

12 Legal landscapes of erotic cities

Comparing legal “prostitution” in New South Wales and Nevada

Penny Crofts and Barbara G. Brents

Introduction

The night-time economy is increasingly important to globalized cities and scholars are beginning to pay attention to how sexuality is implicated in the development of the urban landscape (Hubbard 2012a; Doan 2011; Prior and Crofts 2011; Collins 2006; Bell and Valentine 1995). Cities have always been places where the free flow of sexual liberalism creates a bounty of sexual commerce and a panoply of sexual identities. While erotic dance, pornography, and sex clubs have become increasingly mainstream (Sanders and Brents 2010) – the sale of sex – remains largely in the shadows, highly stigmatized, often illegal.¹ Little of what we know about the (sub)urban sexscape comes from international comparisons, especially those looking at those few global cities where prostitution is legal. This chapter explores two world cities of sex (Hubbard 2012b):

- Sydney in New South Wales (NSW), Australia; and
- Las Vegas in Nevada, United States (US).

NSW has been recognized as having the most liberal legislation on prostitution in Australia (Sullivan 2010) – the sale of sex is decriminalized and brothels are legal in the city of Sydney. Las Vegas’s economy has prospered dramatically as “Sin City” is in the only state in the US where prostitution is legal, yet prostitution is not legal in the city of Las Vegas.

This chapter will compare the development of sexual regulations and the contemporary legal landscape. The following discussion demonstrates that despite both states legalizing brothels, there are important differences. This chapter examines several key issues. First, the Nevada and NSW regulatory regimes are contextualized, highlighting common assumptions and factors, yielding different outcomes and organization of space. Next, the contemporary legal regimes are detailed. In both regimes the conceptions of space condition the legal approaches. These include: local versus regional controls; perceptions of disorder; and, the importance of visibility in the (il)legality of sex work. In both states, and in particular, Sydney and Las Vegas, global flows of migrants, servicemen and tourists have important implications for the constitution of their legal regimes. The chapter concludes with a focus on the constitution and

evaluation of space. Although both states have taken into account similar factors in the legal regulation of brothels, the resulting moral geographies are very different.

Space and sex work

While there has been a great deal of analysis of sex work in terms of health, safety, and violence (Lewis *et al.* 2005; Wahab 2005; Lowman 2000; McKeganey and Barnard 1996) there has been relatively less research on the political economy, or geography of sex work. This investigation draws upon the insights of legal geography, particularly the concept of nomosphere, to begin to illuminate points of comparison in the regulation of sex work. Delaney (2010: 6) coined the term “nomosphere” to integrate analysis of law and space, to emphasize the “mutual constitution of the legal and the spatial and their intertwinement with power”:

That space signifies is incontestable. But *what* it signifies is *do's* and *don'ts*, and that brings us back to power.

Law is one of the discourses that contributes to the production or constitution of meaning in lived material spaces; it signifies the “do’s and don’ts” (Lefebvre 1991). The concept of the nomosphere is a reminder when examining the law to consider not only the impacts on people, but also, on space. In turn, materiality is constitutive of law (Manderson 2005) – law is given material, spatial and cultural expression in particular settings, impacting on the legal, social and spatial relations of specific communities (Hogg 2002). Law is an expression of power – not only in its constitution of meaning but through enforcement.

Nomosphere then refers to the cultural–material environs that are constituted by the reciprocal materialization of the “legal” and the legal signification of the socio-spatial, and the practical, performative engagements through which such constitutive moments happen and unfold (Delaney 2004). Nomosphere is used in this chapter to question how traces of the spatial imaginary variously condition legal performances – such as the policing and regulation of sex work – and how legal materialities condition spatial imaginaries – such as expectations of city and rural living and the (un)acceptability of the intersection of vices. The concept of nomosphere is a reminder that spatial and legal meanings are not inert and pre-existing but are contingent and constructed. It encourages us to think beyond the binaries of law and space, and instead to consider the ways in which legal meanings circulate through spatial forms, and vice versa. This concept of nomosphere highlights the historical contingency and contested nature of the legal regulation of brothels, and provides an explanation for the different moral geographies in Nevada and NSW despite the common legal element that brothels are lawful enterprises in both states.

Contextualizing regulatory regimes: contesting vice in (sub)urban space

As former colonies, both NSW's and Nevada's prostitution laws have historically been based on British common law, which addressed prostitution indirectly as vagrancy or nightwalking. In other words, laws targeted individuals (women in particular) who were in the "wrong public spaces" as problems related to regulating social disorder (Luker 1998). In both regions, the criminal justice system was historically dominant in the regulation of sex work. Not surprisingly, as cities grew, problems related to "vice" were to be controlled through containment seen to separate "normal" sexualities (i.e. families, monogamy and heterosexuality) from "abnormal." In the early 1900s regulators and the criminal justice system passed laws reinforcing gendered discourses of morality in identifying (in)appropriate spaces for sex work. These histories also highlight approaches when dealing with outsiders, migrants and transients in growing global cities. During and after World War II, the flow of tourists and US military personnel impacted the organization of sex work. However, despite these commonalities the ways in which moral discourses unfolded in the US drove the contemporary nomosphere of sex work in a different direction from that of NSW.

Development of the regulatory regime in Nevada

While sex work and red-light districts flourished in industrialized and highly populated eastern US cities such as New York City, Boston, Philadelphia in the late 1800s, by the early 1900s middle- and upper-class reform movements agitated for laws to control the large influx of immigrants and poor people whose sexuality and family life was seen as producing social disorder (Best 1998; Luker 1998; Gilfoyle 1992, 1999; Hobson 1990). National, state and local laws were passed to legislate "proper moral" behavior against drinking, gambling, obscenity and prostitution. Among these were local regulations for licensing saloons and dancehalls so they could be monitored for potentially harming public health and safety. These laws placed control for monitoring "lewd" behavior, both of individual women and businesses under the criminal justice system. During World War I laws increasingly targeted working-class women seen to threaten the health of US soldiers, and many US cities passed laws criminalizing vagrancy, living off the earnings of a prostitute, pimping and inducing women to enter prostitution. Cities in the mid-west and eastern US, for example, eventually criminalized prostitution altogether (Luker 1998; Gilfoyle 1992; Hobson 1990). Similar to Sydney, these laws drove prostitution underground and fostered an extensive shadow economy.

However, the arid western third of the US was just beginning to populate. Nevada, in particular, did not have a significant population until a gold rush in the late 1800s brought 40,000 white settlers to the state. The state's early mining economy developed in fits and starts, as Nevada's largest cities came and went in the space of a decade as mines prospered then dried out. One southern Nevada town, Goldfield, rose and fell from one tent to 20,000 and back to 5,400 between 1903 and 1910 leaving it still the second largest city in Nevada at that time. It fed

222 *Penny Crofts and Barbara G. Brents*

the tiny supply town of Las Vegas, whose population would not pass Goldfield's peak until after World War II. Reno, Nevada's largest town in 1910, did not reach a population of 20,000 until 1940 (Brents *et al.* 2010).

In these boom and bust mining towns, adult entertainment and sexualized service industries were among the more staple components of the local economy. Most towns had saloons, dancehalls, brothels and cribs located in specific sections of town, near, but often off main streets. Like the rest of the US prior to the turn of the twentieth century, the few official zoning ordinances were justified under a legal discourse designed to separate red-light districts deemed potentially harmful to the public health, safety welfare and morals from other parts of the town (Brents and Hausbeck 2001). Brothels brought economic stability, and as towns like Ely, Winnemucca, Elko, Beatty, Reno and Las Vegas kept their brothels as a result of the development of railroads and later intra- and inter-state highways. Until the 1950s, few laws addressed prostitution except those regulating a brothel and dancehall's distance from main streets, schools and churches, and laws against living off the earnings of a prostitute.

The laws that attempted to control morality in the industrialized eastern US cities never had much of an effect on Nevada's nomosphere initially. The rugged west with its mining and ranching economy developed a neoliberal ideology early on and resented federal regulators who attempted to control social and economic life. Not only did Nevada resist the regulation of morality and vice, by mid-century, they began to capitalize on it. The state benefitted from its "Wild West" image as tourism increased generally in the 1920s through to the 1940s. In a strategic move to capitalize on the tourist thirst for vice, the state officially legalized gambling, and "quickie" marriages and divorces in the 1930s. Shortly after World War II the state's largest cities, Las Vegas and Reno grew tremendously as a result of changing sexual morals and several large federal military projects in the state. Today these remain the only urban areas in a very rural state having grown almost entirely from a global tourist and service economy.

During World War II a nationwide crackdown on prostitution to protect the "health" of servicemen closed most of the remaining brothels in the US. Interestingly, during World War II there was a huge increase in gambling related tourism. After World War II the federal government launched highly publicized attacks against organized crime and targeted syndicates that controlled Las Vegas and Reno gambling. Elected state and local leaders in the big cities of Reno and Las Vegas now depended on the casino economy and had too much to lose if gambling were to be made illegal. In order to make gambling appear legitimate, prostitution was declared illegal.

By the 1960s, the resort cities of Reno and Las Vegas, now with populations nearing 50,000 and 130,000 respectively, shut down prostitution but this practice continued in rural counties. As gambling brought more tourists to urban regions, rural-based brothels became more dependent on those passing through town – tourists, truckers and miners – en route to Reno and Las Vegas. In the late 1970s local officials in a few rural areas began to enact codes to license and operate brothels (Figure 12.1). Urban legislators battled to criminalize prostitution in the

entire state, but were only able to achieve a compromise law in 1971. The compromise made prostitution illegal only in those counties with a population over 400,000. This inadvertently gave rural counties the freedom to legalize prostitution. Local cities and counties unwilling to change the status quo passed ordinances licensing those brothels that already existed and made independent prostitution illegal (Brents *et al.* 2010).

Development of the regulatory regime in New South Wales

Similar to the US, Australia, prior to the twentieth century, viewed prostitution as a crime of disorderly behavior in the “wrong” spaces. In NSW, prior to 1908, there were no explicit offences for prostitution. Rather, prostitutes were prosecuted for “loitering,” “riotous” or “indecent behaviour” under successive *Vagrancy Acts* (1851, 1901, 1902). In 1908, legislation began to explicitly regulate sexual morality in public spaces. The 1908 *Police Offences (Amendment) Act* amended the *Vagrancy Act (1905)* to create the offence of “being a known prostitute, [who] solicits or importunes for immoral purposes any person who is in a public street, thoroughfare or place.” The 1908 *Act* also created new offences effectively of pimping, living off the earnings of a prostitute, and being the owner, occupier, agent or manager of any property who induced or suffered women he knew to be a common prostitute to be in such premises for the purposes of prostitution. As



Figure 12.1 *The Resort at Sheri's Ranch*, Pahrump, Nye County, Nevada.
Source: Barb Brents

224 Penny Crofts and Barbara G. Brents

elsewhere, the *Act* effectively reorganized but did not eliminate prostitution in Sydney. This is an example of nomosphere. That is, the enactment of law produced spatially whereby, in this case, the demand for prostitution remained unchecked, but women who had previously worked freelance were driven indoors to become employees of big brothel operators (Select Committee of the Legislative Assembly on Prostitution 1986).

While the legislation from the 1920s to the 1940s prohibited men from running brothels, it did nothing to stop women from controlling and running criminal enterprises. This was depicted in the Australian television series *Underbelly: Razor*, broadcast by Nine Network in 2011, where the key female characters, Tilly Devine and Kate Leigh, ran illegal “grog” and prostitution businesses in Sydney. Devine provided a range of sexual services depending on the customer. She employed elite “call girls” for state politicians, prominent business figures and visiting overseas guests of significance and “tenement girls” for poorer clients (Writer 2001). Leigh was a criminal entrepreneur and known as “The Queen of the Underworld,” she sold illegal alcohol, drugs and prostitution. Both of these women depended on support from male-led criminal gangs and bribes to the police.

In Sydney, the inner-city, particularly the Kings Cross area, became a center for organized crime with police, as well as potential customers and workers looking for illegal activities such as gambling, prostitution, “sly grog” and drugs. Not surprisingly, at the same time, Kings Cross had also become noted for its cosmopolitan and sophisticated ambience, including music and theatre. During the 1920s the city of Sydney experienced more apartment construction than any other local government area in the state. The flats brought a “modern high rise culture” with them, a new, “free” style of city living” (Kirkpatrick 2007: 48). By the end of the 1920s, Kings Cross was known as the place where continental Europeans fleeing the rise of fascism chose to live (Spearritt 1978).

Out of this entertainment and vice district grew a thriving “(sub)urban sexscape” (see Chapter 2, this volume). During and after World War II, Kings Cross became known as a red-light district with a growth in nightclubs and strip clubs, black market trading and rampant prostitution (Butel and Thompson 1984). This was due to architectural and geographical specificities, including the convenient location of a naval base nearby. During World War II, Kings Cross was inundated with American servicemen who resided while on leave in a number of the old mansions and other adapted use residences. The notion of Kings Cross as an entertainment and red-light district attracted people to the area, in turn confirming its reputation.

Legislation was promulgated specifically with Kings Cross in mind. The *Disorderly Houses Act 1943* (NSW) created offences of being an owner or occupier of a declared premise. A declaration that a place was a “disorderly house” enabled prosecutions to be undertaken for the offences of owning, occupying or being found on such premises. Initially, the main purpose of the reforms was to keep American servicemen out of “sly grog” shops and unlicensed nightclubs by closing the venues. The local government was concerned that nearby residents may be disturbed by drunken and/or indecent behavior by servicemen visiting such premises. At roughly the same time the federal government in the US was passing

regulations against prostitution purporting to protect soldiers from disease. In NSW legislation was also introduced to protect the community from the American soldiers, who were “over-paid, over-sexed, and over here” (Darian-Smith 2009).

At the end of the 1960s a second influx of American servicemen “invaded” Kings Cross. Rest & recreation (R&R) leave from the Vietnam War began in October 1967 and lasted until August 1970 (Ellis and Stacey 1971). A new crop of visiting soldiers over-ran Kings Cross’s now established entertainment, illegal casinos and sex businesses. This confined geographical space became infamous for crime, vice and corruption. Subsequently, new and harsher prostitution offences were introduced under the *Summary Offences Act 1970 NSW*. As a consequence of these reforms “prostitution became less visible, literally and figuratively” (NSW Select Committee 1986: 246).

Despite attempts to control prostitution, business thrived. Paradoxically, these new harsher laws increased the power of pimps and certain brothel owners and facilitated police corruption. Brothel owners and sex workers paid police so that they could not only operate in specific geographic areas but they also received their protection. Following a series of thwarted attempts in the 1960s by the NSW police to use the *Disorderly Houses Act* to close brothels and other premises that supported sexual deviance,² the NSW government amended the *Disorderly Houses Act* to enable closure. The selective enforcement by police did not revolve solely around the protection of particular workers and operators, but was also geographic. The focus of the police was on Kings Cross, reflecting and reinforcing an assumption of the absence of this type of vice outside of the city (Prior and Crofts 2011).

Between the 1970s and 1990s, while the US (except Nevada) had fully criminalized prostitution, Victoria, Queensland, the Northern Territory and Western Australia amended laws to allow some forms of brothels and/or indoor prostitution (Sullivan 2010). NSW was the earliest state to change prostitution laws, and in 1979 NSW decriminalized most prostitution related offences; these have continued in the same form to the present day.

Although legislative reforms in the 1970s had removed the offence of keeping a brothel, the NSW police undermined these reforms. They resuscitated the rarely used *Disorderly Houses Act 1943* and an increasing number of declarations that a premise was a disorderly house were sought. During the early 1990s police reliance upon the *Disorderly Houses Act 1943* (NSW) to shut down brothels was aided by the decision in *Sibuse Pty Ltd v. Shaw*, where the Supreme Court held that a brothel was a disorderly house whether it was well run or not. For a short period this decision led to an intensification of NSW police closures of brothels and other forms of sex industry premises.

In 1995, the *Disorderly Houses Act 1995* (NSW) provided in section 16 that a “declaration under section 3 may not be made in respect of a premises solely because... the premises are a brothel.” As a consequence of this amendment, local councils were given the power to regulate sex-services premises through their planning powers, governed by the *Environmental Planning and Assessment Act 1979* (NSW). Brothels are now technically able to operate like any other legitimate business.

226 *Penny Crofts and Barbara G. Brents*

Both Sydney and Las Vegas developed thriving sexual economies despite any legal prohibitions, in part driven by regional and global economies, tourists and migrant workers (soldiers, miners, truckers and seamen). In both states, legal images and meanings circulated through spatial forms that were legible to potential customers, workers and law enforcers. In both cities, prostitution was initially tolerated, and operated in a quasi-regulated status of patronage and payoffs overseen by the criminal justice systems. Since the early twentieth century, sex work regulations were informed and shaped by assumptions about appropriate spaces for sex work. In both NSW and Las Vegas, police and law enforcement had considerable power in interpreting and carrying out (or not) the law. In Nevada, the city of Las Vegas legitimated the vice of gambling by separating and excluding prostitution from those downtown spaces where profitable casinos now operate. As with the regulation of other forms of commercial sex (see Chapters 2, 3, 8, and 11, this volume) brothels were relocated to peripheral locations outside big city limits. The increasing visibility of prostitution in these urban areas made them more susceptible to the post World War II dominant nomosphere in the US that considered prostitution a moral crime. Even in rural areas that permitted brothels that aim was to keep them off main streets and restrict advertising to keep them less visible. In the US nomosphere, prostitution was legally and spatially outlawed. At the same time, Las Vegas then and now continues to capitalize on its reputation as “Sin City.” In contrast, in NSW, gambling and prostitution were historically limited and restricted to a small geographic area in the inner city, with an aim to protect the suburbs and family values from the vices of the city. The NSW nomosphere now permits the legal inclusion of prostitution within the confined spaces of the city.

Current local regulations

Both NSW and Nevada’s systems have been strongly influenced by their emergence as globalizing cities and economies that rely heavily on commercial sex including prostitution and other form of adult entertainment in the form of cabaret shows, cocktail waitresses and showgirls. While morality politics framed politics in the early twentieth century, contemporary neoliberalism provides the important backdrop for twenty-first century regulation in both regions, though not without contradictions.

The chapter now moves to comparing the current nomosphere in the two globalizing cities of Las Vegas and Sydney. The focus here is on: (i) the regulatory authority and structure; (ii) business and worker regulations; and (iii) locational restrictions. What becomes clear is that both systems are organized to control the visibility of sexual commerce, regulating sexuality through the ordering of space. This is done slightly **different** in each region. Both systems are relatively decentralized, though in different ways. Despite an anti-regulatory neoliberal rhetoric toward most businesses in the US, local districts regulate brothels as a moral threat, imposing tight restrictions ostensibly to protect public safety, health and welfare. Prostitution is not allowed outside brothels. NSW tacitly regulates brothels in the same way as other legitimate businesses – more regulations are

imposed on businesses generally than in the US, but there are far fewer rules for sex businesses. Notably, in NSW sex work outside of brothels is decriminalized and sex workers are able to work legally, whether on the streets, on call, from home, or in a commercial brothel. This is not to say that sex workers can operate anywhere. They are restricted from operating in certain locations such as near schools or places of worship. The regulatory regime surrounding sex work in NSW is far more neoliberal in its approach than the US, including Nevada.

Regulatory authority and structure in New South Wales: the planning model in practice

There are more than 150 local councils in NSW with more than 5,500 legal planning instruments. These planning instruments are similar to, but exceed in their conditions and requirements, US planning codes. They specify zones (for example, residential, industrial and commercial), what type of building can be constructed and what businesses can operate where, and conditions of consent including operating hours, lighting, noise impacts, and occupational health and safety. These planning regulations specify what fits where, demonstrating the insight of the concept of nomosphere – the relationality between law and space. NSW has incorporated sex-services premises within the existing planning regime. The focus is primarily upon the regulation of the business, rather than individual sex workers. Brothels are regulated like any other legitimate business according to the central concerns of planning. In order to open a brothel, the operator must submit a development application to their local council in the same way as any other proposed business. Conditions of council consent require not only that a proposed business will have assessed amenity impacts for the area and satisfied council conditions relating to appropriate zoning, size, operating hours, lighting and so on but also that the operator will meet state and federal legislative rights and responsibilities pertaining to occupational health and safety, worker rights, wages, taxation and building standards. While in some areas in NSW sex-services premises have been regulated more restrictively than other businesses (Crofts 2007), the inclusion of sex-services premises within general planning frameworks means that existing procedural and substantive legal structures are assumed, required, and applied (Figure 12.2). **Workers’** rights and conditions flow from the regulation of the business as a business, rather than through regulation of individual workers. Councils have responded to their responsibility for regulating the sex industry in a variety of ways, applying existing regulations to brothels or developing brothel-specific planning policies (Crofts 2003).

Despite great variation across councils in the regulation of sex-services premises, the inclusion of these types of businesses within a planning regime imports a procedural and legal framework that is applicable across the state. Planning instruments are regulatory documents that must comply with existing state legislation and policies. While many local councils and communities may not want a brothel in their local area, operators can still receive authorization via planning, whether from the local council, or through appeal to the Land and Environment Court



Figure 12.2 A brothel in a mixed commercial/residential zone in a suburb in Sydney.
Source: Christine Steinmetz

(LEC). Under the *Environmental Planning and Assessment Act 1979* (NSW) local councils must take into account the amenity impacts of a potential development. “Amenity” is recognized as “wide and flexible,” and includes concerns such as parking, noise, lighting but transcending mere physical content (*Perry Properties v. Ashfield Council*, 2001). The LEC (and other state planning tribunals/courts) has been clear that morality is not a planning consideration.³

The LEC has emphasized the need for hard and fast evidence of (potential) negative impacts upon amenity. There is a great deal of variation in terms of how local councils in NSW regulate sex premises. In concrete planning terms, variations include where brothels are permitted to operate and how much parking space is required. Furthermore, the extent of variation is determined to a large extent by how welcoming a council is to brothel proposals. Some councils, such as City of Sydney, regard brothels as potentially lawful businesses, whereas other councils would prefer to exclude brothels from their local government area (Crofts 2007; see also Chapter 6, this volume). However, incorporating sex-services premises within the existing planning regime allows for these types of businesses to be regarded as “legitimate.” The possibility of appeal to the LEC, while expensive and time consuming, has been a significant aspect of regarding

and regulating sex-services premises as ordinary businesses. The LEC has tended to apply pragmatic planning policies that can overcome localized restrictive council policies (*Hang v. Strathfield Municipal Council*, 2005; *Sun v. Campbelltown City Council*, 2005).

Regulatory authority and structure in Nevada

Nevada, like NSW, relies mainly on local laws (city and county) to regulate brothels. Since enacting the 1970 state bill outlawing brothels in only one county, state-level politicians want nothing to do with legislating brothels. Nevada state leaders still today fear that tourism may be adversely affected if its legal brothels are too “visible.” At the same time, the state has strongly resisted eliminating brothels to protect local rule – the rights of localities to decide for themselves. As a result, the only state laws governing brothels are those from the early 1900s, regulations against third parties, pimping, pandering, and zoning brothels away from schools and churches. State health codes responding to the AIDS epidemic in the 1980s required testing of sex workers for HIV and various sexually transmitted infections (STIs).

Some 30 to 35 legal brothels currently exist in the state, and most are in very sparsely populated rural regions in Nevada.⁴ In all, there are 16 counties in the state of Nevada, and 108 cities. Currently, only five cities – Ely, Elko, Wells, Carlin, and Winnemucca – and seven counties – Churchill, Esmeralda, Lander, Lyon, Mineral, Nye, and Storey – license and regulate brothels (see Table 12.1 and Map 12.1). These cities and counties have enacted specific ordinances that govern brothels. All of these local ordinances are similar, varying only in wording – ordinances specify application processes, specify brothel locations, spell out restrictions on licenses and employees, special fees, appeal procedures, zoning, health regulations and penalties (Bretns and Hausbeck 2001). Larger counties tend to have more detailed regulations on things like signage, license application procedures and site plan proposals. A few counties allow brothels to run escort services, where both clients and workers can leave the brothels. Counties also differ in the numbers of brothels they allow, ranging from one to five. Some counties specify fences around the brothels, others do not. Sex workers must be 21 years of age in most counties, although in a few counties the age limit is 18.

Governments in urban areas such as Las Vegas and Reno have largely opposed regulated prostitution. Both the resort and gambling corporations who dominate both cities’ economies fear that commercial sex will somehow “offend” the sensibilities of tourists and want to make sure tourists have few reasons to leave resort properties. Ironically, of course, a very large illegal prostitution industry exists in Las Vegas. Small town and rural county governments support prostitution because citizens accept brothels in confined, isolated areas, and also because they get a significant percentage of tax dollars from these businesses. The tension between urban and rural governments has resulted in very little centralized guidance from the state.

230 *Penny Crofts and Barbara G. Brents*

Table 12.1 Nevada County brothel laws

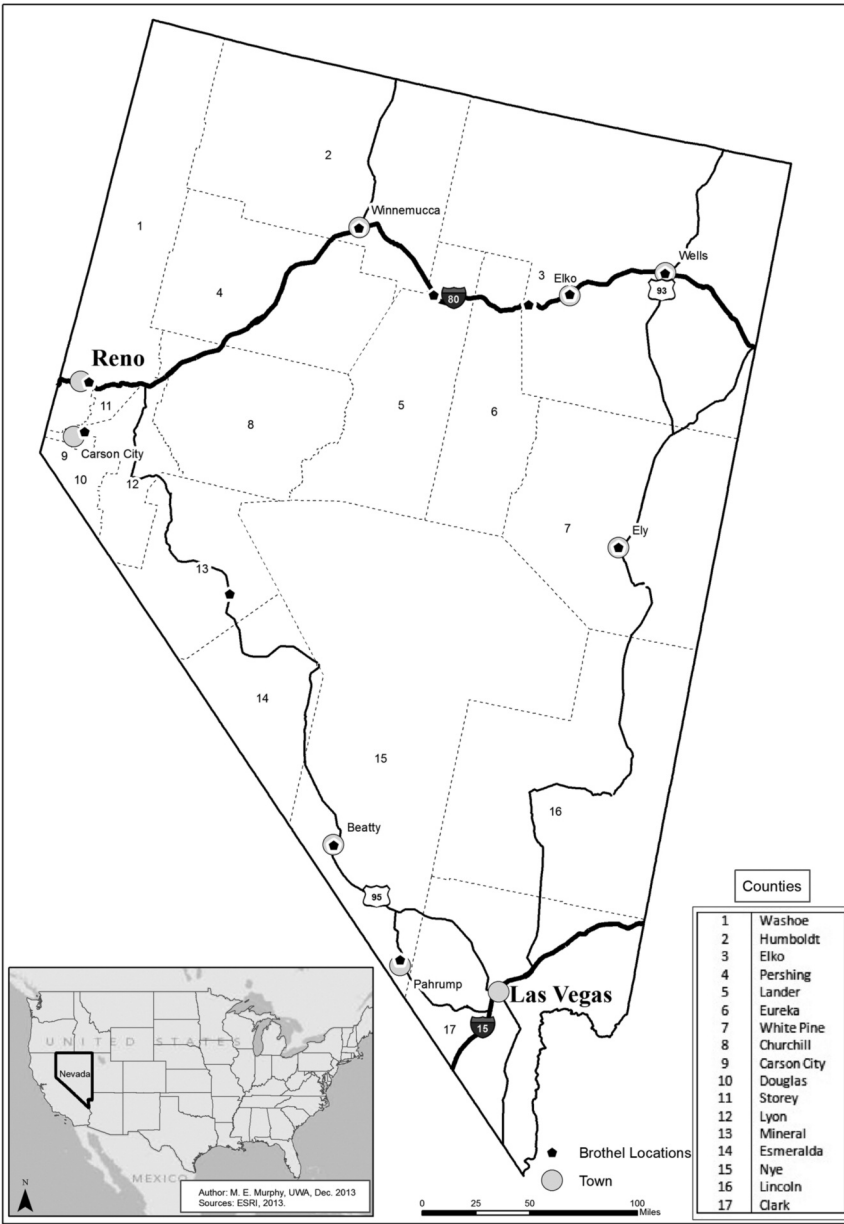
<i>Counties</i>	<i>Currently operating brothels</i>	<i>Within one hour drive of major Metro area</i>	<i>Population per square mile, 2010*</i>	<i>Licensing ordinances</i>
Carson City	prohibited by county law	yes	382.1	
Clark	prohibited by state law	yes	247.3	
Douglas	prohibited by county law	yes	66.2	
Washoe	prohibited by county law	yes	66.9	
Lincoln	prohibited by county law	no	0.5	
Pershing	prohibited by county law	no	1.1	
Eureka	no written ordinance	no	0.5	
Churchill	none open	yes	5.0	
Elko	2 in Carlin	no	2.8	Carlin
	4 in Elko	no		Elko
	2 in Wells	no		Wells
Esmeralda	none open	no	0.2	
Humboldt	2 in Winnemucca	no	1.7	Winnemucca
Lander	2 in Battle Mountain	no	1.1	County law
Lyon	4 outside Carson City	yes	26	County law
Mineral	2 in/near Mina	no	1.3	County law
	(licensed but not currently open)			
Nye	5 near Pahrump	yes	2.4	County law
	1 near Beatty	no		
Storey	1 in Sparks	yes	15.3	County law
White Pine	2 in Ely	no	1.1	Ely

* From *US Census Bureau State & County QuickFacts*,

<http://quickfacts.census.gov/qfd/states/32000.html>. Last Revised: Saturday, 27 July 2013.

Regulating businesses and workers: to license or not to license

Unlike NSW, Nevada brothels are required to have privilege licenses reserved for those categories of businesses requiring “special” regulation to protect the public from health, safety, moral and welfare issues that supposedly emanate from prostitution. Other businesses included in these categories: those serving alcohol; gaming; and businesses involving any sexually oriented activities (e.g. strip clubs, adult video stores and swingers clubs). Two bodies oversee the regulation of brothels, county commissions or city councils that comprise of three to seven elected politicians who serve terms of four years. These bodies empower criminal justice agencies such as the county sheriff or city police to investigate applications and monitor adherence to licensing requirements. Privilege licenses are completely revocable for any cause deemed harmful to the health, safety and welfare of the general public and have no vested privileges or rights. While for years this revocability remained broad and vague, local codes have increasingly specified cause,



Map 12.1 Distribution of Nevada brothels by county.

Source: Mary E. Murphy

hearing and investigation procedures. At the same time, even these newer ordinances allow for “emergency” revocation of licenses for public health or safety reasons.

232 *Penny Crofts and Barbara G. Brents*

License application procedures for brothel owners are quite onerous compared to most other businesses. License applications are created under similar principles to Nevada gaming licenses that were originally designed in the 1960s to keep organized crime or other objectionable people from applying. Applicants must disclose family, military, employment and criminal records as well as full financial disclosure. Applicants must pay an investigation fee that covers an FBI check and interviews. The process prohibits any individual with a felony, any drug charges, or previous involvement in an illegal business, or financial insolvency from operating a brothel. Local governing boards have considerable leeway in interpreting results from an investigation and in demanding additional information. By code, they can deny applicants for any reason “contrary to the health, welfare or safety” of the area. In one suburban county, the applicant waives any claim of damages resulting from the application process.⁵ It is believed that this tight system of oversight prevents organized crime involvement.

Sex workers are required to obtain work cards before commencing employment in a brothel. In most counties, these are the same cards required for workers in other “vice” industries serving alcohol or gambling. They require a fee, background checks for previous arrests, and are approved and monitored by local police departments. Some counties even require the location of work to be specified.

In contrast, there is no business licensing system or worker registration in NSW, although the current state government is considering this as a possibility in a discussion paper that seeks to improve the regulation of sex work (Better Regulation Office 2012; Crofts 2012). The focus of the planning regime is upon amenity impacts of a particular land-use, not the person operating the business. It is believed that regulating sex-services premises as legitimate businesses imports not only bureaucratic regulations via the planning system but also the force of the market (see Chapter 2, this volume). Legalization removes the potential for super profits associated with an illegal industry and thus acts as a deterrent to organized crime. Legalization also brings with it rights, and the possibility of turning to police and legal authorities in the event that a sex worker and/or brothel owner are the victims of criminal actions such as rape, assault, extortion and so on. Moreover, market regulation stimulates “fair competition” hence owners of legal brothels and other commercial sex premises are more likely to report illegal or non-compliant sexual services to the police or other regulators on the basis that such activities have an unfair advantage (Crime and Misconduct Commission 2011). This allows for natural surveillance, rather than the need for external policing to regulate the industry.

Despite the rhetoric of neoliberalism in the US, Nevada regards brothels as a special category of business, subject to strict localized rules and variations, and limited rights, and primarily regulated by police. In contrast, in NSW, there is some local variation, but brothels are broadly regulated and regarded under the existing state planning regime in the same way as any other legitimate business. Although the US is often regarded as an exemplar of the operation of the free market in the area of commercial sex, NSW appears to be placing greater trust in the free market and existing business regime than the US.

Locational restrictions: visibility, sex, and space

Nevada and NSW rely upon similar strategies to contain brothels, particularly through reducing visibility and locational restrictions. Both states rely upon localized regulation of brothels, but in NSW this fits within an existing state regime, resulting in greater restriction on the powers of local government. This has been demonstrated by a directive from the state planning department (NSW DUAP 1996) that local councils may not prohibit brothels from their local government area, with the result that authorized brothels exist throughout NSW.

While many NSW local councils have anti-clustering provisions (e.g. restricting a brothel from operating within 100 meters/328 feet of another authorized brothel), there are no upper limits on brothel numbers. Conversely, in Nevada, the laws have been written in such a way as to confine brothels to very specific localities. As such there is no scope to expand the number or geography of brothels. Such locational restrictions have effectively limited brothels to around the same number (i.e. $n = 30-35$) that have been operating since the 1930s. In NSW, many new and pre-existing brothels have received council or LEC consent since 1995 as a consequence of the *Disorderly Houses Amendment Act 1995*.

Invisibility and containment are important for both regions, especially for Nevada. In Nevada, brothels are located primarily outside of the city, in rural areas. The seven counties that regulate brothels limit them to areas outside of their city limits. In the five towns that regulate them, brothels are a few blocks off the main street, and most of these are within a few blocks of each other. However, these five towns are all small and rural. In contrast, in NSW, brothel regulation was initially framed with the city in mind, and as a consequence of the legislative regime, brothels are spread throughout NSW, especially within the Sydney metropolitan region. This means that NSW cannot rely on locational or distance restrictions – although see Chapter 6, this volume – as much as Nevada has. Instead, regulators in NSW have focused more on reducing the visibility of brothels. For example, both states prevent brothels from operating near sensitive uses, such as schools and places of worship. However, NSW utilizes the words “near or *within view*,” imported from street solicitation legislation (*Summary Offences Act 1970 NSW*). In Nevada, state law prevents brothels from being located on a main business street, whereas in NSW, in many local government areas, brothels are permitted to operate in commercial areas, provided they are located on the first floor or above. Likewise in Nevada, brothels are severely restricted in their signage, and cannot readily advertise their presence as other legitimate businesses might normally do despite being recognized as legal and legitimate businesses. Brothel owners have sought to overturn the signage restriction imposed upon them via the courts; federal appeals courts however have ruled that states have the right to restrict advertising by commercial sex premises because of the impacts such businesses might have on the health and welfare of citizens.

So how do people know the whereabouts of brothels if they are not permitted to use signage to advertise their existence in the urban landscape? In short, the answer to this question is threefold. First, claims about the existence of a brothel in a local neighborhood tend to travel by word of mouth. Next, travel guidebooks

published by independent authors often highlight “exciting” and risqué aspects of cities and other destinations. Finally, the internet and social media are used by brothels and independent sex workers to advertise their existence, location and range of services. A major focus of planning regulations in NSW has been on the (in)visibility of brothels, so that there are “no overt indications that it is being used as a brothel” (*Martyn v. Hornsby*). Council planning policies do not permit the use of the traditional red-light associated with brothels to be used to signify that sex services are available at a particular property or building. Rather, signage can only be a number, not a name. Furthermore, waiting rooms must be provided so that clients do not loiter outside buildings or on the streets. As a consequence of this aesthetic regulation which seeks to render brothels invisible or non-descript in the urban landscape it has had the opposite effect (see Martin’s discussion on sex shops in Chapter 3 of this volume). Brothels in NSW, especially Sydney, are “recognizable” by the fact that they tend to have high security, double glazed reflective windows, and the lack of outward signage highlighting the name of the business. Figure 12.2 shows a photo of a typical inner-city brothel in Sydney. Simultaneously, however, recent research by Prior and Crofts (2012) has shown that many people who live near brothels within Sydney tend to be oblivious to their existence and secondary effects. Prior and Crofts (*ibid.*) surveyed 401 residents who lived within 400 meters (1,312 feet) of a sex-service premises. Respondents lived in two areas of Sydney: inner-city Sydney and outer-suburban Parramatta. Respondents were asked if they were aware of any sex-services premises located in their neighborhood. If they answered yes, respondents were asked to rank the overall effect, using a Likert scale of -3 (extremely negative) to +3 (extremely positive), of the sex services premise on their local area. In total, almost half (44 per cent, 173 out of 401) of those surveyed were unaware that they lived nearby a sex-services premise. Of the remaining survey respondents (56 per cent, 228 out of 401) who were aware of sex-service premises, just under half (49 per cent, 122 out of 228) stated that the business had no effect (positive or negative) upon the local area. Within the remaining half nearly as many residents rated the overall impact positively (24 per cent, 55 out of 228) as there were rating it negatively (27 per cent, 62 out of 228). Accordingly, just under three quarters of the residents surveyed (74 per cent, 296 out of 401) either experienced no effects as a consequence of the nearby sex-services premise or did not know of its existence. This suggests that even though sex-services premises are sited in the city and near homes, visibility and awareness of these businesses is low.

Specificities of vices in space

The concept of *nomosphere* encourages analysis of the assumptions about where prostitution is most appropriately placed. Why are brothels restricted to particular areas and excluded from others? These assumptions underpin the locational restrictions upon brothels in relation to other human vices. The intersection of gambling and prostitution has had important implications for both regions in the regulation of space. Historically, gambling and prostitution coexisted in both states.

Vice squads paid close attention to these businesses because they generated super profits and were likely to be controlled by organized crime. Paradoxically, police corruption was also commonplace when it came to the regulation of gambling and sex work. However, Nevada's history has demonstrated that legalizing vices relies to a large extent on distinguishing one vice from another to make one look more "legitimate." In Nevada, this reflected the relative power or "mobilisation of bias" (Bachrach and Baratz 1962) articulated by a large and growing corporate casino and tourist resort industry based mainly in urban areas. In contrast, those engaged in sex work, as independent workers or brothels owners, simply do not have the resources, especially financial, to influence policymakers. In the 1950s and 1960s when Nevada was shrinking its prostitution industry, it was under a great deal of scrutiny from federal officials seeking to bring Nevada in line with the nation's laws against vice. They sacrificed open prostitution and independent women's abilities to profit from selling sex. Like the laws that motivated early 1900s anti-prostitution laws in the US, these moves in the 1970s reinforced gendered views of appropriate sexuality – proper women do not profit from their sexuality.

The spatial intersection of gambling and prostitution in NSW is complex. The red-light district of Kings Cross in Sydney proffered vices of illegal gambling, liquor and prostitution. This highly confined, but visible, geographical space was associated with crime, vice and corruption, while also being a center for legal entertainment. The co-location of vices was accepted because it was confined and subjected to specific policing practices. However, in 1995, following the opening of Sydney's one and only legal casino – Star City – it would appear that NSW-based policy-makers were following Nevada in the sense that they were trying to separate gambling and prostitution. The City of Sydney, the local government charged with planning responsibilities, banned brothels from within 200 meters (656 feet) of the casino then local environmental plan (LEP). The premise for this decision centered on concerns that "illegal or undesirable" activity might concentrate around the casino. However, despite ostensible similarities with Nevada, differences are apparent. First, casino gambling makes up only 18 per cent of total gambling in Australia, whereas 55 per cent of gambling takes place on electronic gaming machines (Productivity Commission 2010). In NSW, most gambling takes place in clubs and pubs spread throughout the state. While brothels cannot operate from within pubs and clubs, there are no restrictions on brothels operating nearby (ibid.). Second, Star City Casino opened in 1995, just as brothels were legalized by the state government under the *Disorderly Houses Amendment Act 1995*. In the most recent draft of planning documents (Sydney LEP 2012), brothels are no longer banned from the casino area – arguably because with more than 15 years of regulating sex work and brothels as legal businesses, they are no longer deemed to be associated with "illegal or undesirable" activities.

Conclusions

Although Nevada and NSW are classified as having legal prostitution, this chapter has highlighted important differences in the way these states have constructed

diverse “(sub)urban sexscapes” of legality and illegality in relation to prostitution. Nevada and NSW have made different choices regarding local versus regional regulation and in their reliance on policing versus planning. While both places began with similar cultural approaches to prostitution, and even developed vice districts where gambling and prostitution co-existed, the US has largely kept prostitution illegal, even while gambling has become more acceptable. While Nevada’s rural brothels are legal, they still operate in a context where sex work is considered a vice and in need of specific regulations. In contrast, NSW brothels are part of a spectrum of sex services provided in a broadly legalized framework. This means that the nomospheres of the sexscapes in the states of Nevada and New South Wales vary which has been expressed and enforced through a state-specific constitution and evaluation of brothels. Spatial variations in the two regions reflect and reinforce different regulatory approaches, expressed in choices of reliance on distance or visibility. The differences in the perceived acceptability of an intersection of gambling and prostitution highlights the complex and developing nomos in Nevada of sex work as both legal and illegal and the different developing nomos in New South Wales of sex work as orderly, legal and regulated. Despite the “mainstreaming” of the sex industry as exemplified, for example, in the number and range of sex shops/adult stores (see Chapters 2 and 3, this volume) and the growth in the number of adult entertainment venues (see Chapter 8, this volume) that is common in global cities, it is clear that prostitution remains in an awkward and contradictory position within the sex economy. In particular, the question of the (in)visibility of sex work in comparison to other elements of the sex economy is an interesting one. It is increasingly the case that in a neoliberal political environment, more and more sex businesses are regulated like other “normal” businesses (Brents and Sanders 2010). As Martin has noted in relation to sex shops (Chapter 3, this volume), businesses in this facet of the sex economy have been presenting themselves to look like a “regular” business and as such they are less likely to be singled out for special surveillance. However, a great deal of ambivalence continues to surround prostitution. Regardless of whether or not they are legal, decriminalized or illegal, sex work is often engaged in continuous legal and political battles against forces seeking to contain and monitor the industry as a vice, and to at least, render it invisible. A number of jurisdictions – Republic of Ireland (Department of Justice and Equality 2012), Northern Ireland (Maginn and Ellison 2013; Morrow 2012), Scotland (McNab 2013) and France (Chrisafis 2012; Willsher 2011) – have recently reviewed the regulation of prostitution/sex work with the view to introducing new legislation designed to criminalize the sale and/or purchase of sexual services.

Paradoxically, despite the spatial marginalization of the brothel industry within Nevada, Las Vegas, casinos, and the city in general, remain a highly, if not, hyper-sexualized space. Las Vegas is advertised as “Sin City,” and an erotic playground, especially with the now iconic advertising campaign: “What Happens in Vegas, Stays in Vegas.” This hyper-sexual identity is communicated via nationwide advertising campaigns as well as local billboard advertisements, casino shows, strip clubs within the city and, of course, the dress code of the cocktail waitresses within

the casinos. Ultimately, while sexualized bodies are overt and a complicit component of the gambling industry's strategy to offer patrons a "good time," the actual sale of sex is rendered invisible. Meanwhile, although Kings Cross retains a hyper-sexual identity as a red-light district, much of the sex work in NSW takes place outside and beyond this gaudy space in far more pragmatic and discreet spaces. The concept of nomosphere emphasizes that law and space should not be considered as binary categories, but rather a call to pay attention to the complex reciprocal materialization of the legal and the spatial. The different spatial, legal, and moral geographies of "prostitution" in Nevada and "sex work" in NSW highlight the imbrication of law and space in the construction, expression and communication of meaning.

References

- Bachrach, P. and Baratz, M. S. (1962) 'The two faces of power'. *The American Political Science Review* 56(4): 947–52.
- Bell, D. and Valentine, G. (1995) *Mapping Desire: Geographies of Sexuality*. London: Routledge.
- Best, J. (1998) *Controlling Vice: Regulating Brothel Prostitution in St Paul, 1865–1883*. Columbus, OH: Ohio State University Press.
- Better Regulation Office (2012) *Regulation of Brothels in NSW: Issues Paper*. Sydney: NSW Government. Available at www.dpc.nsw.gov.au/_data/assets/pdf_file/0006/145077/Issues_Paper_Regulation_of_Brothels.pdf.
- Brents, B. G. and Hausbeck, K. (2001) "State sanctioned sex: Negotiating informal and formal regulatory practices in Nevada brothels." *Sociological Perspectives* 44: 307–32.
- Brents, B. G. and Sanders, T. (2010) "Mainstreaming the sex industry: Economic inclusion and social ambivalence." *Journal of Law and Society* 37(1): 40–60.
- Brents, B. G., Jackson, C. and Hausbeck, K. (2010) *The State of Sex: Tourism, Sex and Sin in the New American Heartland*. New York: Routledge.
- Butel, E. and Thompson, T. (1984) *Kings Cross Album: Pictorial Memories of Kings Cross, Darlinghurst, Woolloomooloo & Rushcutters Bay*. Sydney: Atrand.
- Chrisafis, A. (2012) "French minister for women seeks abolition of prostitution in Europe." *The Guardian* (September 24): www.theguardian.com/society/2012/jun/22/french-minister-abolition-prostitution-europe.
- City of Sydney (1995) *Sydney Local Environmental Plan*. Sydney: City of Sydney.
- City of Sydney (2012) *Sydney Local Environmental Plan*. Sydney: City of Sydney. Available at www.cityofsydney.nsw.gov.au/development/planning-controls/local-environmental-plans.
- Collins, A. (2006) *Cities of Pleasure: Sex and the Urban Socialscape*. New York: Routledge.
- Crime and Misconduct Commission (2011) *Regulating Prostitution: A Follow Up Review of the Prostitution Act of 1999*. Sydney: NSW Government.
- Crofts, P. (2003) "Ambiguities in approaches to brothels: Disorderly houses of commercial premises?" *Environmental Planning and Law Journal* 20(6): 445–58.
- Crofts, P. (2007) "Brothels and disorderly acts." *Public Space: The Journal of Law and Social Justice* 1(1): 1–39.
- Crofts, P. (2012) "The proposed licensing of brothels in New South Wales." *Local Government Law Journal* 17(1): 3–10.
- Darian-Smith, K. (2009) *On the Home Front: Melbourne in Wartime 1939–1945*, (2nd edn). Melbourne: Melbourne University Press.

238 Penny Crofts and Barbara G. Brents

- Delaney, D. (2004) "Tracing displacements, or, evictions in the nomosphere." *Society and Space* 22(6): 847–60.
- Delaney, D. (2010) *The Spatial, the Legal and the Pragmatics of World-Making: Nomospheric Investigations*. New York: Routledge.
- Department of Justice and Equality (2012) *Discussion Document on Future Direction of Prostitution Legislation*. Dublin: Houses of the Oireachtas.
- Doan, P. (Ed.) (2011) *Queering Planning: Challenging Heteronormative Assumptions and Reframing Planning Practice*. Farnham: Ashgate.
- Ellis, R. and Stacey, W. (1971) *Kings Cross Sydney: A Personal Look at the Cross*. Melbourne: Thomas Nelson.
- Gilfoyle, T. J. (1992) *City of Eros: New York City, Prostitution, and the Commercialization of Sex, 1790–1920*. New York: W. W. Norton.
- Gilfoyle, T. J. (1999) "Prostitutes in history: From parables of pornography to metaphors of modernity." *The American Historical Review* 104(1): 117–41.
- Hobson, B. M. (1990) *Uneasy Virtue: The Politics of Prostitution and the American Reform Tradition*. Chicago, IL: University of Chicago Press.
- Hogg, R. (2002) "Law's Other Spaces." *Law/Text/Culture* 6(1): 29–38.
- Hubbard, P. (2012a) *Cities and Sexualities*. New York: Routledge.
- Hubbard, P. (2012b) "World cities of sex." In B. Derudder, M. Hoyler, P. J. Taylor and F. Witlox (eds), *International Handbook of Globalization and World Cities*, 295–305. Cheltenham: Elgar Publishing.
- Kirkpatrick, P. (2007) *The Sea Coast of Bohemia*. Perth: API Network.
- Lefebvre, H. (1991) *The Production of Space*. Oxford: Blackwell.
- Lewis, J., Maticka-Tyndale, E., Shaver, F. and Schramm, H. (2005) "Managing risk and safety on the job: The experiences of Canadian sex workers." *Journal of Psychology and Human Sexuality* 17(1–2): 147–67.
- Lowman, J. (2000) "Violence and the outlaw status of (street) prostitution in Canada." *Violence Against Women* 6(9): 987–1011.
- Luker, K. (1998) "Sex, social hygiene, and the state: The double-edged sword of social reform." *Theory and Society* 27(5): 601–34.
- Maginn, P. and Ellison, G. (2013) "Criminalising sex work does more harm than good." *Belfast Telegraph* (January 17): www.belfasttelegraph.co.uk/opinion/news-analysis/criminalising-sex-work-does-more-harm-than-good-29015224.html
- Manderson, D. (2005) "Interstices: New Work on legal spaces." *Law/Text/Culture* 9(1): 1–10.
- McKeganey, N. P. and Barnard, M. (1996) *Sex Work on the Streets: Prostitutes and Their Clients*. Philadelphia, PA: Open University Press.
- McNab, S. (2013) "Bid to outlaw prostitution in Scotland is blocked by Holyrood." *The Scotsman* (June 19): www.scotsman.com/news/politics/top-stories/bid-to-outlaw-prostitution-in-scotland-is-blocked-by-holyrood-1-2362966
- Morrow, M. (2012) *Proposed Changes in the Law to Tackle Human Trafficking – Consultation Paper*. Belfast: Democratic Unionist Party.
- NSW DUAP (1996) *Council Circular – Planning Controls of Brothels*. Sydney: New South Wales Department of Urban Affairs and Planning.
- NSW Select Committee (1986) *The Report of the Select Committee of the Legislative Assembly on Prostitution*. Sydney: Select Committee of the Legislative Assembly on Prostitution, NSW Government.
- Prior, J. and Crofts, P. (2011) "Queering urban governance: The emergence of sex industry premises into the planned city." In P. Doan (ed.), *Queering Planning: Challenging*

- Heteronormative Assumptions and Reframing Planning Practice*, 185–208. Farnham: Ashgate.
- Prior, J. and Crofts, P. (2012) “Effects of sex premises on neighbourhoods: Residents, local planning and the geographies of a controversial land use.” *New Zealand Geographer* 68(2): 130–40.
- Productivity Commission (2010) *Gambling*. Canberra: Australian Government.
- Spearritt, P. (1978) *Sydney Since the Twenties*. Sydney: Hale & Ironmonger.
- Sullivan, B. (2010) “When (some) prostitution is legal: The impact of law reform on sex work in Australia.” *Journal of Law and Society* 37(1): 85–104.
- US Census Bureau American Factfinder (2009) *Persons per Square Mile: 2008 Nevada by County*. TM-M2, Population Estimates Program. Washington DC: US Census Bureau.
- Wahab, S. (2005) “Guest editor’s introduction.” *Journal of Interpersonal Violence* 20(3): 263–9.
- Willsher, K. (2011) “Scandal-weary France to vote on outlawing prostitution.” *The Guardian* (December 4) www.theguardian.com/world/2011/dec/04/france-prostitution-scandal-imprisonment
- Writer, L. (2001) *Razor*. Sydney: Pan Macmillan.

Cases

- Fergusson v. Gee* (1967) NSWLR 791.
- Hang v. Strathfield Municipal Council* (2005) NSWLEC 99.
- Liu v. Fairfield City Council* (1996) NSWLEC 272.
- Martyn v. Hornsby* (2004) NSWLEC 614.
- Perry Properties Pty Ltd v. Ashfield Council* (No 2) (2001) NSWLEC 62.
- Sibuse v. Shaw* (1988) 13 NSWLR 98.
- Sun v. Campbelltown City Council* (2005) NSWLEC 518.
- Zhang v. Canterbury Council* (2004) NSWLEC 500 (48).

Notes

- 1 The terms prostitution/prostitute and sex work/sex worker are highly contested and are used by different groups to signify particular meanings. The term “sex work” is currently preferred by members of the sex industry to emphasize that paid sex services are a form of employment, and this is the term we will use in this paper. We realize that there are important debates about whether or not the exchange is simply labor. In addition, there have been some efforts to reclaim terms with historically negative connotations such as prostitute and whore. This paper will be very specific in using the terms prostitution to refer to institutions surrounding the sale of sex acts in the public marketplace as distinct from other forms of sexual work, including erotic dance, pornography and sex clubs. In addition, the terms prostitution and prostitute are used in historical and current legislative approaches in both Nevada and New South Wales. Where we need to be more general in referring to a broader array of sexual institutions or sexual labor, we will use the terms sexual commerce or commercial sex. When we are referring to workers we will use the term sex workers.
- 2 The impetus for the 1968 amendment was a decision of the NSW Court of Appeal in *Fergusson v. Gee* (1967), which refused to declare an East Sydney house disorderly just because it was used for prostitution. The Court held that even though prostitution occurred in the house, this conduct did not amount to “indecent conduct” as required

240 Penny Crofts and Barbara G. Brents

under section 3(1)(a). The Court proposed that Parliament, if it saw fit, could amend the Act. The resulting *Vagrancy, Disorderly Houses and Other Acts (Amendments) Act 1968*, read as follows: “3. (1) The *Disorderly Houses Act 1943* as subsequently amended, is amended by inserting at the end of paragraph (d) of subsection one of section three the following word and new paragraph:- or (e) That the premises are habitually used for the purpose of prostitution, or that they have been so used for that purpose and are likely again to be used for that purpose.”

- 3 Councils can develop and/or apply regulations in ways which make it very difficult for brothels to receive development consent. This can be done in a variety of ways – with restrictive parking, locational, security, operating hours, size of business policies. Where operators have appealed to the LEC, the court has considered council policies critically to determine if they are overly restrictive. For example, some councils have imposed parking requirements that are not required of developments with similar amenity impacts. If an operator has the money and time to appeal to the LEC, this requirement may be overturned, because the Land and Environment Court has accepted that sex services premises have different operating hours from existing businesses in the area, and clients tend not to park at the premises (*Liu v. Fairfield City Council*). This was reiterated by Commissioner Moore in *Zhang v. Canterbury*, stating “it is a well accepted position that this Court is not a court of morality.”
- 4 Nevada is one of the biggest states in the US in terms of size with only two major population centers. Las Vegas has 2 million people and contains 72 percent of the state’s population. Reno has 400,000. The rest of the state’s population is spread over 100,000 square miles. The majority of rural counties have fewer than six persons per square mile (US Census Bureau American Factfinder 2009). It is in these rural counties that legal prostitution exists.
- 5 Storey County Code 5.16.150.