

## **Time, space, and the authorisation of sex premises in London and Sydney**

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### **Abstract**

While the regulation of commercial sex in the city has traditionally involved formal policing, recent shifts in many jurisdictions have seen sex premises of various kinds granted formal recognition via planning, licensing and environmental control. This means that ‘sexual entertainment venues’, ‘brothels’, or ‘sex shops’ are now not just labels applied to particular types of premise, but are formal categories of legal land use. However, these categories are not clear-cut, and it is not simply the case that changes in the law instantiate a change whereby these premises are brought into being at a particular point in time. Countering the privileging of space over time that is apparent within much contemporary research on sex and the city, this paper foregrounds the varied temporalities in play here, and describes how the actions of those policy-makers, municipal bureaucrats and officers allow sex premises to variously ‘fade in’, accelerate, linger or disappear as legal land uses within the city. We examine the implications of these different temporalities of the law by exploring how sex premises have been subject to regulation in London and Sydney, showing that the volatile, contradictory and fractured nature of legal space-making does not necessarily provide the certainty sought by the law but produces overlapping and contested understandings of what types of premise should be subject to regulation. More broadly the paper highlights how attention to the contingency and complexity of municipal law can help us better understand the ways that commercial sex is differently manifest in different cities.

**Keywords:** commercial sex; legal geography; temporality; municipal law; governmentality.

## **Introduction**

Commercial sex, whether in the form of prostitution, adult entertainment or sex retailing, has long been associated with the Western city, albeit largely limited to the 'backstreets and sites of ill repute'. The dominant process by which this has been achieved has been the deployment of criminal laws, and their enforcement by police (Ashworth *et al.*, 1988; Scoular, 2010). Whilst this has received significant scholarly attention (Matthews, 2005), less attention has been devoted to the role of municipal law in regulating the presence of commercial sex in the city. However, an emerging body of work has begun to highlight how formal urban planning is emerging as an important mechanism for governing commercial sexual exchange within contemporary western cities, most notably, in the large US literature on the zoning of commercial sexual venues (e.g. Papayanis, 2000; Kelly, 2004).

However, zoning ordinances are only one of the many instruments associated with municipal law, which also shapes the city through development control, the licensing of premises, the enactment of local nuisance by-laws and health regulation (Valverde, 2005; Blomley, 2010; Layard, 2012). Significantly, such municipal laws tend to be enacted and enforced by 'minor bureaucrats' - planners, licensing officers and councillors - rather than the police (Brown and Knopp, 2010). These overlapping actors seldom have an interest in creating a coordinated mode of regulation because they act instrumentally and often in isolation (Blomley, 2010). Nonetheless, they share an interest in assuaging conflicts between 'incompatible' urban land uses, constructing an urban landscape that is rarely coherent, and sometimes contradictory, but which can

exercise considerable influence over sexuality by determining what activities are appropriate in particular premises (Laing, 2012; Hubbard, 2015).

In this paper we explore the way that specific types of commercial sex premise have been brought within the ambit of municipal law via techniques of spatial governance including planning and licensing. Our focus is on Sydney and London, world cities where commercial sex was governed in the twentieth century primarily through prohibition involving frequent police incursions into the use of premises for commercial sex justified with reference to public decency or obscenity law (Hubbard *et al.*, 2009, Prior *et al.*, 2012).. Yet in both this close scrutiny of commercial sex by the police has largely subsided, with shifting social morality and government priorities meaning that commercial sex is now largely overseen by planning and licensing officers in these cities. As we subsequently describe, the gradual dismantling of such prohibitions for commercial sex is arguably more pronounced in Sydney than London, with the decriminalisation of prostitution and brothels in New South Wales (NSW) at variance with their continual criminalisation in England and Wales. Nonetheless, despite the divergent legal approaches taken to commercial sex within these cities in recent decades, we argue that both cities have witnessed a (partial) delegation of responsibility to the local authorities who now have more influence over the development and management of commercial sex in their respective cities.

Elsewhere, we have argued that this process has not rendered commercial sex any less prone to surveillance given authorisation through licensing or planning relies upon an ongoing assessment of environmental or amenity impacts by planners, licensing officers

and councillors. In this paper we are interested in the *temporalities* of these processes, and the ways these bring particular categories of sexual land use into being at particular times (Benda-Beckmann and Benda-Beckmann, 2014). Focusing on the moments when specific categories of land use are constituted by the law, and subsequently identified within the city, we emphasise the constantly changing legalities of commercial sex premises, and the consequences of this in terms of the geographies of commercial sex in the city. In doing so we counter the privileging of space over time that is apparent within much research on the legal geographies of the city by foregrounding the neglected relationship between time and space in the formation of legal spaces of sex work. In this sense, our focus does not simply concern technical questions of land use, but engages with more politically consequential matters concerning the use of premises for particular sexual purposes (see Maginn and Steinmitz, 2014) and related questions of sexual rights to the city (see Wietzer and Boels, 2015).

### **Sex premises as legal land use**

The governance of commercial sexuality can be placed in the broader theoretical terrain of spatial governmentality (Huxley, 2007), which has been developed as a “frame for [*understanding*] prosaic and quotidian city politics” (Brown 2009, p. 5). In focusing on different *techne* – e.g. licensing, planning, judiciary - that have been used by local authorities and the state to emplace commercial sex within the urban landscape, studies have shown that municipal law needs to be understood as implicated in the wider biopolitics that is central to liberal forms of governmentality (Legg, 2005, Meulen and Valverde, 2012; Laing, 2012). Governmentality refers here to a ‘mentality of government,’ both in the sense of how government thinks about its governed citizens

and how those citizens think about themselves, while *techne* refers to modes of government intervention into the reality of the lived urban population (Foucault, 1991). Here, instruments such as development control or licensing are used to organise and to establish rules concerning the effective use of urban space; these are 'authorised' by bodies charged with managing common interests on behalf of the municipality (e.g. licensing committees, planning committees).

What is crucial here is that municipal law is not concerned with regulating the comportment of individuals through the logic of disciplinary power, but the regulation of territory:

With the shift to what Foucault calls governmentality, the ruler of a state begins to take an interest in, and to pursue strategies towards, the people who live in the territory of the state, and their affairs, including economic activities, social norms ... Central to this change was the identification of the people of the state as a population understood as the proper focus of the art of government. For Foucault, the discourses and practices of governmentality emerge ... together with the objects of government: the population of a particular territory (Painter and Jeffrey, 2009, p. 29)

This preoccupation with the governance of populations was emphasised in Foucault's *History of Sexuality* volumes, which suggested that while deviant sexuality could be remedied through incarceration, it could be most effectively reduced through the promotion of stable domesticated families (i.e. the *heteronormative*). This discursive emphasis on the sexual 'norm' relied on the state collecting information on the sexual behaviours evident in particular territories and populations: as Legg (2005) argues, this provided a basis for state intervention in these very territories, with programmes of

urban renewal and ‘cleansing’ often justified with reference to sexual immorality.

Accordingly, commercial sex has often enjoyed only a precarious position within contemporary urban landscapes, despite the evident demand and supply of sex for sale in Western cities. Traditionally, it was obscenity laws and criminal laws prohibiting brothel-keeping that were used to remove these ‘immoral spaces’ from the city.

However, this is beginning to change, with a moderate opening in the space for legal sex work resulting from feminist movements arguing for legal change, the strength of sex worker advocacy groups and a liberal authoritarianism that regards sex workers and their clients as able to self-govern. As Maginn and Steinmitz (2014) argue, perhaps the most concrete expression of this is where governments have recognized prostitution as a legitimate form of labour through legalisation. Simultaneously, they contend that the emergence of erotic boutiques and corporate ‘gentleman’s clubs’ is contributing to a social mainstreaming of sex as legitimate leisure that is mirrored in its inclusion in some formal categorizations of legal land use. In some cases this means that commercial sex has begun to move from clandestine locations on the urban periphery (for example, in parks and industrial districts) to more commercial urban sites – albeit this process remains highly contested, especially in the context of ‘revanchist’ urban policy (Papayanis, 2000).

It is evident here that the recognition of sex premises as potentially legal land use relies on the use of certain vocabularies and procedures which produce particular ‘facts’ about commercial sex in the city: despite their obvious moral dimensions, these truths are ostensibly stripped of political resonance or moral sentiment given they appear to relate solely to environmental impact and the material consequences of sexual uses of space (Frisch, 2002; Kern, 2015). In this sense, while municipal law appears unconcerned with anatomo-politics and sex itself, the suggestion here is that it is fundamentally

implicated in the making of social norms through regulation of what sexual behaviour is permitted where (Hubbard, 2015). Hence, while planning can be viewed as a rational economic intervention designed to overcome issues such as negative environmental externalities and 'free-riding', such economic imperatives must be viewed alongside an understanding of the social and sexual norms which imbue land uses with value. As Blomley (2004, p. 72) argues, commercial sex is rarely considered 'best and highest use of land' and as such is often displaced by other commercial and residential land uses (see also Karsten, 2003). This is underlined in the language of planning law, where zoning often privileges residential land uses, with the protection of 'single family housing' being used to enhance the value of such properties, enshrining the nuclear household as the sexual norm (Forsyth, 2001). It is this privileged use of space that often appears to be challenged by commercial sex premises, which frequently operate at night and attract clientele whose comings and goings are assumed to disturb the normal rhythms of family life – e.g. the “daily, weekly and seasonal rhythms ... the normalised temporalities of breadwinners going to work, children returning home from school, weekend family outings, and so on” (Valverde, 2014, p. 71-72). But clearly, not all sex premises are regarded as equally problematic in this regard, with different municipal governors reaching different conclusions as to which premises might be permissible in particular jurisdictions.

Valverde (2014) has accordingly insisted that studies of governmentality need to consider time as well as space. As she notes, when we consider the governance of conduct, we are often looking not just at the dividing of the city into functional spaces, but 'time-spaces' regulated by specific laws at particular 'times'. Notions of time and duration – such as night/day - are regularly invoked in municipal law, underlining that

urban regulation involves a *chronopolitics* that seeks to determine what belongs where and *when* (Klinke, 2013). However, this is not just about the diurnal rhythms of the city, as planning allows regulators to determine whether particular land uses are appropriate in given localities on the basis of what their projected effects might be in a city-yet-to-come, an ordered city where land uses are distributed so there is no conflict. This is perhaps not surprising given urban planning is ‘always constituted through a future-oriented vision’ (Klinke, 2013: p. 678). In relation to commercial sex, it is apparent even legal premises can be prevented from opening on the basis of nuisances it is imagined they *might* cause (Hubbard, 2015). At the same time, a characteristic of planning law is its accommodation of changes in land use over time (Webster and Lai, 2003), conversely implying that even if a commercial sex premise is granted rights to development, it might lose those in the future if it is judged that the continuing existence of the premise is no longer in the municipal interest. Indeed, this might be the case when a legitimate sex premise is later deemed a barrier to regeneration (Hubbard, 2015).

Examining the notions of time which inform planning and licensing decisions pertaining to sex premises is hence important in an era when many previously prohibited forms of commercial sex are being decriminalised. Yet given the governmental pluralism that exists within municipal and state authorities, there can be no assumption of a correspondence of state legislation and municipal law: just because an activity that was illegal becomes legal in terms of the criminal law does not mean that spaces where it occurs immediately become legal land use. At times, state and municipal levels may operate in unison; at other times they appear poorly coordinated and out of synch. These observations are relevant to thinking through what Benda-Beckmann and Benda-Beckmann (2014) refer to as ‘temporalities of space’. As they

show, precincts, buildings or parcels of land can be officially designated through specific legal systems at particular points of time only for these to be transformed or superseded by later enactments of the law. In terms of sex premises, this might mean, for example, that a place determined to be illegal at a certain point in time (a brothel) is granted legality through processes enacted later. To the contrary, it might be that a place granted legality later falls into illegality as new laws come to pass. This means businesses or individuals operating under such conditions have to adapt each time the regulation of that space is altered by prevailing legal systems (something familiar to all those who have to deal with licensing officers or planning inspectors on a regular basis). In relation to commercial sex, this is brought into sharpest relief in the moments when municipal codifications of commercial sex shift in response to constructions of commercial sex as either legal/normal or illegal/deviant (Maginn and Steinmitz, 2014). However, as Benda-Beckmann and Benda-Beckmann (2014) insist, these shifts are seldom total, and the law is never able to create the unambiguous and enduring legal spaces it desires. It is this sense of legal uncertainty that we seek to highlight in the remainder of this paper where we explore the authorization of commercial sex in the urban landscapes of London and Sydney respectively.

### **Authorising Sex Premises in Sydney and London**

Sydney and London have contrasting histories and geographies of commercial sex, this is most notable in recent histories of the regulation of prostitution. For example, prostitution in London's has been shaped by a suite of laws that do not criminalise prostitution per se but aim to prevent 'the serious nuisance to the public caused when prostitutes ply their trade in the street' and penalising the 'pimps, brothel keepers and

others who seek to encourage, control and exploit the prostitution of others' (Edwards, 1987, p. 928). This has rendered street soliciting illegal, whilst penalizing anyone who opens a brothel or any 'disorderly house' where sex is sold. In contrast, in NSW the *1995 Disorderly Houses Amendment Act* removed the prohibition on brothels and gave local councils power to regulate brothels through their plan-making powers, governed by the *Environmental Planning and Assessment Act 1979*, while under the *1988 Summary Offences Act*, street soliciting remains legal except 'within view' of any dwelling, school, church or hospital (Prior *et al.*, 2012, p. 1842). Beyond prostitution, it is clear that commercial sex persists in many other forms:

Sydney's commercial sex industry includes more than direct sexual services. The city is also host to a large range of adult/sex shops catering for diverse groups of sexually curious/adventurous individuals. Adult entertainment such as strip clubs, gay/lesbian bars and BDSM venues all contribute to Sydney's thriving night-time economy. These types of ... activities have become increasingly visible ... in discrete 'vice districts' ... but also in inner-, middle- and outer-ring suburbs (Maginn and Steinmitz, 2014, p. 55).

In London, too, it is apparent that despite the prohibitions placed on brothels, there is a wide variety of commercial sex for sale: while geography of sexual subcultures in London is highly variegated, including anonymous (gay) sex in public spaces and cruising grounds (Gandy, 2012), the majority of this is accommodated within commercial premises including lap-dance clubs, saunas and massage parlours where sex is transacted, sex shops, and LGBT clubs (Andersson, 2011; Hubbard, 2012; 2015).

Our analysis here focuses on the specific legal instruments and techniques which emerged at moments when there was a perceived need to recognize some of these forms of commercial sex as legal businesses. Here we dwell on two examples, most particularly, striptease clubs in London, and sex services premises in Sydney (brothels and private residences where sex is sold). In examining these we do not suggest that such premises have become accepted everywhere and anywhere within their respective cities, but that specific *techné* have emerged which provide distinctive ways of emplacing them within the urban landscape. This examination is based on archival research involving analysis of all applications for sex establishment licenses made between 2010 to 2013 in London along with scrutiny of all publically available objection letters and written submissions accompanying these. Relevant judicial review and planning inspectorate decisions were also obtained. In Sydney this involved archival research that explored local council development processes for sex service premises, associated NSW Land and Environment Court (LEC) judgements and NSW state parliamentary debates. We analysed the planning policies regulating sex service premises across the 150 local councils operating in NSW and paid particular attention to two local councils - City of Sydney (COS) and Parramatta City Council - that developed contrasting approaches to sex service premises. Given our interest in the inter-relationships of space, time and law, our analysis here is framed through Benda-Beckmann and Benda-Beckmann's (2014) conceptualization of legal spaces as variously fading in, disappearing, lingering or accelerating. As we show, each implies a particular degree of certainty (or, more routinely, uncertainty) for those managing, working in, or visiting these premises.

*Fading in: legalizing commercial sex premises*

Benda-Beckmann and Benda-Beckmann (2014) argue some spaces ‘fade into view’ when an older legal regime makes way for an emergent regulatory regime. Spaces of striptease entertainment are a case in point. Striptease has long existed in London’s pubs, mainly those in the East End catering for a male, working-class clientele (Clifton *et al.*, 2002). However, this began to change in the 1990s as ‘US-style’ striptease clubs emerged. These clubs, dedicated to offering sexual entertainment, quickly became known as ‘lap dance’ clubs because they were (erroneously) thought to specialize in forms of close-contact ‘straddle dancing’: many were located on the fringe of the City of London’s financial district, catering for a more affluent, corporate clientele. Under the *Licensing Act 2003*, all were licensed in the same way as any pub or club, with no special provisions allowing refusal of licences on the grounds of the number of sex establishments in the area or nearby land use types. In short, they were not licensed as sex premises, but as spaces licensed for the sale of alcohol in which the type of entertainment provided was regarded incidental to their material impacts on the locality in which they were located.

This mode of (non) regulation caused controversy. In London, for example, when Southwark Council granted a license to a lap dance club (the Rembrandt Club) for lap dancing in 2005, it precipitated a series of complaints – despite stringent conditions being put on opening hours, insistence on blacked-out windows and a prohibition on advertising striptease within one mile (*Minutes of Southwark Licensing Subcommittee*, 10 December, 2005). Commenting on the decision, the Dean of nearby Southwark Cathedral commented:

We were not allowed to object on moral grounds yet thousands of children pass down the street every day and the evidence is that similar clubs encourage undesirable behaviour... millions spent regenerating this area will be wasted because of this council's sloppy policies if the area is given a sleazy reputation and businesses move away' (cited in Batesc, 2006)

Other voices also claimed this club would besmirch the area's reputation: Ken Livingstone, then Mayor of London, stated 'It's not like it's buried away in some sleazy quarter of the city...It's actually down on a main street which is a centre for family tourism' (Livingstone, 2006). The Dean of Southwark sought to mount an appeal against granting a license – albeit the appeal was not necessary given that the property owners (Network Rail) ultimately refused to allow adult entertainment to occur.

Such controversy was mirrored elsewhere in England and Wales (Hubbard *et al.*, 2009). The seeming inability of local authorities to prevent the opening of lap dance clubs under the *Licensing Act 2003* provoked the rapid introduction of a Bill in 2008 – the *Sex Encounter Establishments (Licensing) Bill* – which led to the inclusion of clauses in the *Policing and Crime Act 2009* allowing local authorities to license striptease venues as Sexual Entertainment Venues, and subjecting them to the same determination criteria by which sex cinemas and sex shops had been judged since the introduction of the *Local Government (Miscellaneous Provisions) Act 1982* (at which point both were defined as sex establishments). The consequence is that any venue offering 'relevant entertainment' more than once a month requires a Sexual Entertainment Venue licence in addition to a alcohol licence. Significantly, the new powers allow a local authority to

refuse a licence application if:

[...] the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality [or] that the grant or renewal of the licence would be inappropriate, having regard (i) to the character of the relevant locality (ii) to the use to which any premises in the vicinity are put; or (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made (*Home Office*, 2010, p. 10).

Given a locality can be defined by the local authority on the ‘facts’ of an individual application, Kolvin (2010, p. 65) concluded this grants authorities “a high degree of control, even amounting to an embargo, on licences for particular types of sex establishment within particular localities”, noting that “the width of the discretion is consolidated by the absence of any appeal against a refusal on this ground”.

While this new legislation is discretionary – meaning a municipality may chose not to enact its powers – it has created a new legal category of licensed premise: the Sexual Entertainment Venue (SEV). In doing so, it uses the licensing (as opposed to planning) system to designate this as a distinct form of land use, and provides forms of control that regard it as such. This has instigated considerable debate concerning how such premises should co-exist with other categories of land use - a debate that has unfolded in the context of a lack of reliable evidence about the actual impacts of lap dance clubs on their locality (Hubbard, 2015). This means that clubs offering lap dance entertainment have been characterised by a certain liminality (cf. Benda-Beckmann and

Benda-Beckmann, 2014), applying for licences without any particular understanding of whether their operation might be regarded as appropriate in a locality. Moreover, it is sometimes unclear whether a particular premise falls within the scope of the new legislation at all: guidance states that the licensable activities include “any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience” (Home Office, 2010, p.14). While this definition

appears to have been conceived only with lap or pole dancing in mind, given the caveat that an audience can consist of just one person, this also raises questions about other venues where clientele remove clothing or perform in a manner designed to arouse sexual desire (Charalambides, 2013). This question appears pertinent in the context of some of London’s LGBT venues, including gay saunas and gay clubs that have ‘backrooms’ or ‘darkrooms’. To date, however, only one London Borough (Lambeth) has licensed such gay venues as SEVs, with six clubs (*Area, Bar Code, Bar Covert, Eagle, Fire, and Hoist*) applying for, and obtaining, licences in 2012. Some of these clubs had existed since the 1990s, albeit licensed for the provision of alcohol (Andersson, 2011), not as spaces of sexual performance or encounter.

In this respect, the new licensing regime has brought some premises into legal view as authorised ‘sex premises’. This type of ‘fading in’ has been mirrored in NSW in respect of commercial sex service premises where sex is sold. Whilst premises of various types - ranging from large commercial brothels through to workers providing sex services from their own home - had been recorded within Sydney for decades (Prior *et al.*,

2012), it wasn't until 1995 that the NSW state government legalized sex premises through the *Disorderly Houses Amendment Act 1995*. This removed that part of the *Disorderly Houses Act 1943* which made it a criminal offence to operate a commercial sex premise, with the existing laws regulating businesses (e.g. planning and taxation laws) regarded sufficient to regulate such premises. Shifting the regulatory onus from the police to local councils (including planners and health officers), the amending legislation removed the prohibition on urban property being used for prostitution and allowed local councils within Sydney to regulate these premises through plan-making powers, in the *Environmental Planning and Assessment Act 1979*. Over the next decade, this encouraged the development of Local Environmental Plans stipulating where brothels could be placed within local government areas (LGA). While the state stipulates that councils cannot ban sex premises outright, they can restrict them to industrial zones in the interests of maintaining neighbourhood amenity: under s.17(5)(a) of the *Disorderly Houses Amendment Act 1995* a brothel can be closed if it is operating “near or within view from a church, hospital, school or other place regularly frequented by children from residential or cultural activities”.

Since decriminalization in 1995, brothels have hence moved from a situation where they are de facto illegal to one where they are either authorized or unauthorized in planning law. Equally, in the twenty years since decriminalization there has been a gradual replacement of a unitary category of a disorderly house (which existed during the period of prohibition) and the introduction of more differentiated land use categories authorizing different scales of premise ranging from large and medium brothels through to Home Occupation Sex Service Premises (HOSSPs). In relation to HOSSPs, Sydney's local councils have utilized three different land use categories to regulate the sale of sex

in private residences. This first is the category of ‘home occupation’, which treats these like any other home businesses and allows them to operate in the LGA without development consent. This applies in almost half the councils in Sydney. Secondly, some local councils have sought to regulate HOSSPs through the *Disorderly Houses Amendment Act 1995*, and required owners to submit a development application to local councils through which consent is either granted or denied for that use of land. Third, some local councils have created a special category of HOSSPs and develop specific regulations to authorize this type of home business (*South Sydney City Council, Except and Complying Development Plan, 1999*). Between 1995 and 2005 a complex mosaic of land use classifications and authorization processes for HOSSP was accordingly introduced, bequeathing a varied approach to their regulation. For instance, a previously operating HOSSP on one side of a street could continue to operate without formal consent (as it did prior to decriminalization), whilst a premises the opposite side of the street (in a different LGA) required authorization through extensive development consent processes.

#### *Disappearing: prohibited commercial sex spaces*

The flipside of the authorisation of certain commercial sex premises through their planning or licensing approval is the refusal of authorization for others. For example, the recognition of SEVs in London as licensed sex establishments does not mean all such premises are permitted. Indeed, while most London Boroughs have published policies suggesting they will consider each application for a sex establishment on its merits, in some cases local policies approved by licensing committees have stated a presumption against the award of licences, stating there are no localities where sexual entertainment premises are suitable (a ‘nil limit’). An example here is the London borough of Hackney, which, having adopted the new powers, passed a *Sex*

*Establishment Licensing Policy* in 2011 suggesting no more sex establishments would be permitted in the borough despite the 76% of 2,705 consulted residents reporting no objection to the presence of lap dance clubs (*Hackney Licensing Committee*, 29 Jan 2011). While special exception was given to its four existing strip clubs, which remained open following their licence applications in 2011, the subsequent closure of one club means the number of premises has decreased given the nil limit policy has been strictly applied (*Hackney Sex Establishment Licensing Policy*, 2011, p. 5). A similar approach prevails in Camden, where sex establishments cannot be located within 250m of numerous sensitive land uses (e.g. schools, ‘family’ housing): the policy stating “the appropriate number of sex establishments ... in each of its wards is nil” (*London Borough of Camden Sex Establishment Policy*, 2011, p. 6).

In most other cases, London boroughs have policies stating they will treat any application for a SEV licence on its merits, albeit often taking into account whether a club is located ‘in the vicinity of’ sensitive land uses. Such policies have resulted in refusals of licences for some clubs which existed prior to the new legislation’s introduction, such as *Mist* in the London Borough of Hounslow, which was refused a licence on the basis of its High Street location (minutes of *Hounslow Licensing Committee*, 29 Aug 2012). Even when a local authority grants a licence, licensing conditions can severely limit a club’s operating hours. Combined, this has produced a restrictive operating environment in some boroughs, and some clubs have closed rather than seek a licence (costing up to £20,000 a year).

Here, the authorisation of sex premises is clearly selective, meaning that some spaces

are disappearing because they do not accord with the municipality's view of what is acceptable in a given circumstance. This shows that the general recognition of a category of sexual land use does not necessarily translate into a proliferation of such land uses: in London the overall number of sex establishments has reduced as clubs are refused licences or decide to close in the face of the new licensing regime (Hubbard, 2015). Similarly, whilst a diverse range of NSW legislation and local council planning instruments have been developed to authorize sex service premises, some councils have utilized this power to effect restrictions on premises. Some councils, particularly the COS, have utilized decriminalization to develop a pragmatic planning approach to sex premises which regards them like any other lawful land use, regulated by orthodox planning concerns applicable to any other legitimate businesses (such as amenity impacts) (Crofts and Prior, 2011). However, others have used their newly delegated powers to develop highly restrictive regulations that make it difficult to locate 'authorised' commercial sex, precipitating the disappearance of these land uses from the LGA. Such councils continue to regard sex premises as criminogenic, perhaps because historically they were unlawful: the expression 'not in my backyard' (Hubbard, 2011) is literal in relation to premises in these LGAs. For example, some require applicants to place a sign at the front of the property explaining the nature of the proposed development. Whilst this may be appropriate for large-scale brothels, when applied to HOSSP, it can excite a great deal of community opposition. This planning requirement can make it virtually impossible for HOSSP operators to apply for, let alone receive, development consent. This regulatory disappearance arguably has consequences in terms of power and exclusion, with unauthorised premises being susceptible to exploitation, existing beyond the scope of policies that support workers' safety and rights (Hubbard and Prior, 2013; Crofts and Prior, 2011).

*Lingering: commercial sex spaces and laws that remain*

The discussion above stresses that although some commercial sex premises may be abolished, and lack an authorised presence, this does not mean they necessarily disappear. As Benda-Beckmann and Benda-Beckmann (2014) note, spaces may continue to exist in practice even if they are technically prohibited, something most pronounced in the periods following the introduction of new legislation whose full implications remain unresolved or unclear. Inevitably, some will cling to old laws even as new ones are introduced. For example, many years prior to the adoption of the SEV provisions in the *2009 Policing and Crime Act*, *Secrets* had run six striptease clubs in London without police complaint. The chain argued strongly against the imposition of new licensing conditions through the new regime, including new conditions relating to the dancers' performance (e.g. banning self-touching and touching of customers). For example, in *Secrets v. London Borough of Camden* (16 June 2012) the chain challenged these new conditions being imposed during its transition to becoming a SEV under the new regime, arguing that no problems had arisen in the past without these conditions. In this case, the court dismissed the challenge, holding that the local authority was justified in exercising its powers in the public interest (see also *Spearmint Rhino Ltd v. London Borough of Camden 2014*, CO/1391/2014).

The fact that the 'rules' imposed by previous techniques of regulation can continue to guide practice until the legality of a new regime is tested at appeal illustrates the notion of 'lingering law'. Yet in the context of the emergent regulatory regime for SEVs, it is the persistence of spaces where commercial sex is available for consumption, but where this is not formally recognized, that provide the best instances of such lingering legality.

An example here is provided by the massage parlours located throughout London that are licensed for ‘massage and special treatments’. While this licence does not grant permission for sex to be sold on the premises (given that would constitute the legalisation of a brothel, contrary to the *1956 Sexual Offences Act* which makes it an offence to operate a premise “where people are allowed to resort for illicit intercourse”), it is widely understood that sex can be consensually negotiated between workers and clients in many (and some openly advertise this). Were this use for sexual consumption to be acknowledged by the premise owner, this would identify the premise as a brothel, casting it into a zone of illegality. These premises are not acknowledged for what they are, and hence authorized only as legal massage parlours, not as sex establishments, contrary to the situation in Sydney. This suggests that these exist as spaces of legal exceptionalism (Sanchez, 2004), and enjoy a legally liminal status in the sense that the main activity for which they are known (selling sex) is not regulated. Such spaces hence ‘linger’ as they are authorised through municipal laws that regard them as ‘non-sexualised’ spaces as there is currently little political enthusiasm to reform brothel-keeping legislation in England & Wales and incorporate them in the licensing regime that regulates sex establishments.

Whilst there has been gradual authorization of brothels in Sydney over nearly three decades, this transition is also, as yet, incomplete (Crofts and Prior, 2011). The now-obsolete criminal law continues to linger both in the memory and practice of some local councils, and arguably within NSW state legislation. As Benda-Beckmann and Benda-Beckmann (2014, p. 41) note, laws tend to linger long after they have been officially abolished if a “change in law is so contested that people cling to the old law, disregarding what the new law stipulates”. Here, the role of law enforcers is crucial,

with Gill (2002) persuasively arguing that the range of possible enforcement responses by police and other regulators such as planners will be influenced by judgments as to where the business is perceived to exist on an 'illegal-legal spectrum'. Evidence suggest that some local councils in Sydney continue to perceive commercial sex services as inherently illegal, informing the regulatory practices that they apply (Crofts and Prior, 2011). For example whilst the COS authority treats sex industry premises like any other legitimate land use, other local councils, such as Paramatta, have taken a restrictive planning approach to brothels in their LGA. Lingering assumptions of disorder lead these other councils to treat sex service premises as if they were unlawful, to adopt police-like strategies and powers involving frequent inspections or raids on what are authorised spaces (Crofts *et al.*, 2013, p. 58): reminiscent of earlier decisions such as *Sibuse v. Shaw* (1988 13 NSWLR 98) which ruled that a brothel was inherently disorderly even if well-run and tidy.

#### *Accelerating: mismatched legal spaces*

Benda-Beckmann and Benda-Beckmann (2014) contend that any legal attempt to determine once and for all the issues at stake is doomed to failure because regulatory regimes are inherently unstable, involving different laws enacted at different spatial scales, from supra-national down to the local. At some scales regulation can shift with dazzling rapidity, but remain recalcitrant at others. This is apparent in the context of new laws intended to regulate striptease clubs in England and Wales, given that two overlapping techniques of governance define the legality of land use: licensing and planning. The introduction in 2009 of a new system of licensing which acknowledged SEV as a formal land use category, was not matched by change in planning law, which

has continued to treat SEVs like any other nightclub or entertainment venue, all being understood to exist in the same category of the *1987 Planning (Use Classes) Order* that determines the necessity for planning permission. This has caused some conflict given the lack of co-ordination between planning and licensing control. For example, one proposed lap dance club on the fringes of north London was granted planning permission by the local authority but then not granted a SEV licence by the same authority two weeks later. Whilst this seemed contradictory, given the planning committee decided the conversion of a pub to lap dance club would have no detrimental impacts on the community, the licensing committee deferred from that view, the decision of the latter being upheld at appeal (see *R (on the application of KVP Ent Ltd) v. South Bucks District Council*, 2013 EWHC 926). Here, planning law appears to be only slowly catching up with licensing law, and remains out of synch (Hubbard, 2015).

Such mismatches have also occurred in Sydney. Over the past decade a diverse array of quantifiable planning principles for sex premises have emerged across Sydney's LGAs (Prior, 2008). These local council planning principles typically specify the type of 'respectable' land uses (e.g. day care centres) and 'sensitive populations' (e.g. women, children) that brothels are presumed to affect (Prior and Crofts 2011), and specify minimal separations between these. A second set of (equally diverse) quantifiable principles has emerged around the visibility of these in the urban landscape. Paralleling these principles has been the ongoing development of a body of judgments through the courts that are characterised by complex temporalities, so whilst at times the court may uphold local council decisions, at other times their judgements may have significant and abrupt impacts on local councils (cf Jeffrey and Jakal, 2014; Valverde, 2014, p. 66-69).. For example, the notion of disorderliness to construct planning principles for

commercial sex services within LGAs has been challenged through appeals to the LEC. Most notably, in *Martyn v. Hornsby Shire Council* (2004 NSWLEC 614), the main grounds for the rejection of a brothel was that the building could be seen from a home next door, with the court affirming planning principles that brothels should not be located where they are visible from other residences. Coupled with Section 17(5)(a) of the *Restricted Premises Act (NSW)*, this decision suggested that simply being able to see a brothel - even if you cannot see what goes on inside it - can cause offence, and is grounds for refusing authorisation. But more recently, the LEC has questioned the link between visibility and offensiveness of sex premises. In *Hall v. Camden Council* (2012 NSWLEC 1003), the LEC authorised a brothel in an industrial area even though it was visible from 'community' spaces, with the judgement stating:

I accept that it is likely that the nature of the use of the building will become known to people in the area, including to young people who pass the site on their way to and from the playing fields. However, that knowledge of itself would not in my view have an adverse impact on the use of the playing fields or on the amenity of other land in the area or on the community generally (p. 1005).

Here, the situated discretion of the municipal authority to authorise or refuse a premise was undermined by a 'higher' authority, with the implication being that the court might be moving faster than local councils towards an assumption that the sight of a brothel is not offensive in and of itself.

## **Conclusion**

While the legal geography of commercial sex premises within both London and Sydney has previously been studied (e.g. Hubbard *et al.*, 2009; Maginn and Steinmitz, 2014), our exploration here explored how the varied temporalities of the law, shape these geographies. In the broadest sense, the paper counters the privileging of space over time that is apparent within much contemporary urban research, seeking to provide a more balanced view of the relationship between space and time in determining the patterns of land use. In a more focused sense, by studying the transformation of particular classes of sex premises in Sydney and London from illegal to potentially authorised we have drawn attention to the fact that the legalities of commercial sex are not just territorially-determined but are a dynamic spatial and temporal composition that fades in, lingers, accelerates, and sometimes disappears all together.

Our comparative analysis of the regulation of sex premises in Sydney and London has hence allowed us to highlighting the different ways in which the law, space and *time* combine to produce distinctive geographies of commercial sex in the city. There are clearly significant differences in these geographies: for example, in the case of Sydney there has been formal acknowledgment of prostitution through the decriminalization of brothels, which now exist as visibly authorized premises, whereas in London brothels remain illegal, either existing below the thresholds of visibility in residential dwellings or hidden in plain sight in the form of licensed massage parlours. Despite such differences in the ways sex premises are classified in these jurisdictions, there are some commonalities in the sense that legal change appears capable of generating significant moments of ambiguity in terms of how premises are defined in land use terms, meaning some sex premises have 'faded into view' as legal entities, some have disappeared and others linger on despite their seeming illegal status. The consequences of the temporality of these legal geographies may be significant for those who work in the

commercial sex industry: not just those who sell sex directly to customers, but also business owners and investors, independent contractors, and non-sex working employees (e.g. waiters, guards, accountants, lawyers). Indeed, our analysis of the ‘timing’ of legal reform suggests that the overlapping, complex and pluralistic nature of regulatory regimes can create uncertainty for all of these actors, with some sex premises left in a state of liminality, neither recognized in terms of land use nor illegal in terms of criminal law.

Given that techniques such as planning and licensing are constituted by the state, we conclude that municipal authorities’ discretion to authorise commercial sex premises – or other commercial land use - is generated within ‘framework-legislation’ that, while specified in national or state law, is imperfectly defined and defended through the judicial system. This means that the municipal law exists in a dialectical, mutually-constitutive relation with state law, meaning councils and other delegated agents have a degree of freedom within a temporal and spatial ‘framework’ whose co-ordinates are set by legislation. Thus, the outcomes are determined partly by the state and partly by ‘street-level’ bureaucrats. In other words, the state makes it possible for a variety of agents, and multiple *techne*, to participate in the authorisation of premises. By examining how these *techne* interact, and sometimes fail to synchronise, we have drawn attention to diverse possible outcomes for different sexual premises. Moreover, in revealing this complex legal geography of commercial sex premises, we confirm Blomley’s (2012) argument that cities come with no promise of territorial integrity since they are characterized by a legal pluralism generated by the overlapping jurisdictional authority of city and state. In the final analysis, our comparative legal geography shows the consumption of sex in the city occurs in spaces whose status is often ambiguous, undecided and legally contestable.

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