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# RETHINKING RED LIGHTS: AN ECONOMIC APPROACH TO APPALACHIAN PROSTITUTION LAWS

*Kandi Spindler*

## I. INTRODUCTION

Poolside at a Las Vegas hotel, a difficult interview commences with S.<sup>1</sup> She is distractingly funny, and conversation drifts from television shows to fast food. She does a hilarious impersonation of the way her toddler, confined to a walker, clumsily grasps for out-of-reach pizza on the kitchen table. Remembering the purpose of this interview is a struggle, but a single question offers quick redirection: “So what skill best serves you as a prostitute?”<sup>2</sup>

The answer is not what you would expect. “I’m a people person,” she says, smiling.<sup>3</sup> “You *need* to be a people person. Prostitutes are counselors, really.”<sup>4</sup> Sex is only a small piece of her work, she explains; she sells an experience.<sup>5</sup> A successful sex worker uses her “people person” skills to figure out why each client

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<sup>1</sup> Several interviewees requested to stay anonymous. Interview with S., in Las Vegas, Nev. (July 18, 2015).

<sup>2</sup> The Author respectfully acknowledges that some members of the profession, as well as some advocacy groups, prefer the term “sex worker.” Yet the law still refers to sex work as prostitution, making it necessary to use “prostitute” and “sex worker” interchangeably. Additionally, this Note does not attempt to sanitize the words of interviewees who self-identified as prostitutes without shame. Finally, while sex workers encompass a broad range of gender identities and sexualities, this Note focused on cisgendered women who serviced predominately male clients. The Author encourages further study on the subject of gender and prostitution.

<sup>3</sup> Interview with S., *supra* note 1.

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

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

needs that specific experience.<sup>6</sup>

Take, for example, the client wishing to briefly live the Vegas fantasy. S. plans a weekend of chic dinners, gambling, and parties at the big-name casinos.<sup>7</sup> This client wants to feel important, so a public appearance with a beautiful woman is key.<sup>8</sup> At the opposite end of the spectrum is the heartbreaking lonely client who just wants some human interaction.<sup>9</sup>

S. just taught you Prostitution Economics 101—prostitution is a unique service that meets a specialized need that is physical, psychological, or both. Either way, the provision of services to this need falls squarely within the supply and demand structure of American capitalism.<sup>10</sup> This economic outlook is not unique to S.; Nevada's legal brothels likewise fulfill a market demand through this same, straightforward provision of surprisingly heartwarming services. The manager and assistant manager of Bella's Hacienda Ranch in Wells, Nevada—a mother-daughter team—described a slew of clients for whom prostitution is an irreplaceable industry.<sup>11</sup> There's the man who is, after fifty years of marriage, suddenly a widower.<sup>12</sup> For him, finding another partner is out of the question—but so is a one-night-stand.<sup>13</sup> At Bella's, he finds the right amount of companionship to keep going.<sup>14</sup> Other clients include cross-dressers whose sexual preferences are unaccepted in general

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

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

<sup>8</sup> Interview with S., in Las Vegas, Nev. (July 18, 2015).

<sup>9</sup> *Id.*

<sup>10</sup> XAVIERA HOLLANDER, *THE HAPPY HOOKER* 157 (1972) (“In other words, it’s a supply situation strictly catering to demand. And as long as there is such a thing as male libido, the ostrich-attitude law notwithstanding, there will always be a demand for a high-class brothel.”). *See also* Marina Della Guista et al., *Who is Watching? The Market for Prostitution Services*, 22 *J. OF POPULATION ECON.* 501 (2009) (presenting economic models for prostitution from both the supply perspective of prostitutes and demand side of clients).

<sup>11</sup> Interview with Lisa and Kelly, Manager and Assistant Manager, Bella's Hacienda Ranch, in Wells, Nev. (July 21, 2015) [hereinafter interview at Bella's Hacienda].

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

society.<sup>15</sup> Some suffer from disabilities, like birth defects or, in the case of many veterans, amputations, that sex workers accommodate without judgment.<sup>16</sup>

Despite prostitution's clear role in supply and demand, economics is strangely ignored as society begins to seriously consider legal prostitution. As one sex worker wisely noted, "while every interviewer asks me whether I was sexually abused as a child, none of them have ever asked me a single question about the financial mindset, or even the financial motivation, involved in my decision to work in the sex industry."<sup>17</sup> Economics are overshadowed by the belief that no one voluntarily sells sex—or that those who do lack the capacity to make smart budgetary or moral choices.<sup>18</sup> However, disregarding economics insults prostitutes by adhering to the "where did you go wrong?" inquiry; studies that fail to consider economics also defy logic by insisting that sex work is not, at its core, about money.<sup>19</sup>

An economic outlook on prostitution is not devoid of humanity if one remembers that "[e]conomics is the study of decision-making" based on the assumption "that people are fundamentally rational beings who chose among the available options the things that make them better off . . . and avoid options that do not."<sup>20</sup> Accordingly, economics understands prostitution

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<sup>15</sup> *Id.*

<sup>16</sup> Interview at Bella's Hacienda, *supra* note 11.

<sup>17</sup> Jo Weldon, *Show Me the Money: A Sex Worker Reflects on Research Into the Sex Industry*, 9 RESEARCH FOR SEX WORK: SEX WORK AND MONEY, 2006, at 12, <http://www.nswp.org/sites/nswp.org/files/research-for-sex-work-9-english.pdf>.

<sup>18</sup> In fact, S. defies the stereotype of a money-strapped prostitute. "I've always been a business woman," she says. She had early business experience through her father's roofing business, but claims that earning an income through prostitution is "not that complicated, it's just budgeting. And if you can't do that as a sex worker, you can't do that as *any* kind of worker." Interview with S., *supra* note 1.

<sup>19</sup> Weldon, *supra* note 17, at 13.

<sup>20</sup> Alys Willman-Navarro, *What Economics Should Be Doing for Sex Work Research*, 9 RESEARCH FOR SEX WORK: SEX WORK AND MONEY, 2006, at 19, <http://www.nswp.org/sites/nswp.org/files/research-for-sex-work-9-english.pdf>.

better than morality because economics examines how the behavior of clients and sex workers turns into capital. No matter the purpose of addressing prostitution, it simply makes sense to know what is actually going on, as prostitution cannot respond to laws that draw on irrelevant factors. As one researcher put it: “Money is power, and power defines the rules of any game.”<sup>21</sup> Economics truthfully reports on prostitution by examining the actual incentives that keep prostitution running.<sup>22</sup> As such, economics is a more accurate platform for legal reform.<sup>23</sup> When prostitution laws draw on the local economy, real acts by real people are considered, rather than moral supposition about what prostitution *must be like*.

Accepting the role of economics in prostitution acknowledges that a sex worker’s daily concern is how to make a living. “[U]ntil we acknowledge the unique economic need sex work fulfills, and acknowledge money as a motivation for working in the sex industry, there can be no useful approach to solve any of the problems in or around the sex industry.”<sup>24</sup> “[P]olitical and social aspirations” that ignore financial incentive exist more for the benefit of smug academics and policy-makers than actual prostitutes.<sup>25</sup> Even well-meaning ideologues harm prostitutes through a “‘top-down’ approach” in which laws and policies “fail to account for local conditions” because the enacting individuals are too removed to know what those conditions are.<sup>26</sup>

The gap between the reality of prostitution and the law

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<sup>21</sup> *Id.* at 20.

<sup>22</sup> *Id.* at 19 (“[M]oral issues aside, participants in illicit markets respond to incentives and disincentives and run their operations in ways very similar to formal businesses, and very often overlap with the private sector.”).

<sup>23</sup> Laura Agustín, *Sex and the Limits of Enlightenment: The Irrationality of Legal Regimes to Control Prostitution*, 5 *Sexuality Res. & Soc. Pol’y* 73, 751 (2008) (arguing that moral and ethical incentives for regulating prostitution will always yield different proposals, thus “[i]f progress is to be judged as social improvement for the people who sell sex and the neighborhoods where it is sold, governance remains chaotic.”).

<sup>24</sup> Weldon, *supra* note 17, at 13.

<sup>25</sup> Jane Scoular, *What’s Law Got to Do with It? How and Why Law Matters in the Regulation of Sex Work*, 37 *J. OF L & SOC’Y* 12, 13 (Mar. 2010).

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

becomes even more troubling in rural areas, such as Appalachia.<sup>27</sup> A distant state capitol does not see rural women's struggle to financially survive, thus law regulates prostitution without understanding how sex workers benefit. In Appalachia, "everything necessary for a good life is scarce' . . . including jobs, housing, clothing and transportation . . . [and] depressed conditions in rural Appalachia create tensions, resulting in minimal civic activity."<sup>28</sup> Low-density populations can further prevent the financial success of rural women by hindering large-scale economic development and educational opportunities.<sup>29</sup> Thus an Appalachian woman has more incentive to sell sex for an otherwise impossible income. She lives in a world beyond the contemplation of lawmakers.<sup>30</sup> Against the top-down legislative approach that ignores Appalachian struggle, this Note rests on the principle that better laws come from the people.

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<sup>27</sup> Appalachia is a cultural and geographic region that runs along the mountains for which it is named. For some, "Appalachia represents quintessential . . . Mention of the region evokes images of uneducated white people living in acute poverty. In fact, some of the most extreme examples of the hardships, challenges, and vulnerabilities associated with rural living are found in Appalachia." Lisa R. Pruitt, *Place Matters: Domestic Violence and Rural Differences*, 23 WIS. J. L. GENDER & SOC'Y 347, 394 (2008). However, Appalachia also represents a rich cultural heritage that rightfully brims with pride over its historical and industrial accomplishments. As Appalachians struggle to overcome the economic hardships brought forth by the twilight of the coal industry, they demonstrate amazing resilience and optimism for their home. See Sarah Baird, *Stereotypes of Appalachia Obscure a Diverse Picture*, WBUR NEWS (Apr. 6, 2014), <http://www.wbur.org/npr/298892382/stereotypes-of-appalachia-obscure-a-diverse-picture>.

<sup>28</sup> Pruitt, *supra* note 27, at 372 (quoting Cynthia M. Duncan, *Persistent Poverty in Appalachia: Scarce Work and Rigid Stratification*, in *Rural Poverty In America* 112, 131 (Cynthia M. Duncan ed., 1992)).

<sup>29</sup> Pruitt, *supra* note 27, at 372.

<sup>30</sup> Agustín, *supra* note 23, at 76. ("When legal projects reduce the object by setting parameters around prostitution only . . . [a] proponent plan excludes the messy complexities and ambiguities from the subject . . . mak[ing] the plan appear reasonable."). *But see* Scoular, *supra* note 25, at 25 (asserting that Agustín uses an overly-simplified notion "of law as a free-floating entity, with society going on outside of it.").

Accordingly, this Note evaluates prostitution laws through a firsthand study of rural prostitution. This study considers two counties: McDowell County, West Virginia and Elko County, Nevada. McDowell County illustrates how criminal laws have failed, and continue to fail, at regulating Appalachian prostitution, whereas Nevada—a state where all legal prostitution is confined to about nineteen brothels in the rural outskirts—is well suited for considering what legal prostitution *could look like* in Appalachia.<sup>31</sup> However, Appalachia should not adopt Nevada’s prostitution laws merely because that adoption is feasible. Instead, this Note looks to Nevada as the sole American example of legal rural prostitution.<sup>32</sup> Part II examines the flaws in both West Virginia’s criminal prostitution laws and Nevada’s laws governing legal brothels. Part III then proposes a solution for effective rural prostitution regulation through a new American model for legal prostitution that allows corporate access to rural areas in the form of a parent-subsidiary structure. The ultimate goal of this model is realistic laws that

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<sup>31</sup> Contrary to popular belief, prostitution is not legal in Las Vegas; state law specifically seeks to exclude prostitution from large cities. Any county that may legally grant a license for the operation of a brothel, which is the only form in which legal prostitution may occur, must have a population of 700,000 or less. NEV. REV. STAT. ANN. § 244.345(8)(West 2015). As of 2015, the number of reported legal brothels is 19, but the businesses open and close with frequency. Daniel Hernandez, *Survival of the Freakiest: How Some of Nevada’s Brothels Are Staying Afloat*, THE GUARDIAN (June 2, 2015), <http://www.theguardian.com/us-news/2015/jun/02/nevada-brothels-sheris-ranch>.

<sup>32</sup> Advocates of legal prostitution frequently idealize European models of legal prostitution in comparison to America’s criminal approach, but an extensive overview of prostitution laws in Nordic countries admits that “[i]t is difficult to say anything conclusive about the relationship between prostitution law and the size and composition of the prostitution market.” May-Len Skilbrei & Charlotta Holmström, *Is there a Nordic Prostitution Regime?*, 40 CRIME & JUST. 479, 499 (2011). Furthermore, international comparisons of “[m]odels of prostitution policy often disguise differences” in markets. *Id.* at 507. Accordingly, Nevada is a better basis for comparison to Appalachian prostitution policy as another largely rural American state. European models cater to high-density populations in small areas, thus comparing them to America is problematic and furthers the exclusion of rural prostitutes.

balance state interest in controlling prostitution with a fair and indispensable income for rural women.

## II. LEGAL PRACTICALITY: WHY PROSTITUTION LAWS FOCUS ON THE WRONG FACTORS

If prostitution is about capital, why do American legal repercussions for prostitution focus on property? When prostitution is allowed, county lines, population, and land use mark its boundaries.<sup>33</sup> When prostitution is criminalized, the law targets location.<sup>34</sup> When prostitution is punished, property restrictions apply. In both West Virginia and Nevada, prostitution constitutes a nuisance that can result in injunction.<sup>35</sup> In fact, the state of West Virginia itself can bring a suit in equity “to abate such nuisance and

<sup>33</sup> NEV. REV. STAT. ANN. § 244.345(8); NEV. REV. STAT. ANN. § 201.380.

<sup>34</sup> The West Virginia criminal provision on prostitution begins by explaining who is culpable based on association with “any house, place, building, hotel, tourist camp, other structure, or part thereof, or vehicle, trailer, or other conveyance [used] for the purpose of prostitution.” W. VA. CODE ANN. § 61-8-5(a)(West 2016). This association can take the form of keeping, setting up, maintaining, operating, owning, leasing, subletting, renting, directing, taking, transporting, or inviting someone into a house of ill fame. § 61-8-5(a). In keeping with property-centrism, “the reputation or character of any house, place, building, hotel, tourist camp, or other structure” is admissible for a prostitution charge. § 61-8-5(c). Nevada has a similar provision regarding the admissibility of the reputation of “any house alleged to be so kept.” NEV. REV. STAT. ANN. tit. 15 § 201.400 (West 2015). Yet Nevada law at least defines prostitution. § 201.295. While West Virginian law undergoes an exhaustive description of *where* prostitution can happen, no definition for prostitution exists. Conversely, nuisance is defined by prostitution, meaning prostitution is best understood to West Virginian law through property. W. VA. CODE ANN. § 61-9-1 (“[N]uisance’ shall mean any place . . . upon which lewdness, assignation, or prostitution is conducted.”).

<sup>35</sup> In West Virginia, a nuisance based on prostitution enjoins the “the owner, agent, or lessee of any interest in any such nuisance, together with the person employed in or in control of any such nuisance . . .” W. VA. CODE ANN. § 61-9-2. Nevada likewise specifies that “[t]he maintenance and operation of [a] house of prostitution . . . being a nuisance under the common law and being within the definition of a nuisance . . . [is] properly enjoined and restrained by the district court.” *Cunningham v. Washoe Cnty.*, 203 P.2d 611, 613 (Nev. 1949).



to perpetually enjoin” prostitution.<sup>36</sup> Furthermore, a West Virginian prostitution charge voids a defendant’s lease, including those at tourist camps, or in “any temporary or permanent buildings, tents, cabins, or structures, or trailers, or other vehicles.”<sup>37</sup> Such laws showcase the faulty logic that, if prostitution ceases on a certain piece of property, it disappears altogether.

Legislating as though prostitution depends on location is a legal fiction because property control does not equate to prostitution control. Furthermore, property-centric laws are irrelevant to real world prostitution because they build on two large misconceptions. First, using property as a conduit for regulation is flawed because prostitution is transitory while property is inherently unmovable. Second, by assuming that the property owner exercises complete authority, the law misdirects its force at the wrong individuals. Resolving these misconceptions through economics redirects legal focus to the role of human beings.

#### *A. Transience of Prostitution*

In defense of state laws, one could argue that using property to regulate prostitution made more sense before the American transportation boom facilitated movement through rural areas. However, these laws lacked effect in Appalachia long before highways and the Internet. As early as 1911, the red-light district of Cinder Bottom in McDowell, West Virginia was “infamous . . . as the ‘International Whorehouse District of the Coal Fields’ . . . [i]n addition to American’s white and Negro prostitutes, their likes are here from nearly every country in Europe.”<sup>38</sup> The diversity among Cinder Bottom prostitutes shows that travelling from outside West Virginia to Cinder Bottom did not deter them from making good money from sex work. Yet despite the fact that Cinder Bottom prostitutes were primarily outsiders, the law treated brothels as the

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<sup>36</sup> W. VA. CODE ANN. art. 9 § 61-9-3.

<sup>37</sup> W. VA. CODE ANN. art. 8 § 61-8-5(c).

<sup>38</sup> HOWARD B. LEE, BLOODLETTING IN APPALACHIA app. III 203 (W. Va. Univ. 1969).

origin of control.<sup>39</sup> Indictments did not charge women for selling sex.<sup>40</sup> Rather, punishment centered around living, loitering, or boarding in a “house of ill fame.”<sup>41</sup>

Early twentieth century West Virginian law saw the root of prostitution as the place of prostitution, an association that carries over into today’s state laws.<sup>42</sup> In Las Vegas, S. explained that she was “eighty-sixed” (slang for banned) when caught illegally working at casinos.<sup>43</sup> This punishment stems from trespass law,<sup>44</sup> and there is even a specific Nevada law titled “[u]nlawful trespass upon licensed gaming establishment by person previously convicted of prostitution or solicitation for prostitution.”<sup>45</sup> In practice, the ban applies to the individual hotel or casino, so being eight-sixed only excludes work at that specific establishment.<sup>46</sup> Enforcement therefore depends on hotel employees recognizing individual sex workers, which leaves ample work opportunity in Las Vegas’ many other resorts.<sup>47</sup> This regulation is doubly ineffective because a new charge for prostitution generally requires trespassing within six

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<sup>39</sup> A combination of prostitution indictments and census information reveals the residents of several brothels existing in 1910 and confirms that prostitutes came from outside West Virginia to work in Cinder Bottom. For example, a brothel headed by Mary Dickenson had seventeen female residents in 1910, but only three state natives. DEPT. OF COMMERCE AND LABOR BUREAU OF THE CENSUS, THIRTEENTH CENSUS OF THE UNITED STATES: 1910 POPULATION, CENSUS PLACE: BROWNS CREEK, MCDOWELL, WEST VIRGINIA 9B. Eleven hailed from Virginia, two from Kentucky and one from Georgia. *Id.* Similarly, Ella Kelso’s boardinghouse of eight women contained no West Virginians; half came from Virginia, two from Tennessee and the remaining from North Carolina and Pennsylvania. *Id.*

<sup>40</sup> In researching Cinder Bottom prostitution, the Author reviewed hundreds of McDowell County prostitution indictments that all contained this language, a sample of which is provided by the charges cited in this Note. *Infra* note 50.

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

<sup>42</sup> *See supra* notes 32–36.

<sup>43</sup> Interview with S., *supra* note 1.

<sup>44</sup> NEV. REV. STAT. ANN. § 207.200.

<sup>45</sup> § 207.203.

<sup>46</sup> S. even contends that she has a friend that was “eighty-sixed” from the entire strip as a whole, which may be a more realistic portrayal of how enforcement realistically manifests. Interview with S., *supra* note 1.

<sup>47</sup> Interview with S., *supra* note 1.

months; if a prostitute trespasses on a prohibited location *after* one year, police just re-issue the ban.<sup>48</sup> Clearly, property-based criminal law does not deter prostitution, and the transient nature of prostitution explains why.

### 1. Transience of Sex Workers

Prostitution is a mobile industry that follows activity and demand.<sup>49</sup> To satisfy this demand, sex workers create an interactive network that centers on people and work availability—not property. This has been true in Appalachia since the heyday of Cinder Bottom,<sup>50</sup> and transience shapes prostitution today just as it did in

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<sup>48</sup> A Las Vegas law firm confirms S.'s portrayal of regulation: “[i]n practice, the Clark County D.A. typically does not press trespass charges stemming from bans more than one year old.” *Guide to “Trespass” Laws in Nev. (N.R.S. 207.200) (Explained by Las Vegas Criminal Defense Lawyers)*, LAS VEGAS DEF. GRP., <http://www.shouselaw.com/nevada/trespass.html> (last visited Oct. 25, 2015).

<sup>49</sup> *More Bang for Your Buck: How New Tech. is Shaking Up the Oldest Business*, THE ECONOMIST (Aug. 9, 2014), <http://www.economist.com/news/briefing/21611074-how-new-technology-shaking-up-oldest-business-more-bang-your-buck> (noting that prostitution advertisement raised considerably when political conventions hit Denver and Minneapolis in 2008). The correlation between prostitution and gatherings and conventions applies in Appalachia as well. Taylor Eaton, *Update: Charleston Police Cracking Down on Online Prostitution*, WSAC NEWS CHANNEL (Feb. 3, 2015, 11:50 PM), <http://www.wsaz.com/home/headlines/Six-Arrested-During-Prostitution-Sting-in-Charleston--291849181.html> (citing a Lieutenant statement that, “Whenever there's a large gathering, like . . . the Legislature being in session . . . [a]ccording to the prostitutes on the street, there tends to be a rise in their business . . .”).

<sup>50</sup> The network of the aforementioned Mary Dickerson illustrates why the transience of Cinder Bottom prostitutes defied property regulations. Dickerson faced charges in 1905 for allowing someone else, Rose Rife, to manage a brothel in her house. Grand Jury Charge, *State v. Mary Dickerson*, Apr. 1905 (Box 133, file no. 1062) (on file with the Author and the McDowell County Clerk's Office); Grand Jury Charge, *State v. Rose Rife*, Apr. 1905 (Box 131, file no. 1102). By 1910, Rife was among four women living in the brothel of a certain Rebecca Robertson, known madam. DEPT. OF COMMERCE AND LABOR BUREAU OF THE CENSUS, THIRTEENTH CENSUS OF THE UNITED

early 20th century Appalachia.<sup>51</sup> Sex workers in Nevada travel to pursue work, and brothel employment particularly appeals to women with seasonal obligations.<sup>52</sup> School ends for the summer and winter halts agriculture, thus creating opportunities for teachers, college students, ranchers, and single moms with school-year-custody to quickly accumulate profit through sex work.<sup>53</sup> The steady demand for sex incentivizes year-round sex workers to travel as well.<sup>54</sup> By attempting to hinder the pursuit of demand by confining prostitution to unpopulated regions, Nevada laws yield the opposite result: sex workers get tired of the sparse clientele and seek more lucrative options in Las Vegas and Reno.<sup>55</sup> Property concepts simply cannot keep track of this transience and, just as early West Virginian laws failed to control prostitution in Cinder Bottom, the law remains ineffective today.<sup>56</sup> If a law's worth does not come directly from its effect on regulated individuals, the purpose of the law becomes the moral interests of third parties.

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STATES: 1910 POPULATION, CENSUS PLACE: BROWNS CREEK, MCDOWELL, WEST VIRGINIA, *supra* note 39. Completing the circle, Robertson lived next door to Dickerson. *Id.* The interactions of these women are only a small piece of a much larger and complex prostitution network, but offer a sample of how prostitution depended on human collaboration and mobility instead of property.

<sup>51</sup> Interview at Bella's Hacienda, *supra* note 11.

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

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

<sup>54</sup> For example, an employee at the Dove Tail Ranch makes frequent trips to see her regular brothel clients when she has arranged a sufficient number of appointments to justify the trip to Elko County; otherwise, she works independently in her home city. Interview with B., Employee, The Dovetail Ranch, in Carlin, Nev. (July 20, 2015).

<sup>55</sup> Charles Kendrick, owner of Sharon's Bar & Brothel, claims that prostitutes rotate through Nevada's brothels and cities at will in pursuit of the best work opportunities. Interview with Charles Kendrick, Owner and Manager, Sharon's Bar and Brothel, in Carlin, Nev. (July 21, 2015) [hereinafter Interview at Sharon's Bar & Brothel].

<sup>56</sup> As aforementioned, research for this Note entailed review of hundreds of McDowell County indictments; both the frequency of prostitution charges as a whole and the repetition of prostitution charges on specific individuals over the course of years showcases the inefficiency of prior criminal regimes. *See supra* notes 39 and 50.

Travelling towards the highest demand is only one of many economic reasons explaining why prostitution is a transient industry. Like any other working person, sex workers consider financial and personal benefits when making decisions about commuting and scheduling.<sup>57</sup> The story that best unifies financial and personal advancement and Appalachian prostitution is the story of Jennifer Reed of the Desiree Alliance, a sex workers' rights organization.<sup>58</sup> Jennifer grew up in Ohio near the West Virginia border, and, after leaving an abusive relationship in her junior year of college, she needed money to support her children and graduate school ambitions.<sup>59</sup> A college friend in a similar situation introduced her to over-the-border club work in West Virginia where she could work without fear of recognition.<sup>60</sup> She recalls the camaraderie among prostitutes as women from poor areas, especially single moms, as they tried to advance beyond their inherited situation.<sup>61</sup> Due to the club's location on the state border, this network provided travel advice about safety and more prosperous venues.<sup>62</sup>

Overall, prostitutes are not anchored to property as the law suggests. To the contrary, sex workers move using savvy cost-benefit analyses that factor in time, demand, and discretion. These

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<sup>57</sup> Both S. and A., illegal sex workers in Las Vegas, are single moms who are proud of how prostitution enables their financial independence and involvement as parents. Interview with S., *supra* note 1; Interview with A., in Las Vegas, Nev. (July 17, 2015) [hereinafter Interview with A.]. As A. sees it, she *could* work nine-to-five for minimum wage, earn less, and miss out on her young son's upbringing. Interview with A. Instead, she earns several hundred dollars from a few appointments after dropping her son at school and has her evening cleared for homework help. Interview with A. S. also cites prostitution as "the best career for a single mom" for the same reason. Interview with S, *supra* note 1.

<sup>58</sup> Interview with Jennifer Reed, Ph.D. Candidate, U. of Nev. Las Vegas, in Las Vegas, Nev. (July 18, 2015).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Refuting the stereotype of the drug-laden Appalachian prostitution scene, Ms. Reed states that drug incentive exists in any type of labor with a low educational bar and addiction is not disproportionate in sex work. To the contrary, her experience showed addicts to be the minority among prostitutes, although that varied from club to club. *Id.*

<sup>62</sup> *Id.*

are the “same things we ask about other economic sectors,” yet the law refrains from viewing prostitution as a business.<sup>63</sup> Not doing so produces inaccurate laws that neglect the economic decisions prostitutes make in the sale of sex, such as “[w]hat kind of jobs are available, under what conditions and for what types of employers?” and “[w]hat role do informal networks of families, friends, and coworkers play . . . ?”<sup>64</sup> Because these are the questions asked by sex workers, these are the questions that the law should ask.

## 2. Transience of Clients

If the transience of prostitutes already exceeds the capacity of property-centric regulation, then the transience of clients doubles the inefficacy of the laws. Just as sex workers travel to work, clients travel for sex. The ultimate meeting place of both parties is thus ancillary to the economic question of how these parties move and why.

History confirms the longstanding connection between prostitution patronage and transience, especially in rural areas occupied by big industries.<sup>65</sup> Cinder Bottom “was tolerated or even fostered by the coal companies to keep their workers happy. The Norfolk & Western Railroad was alleged to have run special trains for the miners’ visiting convenience.”<sup>66</sup> In Nevada, industries continue to generate patrons by assembling large numbers of mobile employees.<sup>67</sup> The manager at the Dovetail Ranch describes a 50-50 divide between regional patrons and workers contracted to the area.<sup>68</sup> Interstate 80 provides a steady supply of truck operators,

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<sup>63</sup> Willman-Navarro, *supra* note 20, at 20.

<sup>64</sup> *Id.*

<sup>65</sup> Jean Battlo, *Cinder Bottom: A Coalfields Red-Light District*, 20 GOLDENSEAL 60, 62 (1994).

<sup>66</sup> *Id.*

<sup>67</sup> Mr. Kendrick calls the mines the “golden opportunity” that enabled his business. The mines were expanding at the onset of Sharon’s Bar and Brothel, and the well-paid, around-the-clock workforce of miners guaranteed a return on his licensing and building expenses. He paid off all costs in just three years. Interview at Sharon’s Bar and Brothel, *supra* note 55.

<sup>68</sup> Interview with Monica, Manager, The Dovetail Ranch, in Carlin, Nev. (July 21, 2015) [hereinafter interview at Dovetail].

while the gold mines bring in miners, especially during the yearly deconstruction and reassembly of the mills.<sup>69</sup>

The transience of brothel clients is not unknown to the law. At Bella's Hacienda, management estimates that 70% of clients are truck drivers.<sup>70</sup> City code mandates that "[a]ll soliciting of prostitution and acts of prostitution must take place inside the house of prostitution of a licensed brothel."<sup>71</sup> This de facto means that prostitutes cannot personally solicit, or even leave ads, at truck stops.<sup>72</sup> However, using a billboard on the brothel property itself or a citizens band ("CB") radio to attract truck drivers is perfectly allowable.<sup>73</sup> In this way, prostitution laws subtly acknowledge and accommodate the transience of patrons because advertising restrictions would suffocate business if not for a mobile clientele. Yet the laws stifle the brothels' ability to truly capitalize on this trend.

In modern day McDowell County, the red-light reign of Cinder Bottom is long gone. Instead, a small number of prostitutes solicit in Welch, McDowell's largest city of about 3,000 people.<sup>74</sup> The Author first encountered Welch's sex workers when two women introduced themselves in a parking garage.<sup>75</sup> The women did not share the Author's favorable view of their town, insisting that there was "nothing to do," especially without a car.<sup>76</sup> "We walk everywhere," one woman said, complaining that even the nearest

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<sup>69</sup> *Id.*

<sup>70</sup> Interview at Bella's Hacienda, *supra* note 11.

<sup>71</sup> WELLS, NEV., CITY CODE ch. 6, tit. 3-6-5(B), (2001).

<sup>72</sup> Bella's employees take shifts advertising over CB, although this practice is decreasing with the rise of online advertising. However, Bella's still has a table where employees broadcast messages to prospective clients, and all brothels generally have bright signs that can be seen from the roadway. Bella's Hacienda, *supra* note 11.

<sup>73</sup> The city advertising restrictions that govern the Dove Tail and Sharon's are essentially the same as those applicable to Bella's in Wells, NV. CARLIN, NEV., CITY CODE ch. 9, tit. 5-9-4(B), (1991).

<sup>74</sup> David Grubb, WELCOME TO MCDOWELL COUNTY, WV, <http://mcdowellwv.com> (last visited Nov. 1, 2015).

<sup>75</sup> Anonymous Interview, in Welch, W. Va. (July 2015).

<sup>76</sup> *Id.*

fast food was out of reach.<sup>77</sup> Eventually a client arrived, parked, and the women entered his truck, thus illustrating the biggest difference between modern prostitution in Nevada and McDowell County; transience defines the client, not the prostitute.

Of course, transience is relative. Prostitutes in Southern West Virginia indeed move via streetwalking, however, the mobility prostitutes gain by streetwalking is minimal compared to that of clients. In Welch, the identities of the several local prostitutes, as well as the street on which they solicit, are well known.<sup>78</sup> Out-of-state contractors, as well as workers from other parts of the state, come to Welch to flag prostitutes.<sup>79</sup> Repeat clients and locals thus know where to find their prostitution supply, but prostitutes do not have similar opportunity to move towards demand.<sup>80</sup>

The unilateral transience of Appalachian prostitution creates a two-fold problem. First, prostitution remains sufficiently transient through streetwalking and travelling clients to make property-centric criminal laws inapplicable. Second, the unequal access to travel between Appalachian sex workers and clients creates unequal bargaining power because sex workers rely on the demand for sex *coming to them*.<sup>81</sup> If obtaining a cheeseburger requires overcoming distance, then getting to the most lucrative place to sell sex is impossible. Accordingly, an Appalachian sex worker receives far less than her rural Nevada counterpart because of a market stalemate: the expected rate for services is \$15-25, and she cannot

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<sup>77</sup> *Id.*

<sup>78</sup> Welch attorney Mr. Barie describes the number of prostitutes as a “handful.” Interview with Danny Barie, Attorney, in Welch, W. Va. (July 8, 2015). Welch attorney Mr. Hassan approximates this number at about five. Interview with Ron Hassan, Attorney, in Welch, W. Va. (July 8, 2015).

<sup>79</sup> Interview with Martin West, Sheriff, McDowell County Sheriff’s Office, in Welch, W. Va. (July 2015). Attorney Barie confirms the high proportion of contracted workers among prostitution clients. Interview with Danny Barie, *supra* note 78.

<sup>80</sup> *Id.*

<sup>81</sup> See Pruitt, *supra* notes 27–28 (explaining the limitations Appalachian women generally face in accessing transportation and overcoming poverty); Anonymous Interview, *supra* note 75.



increase demand by leaving.<sup>82</sup> Compare that number to the average rate of \$365 for a “party” with a “rural” Nevada brothel worker.<sup>83</sup> Even the minimum price for rural Nevada brothel workers began at \$100 from 2011–2013, and that range extended to \$1500.<sup>84</sup>

As one scholar remarked in relation to domestic violence, “[t]he point is not that rural women are worse off than their urban or suburban counterparts; it is that their spatial circumstances and the consequences of those circumstances are relevant. . . including the law’s response to [them].”<sup>85</sup> In Appalachia, the relevant circumstance is that prostitution remains undaunted by criminal prohibitions.<sup>86</sup> However, the diminished transience of prostitutes compared to clients limits how much a prostitute can gain. Criminal law responds only to the question of *if* and *where* prostitution happens.<sup>87</sup> The better question is: when prostitution *does* happen, how do the involved parties shape the exchange? Economics answers this question.

### ***B. Emphasis on Ownership***

Criminal prostitution laws suffer from a second enormous misconception. Property-centrism ignores the transience of

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<sup>82</sup> Rates were obtained by asking a small survey of local men. Anonymous Interview, in McDowell County, W.Va. (July 2015).

<sup>83</sup> *Sex-In-Nevada’s Ongoing Pricing Survey Results for Years 2011 through 2013*, SEX-IN-NEVADA.COM, [http://www.sex-in-nevada.com/Bashful/SURVEYS/price\\_2011\\_2013.pdf](http://www.sex-in-nevada.com/Bashful/SURVEYS/price_2011_2013.pdf) (last visited Jan. 31, 2016).

<sup>84</sup> *Id.*

<sup>85</sup> Pruitt, *supra* note 27, at 355–56.

<sup>86</sup> Erin Beck, *Prostitution Persists Despite Police Efforts*, CHARLESTON GAZETTE-MAIL (Sept. 7, 2015), <http://www.wvgazette.com/article/20150907/gz01/150909607>.

<sup>87</sup> See Ave Mince-Didier, *Prostitution, Pimping, and Pandering Laws in West Virginia*, CRIMINAL DEFENSE LAWYER, <http://www.criminaldefenselawyer.com/resources/criminal-defense/state-crime/pandering-laws-west-virginia.htm> (last visited Feb. 14, 2017) (outlining the relevant prostitution laws in West Virginia and their associated penalties. Like most criminal laws, the state uses jail time and fines to retroactively punish prohibited conduct).

prostitution, but also targets the wrong individual: the property owner.<sup>88</sup> In both Nevada and West Virginia, property owners are liable for prostitution occurring on their land.<sup>89</sup> In turn, the law punishes owners with injunctions and taxes, alongside conventional punishment like fines and imprisonment.<sup>90</sup> Directing the law's force towards property owners is not only ineffective because of the detachment between prostitution and location, but ownership is a weak conduit for regulation because managers—not owners—organize prostitution.<sup>91</sup> Management oversees the employment conditions of sex workers, frequently including fee allocation.<sup>92</sup> Money is the driving force of prostitution, making the role of managers more influential than that of a property owner in shaping an area's prostitution. In turn, an effective prostitution law understands the importance of management and shifts regulatory focus to management's control over sex workers.

### 1. Management and Money

Prostitution in a legal or illegal business structure has a form of management that directs prostitutes and their work. In Las Vegas, illegal sex workers often seek escort agency employment to avoid the financial and physical risks of working independently.<sup>93</sup> Escort agencies are wholly separate from property ownership because

<sup>88</sup> See *supra* notes 34 and 35 for a list of West Virginia and Nevada prostitution laws related to the property owner's culpability.

<sup>89</sup> W. VA. CODE ANN. § 61-8-5(a); NEV. REV. STAT. ANN. § 207.200 (“Any person who shall keep any disorderly house . . . is guilty of a misdemeanor”).

<sup>90</sup> West Virginia law allows ownership of a prostitution locale to be fined between \$100-\$250; subsequent offenses lead to between 1–5 years imprisonment. W. VA. CODE ANN. § 61-8-5(a). Injunction based on ownership is likewise available. W. VA. CODE ANN. § 61-9-2. Maintaining a nuisance due to prostitution also allows a \$300 tax against the owner. W. VA. CODE ANN. § 61-9-9. In Nevada, illegal ownership of a place of prostitution results in a misdemeanor; however, a second violation within three years results in a fine between \$250-\$1000 and 1–6 months in jail. NEV. REV. STAT. ANN. § 207.030.

<sup>91</sup> Interview at Dovetail, *supra* note 68.

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

<sup>93</sup> Interview with S., *supra* note 1; Interview with A., *supra* note 57.

agencies do not host sexual exchanges; instead, management arranges appointments, thereby saving sex workers time otherwise spent soliciting and communicating with potential clients.<sup>94</sup> Potential clients frequently get cold feet, so the secured clientele provided by agencies is cost-efficient.<sup>95</sup> Accordingly, agency employment would seem like a sweet deal: so why do so many prostitutes choose to work independently?

The answer lies in the agencies' fee-splitting arrangement, which tilts a sex workers' cost-benefit analysis in favor of independent work.<sup>96</sup> A. explained that the agency first lays claim to its arrangement fee, then splits the sex worker's tip: a \$300 total thus portions out to only \$160 of earnings.<sup>97</sup> Similarly, S. described a \$200 total of which the agency receives the majority.<sup>98</sup> For sex workers who logically prioritize retaining their profits, managerial control over finances in brothels has the same dissuasive effect as escort agencies. In fairness, brothel laws make it difficult for a small, independent business to break even.<sup>99</sup> Brothels pay a license

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<sup>94</sup> Interview with S., *supra* note 1; Interview with A., *supra* note 57.

<sup>95</sup> A. estimates that she gets eight calls a night, only two of which are legitimate. If she can identify unserious inquiries at the onset, she is lucky: she cites the biggest downside of prostitution as driving somewhere when no one shows up. These unprofitable hours cost her gas money and time away from home. Agencies can "book more people" and quickly replace a no-show. Interview with A., *supra* note 57.

<sup>96</sup> Three sex workers interviewed for this Note talked about their agency experience, and each cited unfair pay as the reason for seeking employment elsewhere, stating, "they take all of your money, but you do all the work." Interview with S., *supra* note 1; Interview with A., *supra* note 57; Interview with B., *supra* note 54.

<sup>97</sup> This total includes a tip, some clients—having paid the agency fee—are upset to discover tips are expected. Interview with A., *supra* note 57.

<sup>98</sup> She then called this a "false rate" because, upon meeting the client, the agency instructs employees to state that the \$200 is "just to get me naked." S. began instructing clients to call the agency to cancel their appointment, whereupon she would personally charge a fair rate. Interview with S., *supra* note 1.

<sup>99</sup> According to Mr. Kendrick, initial approval requires paying for a FBI and Nevada Investigative Division background check; he then pays up to \$50,000 per year for license renewal. Interview at Sharon's Bar & Brothel, *supra* note 55.

fee “for the privilege of operating a house of prostitution” determined by a “prostitution licensing and control board” composed of city councilmen.<sup>100</sup> Advertising restrictions further impair the ability to attract clientele,<sup>101</sup> forcing the already isolated brothels to rely on word-of-mouth. Ultimately, prostitutes bear much of the cost of these financially restrictive laws because, in addition to paying for their own lodging in the brothel, they must pay for weekly health examinations<sup>102</sup> and a sheriff’s card.<sup>103</sup> Finally, a brothel employee personally negotiates with a client about the lump proceeds from a transaction but then splits this amount *and* tips with the brothel.<sup>104</sup> Overall, it comes as no surprise that most Nevada prostitutes choose illegal work when the laws and managerial scheme of legal brothels combine to so severely restrict income.<sup>105</sup>

## 2. Management and Employment Conditions

There are aspects to brothel management beyond strict finances that influence the employment choices of prostitutes. Approaches to brothel management vary tremendously and, because brothel workers live in the brothels, the conditions created by management are a primary determinant when considering where

<sup>100</sup> CARLIN, NEV., CITY CODE ch. 9, tit. 5-9-6 and 5-9-13 (1991). WELLS, NEV., CITY CODE ch. 6, tit. 3-6-6 and 3-6-15 (2001).

<sup>101</sup> See *supra* notes 72 and 73 for city advertising prohibitions.

<sup>102</sup> CARLIN, NEV., CITY CODE ch. 9, tit. 5-9-15 (1991). WELLS, NEV., CITY CODE ch. 6, tit. 3-6-25 (2001).

<sup>103</sup> CARLIN, NEV., CITY CODE ch. 9, tit. 5-9-14 (1991). WELLS, NEV., CITY CODE ch. 6, tit. 3-6-26 (2001).

<sup>104</sup> While workers at the Dovetail keep all tips earned by dancing at the bar, tips from sex work are still split with the brothel. Interview at Dovetail, *supra* note 68.

<sup>105</sup> David Knowles, *A Bad Economy and Independent Prostitutes Running Nevada Brothels Out of Business*, NEW YORK DAILY NEWS (May 10, 2013), <http://www.nydailynews.com/news/national/bad-economy-shutting-nevada-brothels-article-1.1340972>.

to work.<sup>106</sup> At Bella's Hacienda, the assistant manager revealed the key to her approach: separating her "personal life and brothel life."<sup>107</sup> Too much fraternization with employees, she explained, gives the illusion of favoritism and creates tension.<sup>108</sup> In contrast, the Dovetail shift manager and manager lauded the family atmosphere, claiming the sex workers and management form a family.<sup>109</sup>

The employee environment also depends on the extent to which management enforces the city's prostitution restrictions, which impose surprising restraints on a sex worker's liberty. For example, Dovetail workers are under a 7 p.m. curfew after which they cannot be in public; the regulations governing Bella's set the curfew at 5 p.m.<sup>110</sup> Bella's management actively enforces this curfew because police will suspend or revoke the brothel's license for violations.<sup>111</sup> By comparison, the Dove Tail curfew is more lenient, largely because of the accepting community attitude.<sup>112</sup> A Dove Tail employee explained that being spotted with a client past curfew might draw negative attention, but no one cares if a sex worker leaves to purchase snacks at the gas station.<sup>113</sup> Likewise, the Dovetail manager does not make employees contract, meaning

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<sup>106</sup> Interviewing brothel management, as well as past and current employees, highlights the various management styles in place—as well as the response of those subject to management. *Infra* notes 107-119.

<sup>107</sup> Interview at Bella's Hacienda, *supra* note 11

<sup>108</sup> *Id.*

<sup>109</sup> Interview at Dovetail, *supra* note 68.

<sup>110</sup> Interview at Bella's Hacienda, *supra* note 11; Interview at Dovetail, *supra* note 68; See also Bella Mansfield, *Nevada's Brothels: Legalization Serves the Man*, TITSANDSASS.COM (April 22, 2014), <http://titsandsass.com/nevadas-brothels-legalization-serves-the-man/> ("In addition to state and county regulations, each brothel has its own set of rules. These rules aren't available to the public . . . Should [sex workers] need something, like a toothbrush or a box of tampons, they must pay a fee to a house runner who will pick up these items for her . . . If they leave, they must return by a set curfew.").

<sup>111</sup> In actuality, prostitutes are not supposed to be in town whatsoever, regardless of curfew. Local women cannot work at the brothels, and sex workers must take their days off in other towns. Interview at Bella's Hacienda, *supra* note 11.

<sup>112</sup> Interview at Dovetail, *supra* note 68.

<sup>113</sup> Interview with B., *supra* note 54.

prostitutes may leave whenever they choose.<sup>114</sup>

Still, sex workers cannot avoid offensive employment conditions simply by working outside of brothels. S. described several unpleasant practices put in place by escort agency management, such as refusing to use a prostitute's real photo in advertisements.<sup>115</sup> Instead, clients pick from postings of airbrushed, idealized women; agencies then send the sex worker who best matches the image.<sup>116</sup> Sometimes this practice goes horribly wrong; such encounters are not only embarrassing, but S. also resents taking part in a sales practice that actively "lies to people."<sup>117</sup>

Ultimately, the variance in management strategies means that sex workers often make the difficult choice between high profits and fair treatment.<sup>118</sup> The different approaches to sex work management are therefore much more indicative than land ownership with regards to where prostitution occurs. Accordingly, treating prostitution more like a business, rather than a location-based offense, creates accurate laws that consider the importance of the managerial level.

### 3. Management and the Law

Given management's hefty influence over an area's prostitution, placing accountability on the property owner makes little sense. If the manager and owner happen to be the same person, this is a happy coincidence for the law; however, it is rarely the

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<sup>114</sup> The manager's lenient attitude developed from watching management at the larger brothels, where madams refused to let employees leave, demeaned and even fired sex workers in front of clients, alongside other abusive practices. For this reason, large brothels—sometimes called "pussy prisons"—have a more constrictive reputation. Interview at Dovetail, *supra* note 68.

<sup>115</sup> Interview with S., *supra* note 1.

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

<sup>117</sup> S. described a particularly embarrassing incident in which her agency matched her with a client who requested a woman of a different race. Another time, a client called S. out for having the opposite body type to that depicted in his selected photo. *Id.*

<sup>118</sup> Interview at Dovetail, *supra* note 68.

case.<sup>119</sup> As scholar and activist Jennifer Reed puts it, the emphasized role of the brothel aids a male-dominated economic dichotomy in which an illusion is created that—absent the owner’s input—the essential business tactics of booking, marketing and advertising are impossible.<sup>120</sup> However, management is a vital pillar of sex work; this is as true today as it was in early twentieth century Appalachia.<sup>121</sup>

Returning to Cinder Bottom, while brothel owners remained mysterious, the madams were well known authority figures.<sup>122</sup> Indeed, indictments from the time charge madams for “keep[ing] and maintain[ing]” —not owning— a house of ill fame, showing that the law linked responsibility for prostitution with the managerial level.<sup>123</sup> In fact, many Cinder Bottom madams are listed as house-heads and boardinghouse proprietresses in the census,<sup>124</sup> but assuming that the most influential figure in a brothel is also the owner is problematic because of the interplay between madams and owners in compact red light districts.<sup>125</sup> It is this aspect of *influence*,

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<sup>119</sup> The Dove Tail manager cites attempts by brothel owners to also function as effective managers in partial explanation for why Nevada brothels frequently close and re-open. Management and ownership are simply two very different creatures, thus the common brothel structure comprises a male owner and a female manager who “knows how to handle” employees. Dovetail, *supra* note 68.

<sup>120</sup> Interview with Jennifer Reed, *supra* note 58.

<sup>121</sup> See *supra* note 50 (describing the way in which several, central madams coordinated the prostitution of Cinder Bottom; the indictments of these sex workers shows long-term affiliations with certain madams, mirroring the way that modern sex workers choose their place of employment with management in mind.).

<sup>122</sup> In Attorney General Lee’s 1911 visit to Cinder Bottom, he asks the police chief, “Chief, at the first house, you mentioned collecting the rent. Who owns these dives?” The chief had openly collected rent from the madam in clear indication of her authorized control over the brothel. However, the identity of the owner “is a matter that is never discussed.” LEE, *supra* note 38, at 205.

<sup>123</sup> DEPT. OF COMMERCE AND LABOR BUREAU OF THE CENSUS, THIRTEENTH CENSUS OF THE UNITED STATES: 1910 POPULATION, CENSUS PLACE: BROWNS CREEK, MCDOWELL, WEST VIRGINIA, *supra* note 39.

<sup>124</sup> *Id.*

<sup>125</sup> For example, Mary Dickerson and Rose Rife were both independently charged as madams in their time, yet Mary Dickerson “unlawfully and

usually delegated to the madam, that creates so much confusion regarding prostitution laws that focus on property owners. Ella Kelso—yet another prolific Cinder Bottom madam—was not the owner of the house of ill fame she was charged for keeping in 1910, and thus the jury instructions accompanying her charge reveal the weakness of the law’s association between prostitution control and land ownership. Kelso’s liability hinged on undoing this association:

[i]f you believe from the evidence in this case that Ella Kelso the defendant had charge of the house . . . you should find her guilty as charged in the indictment although you may believe she had sold her furniture and had no interest in the rents except to collect them as the *agent of the owner*.<sup>126</sup>

A sustained version of this instruction further states that Kelso’s liability rested on whether she “had *control, managed or exercised some position of authority* over the house in question,” thereby recognizing the actual power held by management.<sup>127</sup>

The state’s description of Kelso’s influence as a madam remarkably parallels current municipal law in Nevada. The city of Wells, unlike its neighbor city of Carlin, requires “key employees” to register for a sheriff’s license.<sup>128</sup> A key employee is “[a]ny executive, employee or agent of a licensed house of prostitution having the *power to exercise a significant influence over decisions concerning any part of the house of prostitution*.”<sup>129</sup> Furthermore, status as a key employee is not “restricted by the title of the job performed or amount of compensation received, but shall consider the functions, *responsibilities and apparent decision making*

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knowingly permit[ted] a house owned by her and under her control to be used and kept by one Rose Rife as a house of ill-fame.” State v. Dickerson, *supra* note 50.

<sup>126</sup> Jury Instructions, State v. Ella Kelsaw, May 1910 (Box 150, file no. 2096) (emphasis added).

<sup>127</sup> *Id.* (emphasis added).

<sup>128</sup> WELLS, NEV., CITY CODE ch. 6, tit. 3-6-20.

<sup>129</sup> *Id.* (emphasis added).



*authority* of the person involved.”<sup>130</sup> Overall, prostitution laws demonstrate significant contradiction. One one had, the statutory language delegates liability to the property owner. However, on a micro level, jury instructions and municipal enforcement are adjusted to suit the reality of how prostitution really works: through nuanced levels of management. Accordingly, Appalachian prostitution laws are better served by recognizing the realistic control of management over prostitution versus the guilty, yet phantom, owner.

This transition would accurately reflect what West Virginian law already knows: a tier of managers exists between sex workers and property owners. State law explains that if “with reasonable care and diligence such owner could not have known” about prostitution based nuisance, the owner avoids punishment if the court is “satisfied of the good faith of the owner of real or personal property and of his innocence of any knowledge of the use of such property as a nuisance.”<sup>131</sup> While this provision appears to acknowledge that owners may be detached from prostitution altogether, it stands in stark contradiction to legal assumptions within the same article:

When such nuisance has been found to exist . . . and the owner or agent of such place . . . was not a party to the proceeding and has not appeared therein, the tax of three hundred dollars shall, nevertheless, be imposed . . . The person in whose name the real estate affected by the action stands on the land books of the county for purposes of taxation shall be presumed to be the owner thereof, and in case of unknown persons . . . such may be made parties.<sup>132</sup>

Of course, this law makes sense in considering that, when a nuisance occurs, someone has to pay – it might as well be the property owner. However, in light of prostitution’s status as a nuisance, the net effect is that wholly unknown persons can be accountable for prostitution. In the grandest legal fiction of all, the

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<sup>130</sup> *Id.* (emphasis added).

<sup>131</sup> W. VA. CODE ANN. § 61-9-4.

<sup>132</sup> § 61-9-10.

state delegates responsibility for two bodies exchanging sex for money to the trustee of the land on which it happens.

### III. RECONCILING THE ECONOMY AND REALITY THROUGH A PARENT-SUBSIDIARY MODEL

Overall, legalizing prostitution requires reconciling two interests: a sex worker's financial interest and the state's interest in control. Prostitutes will not comply with laws that unduly restrict their earnings.<sup>133</sup> Yet, realistically, no state will concede to laws that allow unbridled prostitution. In this regard, legal brothels satisfy state control by funneling prostitution into fixed establishments subject to business regulations. The Author initially resisted supporting the brothel scheme because it goes against the desires of independent sex workers who understandably resent profit sharing. However, the fact that both S. and A., along with interviewed brothel employees, began their careers in agencies is telling. These women were not initially opposed to working for firms, but economic and managerial impositions dissuaded them.<sup>134</sup> If laws made employment for a business more appealing by providing the freedom that sex workers need to maximize their profits, states could still retain adequate oversight. Legalizing prostitution in a way that encourages a parent-subsiary model holds potential as a solution because, unlike current American approaches, it accounts for the key aspects of transience and management.

#### A. *Parent-Subsidiary Corporations and How They Work for Prostitution*

The parent-subsidiary structure allows for control at the state and local level by the nature of its structure. "A partly owned subsidiary corporation is a corporation in which the parent company owns a majority of the subsidiary's voting shares, or at least enough shares to give the parent *effective control* of the subsidiary, but in which some of the subsidiary's shares are owned by other

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<sup>133</sup> Interview with S., *supra* note 1; Interview with A., *supra* note 57.

<sup>134</sup> *Id.*

holders.”<sup>135</sup> While the parent corporation, through its shareholder majority, has authority over subsidiaries, the two are independent entities.<sup>136</sup> As such, both the parent and subsidiary are bound to the laws of their respective states.<sup>137</sup> Should states choose to draft laws similar to those of Nevada in legalizing brothels, each state would naturally draft laws different than those of others. Accordingly, the state exercises control because the daily operations of that subsidiary brothel must conform to state laws even if the parent head is elsewhere. A county can furthermore design its own brothel codes, such as Elko County currently does in Nevada, so long as those codes conform to state law.

So how would a parent-subsidiary structure work for legal prostitution? To begin, prostitution would need to be legalized at the state level. Importantly, in Nevada counties with legal prostitution, no prohibition exists against corporations applying for brothel ownership.<sup>138</sup> However, the realities of county-specific legalization make corporate establishment unfeasible. To begin, “[e]stablishing a subsidiary is an expensive undertaking,” and the laws specifically confine brothels to counties that do not have heavy clientele.<sup>139</sup> Furthermore, the county-specific nature of brothel codes means that community members have the favor of city councilmen in receiving license grants.<sup>140</sup> If a state as a whole, or

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<sup>135</sup> JAMES D. COX & THOMAS LEE HAZEN, TREATISE ON THE LAW OF CORPORATIONS § 1:21(3d ed. 2014) (emphasis added).

<sup>136</sup> FLETCHER CYCLOPEDIA OF THE LAW OF CORPORATIONS § 43, Westlaw (database updated Sept. 2015).

<sup>137</sup> *Id.* at § 2477 (“A corporation can perform no act in violation of the provisions of either the articles of incorporation or the laws of the state of incorporation.”).

<sup>138</sup> WELLS, NEV., CITY CODE ch. 6, tit. 3-6-2; CARLIN, NEV., CITY CODE ch. 9, tit. 5-9-5 (defining an applicant as “any person, firm, or corporation applying to the board for a license . . .”).

<sup>139</sup> Chirantan Basu, *What Are the Advantages & Disadvantages of Establishing the Company's Own Subsidiary Overseas?*, CHRON, <http://smallbusiness.chron.com/advantages-disadvantages-establishing-companys-own-subsidiary-overseas-34167.html>. (last visited Nov. 25, 2015).

<sup>140</sup> Kendrick believes the council awarded him because of the longstanding ties he and his ex-wife had to the community. “Even the mature Mormon

even several states, legalized prostitution, then a broader corporate scheme could arise.

Sex workers in Nevada are currently considered independent workers,<sup>141</sup> which could continue under a parent-subsidary structure. This satisfies the transience of prostitution by maintaining the current Nevada practice, whereby legal brothel employees hop from brothel to brothel for a desired period of time in pursuit of demand. The transience of clients is likewise accommodated because a different location can be tailored for “those [that] normally serve small towns . . . [and] cities crammed with potential customers.”<sup>142</sup> Reflecting on the need-specific strategies of S., this means amenities for party-seeking clients in large cities, like outdates and arrangements with nearby resort casinos, while rural brothels cater to discretion, intimacy, and the fluctuations of seasonal laborers.

The difference created by a parent-subsidary model is the existence of an overarching corporate policy.<sup>143</sup> The parent head should not necessarily be a brothel, but an administrative center that “handle[s] the administration of a company, while the branch locations” as brothels “operate the business,” which “lets both sides do what they do best.”<sup>144</sup> This system provides for a higher chance of a brothel’s success because brothel managers can focus on the

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women in town had known me since I was twelve, and Sharon since she was a baby. The women went to the city council and said ‘if anyone is going to do this, let it at least be Charles and Sharon.’” Interview at Sharon’s Bar and Brothel, *supra* note 55.

<sup>141</sup> As explained in the “FAQ” section of the Dove Tail website, “We do not have set rates for sexual activities. The ladies are independent contractors, and as such they set their own rates for various activities.” THE DOVETAIL RANCH, [www.thedovetailranch.com](http://www.thedovetailranch.com) (last visited Jan. 31, 2016).

<sup>142</sup> *More Bang for Your Buck*, *supra* note 49.

<sup>143</sup> Shaa Hudson, *The Relationship Between a Company & Its Subsidiary*, CHRON, <http://smallbusiness.chron.com/relationship-between-company-its-subsidiary-14696.html>. (last visited Nov. 25, 2015) (“The parent corporation organizes the subsidiary’s management structure and company bylaws, setting forth rules related to corporate governance.”).

<sup>144</sup> Josh Fredman, *How to Manage a Corporate Office With Branch Locations*, CHRON, <http://smallbusiness.chron.com/manage-corporate-office-branch-locations-44198.html>. (last visited Nov. 25, 2015).

well-being and efficiency of employees, while corporate directors can allocate resources and devise strategies for the success of the business. Nevada brothels often close,<sup>145</sup> which management at the Dove Tail attributes to poor managerial approaches—specifically, owners trying to take on the managerial role.<sup>146</sup> The corporate rules set forth by the parent head can thus make determinations about overarching business strategies while maintaining the important and independent role of management. The parent's broad management standards would ideally eliminate unacceptable or unfair managerial strategies, but brothels can then fine-tune policies according to the specific preferences of clientele and employees. For instance, sex workers can choose between the Dove Tail's family atmosphere or the more structured approach of Bella's establishment.

Increased profitability is another important upside of the parent-subsidary scheme, which is vital to legalized prostitution because there is no appeal for sex workers to work for an unprofitable business. A parent-subsidary arrangement allows for several profitable devices. To begin, parent companies are usually not responsible for the debt or liability of subsidiaries, thus the business as a whole can survive if one location fails. Considering the tendency of brothels to close—should one brothel fall into financial ruin—the other subsidiaries are shielded from that downfall and can continue operation.<sup>147</sup> Sex workers thus have security about maintaining employment options.

Future brothel subsidies would also gain revenue through “cost synergies . . . because a parent and its subsidiary could use common financial systems, share administrative services and develop joint marketing programs.”<sup>148</sup> Specifically, “[o]perating synergies affect the operations of the combined firm and include economies of scale, increasing pricing power and higher growth potential.”<sup>149</sup> By combining corporate efforts and resources, the

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<sup>145</sup> Hernandez, *supra* note 31.

<sup>146</sup> Interview at Dovetail, *supra* 68.

<sup>147</sup> Hudson, *supra* note 143.

<sup>148</sup> Basu, *supra* note 139.

<sup>149</sup> Aswath Damodaran, *The Value of Synergy*, STERN SCH. OF BUS. (Oct. 2005), <http://people.stern.nyu.edu/adamodar/pdfiles/papers/synergy.pdf>.

brothels could save on expenses while increasing profits.<sup>150</sup> This increase could, in turn, be used to offset some of the operating costs that get placed on sex workers themselves, like boarding, medical tests, and sheriff's licenses. Furthermore, a more profitable brothel can reduce the percentage it takes from prostitutes' earnings. The net result is a higher likelihood of sex workers to seek brothel employment because they can avail themselves of the clientele of a lucrative business while retaining more income.

Finally, legalizing prostitution in a corporate context enables private law to help the industry address losses. As a business, brothels can use contract law to clarify expectations about the sale of sex. A client can therefore still be obligated to pay if that client fails to show up or cancels last minute, resolving the frustration that independent workers expressed about the high rate of no-shows. By establishing payment guidelines, a client cannot claim unawareness about tips;<sup>151</sup> a minimum rate also ensures that sex workers who are less skilled at negotiation will not grossly undercharge. Payment failure can be countered by breach of contract claims, and a large corporation's visibility (1) disinclines clients from not paying initially; and (2) provides means for the subsidiary brothel to go after those who do.<sup>152</sup>

In terms of safety, private law would perhaps increase

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<sup>150</sup> *Id.* at 3. ("Synergy is the additional value that is generated by combining two firms, creating opportunities that would not been available to these firms operating independently . . . Operating synergies affect the operations of the combined firm and include economies of scale, increasing pricing power and higher growth potential. They generally show up as higher expected cash flows. Financial synergies, on the other hand, are more focused and include tax benefits, diversification, a higher debt capacity and uses for excess cash.").

<sup>151</sup> Especially among sex workers employed through escort services, service provider takes generally half—if not more—of the price, making tips an essential part of sustaining an income. Interview with A., *supra* note 57.

<sup>152</sup> *Achieving Spend Visibility: Benefits, Barriers, and Best Practices*, IBM (June 2013), <http://www-01.ibm.com/common/ssi/cgi-bin/ssialias?infotype=SA&subtype=WH&htmlfid=ZZW03126USEN>.

("Organizations with good visibility can . . . better enforce contract compliance, and help facilitate compliance with regulatory and financial reporting requirements . . .").

judicial oversight of prostitution. The availability of tort claims means that sex workers and clients alike can file claims for assault, battery, and intentional infliction of emotional distress. The illegality of prostitution makes it unlikely such injuries will ever get reported. Even in Nevada, because prostitution is not legal state-wide, Mr. Kendrick decrees that the “attorney general will never discuss prostitution; you will be deferred to local prosecutors or the county sheriff.”<sup>153</sup> Availing prostitution of private law not only removes the industry from the underground, but an injured party can receive restitution for a tort claim. All parties involved are likely to tread more carefully when failure to do so can cost money. Finally, encouraging corporate prostitution does not preclude the criminal justice system: a brothel, like any other business, can call on the police for robberies or violence.

*B. Application of Parent-Subsidiary Prostitution to Appalachia*

Simple numbers show why there is a dire need for the parent-subsidiary approach to prostitution in Appalachia. Again, different sexual acts fall within a range of \$15-\$25 in Welch, McDowell County.<sup>154</sup> A rural brothel worker in Nevada has an average rate of \$365. Nevada is known for prostitution. Appalachian sex workers could not initially expect the same payment range because of the differences in the economy and demand. However, prostitution uncontestedly exists in Southern West Virginia and, with corporate oversight, the gap between \$15 and \$365 could close. This oversight could exist through a parent head’s establishment of minimum wage or a corporate-wide adherence to fixed prices for certain services so that sex workers do not undercharge or get haggled out of fair pay. “Greater pricing power from reduced competition” is among the operating synergy benefits to a parent-subsidiary structure.<sup>155</sup> When other prostitutes accept less money in the same area, a likely scenario considering Appalachia’s high poverty rate, overall prices are pushed down.<sup>156</sup> Yet because only a few prostitutes work in a small West Virginian

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<sup>153</sup> Interview at Sharon’s Bar and Brothel, *supra* note 55.

<sup>154</sup> Anonymous Interview, *supra* note 75.

<sup>155</sup> Damodaran, *supra* note 149.

<sup>156</sup> *More Bang for Your Buck*, *supra* note 49 (describing how an increase of poor immigrants into European cities forces down rates for already established sex workers, minimizing lucrative work opportunities).

town like Welch, the plausibility of keeping prices high by employing all, if not the majority, of an area's sex workers is greater than in a large city.

Adequate compensation does not bind a sex worker to prostitution forever; to the contrary, it may be the financial boost needed to overcome rural "[o]bstacles to economic self-sufficiency . . . [and] social norms that discourage [women] from developing human capital, as well as the practical difficulties associated with doing so."<sup>157</sup> The Welch prostitutes expressed frustration that, without transportation, they are trapped by their poverty.<sup>158</sup> Their community knows them and has granted de facto permission for their work; they will continue working. This Note does not assume that, given adequate compensation, they would seize the chance to purchase a car and drive towards a different life, but they should at least be given that chance. If the state of West Virginia legalized prostitution, such women could then, as independent contractors, find the same employment with the same corporation in a larger city brothel. For instance, Charleston, the state capitol, or the university city of Morgantown, present fewer obstructions to a rural woman's success: scarce options for housing, employment, child care, job training services, and community college.<sup>159</sup> Sex workers availed of a parent-subsidiary's multiple locations can follow the footsteps of Jennifer Reed by accumulating revenue in higher demand areas to fund their goals.

#### IV. CONCLUSION

Overall, American economics need to guide this country's legal stance on prostitution instead of morals or European models. This approach is especially pivotal in Appalachia, where the regional economy deserves and requires special attention that cannot be achieved through blanket policies. Without viewing prostitution as a business, the governing law remains impotent and Appalachian sex workers continue to receive payment that is inadequate to overcome poverty. By comparison, economics promotes laws that are both effective and actually relevant to sex

<sup>157</sup> Pruitt, *supra* note 27, at 372–73.

<sup>158</sup> Anonymous Interview, *supra* note 75.

<sup>159</sup> Pruitt, *supra* note 27, at 373–74.



work participants.

Luckily, examining the past and present circumstances of rural prostitution illustrates more than longstanding regulatory failure: important aspects on which the law *can* hone are also revealed. The reality of sex work in Nevada and West Virginia clarifies that financial influences, like transience and management, have more sway over prostitution than property notions. Business law can better address these factors because allowing prostitution under private law balances the state's interest in control and a sex workers' interest in capitalizing. A parent-subsidiary structure satisfies these interests by ensuring a brothel's compliance with state laws while enabling sex workers to pursue demand and favorable employment conditions. Finally, prostitution can be profitable using a parent-subsidiary model, which is vital not only to the success of effective laws, but also rural women. Unless the law lets sex workers make an adequate income, it will not be abided. Without an adequate income, prostitutes in Appalachia may never have the chance to rise above poverty.