of Government of the Province of Pennsylvania in America May 5, 1682* [in:] Donald D. Lutz, *op.cit.*, p. 283. [*That all marriages (not forbidden by the law of God, as to nearness of blood and affinity by marriage) shall be encouraged; but the parents, or guardians, shall be first consulted...*].

<sup>20</sup> Jerome R. Reich, *op.cit.*, p. 199.

The opposite situation regarding marriage and the notion of consent was for example in early legal rules in New Hampshire or Maryland, where the consent was not directly expressed as obligatory requirement necessary to enter into marriage. More attention was rather paid to proper public announcement of the couple's intention, for example by publishing banns or at town meeting<sup>21</sup>. Similarly in North Carolina, the early regulation of marriage from 1669 focused on the procedural requirements and provided that a couple could wed in the presence of “*three or fower of their Neighbors*” before the governor or a councilor if a minister is absent. And after “*declaring that they do joyne together in the holy state of Wedlock And doe accept one the other for man and wife,*” they were given a marriage certificate which was then registered in the Secretary's office<sup>22</sup>. Also in New York and Delaware the capacity to marry and consent were not regulated, but people followed English common law<sup>23</sup>.

### 3. THE LACK OF CONSENT, ITS WITHDRAWAL AND ENTERING INTO MARRIAGE WITHOUT CONSENT

The lack of consent, its withdrawal and entering into marriage without it had some legal consequences.

According to Jerome Reich “it was unwise to wed without parental consent”<sup>24</sup>. The main reason is that the couple could be punished and he gives the example from Plymouth colony where any attempts to marry without parental permission were punished by fine, corporal punishment or even both<sup>25</sup>.

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<sup>21</sup> See: *General Laws And Liberties Of New Hampshire, March 16, 1680* [in:] Donald D. Lutz, *op.cit.*, p. 19; *An Act Touching Marriages, 1640* and *An Act for the Publication of Marriages, 1658* [in:] *Proceedings and Acts of the General Assembly, January 1637/8-September 1664, volume I*, available online: <http://msa.maryland.gov/> [visited 01.02.2015]

<sup>22</sup> *Colonial Records of North Carolina*, ed. by William L. Saunders, vol. 1, Raleigh 1886, p. 184.

<sup>23</sup> Nicholas L. Syrett, *op.cit.*, p. 25.

<sup>24</sup> Jerome R. Reich, *op.cit.*, p. 200.

<sup>25</sup> *Ibidem*.



Similarly Merrill D. Smith has mentioned that in Puritan families, when a son or daughter went against their parents' wishes or courted in secret – they were fined. For instance, in 1649 in Essex County, Massachusetts Matthew Stanley was fined to pay 5 pounds for “*drawing away the affections of the daughter of John Tarbox [...] without liberty first obtained of her parents*”<sup>26</sup>.

To take another example from Plymouth, – in 1672 Jonathan Coventry was indicted for his proposal to Katharine Dudley without obtaining proper formal consent. It was reasoned to prevent young couple from making an inconsiderate decision which could affect their life<sup>27</sup>.

Jerome Reich has indicated that it was common that a father asked his daughter about the opinion of her admirer. He gives two examples. One is from 1740 and deals with Eliza Lucas who wrote her opinion to her father in such rejecting words: “*that the riches of Chile and Peru put together, if he had them, could not purchase a sufficient Esteem for him to make him my husband.*” A comparable situation happened in the family of Judge Samuel Sewall of Boston in 1699. He has written a letter to his daughter Elizabeth in which he recommended a suitor but he also expressed such acceptance: “*If you find in yourself an imovable incurable Aversion from him [a suitor], and cannot love, and honour, and obey him, I shall say no more, nor give you any further trouble in this matter*”<sup>28</sup>. Also Merrill D. Smith has claimed that generally children were not forced but rather persuaded by parents to marry chosen candidate in order to honor parental choice<sup>29</sup>.

On the other hand, Charles J. Hilkey has pointed out that “since parents had to give their consent to the mating of their children, they became parties to the agreement. In 1670 Hope Allen was brought before the court for breaking his word after having consented to his daughter’s marriage. He was required to *pay ten pounds as a fine to the country for his irreg-*

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<sup>26</sup> Merrill D. Smith, *Women’s roles in seventeenth-century America*, Greenwood Press 2008, p. 11.; quoted: *Records and Files of the Quaterly Courts of Essex County, Massachusetts*, Salem 1916, 1:180; 2:242.

<sup>27</sup> Alice M. Earle, *Customs and Fashions in Old New England*, New York 1894, p. 40-41.

<sup>28</sup> Jerome R. Reich, *op.cit.*, p. 200.

<sup>29</sup> Merrill D. Smith, *op.cit.*, p. 11.

ular procedure, and forty shillings to the disappointed lover”<sup>30</sup>. Analogous remarks have been made by Alice M. Earle: “an engagement of marriage once having been permitted, the father could not recklessly or unreasonably interfere to break off the contract. Many court records prove that colonial lovers promptly resented by legal action any attempt of parents to bring to an end a sanctioned love affair. Richard Taylor so sued, and for such cause, Ruth Whieldon’s father in Plymouth in 1661”<sup>31</sup>.

A very interesting as well as important legal regulation is connected with the groundless lack of consent from parents and can be found in *The Laws and Liberties of Massachusetts* from 1647: “If any parents shall wilfully, and unreasonably deny any childe timely or convenient marriage, or shall exercise any unnaturall severitie towards them such children shal have libertie to complain to Authoritie for redresse in such cases”<sup>32</sup>. Hence, Nicholas L. Syrett rightly has pointed out that although parents in Massachusetts had much power over their children who were required to be obedient, the lawmakers were more interested in new marriages and that people reproduce<sup>33</sup>.

Valid marriages were important for the growth of the colonies and that is why the government in different ways encouraged people to marry. Especially, as stated by Arthur F. Ide, in the colonial south there was no acquiescence to stay single and colonial society generally pressured men and women to marry. One of the ways of doing this was, for example, imposing higher taxes on men who stayed single. Moreover, when they did not want to marry, they were expected to stay under their father’s or another close relative’s authority. Sometimes they were threatened with losing their inheritance or dowry – especially when the parents’ aim was a “favorable” marriage which could bring more prestige or simply more wealth for the family<sup>34</sup>. Similarly, an interesting example about restrictions

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<sup>30</sup> Charles J. Hilkey, *Legal development in Colonial Massachusetts 1630-1686*, New York 1910, p. 122-123; quoted: *Massachusetts Colonial Records*, ed. by Nathaniel B. Shurtleff, Boston 1854, vol. IV, pt. II, p. 458; George E. Howard, *A History of Matrimonial Institutions*, Chicago 1904, vol. II, p. 202.

<sup>31</sup> Alice M. Earle, *op.cit.*, p. 41.

<sup>32</sup> Donald D. Lutz, *op.cit.*, p. 105.

<sup>33</sup> Nicholas L. Syrett, *op.cit.*, p. 23, 24.

<sup>34</sup> Arthur F. Ide, *Woman in the American Colonial South*, Mesquite, Texas 1980, p. 49-50.

comes from Connecticut public records dated from 1636, where it was ordered that no young man could keep a house by himself without the consent of the Town or he had to pay specified amount of money (which was in Connecticut 20 shillings per week), unless he was married or had servants and was a public officer<sup>35</sup>. This rule was then confirmed in the Code of Laws from May, 1650<sup>36</sup>. However, some colonies, like Virginia, suffered from a shortage of woman, which was a great obstacle and had a negative effect because it could complicate the development of the colony. Therefore it was necessary to encourage single women living in Europe to come to North America to marry, for example by sending persuasive advertisements. In Virginia those who were encouraged and consented to come in order to enter into marriage were then placed in the homes of married inhabitants, where they found a generous reception until the ceremony. However, in the situation when a woman finally did not consent to marry, she was deprived of food<sup>37</sup>.

In some colonies the notion of consent also played an important role in the relations dealing with slaves. The most characteristic example comes from Virginia, which was one of the first colonies that regulated indentured servitude and recognized slavery in its law. Among such legal regulations, in March 1643 Virginia introduced punishments on servants marrying without their owner's permission. According to law, the aim of these was to prevent secret marriages:

- when man who was servant secretly married with woman who was also servant without the consent of her master (or mistress if she was a widow) – then the penalty was additional one year of servitude after the respective term, but for woman the penalty was

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<sup>35</sup> *"It is ordered yt noe yonge man yt is neither married nor hath any servaunte, & be noe publicke officer, shall keepe house by himself, without consent of the Towne where he liues first, had, vnder paine of 20s. pr weeke. [...] orders to take effect the first of Aprill next."* *The Public Records of the Colony of Connecticut prior to the Union with New Haven Colony, May 1665*, by J. Hammond Trumbull, Hartford 1850, vol. 1: April 1636-April 1665, p.8.

<sup>36</sup> *"And it is also ordered, that no young man that is neither married nor hath any, servant, nor is a publique officer, shall keepe house of himselfe without the consent of the Towne for and vnder paine or penalty of twenty shillings a weeke."* *Code of Laws, established by The General Court, May 1650* [in:] *Ibidem*, p. 538-539.

<sup>37</sup> Arthur F. Ide, *op.cit.*, p. 9-10.

much more harsh: “*mayd or woman servant so marrying without consent as aforesaid shall for such her offence double the tyme of service with her master and mistress*”

- and when a freeman was offending against the law, he had to “*give satisfaction to the master or mistress by doubling the value of the service and pay a fine of five hundred pounds of tobacco to the parish where such offence shall be comitted*”<sup>38</sup>.

Fifteen years later, in 1658 an *Act Concerning Secret Marriages* was passed, which generally confirmed the previously mentioned rules. However, there was a significant change in the case of women, who for such an offence – comparing to the earlier regulation – only had to “*serve one year after her freedom by indenture*”<sup>39</sup>. Additionally, laws of Virginia from 1705 concerning marriages put a penalty on a minister, for marrying servants without the consent of his or her owner in the amount of ten thousand pounds of tobacco. And what is more, every free person who married a servant without the consent of the owner, had to “*pay to the master or owner of such servant, one thousand pounds of tobacco*”. There was also an alternative to this – such a person had to “*well and faithfully serve the said master or owner of the said servant one whole year, in actual service*”<sup>40</sup>.

On the other hand, records of Plymouth Colony from 1636 give a very interesting example of a legal rule dealing with hindrance from a master for a servant’s marriage. If a motion of marriage was made to the master in a duly appropriate way, but because of sinister or covetous desire the master did not give his consent for such a marriage, then the magistrates should be informed about this situation and they will examine the case in a just and equal way for both parties<sup>41</sup>.

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<sup>38</sup> William W. Hening, *The Statutes at Large, being a collection of all laws of Virginia from the First Session of the Legislature, in the year 1619*, vol. 1, New York 1823, p. 252-253.

<sup>39</sup> *Ibidem*, p. 438.

<sup>40</sup> *Ibidem*, p. 444.

<sup>41</sup> *Records of the Colony of New Plymouth in New England, Laws 1623-1682*, ed. by David Pulsifer, Boston 1861, p. 191.

#### 4. SUMMARY

Marriage and family relations have been in the focus of law since the dawn of American legal history. Regulations which are connected with such important aspects of everyday life have a significant role in all societies. Knowledge of the history of law and ability to understand the mechanisms which influenced the development of legal regulations constitute a valuable source of social and legal experience.

To summarize, the following conclusions about consent and marriage can be drawn from an analysis of the above cited sources and literature:

- the notion of consent appeared since early colonial regulations dealing with marriage requirements and played an important role; so obtaining consent was often not only the traditional, customary practice but was written as a formal rule;
- however, the notion of consent as the requirement to enter into marriage was not uniformly regulated in all analyzed and cited regulations;  
differences existed on the grounds:
  - 1) who can give the consent – some of them used just the general phrase “consent of those whose care or government they are under”, some listed a catalog of persons; based on the cited laws the following catalogue of persons who were allowed to give consent for marriage could be enumerated: parents, guardians, masters of servants or slaves, overseers or in some situations the public magistrate;
  - 2) how it should be expressed (so in which form: oral or written and with or without any other witnesses) – this generally was not commonly specified by law; in some acts it was described in a less detailed way than in others, maybe to make it easier to marry, to encourage couples with less formalities;
  - 3) in some regulations it was explicitly mentioned that the obligation to obtain consent depended on the age of the woman and man who wanted to marry;
- the very interesting aspect is the gender issue according to the consent as it was mainly the role of women to obtain it; what is more,

generally the analyzed law was silent in the terms of the right of woman to express the consent for marriage on her own, however literature gives examples like the one mentioned above from Virginia – in some colonies which suffered from a shortage of women, when they arrived from Europe, they were asked for consent before they agreed to marry;

- for colonial authorities, families created through a new marriage were sometimes more important than parental authority, because in the situation when parental consent was given but then withheld, the man could take legal action to seek a remedy from the parents for a breach of contract; and the Massachusetts example of the children's right to complain to authorities when parents denied to give consent in a willfully and unreasonably way seems to be a very innovative solution in this matter;
- when consent was required by law but not obtained, the penalties were imposed on a man, a woman and ministers for allowing couple to marry without appropriate consent; more severe penalties were provided for slaves who entered into secret marriages; so the legislation provided for some methods of enforcement through penalties.

It is commonly known that the beginnings of colonial America was not the easiest time. Hence, it seems that there was a need for officially sanctioned legal rules that promoted some patterns of life. Such rules would have helped the colonists (who as many authors claim were often very young and immature) to avoid making thoughtless decisions which affected their family future. Colonies encouraged people to marry in a desirable way in order to create a stable society and in the hope of the peaceful development of the colony. It seems that regulating the notion of consent to marry was one such issue.

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