

LAW OF CHASTITY. By Robert E. Rodes, Jr.. Carolina Academic Press 2006. Pp. 140. \$24.00. ISBN: 1-594-60182-8.

Law of Chastity is Robert E. Rodes, Jr.'s expansion of an earlier law review article on the same topic. Therein, Rodes argues for the retrieval and recognition in law of a standard of chastity, said to have been the norm in 1950s America, in which "married people were to have sex only with their spouses; the unmarried were to abstain." (3) This sexual standard was, Rodes argues, "reinforced by the social ambience" (4) of the period, in which "social discourse was relatively free of explicit sex, and even sexual innuendo was far from pervasive." (4) As Rodes observes, in what all but the most unrepentant libertine will likely judge to be uncontroversial, if not an understatement, "The reticence of the period is in sharp contrast with the pervasive, even compulsive frankness that prevails today." (4) With this apparent admission that the horse may be out of the barn with respect to some of the norms and values that Rodes wishes to reclaim, some readers will, as some reviewers already have, find Rodes's unabashed and unapologetic affinity for many of the sexual norms of 1950s America to be quaint or even reprehensible in light of subsequent cultural revolutions, particularly the feminist movement. Nonetheless, Rodes's detailed account of legal and social developments in the law of sexuality and normative shift from chastity to what one may term unchastity, provides a useful (if at times overly cursory) survey of the relevant law and contains important reflections on the relationship between law and culture, both in general and in the midst of evolving sexual norms.

Rodes's analysis is concise but comprehensive, beginning with a descriptive account of the state of law in the fifties. He presents four critiques (instrumentalist, libertarian, free speech, and feminist) of the then-prevailing law of chastity. Then he surveys a number of legal and social developments around various issues and aspects of sex law, before concluding with his own refutation of the four critiques of chastity and proposal of an alternative legal agenda. Among the many topics that Rodes takes up in his wide-ranging, if at times all too brief, survey are rape, sexual harassment, cohabitation, marriage, obscenity in art, and sex education for children, to name just a few. In general, despite its brevity, Rodes's account is reasonably adequate, in providing general outlines of the main points of law and how they relate to and

might be transformed by his proposed standard of chastity. However, his accounts of rape and sexual harassment law are likely to raise longstanding feminist hackles in some areas. A more compelling and overarching question in Rodes's inquiry, beyond these specific topics and recommendations, is whether and how the law should recognize and address changing cultural norms. I shall say more about this below.

First, on the subjects of rape and sexual harassment, Rodes pays due homage to the "very legitimate offense" taken by feminists at the skepticism regarding women's lack of consent to sex under the old common law continuing through the 1950s. As Rodes observes, "The courts seem habitually to have conflated an inference of non-consent from the chastity of the victim with one of consent from her lack of chastity." (13) Rodes's own agenda here is to argue that rape victims should be allowed to mount evidence of their commitment and adherence to norms of chastity as evidence of non-consent. It is not clear, however, that his proposal for claims of chastity escapes the dichotomy of chastity versus unchastity to which women have been subjected, often harmfully and unjustly, and to which feminists have objected so strongly. Indeed, in his introduction, Rodes notes that the claims of chastity and reticence were, in earlier times, supported by the "absence of any general assumption of unchastity." (6)

If the assumption of chastity was largely supported by an assumption that no one would dare be unchaste, such cannot be the case today when the vast majority of young women (not to mention young men) lose their virginity by the end of high school, cohabitation is widely practiced as preparation for or alternative to marriage, and significant numbers of spouses admit to extramarital affairs. What currency claims of chastity have in a culture of unchastity, and whether such claims do not simply amount to resuscitating outdated norms and double standards for "good girls" and "bad girls," or "madonnas" and "whores" as some would have it, remain to be seen. Rodes occasionally remarks that chastity conventions "afforded a certain amount of protection against both sexual harassment and date rape" (6) and that within these conventions "it was not too difficult to avoid the crossed signals that often presage date rape." (6) As Rodes admits in various places in contrasting the "reasonable man" with the "sufficiently egotistical male" (66), these remarks are overly optimistic in expecting that retrieved norms of female sexual chastity would even be perceived, much less respected, by men with malevolent or bumbling sexual inclinations toward women.

It also remains to be seen how Rodes's proposed claims of chastity would play out in today's courtrooms. A judge in Nebraska recently precluded a rape victim from using the words "rape," "assailant," "attack," or "victim" on the stand because he thought they were unfairly prejudicial to the defendant. If even the language of criminality is to be expunged from today's criminal courts, it remains to be seen how well the language of chastity would be received. Other recent sex trials, such as the recently overturned statutory rape conviction in Georgia of a teenaged boy who received oral sex from a teenaged girl, raise questions about whether we have substituted prurience for principles, including principles of chastity, in our legal treatment of sexuality. Further, one wonders how Rodes's faith that prosecutors seeking to punish alleged offenses against chastity "are unlikely to engage in a wholesale attack on illicit sex" out of concern for public accountability, can hold up in the face of issues raised by the recent prosecutorial abuses of Mike Nifong who prosecuted the Duke lacrosse team for raping an exotic dancer who later recanted her claim.

But now for a word on the larger lesson of Rodes's treatise for the relationship between law and society. For those of us who view law in relation to other fields such as religion, ethics, and culture, it is an endlessly intriguing question whether the law is merely responsive to social trends or should actively seek to change them, even roll them back in some cases. Some lawyers do, after all, bemoan the bluntness of the legal hammer and question the tendency to look to the law, rather than other sectors of society, for solutions to every social problem. Rodes's argument is a robust one, primarily against instrumentalist critique, for the law[to be used as "a more subtle instrument than the instrumentalist critiques supposes," (108) as well as a plea for law, at least in the area of sexuality and chastity, to move from abdication to agency.

In reading Rodes, we might invoke another framework, the triune spiritual, civil, and pedagogical uses of the law articulated by the Protestant Reformers. Rodes, while treading lightly over the spiritual uses of the law connected with revelation of sin, presumably because he is resigned to the secular nature of American law, seeks a more robust use of the criminal law in the service of calling Americans and American law to greater clarity in their sexual morals and mores. Rodes debunks two other critiques of chastity, interdisciplinary attention to the "uniqueness of the erotic" (109) and the human response thereto (a uniqueness not recognized by some free speech advocates), and the claim that the "marginalization of chastity" and "trivialization of

sexuality” have not “affected both sexes equally” (a difference affirmed by some feminists but not others). On the feminist question, as an avowed feminist Generation X reader poised between the arguable sexual excesses of the Baby Boomers and what some have cited as a recrudescence of chastity among the Generation Y or Millennial cohort, I found it interesting to read Rodes’s account alongside a new crop of books on modesty and so-called “raunch” or “porn” culture being published by an influential group of post feminist writers, some of which Rodes registers in his ample notes. Wendy Shalit’s *Girls Gone Mild*, Lauren Winner’s *Real Sex: The Naked Truth About Chastity*, and Rene Denfield’s *The New Victorians*, are particularly provocative, along with Ariel Levy’s *Female Chauvinist Pigs* and Pamela Paul’s *Pornified*. Whether law is appropriate or adequate to effecting this change in these areas of social and cultural normativity is an important question raised, sometimes explicitly, but often more implicitly, in Rodes’s account of chastity. It is a question on which readers of a variety of ideologies and disciplines may want to engage him and his book.

*M. Christian Green**

* J.D./PhD, Alonzo McDonald Family Senior Lecturer and Senior Research Fellow, Center for the Study of Law and Religion, Emory University School of Law, Atlanta, Georgia.