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# You Can't Get Rid of It So You Might as Well Tax It: The Economic Impact of Nevada's Legalized Prostitution

David Goldman

## Introduction

Prostitution is arguably the oldest profession in the history of mankind. From 5<sup>th</sup> Century BCE, to ancient Greece, to modern day Amsterdam and Nevada, prostitution is a way of life for both the prostitutes as well as their customers. The debate regarding legalized prostitution is rife with arguments on both sides that speak of the pros and cons of a legalized or decriminalized stance toward prostitution. Scholars argue either from a morality standpoint buttressed with statistics on the quality of life the prostitutes experience, or scholars suggest that the prostitute's body is her own and she may do with it as she pleases. The economic impact of legalized prostitution is substantial and this impact cannot be refuted from either moralists or feminists who disagree with the profession as a whole. Nevada is one such example of a locale where the legalized prostitution industry brings in substantial income to the county coffers. This paper aims at addressing just how much of an economic impact Nevada's legalized prostitution has on the state. In a period of history where we are witnessing numerous states on the verge of bankruptcy, perhaps a prostitution industry such as the one Nevada has would greatly benefit these states.

Part I of this paper describes a brief history of prostitution as well as the legal stance on prostitution from a domestic as well as an international standpoint including Nevada's unique approach to prostitution. Part II demonstrates the economic impact of legalized prostitution in that state. An early history of prostitution in Nevada coupled with current state law has molded individualized county positions on prostitution within their borders. A breakdown of exactly

how much money is brought in on an annual basis reveals how valuable this industry is to Nevada's economic wellbeing. Part III parallels the Nevada stance on legalized prostitution with other states that may benefit from a similar approach. Just as Nevada on a county and statewide level profit from this controversial industry, so to can other states seeking to avoid imminent bankruptcy in this trying economic time. It should be noted that this article focuses solely on the economic impact of the industry; the moral arguments are not intertwined with the economic data.<sup>1</sup>

### Part I: A brief history of prostitution and the current legal position

Prostitution<sup>2</sup> is often said to be the oldest profession, and there is a lot of evidence that this is true. The earliest texts we have reference prostitutes, either sacred ones working for a temple or common street prostitutes.<sup>3</sup> Throughout the Bible, prostitutes played greater or lesser roles in many stories, from Delilah to Mary Magdalene. Prostitution has been in existence for millennia, going back to the Byzantine, Roman, Greek, and Egyptian empires.<sup>4</sup> In ancient Greece, the hetaera, or high class prostitutes, were seen as essential members of society, and

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<sup>1</sup> For an analysis of the moral argument regarding prostitution see the following works. Early works that framed prostitution as women's exploitation include: KATHLEEN BARRY, *FEMALE SEXUAL SLAVERY* (New York University Press 1979); CATHERINE MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* (Harvard University Press 1987); CAROLE PATEMAN, *THE SEXUAL CONTRACT* (Stanford University Press 1988). Other works frame prostitution as work and these include: LAURIE BELL, *GOOD GIRLS/BAD GIRLS: FEMINISTS AND SEX TRADE WORKERS FACE TO FACE* (Seal Press 1987); FREDERIQUE DELACOSTE & PRISCILLA ALEXANDER, *SEX WORK: WRITINGS BY WOMEN IN THE SEX INDUSTRY* (Cleis Press 1987). These two forms of debate are being superseded by empirical research revealing prostitution to be a much more complex reflection of cultural, economic, political, and sexual dynamics including works by: WENDY CHAPKIS, *LIVE SEX ACTS* (Routledge 1997); RONALD WEITZER, *SEX FOR SALE* (Routledge 2000).

<sup>2</sup> Prostitution is a broad topic and encompasses such issues as homosexual prostitution, human trafficking, and the prostitution laws of foreign countries. This paper concentrates on Nevada law and limits its analysis to heterosexual prostitution between female workers and male customers. Comparative law is touched upon briefly but only for illustrative purposes as the economic impact of Nevada's prostitution industry is the crux of the paper.

<sup>3</sup> Jamie K. Wilson, *Should Prostitution Be Legal? – Legal Prostitution Works Well in Many Countries Today*, Associated Content from Yahoo (2007), [http://www.associatedcontent.com/article/227393/should\\_prostitution\\_be\\_legal\\_legal.html?cat=17](http://www.associatedcontent.com/article/227393/should_prostitution_be_legal_legal.html?cat=17), (last accessed Feb. 24, 2011).

<sup>4</sup> Mark Liberator, *Legalized Prostitution – Regulating the Oldest Profession*, (2005) <http://www.liberator.net/articles/prostitution.html>, (last accessed Feb. 26, 2011).

were sought out for their conversation more than their bodies.<sup>5</sup> The existence of prostitution found its way into the United States during the nation's early history. In the 18<sup>th</sup> century some of the women in the American Revolution who followed the Continental Army served the soldiers and officers as sexual partners.<sup>6</sup> Army leadership encouraged the presence of prostitutes to keep troop morale high.<sup>7</sup> In the 19<sup>th</sup> century, parlor house brothels catered to upper class clientele while bawdy houses catered to the lower class. The gold rush profits of the 1820's through the early 1900's<sup>8</sup> attracted prostitution to the mining towns of the wild-west.<sup>9</sup> Prostitution continued throughout the 20<sup>th</sup> century and led to some politicians enduring great scrutiny for their involvement with illegal prostitution. In 1990, Congressman Barney Frank admitted to paying for sex in 1989 and the House of Representatives voted to reprimand him.<sup>10</sup> In 2007 U.S. Senator David Vitter from Louisiana acknowledged past transgressions after his name was listed as a client of the infamous "D.C. Madam" Deborah Jane Palfrey's prostitution service in Washington, D.C.<sup>11</sup> Most recently, former New York governor Elliot Spitzer resigned amid

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<sup>5</sup> Wilson, *supra* note 3, at 1.

<sup>6</sup> Wikipedia, *Prostitution in the United States*, [http://en.wikipedia.org/wiki/Prostitution\\_in\\_the\\_United\\_States](http://en.wikipedia.org/wiki/Prostitution_in_the_United_States), (last modified Feb. 12, 2011 and last accessed Feb. 26, 2011).

<sup>7</sup> *Id.*

<sup>8</sup> The first gold rush brought 40,000 people to Nevada by the 1860's. The first boom between 1860 and 1880 occurred in a vein in the northern part of the state, in the foothills of the Sierra Nevada. A second gold discovery in the southern part of the state spurred a mining boom between 1910 and 1930. This one centered in Goldfield, and from that sprang Las Vegas as a supply and railroad town. BARBARA BRENTS et al., *THE STATE OF SEX: TOURISM, SEX, AND SIN IN THE NEW AMERICAN HEARTLAND* 45-46 (Routledge 2010).

<sup>9</sup> *Id.*; see also REBECCA MEAD, *Letter from Nevada: How to Make an Honest Living from the Oldest Profession*, *NEW YORKER*, Apr. 23, 2001, at 74 ("Nevada, unlike Oregon was not settled by small farmers agitating for moral reform; instead it remained a saloon society, dominated by cowboys and hustlers"); Nicole Bingham, *Nevada Sex Trade: A Gamble for the Workers*, 10 *YALE J.L. & FEMINISM* 69, 85 (1998) ("Prostitution in this frontier state originally existed around mining camps, railroads and cattle towns.").

<sup>10</sup> Bill Dedman, *TV Movie Led to Prostitute's Disclosure*, *WASHINGTON POST*, August 27, 1989, available at <http://www.washingtonpost.com/wp-srv/local/longterm/tours/scandal/gobie2.htm> (last accessed, March 16, 2011).

<sup>11</sup> Joel Roberts, *Senator Caught in "D.C. Madam" Scandal* (2007), <http://www.cbsnews.com/stories/2007/07/09/national/main3037338.shtml> (last accessed March 16, 2011).

threats of impeachment following news reports alleging that he was a client of an international prostitution ring.<sup>12</sup>

Over time, countries have determined the best stance for their nation on prostitution based on a myriad of principles. While the legal position varies widely from country to country there are certain prevailing themes throughout. Studies of prostitution policy in different countries have generally placed laws into several categories. These include legalization (state licensing and various state regulations), abolitionist policies (laws punishing third-party “exploiters” and not the prostitute), criminalization (solicitation is illegal and the prostitute is criminalized) and decriminalization (regulation of prostitutes as independent businesses).<sup>13</sup> In countries where prostitution is regulated, either by legalization and/or decriminalization, the prostitutes may be registered, they may be hired by a brothel, they may organize trade unions, they may be covered by worker protection laws, their proceeds may be taxable, and they may be required to undergo regular health checks.<sup>14</sup> Therefore in a jurisdiction that permits some form of prostitution under a decriminalization or legalization approach, the regulations of the jurisdiction are in place to ensure the safety of both the workers and the customers, that the health of the prostitutes is carefully and appropriately monitored, and that the wages of both the prostitute and the brothel are taxed thus adding to the economic wellbeing of the locale.

Numerous countries have proposed or implemented changes in their penal codes that are reflective of the realization that criminalization may not achieve the desired end of curbing

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<sup>12</sup> Associated Press, *AP: New York Gov. Elliot Spitzer to Resign Effective Monday* (2008), <http://www.foxnews.com/story/0,2933,336688,00.html> (last accessed, March 16, 2011).

<sup>13</sup> Barbara Brents & Kathryn Hausbeck, *State Sanctioned Sex: Negotiating Formal and Informal Regulatory Practices in Nevada Brothels*, 44 SOC. PERSP. 307, 308 (2001).

<sup>14</sup> Wikipedia, *Prostitution and the Law*, [http://en.wikipedia.org/wiki/Prostitution\\_and\\_the\\_law](http://en.wikipedia.org/wiki/Prostitution_and_the_law), (last modified Feb. 2, 2011 and last accessed Feb. 26, 2011).

prostitution.<sup>15</sup> Indeed, a July 2003 article in the *Economist Online* observed that “these days, many in the world’s more liberal countries doubt if the exchange of sex for money between consenting adults really does threaten the fabric of society and ask if the state really has the right to stop them from doing so.”<sup>16</sup> Worldwide in 1998, the sex industry was worth at least \$20 billion a year and probably many times that.<sup>17</sup> In that same year, a study by the United Nations’ International Labor Organization found that of the four countries that report statistics for the sex sector – Indonesia, Malaysia, the Philippines, and Thailand – between 800,000 and a million people received payment for sexual services, generating between 4 to 13 percent gross domestic product in these countries.<sup>18</sup> Germany, Holland, Australia, New Zealand, Belgium, and South Africa all permit, in differing forms, legalized prostitution.<sup>19</sup> A Belgian proposal in 2004 gave prostitutes the same legal rights as any other worker and the government expects to take in \$55 million in taxes related to the sex industry.<sup>20</sup>

Other countries, such as Italy and Romania are considering the possibility of legalized brothels while officials in Cape Town, South Africa, decided in 1999 to publicize brothels as a tourist attraction to boost the economy.<sup>21</sup> In 2003, New Zealand’s Parliament passed a comprehensive act to decriminalize the profession and provide numerous rights for the sex workers.<sup>22</sup> Like the Nevada model, this act includes provisions such as health checks and requirements, prohibition on certain forms of advertising, and restricting the minimum age of sex

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<sup>15</sup> Jacqueline Cooke & Melissa Sontag, *Sixth Annual Review of Gender and Sexuality Law: II. Criminal Law Chapter: Prostitution*, 6 GEO. J. GENDER & L. 459 at 12.

<sup>16</sup> *Id.*

<sup>17</sup> BRENTS et al., *supra* note 8, at 35.

<sup>18</sup> *Id.*

<sup>19</sup> Cooke & Sontag, *supra* note 15, at 12.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Prostitution Reform Act 2003, 2003 S.N.Z. No. 28, [hereinafter “New Zealand Act”] available at: <http://www.legislation.govt.nz/act/public/2003/0028/latest/DLM197815.html>

workers. Many of these countries models are based on the Nevada model<sup>23</sup> and the general social acceptance of Nevada's regime and international legal change indicate that the discourse surrounding sex work has broadened and prostitution's criminal status will not remain unchallenged.

The United States, unlike countries where prostitution has been either legalized or decriminalized, takes a different approach toward prostitution. Today, most American laws are a combination of the other two approaches toward prostitution, the abolitionist and the criminalization approaches.<sup>24</sup> This ideology generated laws at the turn of the 20<sup>th</sup> century such as the Mann Act,<sup>25</sup> anti trafficking treaties in the mid 1900s and other legal reforms designed to abolish prostitution.<sup>26</sup> However, in the United States, each of the fifty states has the power to decide whether or not prostitution should be legal in all or part of that state. Criminalization became the dominant prostitution policy in the United States after World Wars I and II.<sup>27</sup> Recently however, decriminalization principles have entered the policy debates. In the early 1970s, as the women's movement began to criticize prostitution laws generally, prostitutes themselves began to organize and created the group known today as COYOTE (Call Off Your Old Tired Ethics), which challenged selective enforcement and discrimination.<sup>28</sup> This and other groups began to frame prostitution as work<sup>29</sup> and called for decriminalization, which would

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<sup>23</sup> See note 190 *infra*; see also New Zealand Act, *supra* note 22.

<sup>24</sup> See Brents & Hausbeck, *supra* note 13, at 310.

<sup>25</sup> Named after Congressman James Robert Mann, the law in its original form prohibited white slavery and the interstate transport of females for "immoral purposes. The ambiguous immoral language led to selective prosecutions for many years but has been amended by Congress to apply only to transport for the purpose of illegal acts of prostitution. Brents & Hausbeck, *supra* note 13, at 309.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*; see also VALERIE JENNESS, MAKINGIT WORK: THE PROSTITUTES' RIGHTS MOVEMENT IN PERSPECTIVE, (Hawthorne 1993). COYOTE began to lobby for less harsh penalties for the crime of prostitution while attempting to reduce discrimination against prostitutes. The group attempted to label prostitution as a form of work rather than a crime.

ultimately allow the prostitutes to operate in the same fashion as other independently licensed businesses.<sup>30</sup>

Decriminalization would allow for strict regulation thus producing safer working conditions for the prostitutes, mandatory health checks, less drug and alcohol dependency, a reduction of pimps and other criminal elements from the business, and most importantly would allow for the taxation of both the prostitutes themselves and the houses of prostitution they work in. Taxation is a small price to pay in exchange for better working environments and safer conditions for the industry. The respective governments who would be regulating the industry and taxing the workers can benefit greatly from a practice that has been around forever and has shown no signs of slowing down. No greater example of this money making and safer system of prostitution is evident than the model the state of Nevada currently has in place.

Nevada is the only state in the United States to have legalized prostitution. A decentralized, haphazard, and historically unique set of laws and norms have created and sustained the Nevada brothel industry. Nonetheless, this system of legalized prostitution is ingrained in the economic and social systems of rural Nevada.<sup>31</sup> The economic ramifications of the brothels offer a startling realization of just how important the brothel revenue is. It is noteworthy to bring to light the evolution of Nevada's legalized prostitution before delving into current Nevada law and the economic impact on the state. Shortly after Nevada achieved statehood in 1864, the Nevada State Legislature passed municipal incorporation laws that

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<sup>30</sup> *Id.*; see also PRISCILLA ALEXANDER, FEMINISM, SEX WORKERS, AND HUMAN RIGHTS WHORES AND OTHER FEMINISTS, (J. Nagle, ed., 1997) Alexander provides an outline of rights to protect sex workers and calls for a distinction between forced and voluntary prostitution. She calls for the same rights that other labor unions have including health benefits and safe environments to work in.

<sup>31</sup> See Brents & Hausbeck, *supra* note 13, at 1.

allowed incorporated cities to regulate prostitution.<sup>32</sup> In 1881, the Legislature passed the Town Board Act, authorizing county commissioners to regulate brothels in unincorporated areas.<sup>33</sup> Meanwhile, every other state moved to proscribe selling sex for money, culminating in 1917 with the federal government's shutdown of Storyville in New Orleans which was the once legally permissible prostitution district in the state.<sup>34</sup> The original Chicken Ranch, arguably America's most notorious brothel, has a history that goes back to the 19<sup>th</sup> century in Texas.<sup>35</sup> The Chicken Ranch was shut down in Texas in 1973 and the name was bought by a brothel owner in Nye County Nevada named Joe Conforte.<sup>36</sup> Two years earlier in 1971, Conforte, owner of the brothel called Mustang Ranch near Reno, Nevada, managed to convince county officials to pass an ordinance which would provide for the licensing of brothels and prostitutes, thus avoiding the threat of being closed down as a public nuisance.<sup>37</sup> The Mustang Ranch became Nevada's first licensed brothel, eventually leading to the legalization of brothel prostitution in ten of seventeen counties in the state.<sup>38</sup>

Nevada state law is quite specific in terms of its regulations on the brothel industry. The statutory scheme as well as the Nevada Administrative Code which proscribes regulations for State Agencies has laid out the foundation for what is permissible within the brothel industry and

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<sup>32</sup> Daria Snadowsky, Comment, *The Best Little Whorehouse is Not in Texas: How Nevada's Prostitution Laws Serve Public Policy, and How Those Laws May Be Improved*, 6 NEV. L.J. 217, 219 (2005).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Richard Abowitz, *The Life: Inside a Brothel*, LAS VEGAS WEEKLY, <http://www.lasvegasweekly.com/news/archive/2005/jun/23/the-life/>, (2005) (last accessed Mar. 16, 2011).

<sup>36</sup> Mr. Conforte, a key figurehead in Nevada's eventual legalization of brothels was not without personal trouble. In the 1970's he was investigated by Washoe and Storey county grand juries and his list of surveyors included the FBI in the 1980's. In 1981 he fled to Brazil to escape charges of income tax evasion. After testifying as a witness against Judge Harry Claiborne on bribery charges he was allowed to stay in Nevada and was arrested a year later for buying a 17-year-old drink. At one point in the 1980's the U.S. government actually took control of Mustang and after years of battle, the FBI successfully implicated Mustang ownership in income tax violations and eventually closed the Mustang doors for good in 1999. BRENTS et al., *supra* note 8, at 80-81.

<sup>37</sup> Wikipedia, *Prostitution in Nevada*, [http://en.wikipedia.org/wiki/Prostitution\\_in\\_Nevada](http://en.wikipedia.org/wiki/Prostitution_in_Nevada) (last modified Feb. 3, 2011 and last accessed Feb. 26, 2011).

<sup>38</sup> Wikipedia, *Prostitution in the United States*, *supra* note 5.

what is required of owners, operators, and workers alike. The Nevada Supreme Court began to grapple with statutory interpretation after Joe Conforte convinced county officials to pass the ordinance providing for the licensing of brothels. In 1978, Linda Dinitz was convicted of solicitation of prostitution under NRS § 207.030(1)(b), Nevada’s vagrancy statute.<sup>39</sup> Petitioner offered for money to copulate with a man in his car in the parking lot of a Las Vegas hotel. Her conviction was upheld by the Nevada Supreme Court pursuant to the subsection of Nevada’s vagrancy statute making illegal the solicitation of any act of prostitution,<sup>40</sup> and she was fined.<sup>41</sup> The Nevada Supreme Court opined that the words of the vagrancy statute stating “every person...who solicits any act of prostitution” is clear and not vague, vagueness was the primary argument put forth by the defense.<sup>42</sup> In 1994, the Nevada Supreme Court discussed the level of intent needed to justify prosecution of an illegal prostitution act. The court asserted that solicitation of prostitution is a general intent crime with the state being obligated to prove that one knowingly solicited another to engage in sexual conduct but not obligated to prove that one intended to follow through on the offer.<sup>43</sup> The legislature went further and stated, in Title 15, the Crimes and Punishment section, that it is unlawful for any person to engage in prostitution or solicitation therefore, except in a licensed house of prostitution.<sup>44</sup>

The definition of a “licensed house of prostitution” is also clear and unambiguous. NRS § 244.345 discusses the requirements for “dancing halls, escort services, entertainment by referral services [...] and the limitation on licensing of houses of prostitution.”<sup>45</sup> Subsection 8 states that in a county whose population is 400,000 or more, the licensing board shall not grant

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<sup>39</sup> Dinitz v. Christensen, 577 P.2d 873 (Nev. 1978).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 233.

<sup>43</sup> Glegola v. State, 871 P.2d 950 (Nev. 1994).

<sup>44</sup> NEV. REV. STAT. ANN. § 201.354(1) (2010).

<sup>45</sup> NEV. REV. STAT. ANN. § 201.345 (2010).

any license to a petitioner for the purpose of operating a house of ill fame or any other business employing any person for the purpose of prostitution.<sup>46</sup> The legislature has given broad deference to the county licensing board in order to collect fees, grant or deny licenses, and adopt or repeal regulations pertaining to licenses.<sup>47</sup> The Supreme Court of Nevada was confronted with this statute and determined, in *Nye v. Plankinton*, that NRS §244.345(8), when read in conjunction with NRS § 244.345(1), manifested a statutory licensing scheme for houses of prostitution in cities or towns whose population is less than 400,000.<sup>48</sup> In the court’s view, this licensing scheme was repugnant to and, by plain and necessary implication, repealed the common law rule that a house of prostitution constituted a nuisance per se.<sup>49</sup>

The Nevada Supreme Court further interpreted the provisions of NRS § 244.345 in 1980 in *Kuban v. McGimsey*.<sup>50</sup> Lincoln County had enacted an ordinance which imposed restrictions on prostitution and regulated the number of brothels. Petitioners argument was premised on the holding in *Nye v. Plankinton*, asserting that state law now permits the licensing of houses of prostitution and that the less populated counties are divested of the power to prohibit them.<sup>51</sup> However the court made it clear that the holding in *Nye* merely confirmed the fact that houses of prostitution were no longer a nuisance per se<sup>52</sup> but the electorate of the county by initiative and referendum have voted to ban all brothels<sup>53</sup> within county limits and that the legislature has reserved the total ban question to the counties but demands licensing in counties where brothels

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<sup>46</sup> NEV. REV. STAT. ANN. § 201.345(8) (2010); This subsection of the statute currently affects only the city of Las Vegas (within Clark county) and the city of Reno. Contrary to popular belief, prostitution is illegal within Las Vegas city limits as well as within Reno. According to George Flint, Head Lobbyist for the Nevada Brothel Association, due to population growth this subsection will likely be amended to read ‘700,000’ as opposed to ‘400,000’.

<sup>47</sup> S. 329, 2001 Reg. Sess. (Nev. 2001).

<sup>48</sup> *Nye v. Plankinton*, 587 P.2d 421 (Nev. 1978).

<sup>49</sup> *Id.* at 3.

<sup>50</sup> *Kuban v. McGimsey*, 605 P.2d 603 (Nev. 1980).

<sup>51</sup> *Id.* at 5.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

are allowed.<sup>54</sup> The counties themselves are free to determine if a ban on brothels is warranted. Five counties with a population under 400,000 have banned brothels after determining that it is in the best interest of their county.<sup>55</sup>

Brothels are thus permissible in counties with a population of less than 400,000. However the state has decided to regulate the amount and appropriateness of advertising for the brothels as well as restrict their location within the counties that allow them. NRS § 201.380(1) states that it shall be “unlawful for any owner [...] to be kept as a house of ill fame [...] situated within 400 yards of any schoolhouse or schoolroom [...] or within 400 yards of any church, edifice, building or structure erected for and used for devotional services or religious worship”.<sup>56</sup> This statute imposes zoning restrictions designed to keep brothels relatively separate and hidden from “respectable society”.<sup>57</sup> Enactments of the legislature like this one concerning prostitution and its conduct do not constitute it a lawful activity when practiced in an area not prohibited by statute or conducted in a manner not forbidden by statute.<sup>58</sup> The legislature has also decided the parameters for advertising of the brothels. There are limitations on the type, size, and signage of buildings that offer prostitution.<sup>59</sup> Furthermore, NRS § 201.430(1)(a) and (b) make it a crime to advertise for a house of prostitution in any public theater, on any public streets or highways and in any city, county, or town where prostitution is prohibited by local ordinance or by state

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<sup>54</sup> *Id.*

<sup>55</sup> Carson City, Douglas, Lincoln, Pershing, and Washoe counties are the five which, via county law, have determined not to adhere to the state law permitting brothels and do not permit brothels within county limits. Washoe County has recently changed its stance (*See* Part III). BRENTS et al., *supra* note 8, at Appendix B.

<sup>56</sup> NEV. REV. STAT. ANN. § 201.380 (2010).

<sup>57</sup> Brents & Hausbeck, *supra* note 13, at 308.

<sup>58</sup> *See* Cunningham v. Washoe County, 203 P.2d 611 (Nev. 1949).

<sup>59</sup> Brents & Hausbeck, *supra* note 13, at 319.

statute.<sup>60</sup> NRS § 201.440(1) states that one may not advertise in his or her place of business for a house of prostitution in any place where prostitution is illegal.<sup>61</sup>

The Nevada Supreme Court was petitioned to identify the scope of these statutes. In 1981, the owner of a brothel asked the court to declare NRS §201.430 and 440 unconstitutional on the grounds that their advertisements were commercial speech and thus protected by the 1<sup>st</sup> Amendment. The court asserted in *Princess Sea Industries v. State of Nevada*, that commercial speech is afforded only “a limited measure of protection commensurate with its subordinate position in the scale of First Amendment values and that modes of regulation that might be impermissible in the realm of non-commercial expression” are permitted.<sup>62</sup> The court reasoned that the scope of NRS § 244.430 and 440 is constitutional since prostitution is an issue of the state choosing to either regulate or forbid and does not fall within federal regulations.<sup>63</sup> In 1996 the state Attorney General was asked to interpret the parameters of these advertising statutes. A request was made by the Secretary of State to determine if a prospectus containing sales literature that was distributed to investors constituted unlawful advertising if these materials were sent to Nevada counties where all forms of prostitution are prohibited.<sup>64</sup> The Attorney General, after careful review of the advertising statutes, determined that since the prospective owner is not a current owner, operator, agent, or employee of the existing brothel for purposes of the NRS §204.430 the only available statute to apply might be NRS § 204.440. The Attorney General concluded that there was no evidence that the prospective owner would knowingly allow the advertising of its business in an impermissible manner per the statute should the brothel be

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<sup>60</sup> NEV. REV. STAT. ANN. § 201.430(1)(a) & (b) (2010).

<sup>61</sup> NEV. REV. STAT. ANN. § 201.440 (2010).

<sup>62</sup> *Princess Sea Industries v. State of Nevada*, 635 P.2d 281 (Nev. 1981). This case proceeds *Central Hudson* which announced a more protective standard for commercial speech. *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980).

<sup>63</sup> *Id.* at 5.

<sup>64</sup> 96 Nev. Op. Att’y Gen. 01 (1996).

permitted within the county.<sup>65</sup> The legality of phone and internet advertising will eventually be litigated further to determine the scope of the statute in these mediums<sup>66</sup> and brothel owners are eagerly awaiting the outcome.<sup>67</sup>

In addition to these numerous and elaborate state laws on prostitution, the individual counties themselves also have a strict set of policies and procedures for the operation of the brothels within their county limits. Brothel prostitution is allowed through local regulation and licensing in ten counties throughout Nevada.<sup>68</sup> In these counties where prostitution is permitted, the Nevada Supreme Court has concluded that regulation of brothels is a matter of local concern.<sup>69</sup> Brothels have been described as a business activity which is not a nuisance per se and thus a county does not have to abate brothel activity as a nuisance if the county chooses to regulate such a business.<sup>70</sup>

The counties where brothels are deemed legal have their own codes which detail every aspect of prostitution. County codes now spell out the necessary procedures for licenses and appeals as well as fee structures and have eliminated archaic clauses and codified restrictions on prostitutes. It is because of this modernization that many local brothel ordinances are beginning to look very similar to each other.<sup>71</sup> Most city and county ordinances include the following:<sup>72</sup>

1. License and control boards consisting of either the county commission or town board.

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<sup>65</sup> *Id.* at 4.

<sup>66</sup> The Nevada Supreme Court held that an escort service advertised illegally merely by telling a customer over the phone that it offers “special services”. *Washington v. Clark County Liquor & Gaming Licensing Bd.*, 683 P.2d 31, 34 (1984).

<sup>67</sup> NEV. REV. STAT. ANN. § 201.430(1)(b) frustrates brothel owners who want to advertise their services to tourists in Las Vegas and Reno and raises the unsettled question as to whether websites violate this statute.

<sup>68</sup> *Id.* at 2.

<sup>69</sup> *See Kuban v. McGimsey*, 605 P.2d 623 (Nev. 1980).

<sup>70</sup> *See Nye v. Plankinton*, 587 P.2d 421 (Nev. 1978).

<sup>71</sup> *Brents & Hausbeck*, *supra* note 13, at 316.

<sup>72</sup> *Id.*

2. Prostitution defined as a privileged license.
3. Prostitution defined as not a nuisance which addresses the issue in *Nye v. Plankinton*, *supra*.
4. License application procedures, contents, filing and investigations.
5. License restrictions, general prohibitions, and allowances for the licensing board to impose other restrictions.
6. License issuance, renewal fees.
7. Zoning, or specifications on the location of brothels
8. Health requirements, medical examinations.
9. Employee requirements, registration including work permits for prostitutes, managers, bartenders, or maintenance or cleaning personnel.
10. Conditions for the revocation of licenses, due process and hearing procedures, and exceptions to allow emergency closing.
11. Restrictions on advertising similar to or even more restrictive than the state's regulations.
12. All other fees and penalties.

Brothel applicants are required to pay an investigation fee, which can run from \$1500 (in Ely County) to \$58,600 (in Lyon County); in some counties it is nonrefundable, in others the money is returned after the investigation.<sup>73</sup> In Lyon County and Nye County, these investigations conducted by the Sheriff's office include but are not limited to: a complete check of all records of the FBI and any other similar organization concerning the criminal record of any applicant, a personal interview with the applicant, interviews with all employers and business associates of the applicant, and an examination of the financial statement and background of

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<sup>73</sup> *Id.* at 317.

applicant.<sup>74</sup> Many county ordinances prohibit individuals from getting a license if they have been convicted of felony, drug charge, theft, embezzlement, crimes involving use of a deadly weapon, any involvement in illegal business or financial insolvency, or if their associates would be “contrary to the health, welfare, or safety of the City [or County] and its residents”.<sup>75</sup> In fact the reference to unsavory associates is the exact wording in the Lander and Churchill County codes, the City of Carlin Code as well as the city codes of Ely and Wells and is a close match to the wording from the Storey County and Lyon County Codes.<sup>76</sup> The purpose behind these provisions is to ensure that organized crime plays no role in the brothel industry.

Perhaps the most rigid of the county requirements are the ones specifically enacted for the employees. The subsections regarding registration and work card permits coupled with the health examinations subsections<sup>77</sup> are lengthy, specific, and invasive. If a woman wants to work in Lyon County for example she must supply her name at birth with all aliases used,<sup>78</sup> a recent photo and full set of fingerprints,<sup>79</sup> complete employment record and all known addresses for the last three years,<sup>80</sup> as well as a complete criminal history.<sup>81</sup> An FBI background check is performed and the prostitute can be denied a work card for a plethora of reasons, mostly criminal but some relating to age or making false statements on the application.<sup>82</sup> Support staff of the brothel – security guards, maintenance, desk clerks, etc – must also go through the same

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<sup>74</sup> Lyon County Code, Nev. § 5.03.07(b)(1-4) & Nye County Code, Nev. § 9.20.100(a)(1-4).

<sup>75</sup> Brents & Hausbeck, *supra* note 13, at 317.

<sup>76</sup> Lander County, Nev., Code § 5.16.080; Churchill County, Nev., Code, § 5.20.100 (E)(7); Carlin, Nev., Code § 5-9-8(e); Ely Nev., Code Sec. § 10A-7(e) ;Lyon Nev., Code Sec. § 5.03.07(e)(8); close wording from Storey, Nev. Code § 5.16090.

<sup>77</sup> See Part II.

<sup>78</sup> Lyon County Code, Nev. § 5.03.14(A)(1)(a)(1).

<sup>79</sup> Lyon County Code, Nev. § 5.03.14(A)(1)(a) (3).

<sup>80</sup> Lyon County Code, Nev. § 5.03.14(A)(1)(a) (4) & (5).

<sup>81</sup> Lyon County Code, Nev. § 5.03.14(A)(1)(a) (6).

<sup>82</sup> Lyon County Code, Nev. § 5.03.14(A)(1)(a) 5.03.14(A)(1)(b)1-3 and (c) 1-8.

process.<sup>83</sup> Nye County takes a similar position in its county code. Some notable differences include the duration an employee is required to furnish information regarding past employment and addresses.<sup>84</sup> The Code states that any prospective employee who has been convicted of a felony involving “moral turpitude” will not be considered for a license.<sup>85</sup> These county restrictions coupled with the state statutes are designed to ensure that only people who meet the qualifications set forth in the code work as both prostitutes and support staff at the brothels, that the facilities themselves are maintained in the best possible manner<sup>86</sup>, that the location of the brothels as well as advertising of the brothels is kept away from the public, and that the health of the prostitutes is checked weekly in order to promote safe conditions. Despite compliance with the state statutes as well as both county and city codes the legalized prostitution remains a lucrative industry for the owners, employees, and most importantly, the county.

## Part II: The Economic Impact of the Nevada Brothels

Nevada counties are able to profit from legalized prostitution because the brothel system succeeds at recognizing prostitution as a reality and therefore functions to protect all the affected parties and reap the economic benefits of the industry.<sup>87</sup> At the 1999 Ely town meeting which resulted in brothel prostitution remaining legalized one of the speakers stated: “And we do recognize in this state, as all states do, that there are such a thing as vices. We recognize that you cannot legislate them out of existence, and the best you can do is regulate and control them.”<sup>88</sup> In addition to brothel prostitution constituting an integral element of Nevada’s history, it also represents a “relatively significant and stable source of county income” in several of Nevada’s

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<sup>83</sup> Lyon County Code, Nev. § 5.03.14(A)(1)(a) 5.03.14.(B).

<sup>84</sup> Nye County Code, Nev. § 9.20.140(A)(4) and (5).

<sup>85</sup> Nye County Code, Nev. § 9.20.140(C)(1).

<sup>86</sup> To ensure both safety for all who work there and for preserving the health of both prostitutes and employees.

<sup>87</sup> Snadowsky, *supra* note 32, at 2.

<sup>88</sup> *Id.* at 17.

smaller towns.<sup>89</sup> County coffers are fattened from the tax dollars paid via licenses and fees, from money saved combating what everywhere else is deemed a crime, from reduced health care costs, as well as from tourist dollars and other sources.

#### Taxation Dollars – State and County

George Flint, chief lobbyist for the Nevada Brothel Association, asserts that currently in Nevada the ten counties that have chosen to legalize prostitution contain a total of twenty five brothels that are licensed and operational.<sup>90</sup> There are approximately twelve hundred women licensed as sex workers, with three-hundred women working at any given time.<sup>91</sup> In addition, a total of seven-hundred-fifty employees are on staff during brothel business hours, which range from sixteen to twenty-four hours a day.<sup>92</sup> The Nevada Brothel Association estimates that the brothels pull in about thirty-five million dollars per year.<sup>93</sup> The counties, rather than the State, see money from brothel prostitution in the form of licensing fees, property tax, work card fees, investigation fees and liquor licenses, totaling about ten million a year.<sup>94</sup> The state does not receive more money because Nevada does not have a state income tax and because the brothels do not pay a payroll, banking, or business tax.

Flint estimates that the state would make a substantial amount of money if it taxed prostitution as it taxes marriage,<sup>95</sup> but the State has refused. The Nevada Legislature in 2005 approved an entertainment tax that excluded brothels even though the brothel industry itself

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<sup>89</sup> *Id.* at 5.

<sup>90</sup> Phone Interview with George Flint, February 24, 2011.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> Snadowsky, *supra* note 32, at 13.

<sup>94</sup> *Id.*

<sup>95</sup> Flint interview, *supra* note 90.

lobbied to be included.<sup>96</sup> The state of Nevada receives four dollars for every marriage license and according to Flint “needs all the money they can get”<sup>97</sup> yet the State won’t take any money from the brothels who themselves wish to be taxed. 2005 was not the only year that the brothel association lobbied for a tax on its industry. Since 2001, for a total of five legislative sessions, the brothel industry has offered to be part of the entertainment tax<sup>98</sup> and while the legislature refused the tax, the Brothel Association’s willingness did not go un-praised for its proposed efforts.<sup>99</sup> The most recent push transpired in 2009 when the Brothel Owners Association, supported by Democratic State Senator Bob Coffin, proposed a \$5 dollar tax per act of prostitution, with the proceeds partly being used for a sex worker counseling agency.<sup>100</sup> This proposal was voted down by the Taxation Committee.<sup>101</sup> Coffin asserted that prostitution is “almost de facto legal. It’s running unregulated.”<sup>102</sup> Flint estimated that there are over 400,000 sex acts performed annually at the state’s licensed brothels.<sup>103</sup> This proposed tax that Senator Coffin suggested would mean over \$2 million for the state. The mayor of Las Vegas has also

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<sup>96</sup> Snadowsky, *supra* note 32, at 2.

<sup>97</sup> Flint interview, *supra* note 76; *see also* Jon Pike, *Nevada Considers More Brothels and Taxes*, Suite101 Article, <http://www.suite101.com/content/nevada-considers-more-brothels-and-taxes-a93299> (last accessed March 15, 2011). (Pike asserts that Nevada has been hit hard by the country’s economic slowdown with one possible source of more income coming from increasing and/or taxing the current brothels in the state. In Jan 2009, the state was facing a \$1.8 billion deficit fueled in part by a decline in tourism.)

<sup>98</sup> Flint interview, *supra* note 90.

<sup>99</sup> *See* Ed Vogel, *Live Entertainment Tax: Nearly All Brothels Exempt*, LAS VEGAS REVIEW JOURNAL, Aug 2, 2003, at 1B “During hearings on tax bills, no opposition was expressed to proposals to tax brothels. Assemblywoman Sheila Leslie [...] praised [Nevada Brothel Association lobbyist George] Flint and the brothel association for their willingness to accept a tax.”

<sup>100</sup> NPR News, *Prostitution Tax Proposed in Nevada*, Mar. 24, 2009 (last accessed Mar 20, 2011).

<http://www.npr.org/templates/story/story.php?storyid=102314296> (Senator Coffin stated that the state is desperate to find money for essential government services and he would go anywhere to find it. He further estimates that this tax would net the state \$2 million per year. He stated that there are legal brothels throughout the state who wish to be taxed yet no one would be willing “to get their hands dirty” something Senator Coffin said he would do himself if need be.)

<sup>101</sup> Cy Ryan, *Senate Committee Kills Prostitution Tax Bill*, LAS VEGAS SUN, Apr 9, 2009. (last accessed March 20, 2011) <http://www.lasvegassun.com/news/2009/apr/09/nevada-senate-panel-kills-prostitution-tax-bill/> (By a 4-3 vote the Senate Taxation Committee rejected Bill396 which would have imposed the tax on brothels. Had the bill passed it was likely that it would ultimately face a veto from the governor’s desk who did not support the tax.)

<sup>102</sup> Pike, *supra* note 97, at 2.

<sup>103</sup> Flint Interview, *supra* note 90.

decided to lobby for a legalized brothel industry within his city. Since 2003, Mayor Oscar Goodman has repeatedly stated that he favors legalization of prostitution, perhaps turning Fremont Street into a little Amsterdam - with legalized brothels and a medical clinic - and he offered some pragmatic reasons to back legalized prostitution in his city.<sup>104</sup> Those include the acknowledgment that illegal prostitution is occurring and that brothels could provide safer, regulated, and revenue-generating sex.<sup>105</sup> The mayor went on to say that “we kid ourselves and we’re very disingenuous if we pretend that there isn’t rampant prostitution that is unsafe for which we get no tax revenue.”<sup>106</sup> One lawmaker said that Goodman approached him about the possibility of changing state law to allow legal brothels in Las Vegas.<sup>107</sup> Flint asserted that if Las Vegas chose to legalize prostitution and taxed it accordingly - one-thousand women performing four dates per day at half the normal rate - the tax would net the city roughly \$392 million every two years, enough to pay for new schools, law enforcement functions and wages, or help balance the city’s budget.<sup>108</sup>

The state does acquire tax revenue from the brothel industry by way of the tax on alcohol sales as well as business license fees which are a quarterly twenty-five dollar fee for each full-time employee.<sup>109</sup> State Tax Examiner Ruth Jones asserted that a true calculation of revenue the state receives from the brothel industry is unclear because the Department of Taxation does not separate tax from brothel bar sales from the taxes of other establishments; the money is simply

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<sup>104</sup> Erin Neff, *Legalized Prostitution: Vegas Brothels Suggested*, LAS VEGAS REVIEW JOURNAL, Oct. 24, 2003, [http://www.reviewjournal.com/lrvj\\_home/2003/Oct-24-Fri-2003/news/22438503.html](http://www.reviewjournal.com/lrvj_home/2003/Oct-24-Fri-2003/news/22438503.html) (last accessed March 20, 2011).

<sup>105</sup> Geoff Schumacher, *Goodman’s Brothel Views Aren’t Irresponsible*, LAS VEGAS REVIEW JOURNAL, Sep. 9, 2007, <http://www.lrvj.com/opinion/9676117.html> (last accessed Mar. 20, 2011).

<sup>106</sup> Pike, *supra* note 97, at 2.

<sup>107</sup> Neff, *supra* note 104.

<sup>108</sup> Flint interview, *supra* note 90.

<sup>109</sup> Sandowsky, *supra* note 32, at 13.

lumped together rather than separated by industry.<sup>110</sup> In terms of the quarterly licensing fee, it is estimated that the state pulls in close to \$120,000 annually from the workers.<sup>111</sup> While this figure does not seem overly significant, the tax revenue the state receives could be much more substantial if Nevada had a state income tax. Every transaction in a brothel is monitored and kept on the books unlike street prostitution.<sup>112</sup> The house usually takes half of the agreed upon price. Prostitutes earnings can be quite sizeable. Trinity, a prostitute at the famous Chicken Ranch, stated in an interview that she estimates her monthly income at \$9,000 to \$12,000, and another girl interviewed asserted that she hopes to earn \$500 each day she works.<sup>113</sup> With 1,200 legal working girls in Nevada, the state income tax on these workers could be significant and if coupled with the proposed taxes that both Senator Coffin and the Brothel Association have been lobbying for, the total amount of tax revenue would not be something to scoff at.

It is much easier to calculate the revenue obtained on an individual county basis as opposed to the state. The counties have been well aware from the inception of the legal prostitution industry of the financial possibilities that the industry could provide as an additional economic resource.<sup>114</sup> Since counties began legalizing prostitution in the early 1970's, they have been reaping an economic benefit from a variety of brothel related revenue sources including the multitude of taxes and fees required by each county as well as liquor licenses and sales.<sup>115</sup> In total the sources generate more than \$10 million for the county coffers annually.<sup>116</sup> While the

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<sup>110</sup> Lois Gormley, *Prostitution Pumps Millions Into Nevada's Economy*, OUTPOST JOURNAL, UNIVERSITY OF NEVADA, RENO, Dec 11, 1998 <http://www.jour.unr.edu/outpost/community/archives/com.gormley.prostitute.html> (last accessed Mar. 20, 2011).

<sup>111</sup> Flint's numbers were derived from the following figures: 1200 workers X \$25 a quarter = the figure he posited.

<sup>112</sup> Brents Et al., *supra* note 8, at 117.

<sup>113</sup> Abowitz, *supra* note 35, at 13.

<sup>114</sup> Lois Gormley, *Red Light Districts Sweeten County Coiffers*, OUTPOST JOURNAL, UNIVERSITY OF NEVADA, RENO, Dec. 11, 1998. <http://www.jour.unr.edu/outpost/community/archives/com.gormley.prostitute2.html> (last accessed Mar. 20, 2011).

<sup>115</sup> Gormley, *supra* note 110.

<sup>116</sup> *Id.*

state (due in large part to no state income tax nor a tax on the industry) is left with mere crumbs, the counties, depending on the size, number, and earnings of their particular brothels can consider legalized prostitution as a serious revenue builder for their coffers.<sup>117</sup> The counties have considered proposals to close down the brothels at various points and these proposals have been vehemently rejected by the voters, the mayors, or by county commissions.<sup>118</sup>

Nye County, located in the northwest part of the state, is an example of a Nevada county that embraces the revenue it receives from the brothels. All told, Nye County receives close to \$4,100,000 per year from the brothels by way of sales tax, prop tax, privilege tax, the business licensing fees, registration fees, and liquor licenses and sales.<sup>119</sup> Robin River of the Nye County Assessor's Office outlined the valuable ways in which the county uses brothel taxes.

The tax dollars go into many county funds. They pay for all of the county's emergency services, the museum, juvenile probation and many capital projects. Also, the brothels pay \$7,500 every quarter for a privilege tax, and each brothel pays the county \$30,000 per year, and that does not include the liquor license or the \$62.50 per month that each employee pays for their sheriff license.<sup>120</sup>

Other county officials have stated that in Nye County the brothels are safe and "residents don't even know they are there" and the brothels "annually provide us with much needed

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<sup>117</sup> *Id.*

<sup>118</sup> Snadowsky, *supra* note 32, at 19. There are numerous examples of the rejection to any proposals to ban prostitution. The Board of Commissioners for Ely County voted on Aug. 26, 1999 for proposed ordinance #407 to legalize prostitution, but it was immediately vetoed by Mayor Bob Miller. Barbara Brents & Kathryn Hausbeck, *Pro-Family, Pro-Prostitution: Discourses of Gender, Sexuality, & Legalized Prostitution in a Nevada Town* 1-2 (2000) (unpublished paper presented before the Midwest Sociological Association, Chicago, Apr. 2000), <http://www.unlv.edu/faculty/brents/research/msspaper.ely.pdf>. In July 2004, Nye County Commission Chairman Henry Neth proposed that a measure to close the county's six brothels be put on the next ballot. The county commission voted 3-2 not to put this issue on the ballot. Molly Ball, *Brothels in Nye County to Stay Legal*, LAS VEGAS SUN, July 7, 2004 at 1B. For the November 2, 2004 election day, the Coalition to End Prostitution gathered enough signatures to put a measure to prohibit prostitution on the Churchill County ballot, which the voters rejected. Marlene Garcia, *Fate of Brothels in County on Nov. 2<sup>nd</sup> Ballot*, LAHONTAN VALLEY NEWS, Oct. 12, 2004, at A1; *Voters Approve Churchill Brothels*, LAS VEGAS REVIEW JOURNAL, Nov. 4, 2004 at 6B.)

<sup>119</sup> Phone interview with Nye County tax department employee – name omitted by request.

<sup>120</sup> Sandowsky, *supra* note 32, at 12.

funding for many of the services within the county.”<sup>121</sup> The general manager of the Chicken Ranch, which is located in the county, stated that the brothels do not abuse the emergency services in town as she has been working at the ranch for eighteen years and has never once had to call the sheriff’s department to assist her.<sup>122</sup> She is quoted as saying that the ranch and its employees like to be a good neighbor to the people who live in this area and as long as they continue to stay in the county, be good to the town, and don’t bother anyone? They will “be ok.”<sup>123</sup> Community members support the workers’ right to work and one local Ely resident captured the tenor of support that the workers have in town by stating:

The girls, when they come downtown, are probably the most polite, courteous women in this community. They keep their manners on, their verbal manners, and they spend a great deal of money in this community, and I don’t think we have the right to tell them that they can’t work.<sup>124</sup>

Lyon County is another good example of a county reaping a great benefit from the prostitution industry.<sup>125</sup> The county’s 18.5% unemployment rate would be higher if not for the total number of workers at the four brothels located within county limits.<sup>126</sup> In 1998 the county received \$245,000<sup>127</sup> and Flint estimates that the total revenue the county received is around \$500,000 for the 2010 fiscal year. These numbers were substantiated in a phone conversation with the county clerk who stated that Lyon County receives between \$400,000 to 500,000 a year from the brothels.<sup>128</sup> A correspondence with an appraiser at the county assessor’s office listed

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<sup>121</sup> Phone interview with Nye County tax department, *supra* note 119.

<sup>122</sup> Abowitz, *supra* note 24, at 4.

<sup>123</sup> *Id.*

<sup>124</sup> BRENTS, et al. *supra* note 8, at 93.

<sup>125</sup> Gormley, *supra* note 110.

<sup>126</sup> 18.5% unemployment rate is the number garnered from the Bureau of Labor Statistics. This statistic was compiled in 2010. The total population of the county is over 53,000, a statistic compiled in July 2008 and obtained from the U.S. Census Bureau.

<sup>127</sup> Gormley, *supra* note 110, at 3.

<sup>128</sup> Phone interview with Lyon County tax department – name omitted by request.

the personal and real property taxes to be just under \$19,000 for the year.<sup>129</sup> The county sheriff's office added that an additional \$19,000 comes from the licensing fees of all the workers.<sup>130</sup> The money garnered from the brothels, while a paltry sum in comparison to the county's total revenue, is not an insignificant figure. George Flint as well as both the county taxation department and County Comptroller Rita Evasovic said the money from the brothel licensing fees goes into a fund where it is used to buy vehicles for the county.<sup>131</sup> Without this money they would need to find another source to fund the purchase of state of the art law enforcement vehicles and are grateful for the brothel money.<sup>132</sup> The taxation department further stated that in addition to law enforcement vehicles, the brothel taxes are also put into the capital projects fund.<sup>133</sup>

Elko County is yet another county that relies on its brothels for taxation revenue. Elko, unlike most of the other counties discussed here, is one of the few counties where a major metropolitan area is not within a one hour drive from anywhere in the county.<sup>134</sup> Thus, the amount of taxation dollars attained from this county's brothels is smaller compared to its sister counties, but is certainly substantial nonetheless. In fact, Flint estimates that the two brothels located in the city of Wells pay more in taxes than all other business in the county.<sup>135</sup> Elko's brothels cater to a more unique clientele. All of the brothels are located along busy Interstate 80, which cuts across the United States from New Jersey to California. Elko county's brothels rely primarily on the truckers who traverse Interstate 80 as their clientele. When Citizens's Band

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<sup>129</sup> Phone interview with Lyon County assessors department – name omitted by request.

<sup>130</sup> Phone interview with Lyon County Sheriff – name omitted by request.

<sup>131</sup> Flint interview, *supra* note 90; Lyon County tax department interview, *supra* note 112; *see also* Gormley, *supra* note 110, at 2.

<sup>132</sup> Flint interview, *supra* note 90.

<sup>133</sup> Lyon County tax department interview, *supra* note 112.

<sup>134</sup> BRENTS et al., *supra* note 8 at Appendix B.

<sup>135</sup> Flint interview, *supra* note 90.

(CB) radios were popular in the 1970's and 1980's, many brothels relied on these to attract highway visitors.<sup>136</sup> Some of the brothels still require workers to take shifts on the CB, broadcasting sexy invitations to truckers to stop by for coffee, showers, and relaxation.<sup>137</sup>

Storey County, located on the Western edge of Nevada, certainly puts the brothel taxes to good work. In this county, law enforcement greatly benefits from the taxation dollars. The County Sheriff estimates that he would be forced to lay off three deputy sheriffs without the brothel revenue.<sup>138</sup> Using the brothel tax dollars to pay local law enforcement is not a new phenomena. The \$18,000 legal yearly licensing fee that Joe Conforte<sup>139</sup> paid in 1971 accounted for one-fifth of the county budget, paying the salary of the sheriff and a few part time employees.<sup>140</sup> This tradition continues to this day.

**Table 1 – Nevada Counties with Legal Brothels and the Revenue Generated**

(This table is comprised of the 5 counties where prostitution generates the most revenue).

<u>County</u>	<u>Currently Operating Brothels</u>	<u>Revenue Generated</u>	<u>Notable Revenue Usage</u>
Nye	7, 2 in Pahrump, 5 elsewhere	\$4,095,671	Emergency services, juvenile probation, museum, capital projects fund.
Lyon	4, all east of Carson City	\$400,000 - \$500,000	Law enforcement vehicles, capital fund.

<sup>136</sup> BRENTS et al., *supra* note 8, at 100.

<sup>137</sup> *Id.*

<sup>138</sup> Flint interview, *supra* note 90.

<sup>139</sup> Mr. Conforte was a highly influential figurehead within the brothel industry. see note 36, *supra*.

<sup>140</sup> BRENTS et al., *supra* note 8, at 74.

Elko	6, 2 in Wells, 1 in Elko City, 1 in Carlin, 2 elsewhere	\$50,000-70,000 in one of Nevada's more rural counties.	Tax revenue from brothels in Wells is greater than all other businesses in the county.
Storey	2, both in the city of Sparks.	\$190,000 - \$210,000	Allows the sheriff to keep 3 deputies on the payroll.
Humboldt	2, both in Winnemucca	\$55,000- \$75,000 with a county population of 17K	

#### Economic Impact on the Law Enforcement and Health Care Budgets

The tax dollars alone are not the only benefit for the counties and the state. Law enforcement and hospital budgets also see a reduction in their bottom line from the legalized prostitution industry. It is estimated that taxpayers spend approximately seven and a half million dollars on prostitution control per major city.<sup>141</sup> Nevada State Assemblywoman Chris Giunchigliani proffered that state-wide legalization of prostitution may save money in the long run, in part by cutting law enforcement costs: “philosophically from a health and safety perspective [legalized prostitution] could make sense and police could actually focus on other issues”.<sup>142</sup> There are some scholars and lobby groups who view prostitution as a general harm to the public and the women themselves; an example of this is the European Women’s Lobby which works to promote women’s rights and equality and has condemned prostitution as an

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<sup>141</sup> Sandowsky, *supra* note 32, at 13.

<sup>142</sup> *Id.*

intolerable form of male violence.<sup>143</sup> This assessment is accurate if discussing the plight of street prostitutes, those women who work street corners and do not have a security system to fall back on like the ones that exist in the brothels, but is not an accurate assessment when discussing the status of brothel prostitutes.<sup>144</sup> There are numerous mechanisms in brothels by which the prostitutes are protected from the systemic violence regularly faced by street-based sex workers evidenced by the fact that there has only been one documented case of assault in twenty-one years.<sup>145</sup> Assaults, cases of abuse, and victimization are problems commonly associated with street prostitution and are issues that sex workers in brothels rarely, if ever, face.<sup>146</sup> The safety of having the presence and support of co-workers, such as the brothel manager, bartenders, housekeeping staff, and other sex workers, is in stark contrast to street-based workers.<sup>147</sup> Other protections include guards, a security system (including a gate, bell, and cameras from which men are screened before they are allowed to enter), and a panic button built into each room in case of emergencies.<sup>148</sup> Most brothels report that they very rarely need to involve the police to control customers with all of these safeguards in place. One policeman who was paying a check-up call to a brothel asserted that “We don’t get very many calls here at all. The last two or three years there’s been next to nothing”.<sup>149</sup>

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<sup>143</sup> European Women’s Lobby, *Prostitution in Europe: 60 Years of Reluctance*, Dec. 1, 2009. <http://www.womenslobby.eu/spip.php?article472&lang=en> (last accessed Mar. 20, 2011).

<sup>144</sup> See Steven Kurtz et al., *Sex Work and “Date” Violence*, 10 VIOLENCE AGAINST WOMEN 160-88 (2004). Illustrating the dangers of street work, one Miami-based worker described the violence she experienced during a “car-date”. She recounts in vivid detail her assault and rape by a man and two of his acquaintances who had been hiding in the bushes. This story of assault is commonplace among street workers.

<sup>145</sup> Cooke & Sontag, *supra* note 15, at 11.

<sup>146</sup> Melissa Farley & Howard Barkan, *Prostitution, Violence Against Women, and Posttraumatic Stress Disorder*, 27 WOMEN AND HEALTH 37, 37 (82% of San Francisco prostitutes reported being physically assaulted); see also Rochelle Dalla et al., *You Just Give Them What They Want and Pray They Don’t Kill You*, 9 VIOLENCE AGAINST WOMEN 1367, 1367-94 (2003) (72% of Midwestern workers reported experiencing severe abuse); see also Kurtz, *supra* note 130 at 368. (75.5% of Miami workers reported being victimized in the 90 days prior to the interview.)

<sup>147</sup> Cooke & Sontag, *supra* note 15, at 11.

<sup>148</sup> *Id.*

<sup>149</sup> BRENTS, et al., *supra* note 8, at 131.

City and state assets are still spent on law enforcement efforts to catch prostitutes and their customers in cities where prostitution is not legalized.<sup>150</sup> Once caught, justice departments have to process these people through very expensive systems.<sup>151</sup> The end result is that police personnel and courtrooms are overburdened with these cases, which have little or no impact on prostitution as the prostitutes and customers pay their fines and are back on the street.<sup>152</sup> Catch and release may work for recreational fishing but it has no deterring affect on prostitution.<sup>153</sup>

In addition to being more disease-free,<sup>154</sup> Nevada's brothel prostitutes are also more harm-free. The insulated nature of the brothels offers prostitutes near foolproof protection from theft, fraud, or crime.<sup>155</sup> This is in stark contrast to the rampant crime in places where prostitution is illegal. Roy Slaughter, manager of Sheri's Brothel in Nye County, summed up the advantages of the brothel system with respect to the police power objectives of public health and safety: "We [Sheri's] don't allow drugs, excessive alcohol use, and trashy behavior. In Las Vegas, where prostitution is illegal, [the women] are getting robbed, they're transmitting diseases, they're not using protection. I can't imagine why it's not legal in Clark County and regulated and taxed."<sup>156</sup> The Nevada statute barring counties with populations of more than four hundred thousand from regulating prostitution<sup>157</sup> not only causes the State's most populated city, Las Vegas, to spend money needlessly on law enforcement to fight prostitution but also fails to further the police power objectives of health and safety. "To satisfy due process, a statute must

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<sup>150</sup> *Liberator*, *supra* note 4, at 4.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *See* notes 140-148 *supra*.

<sup>155</sup> Snadowsky, *supra* note 32, at 7.

<sup>156</sup> *Id.*

<sup>157</sup> *See* note 32.

be reasonably related to a legitimate government interest”<sup>158</sup> Because brothel prostitutes and customers are healthier and safer than illegal prostitutes and the “johns” who patronize them, the population ban on legalized prostitution does not promote a legitimate governmental interest, let alone make sense financially.<sup>159</sup> As an example of other cities needlessly fighting an unwinnable war, Flint estimates that the borough of Manhattan spends approximately \$30 million a year fighting what he termed “street sex” and stated that if San Francisco instituted a policy similar to that of Nevada, the money used to combat illicit prostitution would build a new school, tax free, every year.<sup>160</sup>

It is difficult to assess the amount of money being saved (and certainly not needlessly spent) in the law enforcement field because, unlike tax dollars which have a tangible number, one cannot place a similar tangible number on law enforcement dollars. However it is quite obvious that there is an economic impact on the counties’ law enforcement and judicial systems because of the legalized prostitution both in terms of money saved on arrest and judicial duties coupled with fighting other prostitution related crime. Moreover, much needed funding which is spent on law enforcement equipment is one less burden on the county.<sup>161</sup> In effect, the legality of the brothels underpins the safety mechanisms exercised in the industry as being legal lends a symbolic and material legitimacy and authority to the business with all the rights (police protection) and responsibilities (house rules to protect health and body) that accompany it.<sup>162</sup> On a sociopolitical level, legality requires a level of transparency and responsiveness to the constant public scrutiny of the local community, police and policymakers and this function of legality in

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<sup>158</sup>Snadowsky, *supra* note 32, at 13; *see also* Kuban v. McGimsey, 605 P.2d 623, 627 (Nev. 1980).

<sup>159</sup> In other areas of the law there is an argument about whether morality is a compelling interest on its own. *See Lawrence v. Texas*, 539 U.S. 558 (2003). *see also* *Lofton v. Sec’y of the Dep’t of Children & Family Services*, 358 F.3d 804 (2004). Reading *Lawrence* narrowly and finding morality uses rational basis.

<sup>160</sup> Flint interview, *supra* note 90.

<sup>161</sup> *See* note 120 & 131.

<sup>162</sup> BRENTS et al., *supra* note 8, at 131.

the brothel setting seems to have severely reduced the factors of systemic violence assumed to be part of sexual commerce.<sup>163</sup>

There is also a beneficial financial impact on the counties' (and state's) health care system due to legalized prostitution. Nevada's regulations on prostitution are a tactic to further the State's police power objectives of promoting public health, safety, and welfare.<sup>164</sup> Brothel workers are checked on a weekly basis for diseases and see doctors often to ensure a safe industry for the health of both the workers and their customers which is vastly different from unregulated street prostitution. The Nevada Administrative Code contains health codes that both prostitutes and brothel owners must follow. NAC 441A.800 outlines the requisite health tests for prostitutes as well as the prohibition of certain persons from becoming a sex worker.<sup>165</sup> A positive test result for HIV equates to a cease and desists from employment in the brothel effective immediately.<sup>166</sup> The county codes are also very rigid when it comes to health testing for the workers.<sup>167</sup> Many county codes go beyond the state requirements and one county in particular regulates not just the workers, but the physical building itself.<sup>168</sup> NAC 441A.805 requires the use of latex prophylactic devices for any sexual contact<sup>169</sup> with the obvious intent of reducing the spread of STD's. The state and county penalties for failing to comply with these

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<sup>163</sup> *Id.*

<sup>164</sup> Snadowsky, *supra* note 32, at 5.

<sup>165</sup> Nev. Admin. Code § 441A.800(3)(a). These health tests for a person currently employed as a prostitute include a blood test on a monthly basis to check for HIV and syphilis and once each week a cervical specimen tests for gonorrhea and *Chlamydia trachomatis*. Section (1)(a) requires these tests prior to gaining employment.

<sup>166</sup> Nev. Admin. Code § 441A.800(4). (Added to NAC by Bd. Of Health, eff. 1-24-92).

<sup>167</sup> See Nye County Code, Nev. § 9.20.150 – *see also* Lyon County Code, Nev. § 5.03.142

<sup>168</sup> See Lander County Code, Nev. § 5.16.100G (The interesting requirements for a business license include (1) a source of water to facilitate cleaning and this source of water must be approved by the county; (2) each restroom and wash basin must be furnished with soap and sanitary towels; (4) all businesses should be provided with clean, laundered sheets and towels to be kept in an approved sanitary manner and cleaned after use which is defined as actual physical contact with the sheets; (5) approved receptacles for storage of soiled linens and towels.)

<sup>169</sup> Nev. Admin. Code § 441A.805.

requirements are extremely severe<sup>170</sup> yet provide brothel prostitutes with a healthier alternative to street prostitution. Flint asserts that all of the illegal sex workers working in Las Vegas<sup>171</sup> receive no health benefits as their business is illegal.<sup>172</sup> The city and state are burdened with assisting these workers with their healthcare in terms of indigent care within the city hospitals associated with emergency room visits as well as Medicare and Medicaid.<sup>173</sup> This economic model is applicable not just to Las Vegas, but to other major cities where prostitution is unregulated, remains illegal, and tax dollars are spent in a futile attempt to curb a profession that is better regulated than fought.

The state and county requirements regarding health checks are quite stringent but have extraordinary implications. Since the instatement of mandatory testing and the mandatory use of prophylactics no brothel prostitute in Nevada has tested positive for HIV.<sup>174</sup> Even more surprising, data shows that legal prostitutes contract fewer STD's than not only illegal prostitutes but also the female population as a whole.<sup>175</sup> Contrary to popular belief, prostitutes in the brothel setting are not a cesspool of diseases.<sup>176</sup> Statistics on the health and safety of Nevada's licensed brothel workers and customers indicate both parties are more protected under the current system than if they were to conduct their commerce outside the bounds of the law.<sup>177</sup> The mandatory

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<sup>170</sup> The state considers it a felony for a worker testing positive for HIV to work again, carrying a punishment of two to ten years in jail, or a \$10,000 fine or both.; In *Glegola v. State*, 871 P.2d 950 (Nev. 1994), a prostitute who solicited an officer in a Reno bar after having repeated notice that she was HIV positive received fifteen of the then maximum twenty years. *Id.* at 951.

<sup>171</sup> Las Vegas, part of Clark County, is statutorily barred from legal prostitution.

<sup>172</sup> Flint interview, *supra* note 90.

<sup>173</sup> *Id.*

<sup>174</sup> Snadowsky, *supra* note 32, at 7.

<sup>175</sup> Brents & Hausbeck, *supra* note 11, at 321.

<sup>176</sup> Priscilla Alexander, *Prostitution: Still a Difficult Issue for Feminists*, in *SEX WORK: WRITINGS BY WOMEN IN THE INDUSTRY*, 184, 185, 197-201 (Fredrique Delacoste & Priscilla Alexander eds., 1987). (Although some epidemiologists like to claim that prostitutes are a "reservoir of contagion" or a "core group of high frequency transmitters", in the United States, less than 5% of TSD's are associated with prostitution.)

<sup>177</sup> *Id.* at 6.

prophylactic statute<sup>178</sup> has been studied for its practical application and these studies have shown that the law is extremely useful and accomplishes what it set out to prevent.<sup>179</sup> The brothel system is the healthiest, safest, and most professional mode of bartering sex for money.<sup>180</sup> In contrast, street prostitution provides none of the financial predictability or health safeguards the brothel life affords.<sup>181</sup> Illegal street prostitution, which is generally punishable as a misdemeanor, paints a much bleaker picture than the brothel industry, replete with high incidents of diseases and crime affecting both the prostitutes and customers.<sup>182</sup> It is the city, county, and ultimately the state that has to foot the bill for both the health and criminal aspects of illegal prostitution. Therefore, while a tangible number on the beneficial economic impact on Nevada's counties and state budget with regards to health care is hard to calculate, one cannot argue with the results.

#### Other Monetary Value Within the State and Individual County

There are other industries which greatly benefit from Nevada's legalized brothels. These industries are equally as important to any economy even though the money generated is not nearly as significant as the tax dollars the counties receive from the brothels. Customers often arrive at the brothels via cab or car service as the brothels are located in rural counties outside of Las Vegas or Reno. If a customer arrives by cab, the driver will receive 30% of whatever the customer spends.<sup>183</sup> Customers generally spend anywhere from \$200 up to \$10,000 at a brothel

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<sup>178</sup> See note 164.

<sup>179</sup> Alexa Albert, et al., *Condom Use Among Female Commercial Sex Workers in Nevada's Legal Brothels*, 85 AM. J. PUBLIC HEALTH 1514 (1995). Condoms were used in all acts of vaginal intercourse that occurred during the course of the study in the Mustang Ranch brothel, where researchers examined 353 condoms and found that none had fallen off or broken during intercourse.

<sup>180</sup> Snadowsky, *supra* note 32, at 9.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.* at 6.

<sup>183</sup> Wikipedia, *Prostitution in Nevada*, [http://en.wikipedia.org/wiki/Prostitution\\_in\\_Nevada](http://en.wikipedia.org/wiki/Prostitution_in_Nevada), (last modified Feb. 3, 2011 and last accessed Feb. 26, 2011).

and the cab driver receives his share. George Flint stated that in addition to the three-hundred working women at any given time a total of seven-hundred-fifty total employees work the brothels at all hours.<sup>184</sup> In a state with over fifteen percent unemployment jobs are at a premium and the brothels are a valuable industry in Nevada.<sup>185</sup> Tourist dollars are a major economic asset as well. Dennis Hof, owner of the Moonlight Bunny Ranch, stated that if for instance Las Vegas legalized prostitution, he would invest large sums of money and create a top-of-the-line, yet discreet facility as a way to attract what he calls the 10,000 weekend warriors who come to Las Vegas every week looking for more than gambling action.<sup>186</sup> Tourist dollars are a valuable source of income for struggling economies; taxing and regulating an industry that it is already in place is a great way to enhance the county coffers. Tourist dollars are not the only dollars spent in-state. The working girls spend much of the wages they earn in places like Reno and Las Vegas, purchasing items in state rather than sending the money home to their family.<sup>187</sup>

Lastly, Nevada's bigger brothels often give back to the community in the form of scholarships, funds for needy families or fire victims, and uniforms for fire departments and sports teams.<sup>188</sup> Sheri's Ranch, a brothel in Nye County, has opened its bar (with a separate entrance from the brothel) to the general public. Today, women, senior citizens, and groups of friends can eat and drink at the bar, and, they often do.<sup>189</sup> In 2004, the brothel held a golf tournament and raised around \$7,000 for the local Pahrump Senior Center, and the brothel

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<sup>184</sup> Flint interview, *supra* note 90.

<sup>185</sup> Flint offered an example of the unique jobs associated with brothel work. There are two men who are self-employed that supply the working girls with products necessary to work such as lingerie, sex-toys, and other products designed for the industry. They drive around in buses from brothel to brothel to peddle their wares.

<sup>186</sup> Neff, *supra* note 104.

<sup>187</sup> Flint interview, *supra* note 90.

<sup>188</sup> Snadowsky, *supra* note 32, at 31. These altruistic charity operations are done to achieve moral legitimacy and to stay in their respective county's good graces. Not limiting its charity to purely wholesome causes, the Moonlight Bunny Ranch offered free sex to the first fifty soldiers who showed up after the current Iraq War started. Alex Cuckan, *Jockstrip: The World as We Know It*, United Press Intl., June 5, 2003, *available at* LEXIS, Nexis Library, UPI File; *see also* Abowitz, *supra* note 35, at 30. The Chicken Ranch also offers discounts to soldiers and veterans.

<sup>189</sup> BRENTS et al., *supra* note 8, at 113.

continues to host public events through professional organizations such as the Sin City Chamber of Commerce.<sup>190</sup> The brothel owners also generate funds for local families in need, participate in local parades, carnivals, and holiday festivities, and run other town events making these brothel owners respected community members who give back to their fellow townspeople.<sup>191</sup>

### Part III: The Nevada Model in Other States

The prostitution trade in the United States is estimated to generate \$14 billion a year<sup>192</sup> and yet only ten counties in Nevada where it is legalized make any money off taxing the industry. The majority of the \$14 billion is spent and earned illegally. Furthermore, there is no reason why both state and local governments shouldn't tax this industry in order to fatten their coffers. One scholar asserts that if the laws are done right, decriminalization is a better alternative than the nation's current stance on prostitution because women can be their own boss and there is no reason why women can't set up shop and run their own business.<sup>193</sup> Moreover, not only is money lost in potential revenue, but it is being spent to combat prostitution.<sup>194</sup>

This paper has not addressed comparative regulatory scheme, however, many are based on the regulations that Nevada currently has in place. Twenty five years ago, when The Netherlands was considering a decriminalized prostitution industry, two members in charge of making sweeping changes to the country's stance on prostitution contacted Flint in an effort to understand exactly how the Nevada model works, in order to mirror the positive aspects of the

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<sup>190</sup> *Id.*

<sup>191</sup> BRENTS et al., *supra* note 8, at 92-93.

<sup>192</sup> *Id.* at 35-36.

<sup>193</sup> Barbara Brents, *A Brothel Ban Would Hurt Women*, LAS VEGAS SUN, Feb 24, 2011.

<http://www.lasvegassun.com/news/2011/feb/24/brothel-ban-would-hurt-women/> (last accessed March 20, 2011).

<sup>194</sup> See Part II Section 2.

industry.<sup>195</sup> Foreign countries have determined to regulate and profit off the industry rather than needlessly wasting money trying to combat it as they acknowledge that prostitution is occurring and should therefore be regulated and taxed.<sup>196</sup>

Prostitution already exists in many forms throughout the United States. Street prostitution, although illegal, is concentrated in largely populated areas of major cities and towns. For example, statistics on official arrests from the Chicago Police Department from August 19<sup>th</sup>, 2005, to May 1<sup>st</sup>, 2007, show that prostitution activity is highly concentrated; nearly half of all arrests for this crime occur in a tiny portion of the city.<sup>197</sup> Escort, otherwise known as out-call prostitution, exists throughout the United States from both independent prostitutes and those employed through escort agencies; escort advertising exists under neutral terms such as “bodywork”, “massage”, and “discreet dating”, yet it becomes quite clear exactly what type of services are being offered.<sup>198</sup> Some of the higher end escort services located in major U.S. markets can charge up to \$6000 for a “date” with what they term, a “VIP model.”<sup>199</sup> Cities where these forms of prostitution take place make no money off of these paid encounters and actually spend money to combat their illegality and fight crime - sometimes violent crime - associated with illegal prostitution.<sup>200</sup> These incidents of crime and violence are highly unlikely to transpire in a brothel setting due to the safety regulations already in place.<sup>201</sup> In fact, in the

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<sup>195</sup> Flint interview, *supra* note 90.

<sup>196</sup> See text at footnotes 13-22.

<sup>197</sup> Wikipedia, *Prostitution in Nevada*, [http://en.wikipedia.org/wiki/Prostitution\\_in\\_Nevada](http://en.wikipedia.org/wiki/Prostitution_in_Nevada), (last modified Feb. 3, 2011 and last accessed Feb. 26, 2011).

<sup>198</sup> Escort websites advertise under the guise of companionship and oftentimes, a massage. See “High Class NY” <http://www.highclassny.com/home.php> (last accessed Mar. 20, 2011); See also “New York Asian Escort Service” <http://www.nyasianescortservice.com> (WARNING: Adult content on their homepage).

<sup>199</sup> *Id.*

<sup>200</sup> Philip Markoff, the infamous “Craigslist Killer” propositioned illegal prostitutes robbed them, brutally murdering one woman, in the hotel room chosen for the rendezvous; see also Alexander, *supra* note 176, at 213-14. (Since the mid-seventies, almost every major city on the West Coast, with the exception of San Francisco, has had a serial prostitute killer with more than twenty-five victims).

<sup>201</sup> See Part II Section II.

United States, prostitution control policies cost taxpayers an average of \$7.5 million annually per large metropolitan city and yet police have made little headway in controlling it.<sup>202</sup>

Cities throughout the United States have begun to analyze the prostitution profession as one which can be regulated and taxed. For example, the county of Washoe<sup>203</sup> located in Nevada asked Flint to send fifteen working girls up to the county in order to meet some of the legislators in order to “get to know the girls not from a business standpoint, but to get to know them as people.”<sup>204</sup> Washoe county has recently been considering legalized prostitution and contacting Flint was the first step in the process. Politicians in Nevada, state senators, and the Mayor of Las Vegas have also been calling for decriminalization as they acknowledge the issue and understand it would be better served to decriminalize and profit off of it then keep it illegal.

This movement is not limited to Nevada. In recent years the American Civil Liberties Union (ACLU), the National Organization for Women, the San Francisco Task Force on Prostitution, and Jocelyn Elders, former Surgeon General, have all supported decriminalization.<sup>205</sup> In November 2004, in Berkeley, California, voters considered Measure Q, or “Angel’s Initiative”, a citizens’ initiative<sup>206</sup> that would have directed Berkeley police to make the enforcement of state prostitution laws of the lowest priority and directed the city to lobby for repeal of state prostitution laws.<sup>207</sup> Proponents argued that the measure would decrease violence against prostitutes by encouraging prostitutes to report violence committed against them, providing them with a cognizable opportunity to report crimes against them without fear of

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<sup>202</sup> Brents & Hausbeck, *supra* note 13, at 308.

<sup>203</sup> Currently prostitution is prohibited in Washoe County per county law.

<sup>204</sup> Flint interview, *supra* note 90.

<sup>205</sup> Brents & Hausbeck, *supra* note 13, at 310.

<sup>206</sup> Cooke & Sontag, *supra* note 15, at 14.

<sup>207</sup> *Id.*

prosecution.<sup>208</sup> Furthermore, proponents argued that public health and public safety would be improved through the regulation of prostitution even though Measure Q would not have resulted in any new regulation.<sup>209</sup> Only thirty-six percent of voters supported the initiative, but while the measure lost it proved successful in sparking popular discussion about decriminalization domestically.

It makes practical sense to monitor prostitution, and what better way is there to monitor it than by legalizing it, regulating it,<sup>210</sup> and ultimately making money off of it. Politicians who are elected to government positions are voted in to solve the problems their jurisdictions face. Currently, a rash of high unemployment in various states and the nation as a whole hamper the country's efforts at a successful recovery. Politicians on the one hand are doing all they can to lower the unemployment rate and get their constituents jobs yet on the other hand do not want to be associated with prostitution in any capacity as an effort to assist in the recovery.<sup>211</sup> Democratic politicians insist government should be designed to act as a safety net for people who need help by providing citizens with various social programs including public safety and healthcare entitlements.<sup>212</sup> Republican representatives believe in freedom of choice through responsible action and libertarians feel compelled to ensure civil rights and allow citizens to be self-governing members of society.<sup>213</sup> Putting the issue of morality aside, it can be plainly seen how each political view contains strong elements supporting legalization<sup>214</sup> yet politicians playing the morality card demonstrates how they won't consider the idea even if it is beneficial

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<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *Liberator*, *supra* note 4, at 6.

<sup>211</sup> *Flint* interview, *supra* note 90.

<sup>212</sup> *Liberator*, *supra* note 4, at 6.

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

in numerous ways for fear of being ousted at re-election<sup>215</sup>. The best way to understand the current state of affairs concerning prostitution is to entertain this profound analogy:

Pretend that government is a business. Politicians would be the managers and prostitution would be a certain procedure the company had to manage. Would a successful business ignore a procedure when it performed poorly [and was quite costly to manage at the current level]? Would the company allow a poor procedure to continue or would a successful business instead rethink its position and improve it? All successful companies must evolve over time if they are to stay in business and excel.<sup>216</sup>

If the company is losing money when it instead could be profiting, a long and hard look at the current practices with an eye toward reformation is normally what transpires at any successful business. Laws can change and adapt to meet the demands of a modern civilization and it is certainly a far better strategy to regulate and profit off prostitution than hoping it will clean itself up and go away.<sup>217</sup> The economic benefits of legalization on a struggling economy that many states are currently facing far outweigh the moral dilemma that stymies any current discussion. These calls for decriminalization have spurred the latest discussions of a prostitution policy, but research shows that there is little public support<sup>218</sup> due in large part to the morality issue. Politicians do not want to have their names associated with this progressive movement<sup>219</sup> and the public, while acknowledging prostitution exists, does not want to legitimize the industry. The public regulation of prostitution is contentious and heavily influenced by regional and local norms and traditions.<sup>220</sup> Ongoing public discourse regarding the current costs of criminalizing

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<sup>215</sup> See BRENTS et al., *supra* note 8, at 37. Government regulations and regulators are contradictory. On the one hand, neo-liberal policies acting in conjunction with the Supreme Court's First Amendment jurisprudence on obscenity and adult businesses have allowed many forms of adult entertainment and products to flourish legally. On the other hand, politicians remain very squeamish about visibly supporting sexual commerce. The mainstreaming of the sex industry has spurred a backlash among religious, fundamentalist feminist, and other conservative groups. Governments and politicians find themselves having to balance the cultural trends toward liberalization.

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> Flint interview, *supra* note 90.

<sup>220</sup> Brents & Hausbeck, *supra* note 13, at 329.

prostitution while in addition examining the revenues lost by not legalizing the industry are evidenced by these initiatives and groups calling for legalization. The decentralized model of legalized prostitution that Nevada has adopted de jure may well be useful as a de jure principle of legalization in other parts of the country.<sup>221</sup> Recent polling has shown a trend toward liberalization with regards to legalized prostitution especially if it is made safer for the workers and customers and this demonstrates that the nation may be ready for a change in the current policy and a shift toward decriminalization based on the Nevada model.<sup>222</sup> While the moral argument is powerful and compelling, a rigid overview of current policy toward prostitution is certainly required at this stage of our nation's history.

### Conclusion

While prostitution may be the oldest profession, the context in which it occurs has changed and this change affects what it means to sell sex. Late capitalist culture has transformed the very notions of sex and has opened the sale of sex to heightened commodification as a product that may be bought and sold in the global marketplace. Numerous countries have embraced the notion that prostitution is a revenue generating vice like gambling and alcohol. Regulating the industry also leads to safer working conditions for both the sex workers and their clientele. Across the globe, this regulation of prostitution has shifted to reflect a new economic climate. The state of Nevada has also determined that regulation is sensible for the state and the taxation dollars attained from the industry are substantial. The business of selling sex in Nevada's brothels is in many ways similar to leisure-oriented service work in restaurants,

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<sup>221</sup> *Id.*

<sup>222</sup> BRENTS et al., *supra* note 8, at 92-93. A 1996 general social survey found 45 percent of respondents agreeing with the statement that "There is nothing inherently wrong with prostitution, so long as the health risks can be minimized. If consenting adults agree to exchange money for sex, that is their business"; 52 percent disagreed. However, by 2006, the U.S. General Social Survey found that only 34 percent of the population disagreed when asked the same question.

clothing stores, or hotels. The taxation revenue attained by these counties funds many of the county necessities from law enforcement vehicles and staff, to juvenile justice programs and the capital projects fund, as well as museums and other beneficial interests to the local communities. Furthermore, the budgets of both the health care and law enforcement industries are considerably reduced under Nevada's current regulatory scheme. In Nevada's legal brothels, there are structures in place that have successfully prevented violence, disease, and severe exploitation of the workers. The rural communities where prostitution is legal do not experience problems typically assumed to be associated with illegal prostitution such as drug use, violence, disease, and a general increase in crime. In addition, other industries benefit from the legal brothels as well and also add revenue to the county coffers. It therefore may be time for other state governments to assess their state's current economic future and determine if legalizing prostitution will have the same economic impact as the industry has in Nevada. Legalizing this industry allows it to be subject to the laws, regulations, and practices of other non-sex industries and other legally sexually oriented businesses. In Nevada, brothels not only generate substantial revenue for the counties and state but have become respectable and well-integrated members of local communities. A similar economic impact in other states may be the reason to make an imminent change in policy based on the success of Nevada's model. At the end of the day, if you cannot get rid of this vice, and there have been many attempts which have failed, you may as well regulate and tax it.