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## **JAPANESE LOVE HOTELS: LEGAL CHANGE, SOCIAL CHANGE, AND INDUSTRY CHANGE**

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**Japanese Love Hotels:  
Legal Change, Social Change, and Industry Change**

**Mark D. West\***

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ABSTRACT

Throughout Japan, people frequent hotels at which the primary purpose is not sleep, but sex. Although some establishments offer such non-sexual amenities as tanning beds, fitness equipment, and large-screen televisions, there is little question that the *raison d'être* of a love hotel is, well, love (or something like it). In this Article, based largely on field observation, interview data, and quantitative analysis, I show that law has played an important but unrecognized role in the development of the love hotel industry (determining love hotel population, location, and form), and by default in the sex lives of many people in Japan. Specifically, I show, first, how social changes gave rise to a recent scheme to regulate love hotels. Second, in large part because of the underbreadth of the resultant controlling statute, the law invigorated the love hotel industry by creating a new class of “extralegal” love hotels and erecting barriers to entry sufficient to ensure greater market power for some surviving hotels. One underlying reason for these effects appears to be the capacity of the law effectively to “legitimize” enterprise in the minds of the public.

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## INTRODUCTION

People in Japan have sex, an observation that will not seem odd to anyone but believers in the most extreme theories of Japanese uniqueness. An accompanying fact that may strike some observers as noteworthy, however, is one place *where* people in Japan have sex: love hotels. Although exact quantitative data are lacking, the Japanese love hotel industry plausibly calculates that couples make over half a *billion* trips to such establishments each year.<sup>1</sup> If that number is reasonably accurate, and if a recent survey on frequency of sex in Japan is also correct, by my calculations, about half of all sex in Japan occurs in love hotels.<sup>2</sup>

Few enterprises amuse adult visitors to Japan more than these limited-purpose facilities – especially when the visitor inevitably mistakes one for a more legitimate place to spend the night. Love hotels, or at least “adult hotels” exist in the United States as well, but they are often seedy low-rent joints in the wrong parts of town. By contrast, Japanese love hotels, often enveloped in blazing neon and gaudy architecture in the style of such landmarks as the Disneyland castle and the Statue of Liberty, are situated so that couples can quickly dart in off the street without attracting attention. In other areas, they are often set back from the highway to allow

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<sup>1</sup> Futabasha ed., *Fuasshon Hoteru Yumekukan* [Tale of Fashion Hotel Dream Space] 104-05 (1999)(citing 576,076,762 couples); Yukari Suzuki, *Rabu Hoteru no Chikara* [Love Hotel Power] 148-49 (2002); Japan’s Love Hotels Shed Seedy Sex Image, *Deutsche Presse-Agentur*, Apr. 18, 2002, available in LEXIS (500 million couples, citing expert).

<sup>2</sup> The 2001 Durex Global Sex Survey into Sexual Attitudes and Behavior, see [www.durex.com](http://www.durex.com), finds that Japanese respondents between the ages of 16 and 55 have sex an average of 36 times per year. The Japanese population in that age range is approximately 70 million persons. If each such person is having sex 36 times per year, a total of about 1.26 billion acts of sexual intercourse are occurring ((70 million x 36)/2)). Another study of sexual practices in Japan finds that the average number of couplings is 7.0 per month for men and 2.1 for women. *Futsu no Sekkusu Hakusho* [White Paper on Regular Sex], *Spa!*, Mar. 5, 2002, at 48. While this study is unscientific and based only on a limited age range of single persons (200 men ages 25-35; 200 women ages 22-32), it does suggest that the Durex numbers are not implausible. All calculations are based on heterosexual sex. Same-sex customers do not comprise a large segment of love hotel guests. Although there are a handful of gay-friendly love hotels, employees at most love hotels who spot same-sex couples on closed-circuit cameras often deny entry, citing security and safety concerns potentially too large for a small working staff. See Suzuki, *supra* note 1, at 185-88.

inconspicuous entrance through the rubber-curtained doors that close just in time to prevent passersby from glancing at one's license plate. In either setting, for about \$50 for two hours or \$100 for the entire night, a couple gets a fully-furnished room, often furnished with rotating beds, mirrored ceilings, glass bathtubs, and entertainment extras such as large-screen televisions and karaoke machines. For a little extra, theme rooms are available, featuring everything from traditional Japanese furnishings to Cinderella fantasies to medieval torture chambers.

In this Article, I explore Japanese love hotel regulation, with my basic claim being that while law did not "create" love hotels, it influences significantly their numbers, location, and form. Because love hotel regulation is so integrally linked with social and historical notions of sex, sexuality, privacy, and the role of the state in a heretofore unexamined context, I can think of few topics that would arouse more natural curiosity. But for those readers who may not approach the topic with the same inquisitiveness, allow me to advertise here that I in fact use love hotel regulation to explore two broader areas of law and legal theory.

First and perhaps most simply, love hotel regulation provides an interesting case study of the interrelation between social norms and law. The love hotel case shows how social change can give rise to legal change, and how legal changes, in turn, can affect social and industry norms and practices. In this case, the latter is particularly interesting, as the love hotel case shows how state intrusion may affect behavior in non-obvious ways consistent with a rational-choice framework -- even in Japan, where social norms are often said to trump law.<sup>3</sup>

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<sup>3</sup> That the state plays a role in affecting sexual practices in Japan is not a novel claim. See, e.g., Sheldon Garon, *Molding Japanese Minds: The State in Everyday Life* 88-114 (1997)(arguing that the Japanese state played a significant role in changing attitudes toward sex in general, and prostitution in particular, in the early part of the Twentieth Century).

Second, this Article examines how state regulation can create change in ways that may not be easily foreseeable. Until 1985, love hotels were regulated primarily by laws governing ordinary hotels and inns, as there was no separate regulatory scheme for sexually-oriented lodgings. At least in part because of their ambiguous legal status, many people, this Article argues, saw love hotels as dark, seedy, and shameful. In 1985, in response to groups that noted various moral, social, and environmental negative externalities that arose from love hotels, the Japanese government attempted to crack down on love hotels through legislation. The evidence presented in this Article suggests that law led to an increase in love hotels (or at least did not lead to decrease), primarily because of a narrow statutory definition of what constitutes such an establishment.

The statute's underbreadth had two related effects. The first was economic: law led to industry restructuring and consolidation. Some hotels failed, but in their place came many successful new ones. The second is social: the law appears to have destigmatized love hotels. The destigmatization claim is impossible to quantify and somewhat difficult to support, but it at least appears that among many industry players and consumers, the perception that law changed people's minds about the love hotel industry is widely held.

I rely on several different data sources. I examine the Japanese secondary literature, which is sparse and recent,<sup>4</sup> as well as the relevant law, the Entertainment Law,<sup>5</sup> corresponding regulations, and several sources of quantitative data. I also rely on first-hand data. In a three-year

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<sup>4</sup> Futabasha ed., *supra* note 1; Kazuhiko Hanada, *Rabu Hosteru no Bunkashi* [A Cultural History of Love Hotels] (1996); Shoichi Inoue, *Ai no Kukan* [Love Space] (1999); Yoshikazu Nagai, *Fuzoku Eigyo Torishimari* [Controlling Leisure Industry] (2002); Yukari Suzuki, *supra* note 1; Issho Yasuda, *Rabu Hosteru Gaku Nyumon* [Introduction to Love Hotelology] (1983). A photographic work is available as Kyoichi Tsuzuki ed., *Satellite of Love: Rabu Hosteru Kieyuku Ai no Kukangaku* [The Vanishing Love Space of Love Hotels] (2001).

<sup>5</sup> *Fuzoku Eigyo to no Kisei oyobi Gyomu no Tekiseika to ni Kansuru Horitsu* [Entertainment Law], Law No. 22 of 1948.

period, I visited (unaccompanied) fifty love hotels of varying sizes in locations throughout Japan. In addition to many hours of observation, I conducted interviews with 71 persons at 18 hotels, and spoke more casually with employees at approximately 30 additional hotels. At each of the 18 interview hotels, I spoke with at least one employee, and often more, usually desk clerks (usually men) or cleaning persons (always women). At most (15), I also spoke with managers, and at a few (7), I spoke with owners. I also gathered information from attendance at two industry conferences (at which I spoke informally with approximately 30 people), interviews with love hotel consultants (5), industry executives (4), police and public safety commissioners (19), ordinary hotel workers, managers, and industry experts (25), anti-hotel campaigners (8), and sex-industry workers (9), and informal polls of long-term regular customers (approximately 50). Altogether, I gathered information on various angles on the topic from over 300 knowledgeable persons in Japan.

The Article has two parts. Part I is background; it describes love hotels and places them in sociohistorical context. I supply this information principally because it is essential to understanding changes in the legal scheme, but also because it is unavailable in English and not widely known even in Japan. Part II examines the watershed 1985 regulatory scheme brought about by the social changes discussed in Part I.

## I. LOVE HOTELS

### A. *What is a Love Hotel?*

I begin by exploring the factors that historically have typified love hotels. I then describe typical customers, and close with a brief summary of the economics of the love hotel industry.

1. *Facilities.* Although urban legends of first-time visitors to Japan who stumble into the wrong inn are commonplace, to most observers, love hotels historically have been easily identifiable even from the outside, with three or four clear characteristics. First, love hotels, especially those built in the 1980s, are often ablaze in neon and light. In general, the more urban the setting, the more neon; rural love hotels need little gaudiness to compete with surrounding rice paddies. Second, love hotels often have easily distinguishable architecture. While some hotels have drab exteriors, many suggest a carnival-like atmosphere. Sometimes this can be accomplished simply by bright and colorful paints; other times the scheme is bolder, with architecture reminiscent of castles, Victorian mansions, or the *Queen Elizabeth*. Third, location often gives an indication of hotel type. In cities, hotels are seldom built directly across from rail stations; although usually very close to mass transit, they are more likely to be slightly off the beaten path to assure greater customer anonymity. In rural areas, the same is true; such hotels are likely to be set off the highway, with multiple signs from the highway to the front door. Finding a love hotel is rarely difficult; if one cannot be located nearby easily, guidebooks are available, magazines (from the lurid to weekly entertainment guides) publish pictures and descriptions of popular rooms, and internet directories abound.

Finally, love hotels have a distinctive nomenclature. Love hotels rarely have names that one would expect for an “ordinary” hotel such as “Tokyo Hotel” or some similarly blasé description. Sometimes names are silly and meaningless, such as “1985,” “21,” or “The White House.” In other cases, it seems that love hotel operators are in competition to determine the most inventive, humorous, or sexually suggestive name. Japan’s bestselling novelist and columnist Haruki Murakami once held a contest to see which readers could send in the best true love hotel names. The winners included “Human Relations” (*ningen kankei*), “Mendel’s Law” (*menderu no*

*hosoku*), and the meaningless yet somehow oddly clever “ $p = 3.14$ .” Some of the more creative names submitted in the contest are more difficult to translate to English, but included “*Koshien*” (the name of a stadium famous for a high school baseball tournament), “*Asoko*” (a double entendre meaning either (a) a somewhat ambiguous “over there,” allowing a couple to say “let’s go over there” or (b) genitalia), and the characters for the flower hydrangea, which can either be read “*Ajisai*” (the actual name of the flower) or “*Shiyoka*,” meaning, roughly, “let’s do it.”<sup>6</sup>

Customers usually enter love hotels surreptitiously. Pedestrian entrances are covered, and auto entrances for cars feature often direct access from garage to rooms. In hotels with garages, a shield is available for the customer to hide his license plate once the car is parked. For security reasons, an employee usually records the license plate number, and those records are said to be reviewed by authorities only when investigating a crime.

Once inside the hotel, customers choose a room. At smaller and older hotels, the decision may be made through a sort of “front desk” at which a clerk, usually shielded from the waist up to avoid exposing a customer’s identity, simply slides the customer the key to an available room. At most hotels, however, the system is more sophisticated. Upon entering, customers are faced with an array of photos of the hotel’s room accompanied by a description of the room’s amenities and the fee schedule. Available rooms are backlit. (If no room is available, as is often the case on weekends and holidays, many hotels have a clock that gives approximate waiting times, the determination of which is a science in and of itself.) To choose a room, a customer presses a button under the appropriate picture. The button triggers a trail of lights that direct the customer from the lobby to the appropriate room.

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<sup>6</sup> Haruki Murakami & Anzai Mizumaru, *Murakami Asahido ha Ikanishite Kitareretaka* [Has Murakami’s House of the Rising Sun Been Trained?] 222-23, 303 (1997).

Although some hotels offer little more than a bath, a bed, and a few pornographic videos, most hotels offer a full array of both sexual and non-sexual entertainment. As for the non-sexual, many offer room service, satellite large-screen TV, piped-in karaoke music, massage chairs, and video games. A popular Osaka hotel named Rondchamps boasts (room 405) a private glass elevator from the bath to the bedroom, with a slide for bedroom to bath (warning sticker: “Sliding while naked will result in dangerous speed; please wear a bathing suit, available for rental free of charge), as well as (room 502) a dance floor with automated dancing bears.<sup>7</sup> As for the sexual, hotels offer such amenities as luxurious oversized transparent baths, king-size beds that rotate and/or vibrate, mirrors galore, and a separate room-service menu of sexual equipment. Some specialty hotels offer costumes that allow customers to depict a variety of scenarios, ranging from nurse-patient to knight-damsel to Mickey Mouse -Minnie Mouse.

When a couple has finished using the room, they either exit to pay the shielded employee, or call the front desk on the house phone. For those who call, in some hotels, an employee may conduct the payment transaction through a slot in or near the door. In some hotels, a vending-machine-like apparatus accepts payment. In more sophisticated hotels, an “air shooter” system is employed. Much like the drive-in window at a bank, the customer places payment in a plastic canister, presses a button, and the canister is vacuum-delivered to the front desk, where change is made and discount coupons for the next visit or membership cards are inserted.

Prices vary by location, size, and quality of the room. Smaller rural hotels may charge 3,000 yen for a 2-hour “rest” and 7,000 for the night (\$1 = approximately 125 yen). Larger hotels may start at 5,000 for a rest and charge 10,000-12,000 for the night. Still more luxurious hotels, or

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<sup>7</sup> I kid you not. See Tsuzuki, supra note 4, at 28-35 (photographs).

at least the most popular rooms in nicer hotels, may charge 25,000 yen for the night. In general, prices are roughly similar to, or slightly less than, those of “ordinary” hotels.

2. *Clientele*. Little research has been conducted on love hotel clientele. While hotels are popular and the customer base is quite large, love-hotel visits are not considered polite dinner conversation in many social circles. I was able to gather data only through interviews and observation. At eight hotels on ten separate occasions, I watched over 600 couples enter the establishment over a closed-circuit television monitor. I initially attempted to categorize these couples with some precision, but that exercise proved fruitless, and accordingly I can only make general estimates of relative frequency. My observations, which correlate with the interview evidence, suggest that love hotel clientele, with variation to be sure, usually consist of one of four types, in the following order of frequency.<sup>8</sup>

First, there are lovers; “traditional” young dating couples. As one might expect, some dates end (and many surely begin) at love hotels, an unsurprising locale given the fact that many young people live at home until they marry.

But not all love hotels clientele are young singles. At some hotels, the average customer age appeared to be late 30s, and I saw customers carry in sleeping babies on four occasions. According to love hotel management and industry experts that I interviewed, a large number of love hotel clientele – perhaps one-fourth on average -- are said to be of a second category: married persons, or more accurately, persons married to each other. At some hotels, managers

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<sup>8</sup> One website, maintained by a self-styled Japanese expert named “Love Machine” who sells sex toys over the internet, states that customers are of five types, in the following order of frequency: lovers, extramarital affairs, barmaids/hostesses and their customers, married couples, and prostitutes. <http://www.toyzamus.com/h7.html>. Though the scientific authenticity of either of our findings is debatable, it is at least interesting that we reach similar conclusions.

told me that married couples are the largest category of customers, while at others (such as those located next to Tokyo nightclubs), the percentage was said to be significantly smaller.

Married couples might be expected to confine their sexual activity to their bedrooms, but people in Japan commonly cite three factors to explain marital love hotel visits. First, many married couples live with children or their adult parents.<sup>9</sup> As one surveyor of Japanese sex explains, “[w]ith little privacy from growing children and/or the husband’s widowed mother, the love hotel is for many Japanese virtually the only haven of sexual intimacy there is.”<sup>10</sup> Second, houses in Japan are small and not particularly well sound-proofed, a fact which combined with the demographic arrangements might lead some customers to love hotels. Third, love hotels, with their blatantly nonessential luxuries, might simply be more enjoyable than a couple’s own home.<sup>11</sup>

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<sup>9</sup> Couples with children outnumber the childless two to one, and 35.5% of persons over 65 live with their married adult children Koseisho Tokei Johobu, Kokumin Seikatsu Kihon Chosa [Basic Survey of Citizen Life] (1995), available in Kosei Tokei Kyokai ed., Jinko no Doko [Population Trends] 251 (1999).

<sup>10</sup> Nicholas Bornoff, *Pink Samurai: Love, Marriage, and Sex in Contemporary Japan* 17 (1991).

<sup>11</sup> In addition to these three factors, many casual observers find Japan to be more “sexual” than the U.S. Richard Posner, for instance, notes that “Many non-Western cultures seem positively licentious by Western standards.” In the case of Japan, he notes prostitution and “other forms of nonmarital sex “flourish” with “little social disapproval.” Richard A. Posner, *Sex and Reason* 67, 69 (1992).

The available data suggest a more ambiguous cross-country comparison. The 2001 Durex Global Sex Survey, an ambitious study of 18,500 adults in 28 countries, is self-billed as “the biggest research project ever undertaken by the world’s leading condom brand.” 2001 Durex Global Sex Survey, *supra* note 2. These data, though not necessarily scientific, suggest that Americans are much more sexually active than Japanese. Americans have sexual relations earlier (on average, age 16 versus 18.2), have more partners (14.3 versus 10.2), and in fact have more sex: in the survey of 28 countries, the U.S. placed first, with an average of 124 times per year, while Japan, with 36 times per year, was last.

As for nonmarital sex, a 1993 survey in Japan found that among high school seniors, only 27% of boys and 22% of girls were sexually active. But by the second year of college, those numbers were 75% and 65%, respectively. NHK Broadcasting Culture Research Survey on Sex, May 1, 1999. Although Americans, on average, appear to start earlier, the numbers at age 19 are roughly similar to the Japanese second-year college students: 74% of unmarried white women have sexual experience. Edward O. Laumann et al., *The Social Organization of Sexuality: Sexual Practices in the United States* 327 (1994). Although generally considered to be more socially acceptable in Japan, the evidence on adultery is also not clear-cut. When asked about the acceptability of extramarital sex, only 2% of Japanese respondents in 1998 found it “absolutely acceptable,” see NHK Broadcasting Culture Research Survey on Sex, May 1, 1999, while the same 2% of American respondents in 1996 found it “not wrong at all.” National Opinion Research Center, *General Social Survey*, question 795A, available at [www.icpsr.umich.edu/GSS99/index.html](http://www.icpsr.umich.edu/GSS99/index.html). In Japan, 86% stated that extramarital sex was either “unacceptable” or “absolutely unacceptable,” compared to 78% of Americans who stated that it was “always wrong.” *Id.*

To summarize these three factors, as one long-time Japan observer puts it, “[t]he main reason for their popularity . . . is the lack of venue anywhere else.”<sup>12</sup>

A third type of love-hotel client, as one might expect, are couples engaged in extramarital affairs. It is difficult, of course, to find exact data on the topic (although I observed couples entering love hotels on several occasions that I suspected to be having affairs, I have no proof of such). Still, it is commonly assumed that love hotels are a popular destination for couples who are cheating on their spouses or others. In fact, some hotels cater to such a crowd; five hotels that I visited had phone systems that played background sounds of offices, bars, and train stations (at the customer’s choice) when the customer placed an outgoing call. The sounds are designed to mislead call recipients into believing that the caller is actually at such a location and not a love hotel.

Finally, there are prostitution-based visits. Prostitution has a long history in Japan, and continues to thrive in various forms today. In the eighteenth and nineteenth centuries, prostitutes were licensed and often worked as indentured servants.<sup>13</sup> Although national regulation was attempted in the early twentieth century, the Prostitution Prevention Law was not passed until 1956.<sup>14</sup> A 1948 survey shows one reason why: 70% of respondents (by sex, 78% of men and 59% of women) thought organized houses of prostitution to be “socially necessary,” and 52% of respondents (58% men, 45% women) opposed the law.<sup>15</sup>

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<sup>12</sup> Donald Richie, *The Donald Richie Reader: 50 Years of Writing on Japan 194* (Arturo Silva ed. 2001). The lack of usable public space appears to affect many aspects of life in Japan, where singles looking for time alone often sleep or read in their air-conditioned cars on less-traveled roads, and young persons spend much more time at fast-food restaurants than is required for a meal. See, e.g., Emiko Ohnuki-Tierny, *McDonalds in Japan: Changing Manners and Etiquette*, in *Golden Arches East: McDonald’s in East Asia* 161 (James L. Watson ed. 1997).

<sup>13</sup> J. Mark Ramseyer, *Odd Markets in Japanese History: Law and Economic Growth* 109-34 (1996).

<sup>14</sup> Baishun Boshiho, Law no. 118 of 1956.

<sup>15</sup> National Public Opinion Research Institute, *The Japanese People Look at Prostitution* (1952).

Despite the law, prostitution is “a massive, well-established industry accepted by most Japanese, including the police, as a fact of life, and one major component of the pattern of leisure activity for many Japanese men.”<sup>16</sup> The Prostitution Prevention Law does relatively little to control the industry; while public solicitation, serving as a broker for prostitution, contracting to engage in prostitution, and furnishing a venue for prostitution are punishable acts, prostitution *per se* is not (hence “Prostitution Prevention Law,” not “Prostitution Prohibition Law,” a distinction that is equally clear in Japanese). Even given this structure, in a 1985 Prime Minister’s Office survey, 76% of respondents stated that the prostitution law was not obeyed.<sup>17</sup>

There are no data available that directly illuminate the connection between prostitution and love hotels. The Tokyo Metropolitan Police report, however, that in 1997 and 1998, no love hotels were temporarily closed for any sort of violation of prostitution or business regulation laws. And of the 1,084 prostitution cases involving 179 persons that Tokyo police sent to prosecutors, none were employed directly by love hotels (3 worked for bathhouses and 2 for massage parlors).<sup>18</sup>

The statistics reflect both a lack of enforcement and a vague legal (and perhaps concurrent social) concept of prostitution. As for enforcement, managers at several hotels told me that police consider love hotels to be “off limits” unless something obviously amiss was observed. But prostitution exists: in Tokyo and Osaka, I often observed prostitutes loitering near seedier love hotels. These women are usually non-Japanese, often southeast Asian. Police, hotel employees, and the women themselves told me that most such workers had overstayed their visas or had

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<sup>16</sup> Stephan M. Salzberg, *The Japanese Response to Aids*, 9 *Boston Univ. Int’l L. Rev.* 243, 258 (1991).

<sup>17</sup> Baishun Taisaku Shingikai, *Baishun Taisaku no Genkyo* [Status of Anti-Prostitution Measures] 93 (1986).

<sup>18</sup> Keishicho, *Heisei 10-nen Keishicho no Tokei* [1998 Police Statistics] 135, 138 (1999).

sexually transmitted diseases, and as such could not get hired at established legal sex shops. The only alternative, I was told, was to look for customers outside love hotels.<sup>19</sup>

But even if the law were enforced more rigorously to eliminate street prostitution, other forms of market sex at love hotels would likely flourish. Outside of Tokyo and Osaka, I saw no obvious cases of street prostitutes loitering near love hotel facilities. To sell sex at a love hotel in such a manner, a woman risks charges of public solicitation.

Still, some love hotels are widely used by pay-for-sex services, some of which violate prostitution laws, some of which do not. Hotel employees with whom I watched closed-circuit video of customers entering the hotel easily pointed out regular female customers who arrived with many different male companions. Some were employees of hostess bars and were providing illegal prostitution services.<sup>20</sup> Others work around the law. Mayumi Takeda worked in such a capacity in the late 1990s and discussed her experiences in a widely read autobiography. The “shop” at which Takeda was employed was a one-room condominium in the Dogenzaka section of Shibuya in Tokyo, located adjacent to an area known as “Love Hotel Hill,” home to about sixty love hotels. Customers came to the shop to purchase sexual favors:

The cost depends on the course, but a cheap course is 10,000 yen, and an expensive one was about 25,000. The shorter the time, the cheaper; the longer, the more expensive. Customers pay an extra 1,000 or so to pick their companion. A customer can extend his time by about 30 minutes, but he has to pay extra.<sup>21</sup>

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<sup>19</sup> Estimates of illegal profits from the sex industry in Japan attribute 92.9% of such income to established facilities, 4.9% to underage prostitution known as teenage “compensated dates” (*enjo kosai*), and 2.3% to “foreign prostitutes.” Takashi Kadokura, *Nihon no Chika Keizai* [Japan’s Underground Economy] 136 (2002). Note that there is no category for free-lance Japanese prostitutes.

<sup>20</sup> A 1986 government report notes that some such employees are not paid unless they provide prostitution services as well. Baishun Taisaku Shingikai, *supra* note 15.

<sup>21</sup> Mayumi Takeda, *Faito! [Fight!]* 99 (2001).

Once paid, Takeda (like other women working in the industry) took her customer to a nearby love hotel, where “he picks the room, and then we start to play as planned.” “Play” includes bathing, costume play, petting, and oral sex (all mutual), but the rules of the game, both as dictated by law and as followed in the industry, prohibit vaginal penetration; to do otherwise would subject the shop to prostitution charges. (In Takeda’s words, “The reason I chose this [sex-] shop was because of this “can’t go all the way” rule. I just really didn’t want to do that. Going all the way would have made me no different than a prostitute.”<sup>22</sup>) At some love hotels, particularly in urban areas, these paid-for sexual encounters, which technically do not violate prostitution laws,<sup>23</sup> are commonplace, but even at these hotels, such business is said to account for only a minor portion of revenues.

3. *Economics*. At 16 of the 18 hotels at which I conducted in-depth interviews, owners, managers, or management representatives spoke with relatively few limits once they discovered that my purpose was academic and that privacy was ensured. At two hotels, I was flatly rejected. In one of those cases, I was told of a connection with organized crime; in the other, I could not make management comfortable with my inquiries. In addition to the site visits, I spoke with other managers and owners at two industry conferences that I attended. Although love hotels are notorious for tax evasion,<sup>24</sup> I think that the data supplied to me are reasonably accurate, because owners said such things as, “Of course, I only reported half of that income,” but I cannot be confident that everyone gave me honest information.

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<sup>22</sup> Id. at 98.

<sup>23</sup> The Prostitution Prevention Law contains no definition of prostitution or even sex. By contrast, the recently enacted Child Prostitution and Child Pornography Act (*Jido Kaishun, Jido Poruno ni kakaru Koi to no Shobatsu oyobi Jido no Hogo To ni Kansuru Horitsu*, Law no. 42 of 1999), specifically prohibits the touching of sexual organs, the anus, and breasts (art. 2).

<sup>24</sup> See Kadokura, *supra* note 19, at 39-45.

The economics of love hotel management appear not to differ significantly across Japan, and what variation exists principally reflects location. In Tokyo or Osaka, \$10 to \$15 million may be needed to start a love hotel; in smaller cities, \$5 million is often sufficient. On average, to build a nice, modern hotel of twenty to thirty rooms requires approximately \$10 million. Expenses quickly mount. Furnishing and construction costs account for the bulk of the \$10 million; furnishing each room costs approximately \$100,000 to \$150,000, for a total cost of \$2 to \$3 million. Adding a black-light system may add \$10,000 per room; a sauna, \$15,000. A computerized check-in system adds \$200,000, and a video karaoke system may add \$100,000. As further discussed in the next Part, love hotel construction often faces neighborhood opposition. To mitigate opposition, love hotel operators told me, it is wise to prepare about \$100,000 for donations to politicians and neighborhood associations.

For large corporate owners such as Nomura Finance, which owns several establishments,<sup>25</sup> or wealthy individuals (often executives at construction and real estate companies<sup>26</sup>) using love hotels as part of tax avoidance schemes,<sup>27</sup> \$10 million may be a relatively small investment; for others, it is of course quite large. For entrepreneurs without independent wealth, the needed \$10 million is usually procured through a bank loan, the terms of which require repayment at the rate of approximately \$50,000 monthly. Assuming four couples per day and average room rates of (a) \$50 for a two-hour rest and (b) \$100 for all night, a love hotel operator may receive an average of \$250 per day per room.<sup>28</sup> For twenty rooms, the monthly gross revenues may reach \$150,000, more than enough to repay the bank loan. Tokyo hotels that generate less than \$5,000 per room

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<sup>25</sup> See Gillian Tett, Nomura To Sell Its “Love” Hotels to US Investors, *Fin. Times*, May 26, 2000, at 23.

<sup>26</sup> See Yasuda, *supra* note 4, at 132-39.

<sup>27</sup> See Emiko Terazono & Gillian Tett, Parlours Pay for Their “Sins” in Yokohama, *Fin. Times*, Aug. 26, 2000, at 6.

usually do not survive, but at hotels in smaller cities such as Hiroshima, I was informed that a 20-room hotel may generate about \$50,000 to \$70,000 per month; only the busiest generate as much as \$100,000. Out of these revenues, hotel operators must pay staff, utilities bills (in addition to the large linen cleaning bills, the monthly water bill at a 20-room hotel averages \$4,000<sup>29</sup>), and, occasionally, taxes.<sup>30</sup> While less popular hotels may generate minimal profits, busier establishments can be quite profitable.

### B. Love Hotel History

1. *Origins.* Love hotels have humble origins. In the Edo period (1600-1868), the service was filled by *deaijaya*, literally, meeting tea-houses, with 10 to 15 small rooms of six tatami mats (about 100 square feet) each. Upon arrival, a female employee secured customers' shoes and other possessions, not for safety, but as a security deposit on the bill, which was paid upon exit. She then escorted customers to a private room, served tea and cake, drew a bath, and left the couple to their own devices. At their peak, sixty such institutions functioned in the Sendagaya district of Tokyo alone, and every town was said to have five or six.<sup>31</sup>

In the early part of the Twentieth Century, a similar function was served by two types of establishments. First, *machiai* (literally, meeting places), small facilities with tatami-mat space for activity, were quite common, especially in Tokyo, as seen in Table 1.

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<sup>28</sup> One source cites three couples per room per day as average, and notes that busy seasons like the year-end holidays may see seven couples per room per day. Yasuda, supra note 4, at 36.

<sup>29</sup> Customers normally bathe before and after sex, and love hotel facilities are often designed to facilitate sex in the bathroom

<sup>30</sup> Cleaning is said to be an especially difficult task in a love hotel. Customers expect cleanliness, requiring special diligence on the part of cleaning personnel, who I have seen change bed linens in seconds and use black-light technology to locate bodily fluid stains throughout the room. Cleaning personnel diligence also means that most hotels keep a large supply of lost objects that are never reclaimed, the most numerous of which is women's jewelry.

<sup>31</sup> Hanada, supra note 4, at 22; Yasuda, supra note 4, at 64.

<b>Location</b>	<b>Number of <i>Machiai</i></b>
Tokyo	3,251
Kanagawa Prefecture (Yokohama)	330
Aichi Prefecture (Nagoya)	129
Gifu Prefecture	121
Hiroshima Prefecture	91
Tokushima Prefecture	59
Miyagi Prefecture	47
Kyoto Prefecture	45
Ibaraki Prefecture	42
Osaka Prefecture	33

Source: Naimusho, Keisatsu Tokei Hokoku, Daiikkai [First Police Statistics Report] (1926), reprinted in Inoue, supra note 4, at 158-59.

Second, sexual liaisons occurred in a rather unlikely location: noodle restaurants (*sobaya*). At the beginning of the 20<sup>th</sup> Century, it was common knowledge that noodle restaurants rented out upstairs room for short periods of time for sex. In fact, it was such common knowledge in some areas that actual noodle restaurants (which served noodles but had no rooms for rent) were forced to write “REAL noodle restaurant” on their outdoor signs in order to enable clientele to distinguish them from sex locations.<sup>32</sup>

*Machiai* and noodle shops were not for amateur couples, but for pros. Both locations were widely used as prostitution centers, as male customers met *geisha* and other paid companions there for sexual services.<sup>33</sup> The use by professionals was not exclusive, but the “professional” atmosphere and stigma was said to be so strong in most such establishments that it drove away amateur customers.

So if *machiai* and noodle shops were mostly used by pros, where did the other “amateur” (non-monetary) couples go? The available evidence points to one primary location: outside. As

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<sup>32</sup> Inoue, supra note 4, at 132-190, 169.

<sup>33</sup> Inoue, supra note 4, at 80.

Shoichi Inoue explains in his thorough history of Japanese “love space,” “At the beginning of the Twentieth Century, many couples made love outside. In fact, the general movement of male-female interaction from outdoors to indoors is said to be an extremely recent development.”<sup>34</sup> Even as late as 1973, novelist Aiko Goto, in an interview regarding a recent increase in the number of love hotels, responded:

Sex was originally something to be done while bathed in sunlight in the middle of a field. The need to seek simulation behind closed doors shows how weak people have become. Young people don’t need stimulation like that; young people should be doing it in the park. It’s much more pleasant.<sup>35</sup>

And do it in the park young people apparently did. A 1916 news report notes that park benches and fields were full of amateurs in the evenings, including “doctors and nurses, office workers and female assistants, manual laborers, cooks, and their girlfriends, reporters and their contacts, bank workers and female apprentices.”<sup>36</sup> The practice continued well into the U.S. Occupation, when “as the sun set, lovers gathered in places like the Imperial Palace grounds and Inokashira Park, and the next morning the grass was full of paper scraps and condoms.”<sup>37</sup>

Note the missing actor in outdoor sex: prostitutes. The territorial distinction was said to be clear: amateurs have sex outside, professionals have sex inside. It was not until the 1930s that the market provided amateurs with indoor facilities suitable for them in the form of *enshuku*, the first true predecessor of the modern love hotel. *Enshuku* literally means “one-yen dwelling,” and customers paid one yen per person to rent a room by the hour. *Enshuku*, unlike ordinary hotels

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<sup>34</sup> Inoue, *supra* note 4, at 68.

<sup>35</sup> Interview in *Shukan Posuto*, Oct. 5, 1973, quoted in Inoue, *supra* note 4, at 61-62.

<sup>36</sup> *Koen no Benchi ya Sogen wo Shitonetoshi: Hanjuteki Koi* [Enjoying Themselves on Park Benches and Fields: Half-Beast Activities], *Chuo Shinbun*, Aug. 12, 1916, quoted in Inoue, *supra* note 4, at 51-52.

<sup>37</sup> Yasuda, *supra* note 4, at 60; see also Shoichi Inoue, *Rabuhoteru no Jidai* [The Age of Love Hotels], in Shun Inoue ed., *Fuzoku no Shakaigaku* [Sociology of Leisure Industry] 185, 186 (1987).

and other facilities, marketed what was then quite exotic: rooms with Western furnishings, double beds (so scandalous that they could not be pictured in print ads), and locking doors.<sup>38</sup>

2. *Establishment and Subsequent Problems.* From the 1930s until the late 1960s or 1970s, *enshuku*, and to a lesser extent bathhouses (including the inappropriately named “family baths” which were said to allow a “family” to “bathe” in privacy, away from other bathers) were said to be the primary locations for indoor amateur sex. But at some time in the late 1960s, and the details are far from clear, the love hotel was born, bringing many couples in from the cold.

The most famous of these early love hotels is the Meguro Emperor hotel, designed with architecture similar to the Disneyland castle, which opened in Tokyo in 1973. But before 1973, love hotels had begun to make their way into popular vernacular. Contemporaneous weekly magazine articles reveal a host of different labels, including yellow hotels (1967), couple hotels (1970), and love hotels (1973).<sup>39</sup> Whatever the name, these early love hotels were set apart from their *enshuku* predecessors by two primary features: “elegant,” “gorgeous,” or “royal” architecture and furnishings (ostensibly designed to appeal to female customers), and large-scale sex-related playthings, including electric beds, mirrored ceilings, foam-filled bathrooms, and see-through bath mirrors (visible from the bedroom).

In these early days, the relation of love hotels to professional sex was not clear-cut. Although love hotels were designed to appeal to amateurs, part of the attraction of the enterprise was said to be that indoor sex was traditionally the domain of professionals.<sup>40</sup> Professionals remained indoors as well; at many love hotels, a male customer could order a prostitute by calling

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<sup>38</sup> Yasuda, *supra* note 4, at 58; see also Inoue, *supra* note 4, at 219-25.

<sup>39</sup> See Inoue, *supra* note 4, at 304.

<sup>40</sup> Inoue, *supra* note 4, at 336, 350.

down to the front desk.<sup>41</sup> Although the Prostitution Prevention Law effectively closed centuries-old red light districts, workers from previously legal prostitutions houses simply resumed their trade in less conspicuous love hotels.

Many forms of adult entertainment were not unregulated; they were covered by the Entertainment Law, promulgated in 1948 under considerable influence from authorities of the American Occupation (GHQ).<sup>42</sup> But the 1948 Law, despite several subsequent revisions, was ill-equipped to deal with these new enterprises. The Entertainment Law had always regulated *machiai*, and was revised in 1972 to regulate motels.<sup>43</sup> But love hotels, which could not easily be distinguished from ordinary hotels, remained regulated only by the Inn Law, which covered both sex-related and non-sex-related types of establishments, and other related laws not specific to the trade. No law contained any mechanism by which love hotels could be distinguished from ordinary hotels.

As the number of love hotels increased, so, too did perceived problems associated with them. Japan's loose zoning scheme has twelve types of zones; residences are permitted in eleven. Of those eleven residential zones, "hotels" are permitted in six, including some of the most ubiquitous zones.<sup>44</sup> Thus hotels, including love hotels, operated not only in red-light districts, but also next door to the retirement home, across the street from the school, and in the space where a

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<sup>41</sup> Yasuda, *supra* note 4, at 44; Inoue, *supra* note 4, at 327.

<sup>42</sup> See Nagai, *supra* note 4, at 62-73.

<sup>43</sup> Fuzoku Eigyo Torishimariho no Ichibu wo Kaisei Suru Horitsu, Law No. 116 of 1972. See also Nakasako v. Aichi Ken Koan Inkaikai, Nagoya D. Ct., 320 Hanrei Times 131 (Apr. 14, 1975), *aff'd*, Nagoya High Ct., Oct. 20, 1977, 355 Hanrei Times 207 (finding local assembly restriction on motels, based on national law, valid and reasonable). For a brief description in English, see J. Mark Ramseyer & Minoru Nakazato, *Japanese Law: An Economic Approach* 35 (1999).

<sup>44</sup> Kenchiku Kijun Ho [Building Standards Act], Law No. 201 of 1950, arts. 27, 48, Beppyo Daini (Chart No. 2). See generally Mark D. West, *The Resolution of Karaoke Disputes: The Calculus of Institutions and Social Capital*, 28:2 J. Japan. Stud. 301(2002).

back yard would be if Japanese urban dwellings had such things. Accordingly, the problems cited by anti-hotel campaigners were quite visible.

Love-hotel opponents, a group that was largely led by grass-roots citizens' movements (including NIMBY groups and children's rights groups) but also included small businesses with ties to the ruling Liberal Democratic Party (LDP), generally noted four areas of concern. First, they often cited the social and moral concerns of having a sex-oriented business on daily public display. The constant exposure to sex was said to affect not only children, but also the general population.

Second, crime often accompanied love hotels. In some areas, the crime was prostitution. In others, love hotels and related businesses had ties to organized crime, which until 1992 was unregulated as a specific type of crime.<sup>45</sup> In still others, the privacy afforded by love hotels led to a wide range of criminal acts, from extortion schemes to property crimes to and sensational murders.<sup>46</sup>

Third, practical cost-related issues arose as well. Love hotels often raised issues of traffic safety, annoying neon signs, and water runoff from the relatively high number of showers and baths that clientele take.<sup>47</sup>

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<sup>45</sup> See Curtis J. Milhaupt & Mark D. West, *The Dark Side of Private Ordering: An Institutional and Empirical Analysis of Organized Crime*, 67 *U. Chi. L. Rev.* 41 (2000).

<sup>46</sup> As for extortion, in one widespread scheme, blackmailers filmed couples entering hotels, traced their license plate numbers, and blackmailed them with the videos. *Furin Kyokatsu: Rabuhoteru Mae de Bideo Satsue, 4nin Taiho* [Adultery Blackmail: 4 Arrested After Filming Love Hotels], *Mainichi Shinbun*, Oct. 22, 2002, available at <http://www.mainichi.co.jp/women/news/200210/22-4.html>. As for property crimes, in one case, a woman lured her male victims to love hotels, drugged them, and robbed them. *Seductress Dopes, Robs Horny Men*, *Mainichi Daily News*, May 21, 2002, at 1. For murder, see, e.g., Suzuki, *supra* note 1, at 82-84.

<sup>47</sup> Hiroku Kume, *Mo-teru Shisetsu no Kisei ni Tsuite* [Regarding Motel Regulation], 542 *Hanrei Times* 68 (1985). According to one account (perhaps urban legend), tax inspectors identified tax evading love hotels by comparing their water usage rates with their reported income. See James S. Henry, *Noncompliance with U.S. Tax Law – Evidence on Size, Growth, and Composition*, 37 *Tax Law 1* (Fall 1983).

Finally, and most centrally for many love hotel opponents and legislation supporters,<sup>48</sup> minors were not legally banned from love hotels, and they often used hotels, for smoking, sniffing thinner, and illegal sexual activity.<sup>49</sup> These four factors led to cries for regulation.

Although love hotels could have self-regulated to avoid government intervention, at least two factors made self-regulation unlikely. First, while many hotel entrepreneurs expected regulation, they did not expect any new legal scheme to be too terribly onerous. Many leisure facilities that had functioned well under the 1948 Entertainment Law; motels, for instance, experienced few problems when they were regulated by 1972 Entertainment Law amendments. Second, the barriers to collective action were significant. Although industry associations existed at the time, the love hotel industry was fragmented among elite Meguro-Emperor knock-off hotels run by legitimate business interests, small-town bed-and-breakfast-esque inns run by Mom-and-Pop family businesses, and low-rent facilities that encouraged prostitution, many of which are said to have had organized crime connections. Besides the obvious difficulties involved in the coalescence of these varied groups, industry officials told me that they considered the source of most love-hotel-related social problems to be the low-rent facilities. The owners of these facilities had the least desire to self-regulate and were least able to understand the consequences of a lack of self-regulation. They may also have been concerned that industry-sponsored self-regulation would affect their business negatively.

Faced with apparent social problems and no solutions from industry or national legislation, in the late 1970s, several local municipalities attempted to regulate on their own.<sup>50</sup> In the most

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<sup>48</sup> Tsuyoshi Furuyama, *Fu zoku Eigyo to Torishimariho Ichibu Kaisei no Gaiyo* [Outline of Revision of a Portion of the Entertainment Law], 823 *Jurisuto* 13 (1984)

<sup>49</sup> Ayako Uchiyama, *Fuzoku Kankyo to Shonen Hiko* [Leisure Environment and Juvenile Misconduct], 57 *Horitsu Jiho* 13, 14 (1985). “Illegal sexual activity” often meant prostitution by underage girls.

famous court case arising from such regulation, the village of Iimori (population 8,451) in southern Nagasaki prefecture passed an ordinance requiring the approval of the mayor for the building of any hotel or inn. When on November 9, 1978, Toyoki Torii, the owner of a local supermarket applied to the mayor for permission to build a love hotel within 700 meters of a junior high school, he was flatly rejected a week later, and was informed of the decision the following January. Torii sued. The Nagasaki District Court and the Fukuoka High Court found for Torii, holding that a local municipality needs a rational basis to enforce a test stricter than that of the national Inn Law,<sup>51</sup> which required no such approval. In this case, the local regulation had no such basis, and thus interfered with the plaintiff's constitutionally guaranteed freedom of occupation.<sup>52</sup>

## II. LEGAL ANALYSIS

In the wake of the Iimori case, in addition to the problems of crime, juveniles, and residential environmental problems, love-hotel opponents now had an additional banner – the search for a constitutionally permitted regulatory scheme to assist municipalities like Iimori in maintaining their local autonomy. In response to these concerns, the Diet in 1984 undertook a major revision of the Entertainment Law, which became effective in 1985 (the “1985 revisions”).<sup>53</sup>

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<sup>50</sup> See, e.g., Tasuke Masago, Akihiro Minamikawa & Hisashi Hiraoka, *Ryokan Kenchiku Kisei Jorei ni Tuite* [Regarding Inn Construction Regulations], 34 *Ho to Seiji* 229 (1983).

<sup>51</sup> *Ryokangyoho*, Law no. 138 of 1948.

<sup>52</sup> *Torii v. Mayor of Iimori*, Nagasaki D. Ct., 978 *Hanji* 24 (November 19, 1980); *aff'd*, Fukuoka High Court, 1083 *Hanji* 58 (Mar. 7, 1983). In a later case, the Nagoya District Court held that a local government may not inordinately delay approval of an application to build a love hotel. See *Marui K.K. v. Aichi Prefecture*, 156 *Hanrei Chiho Jichi* 78 (Jan. 31, 1996).

<sup>53</sup> *Fuzoku Eigyo to Torishimariho no Ichibu wo Kaisei suru Horitsu*, Law no. 76 of 1984.

### *A. The 1985 Legislation*

The 1985 revisions were the Japanese government's first attempt to regulate love hotels directly. Before looking at the details of the Japanese regulatory scheme, it is useful to examine the choice set that was available to Japanese policymakers. To do so, I first consider some alternative approaches.

*1. Alternative Approaches.* Japan could have employed any number of tactics to combat love hotel problems. One possible solution might have been to enact a comprehensive zoning plan by which hotels of all sorts, or at least all hotels of a certain size, are zoned out of residential neighborhoods. While this approach may have done little to combat crime and juvenile problems, it would likely have had some impact on neighborhood environments. But given the state of Japan's zoning at the time (as now), such a comprehensive rezoning would have required a near-complete reorganization of urban and suburban Japan, including the removal of many long-established hotels and surrounding businesses that cater to hotel guests. Such a drastic change would have been impractical, would have opened the debate on the zoning system to all sorts of other unrelated and potentially difficult issues, and given the support of small businesses for the ruling LDP, it would likely have also been politically impossible.

Japan might also have tried another approach: attacking directly the social problems raised by love hotels. Increased police presence might have mitigated prostitution and juvenile usage issues. Juvenile problems might have been further reduced through some sort of identification check. Neighborhood environmental problems might have been mitigated by requiring hotels to deal with traffic and water issues as a condition of licensing, and by limiting explicit advertising.

It is unclear why Japan did not take this path. While representatives repeated on the Diet floor the social problems mentioned above as bases for love hotel regulation,<sup>54</sup> alternative legislative or regulatory approaches are not mentioned in any of the legislative record or related committee histories. Still, three possibilities seem likely: path-dependent legal culture, politics, and love-hotel usage patterns.<sup>55</sup> As for legal culture, the Entertainment Law presented a familiar pre-existing framework for regulating such industries. Simply adding love hotels to the Entertainment Law's then-forty-year-old definitional and registration scheme<sup>56</sup> was a simpler solution than (and perhaps a superior one to) some of the more direct solutions listed above. Lawmakers were used to acting in this way; when the field of regulated industries was expanded in 1959 to include tea houses, bars, and nightclubs, again in 1966 to include and baths with separate attached rooms, and again in 1972 to include motels, the Entertainment Law was simply amended to add the new categories to the list.<sup>57</sup> Given this history, apparently there was little thought in 1985 of doing otherwise; hotel industry officials and anti-hotel campaigners alike told me that they never even imagined other alternatives.

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<sup>54</sup> See, e.g., Minutes of Sangiin Honkaigi [House of Councillors], No. 21, July 11, 1984, at 1 (statement of Home Affairs Minister Seiichi Tagawa).

<sup>55</sup> Determining legislative intent with any precision is impossible, even with the aid of legislative history. See, e.g., Kenneth A. Shepsle, Congress Is a "They," Not an "It": Legislative Intent as Oxymoron, 12 Int'l Rev. L & Econ. 239-56 (1992).

<sup>56</sup> These aspects appear to have been uncontroversial in 1948. See Nagai, *supra* note 4, at 62-73. In addition to the elimination of licensed prostitution, the more significant points of the 1948 Entertainment Law appear to have been the reassignment of approval power from the police to public safety commissions and the ability of prefectures to (a) control hours and location through regulation and (b) ban such enterprises after public hearing. Nagai, *supra* note 4, at 64.

<sup>57</sup> For 1959, see Fuzoku Eigyo Torishimariho no Ichibu wo Kaisei Suru Horitsu, Law No. 2 of 1959. The 1948 categories were (1) *machiiai*, restaurants, and cafes, (2) cabarets and dance halls, and (3) pachinko and mahjong parlors. The 1959 reconfigured categories were (1) cabarets, (2) *machiiai*, restaurants, and cafes, (3) nightclubs, (4) dance halls, (5) tea houses and bars class 1 (based on lighting), (6) tea houses and bars class 2 (based on size), and (7) pachinko and mahjong parlors. The differences between the categories are based largely on the existence or nonexistence of customer contact, dancing, and food. For 1966, see Fuzoku Eigyo Torishimariho no Ichibu wo Kaisei Suru Horitsu, Law No. 91 of 1966; for 1972, see Fuzoku Eigyo Torishimariho no Ichibu wo Kaisei Suru Horitsu, Law No. 116 of 1972.

Two political factors seem important. First, love hotel operators, like other small businesses, supported the LDP. Industry representatives told me that some larger hotel operators, who made regular donations to the LDP, publicly opposed any sort of regulation. Although there is no direct evidence of intense lobbying by these entrepreneurs, their support may have been a consideration when the LDP addressed the problem. Second, some operators suggested to me that the legislative scheme may have reflected a bureaucratic desire to widen its jurisdiction.

Finally, love hotel usage patterns may have played a role in the process. Then as now, it was common knowledge that many upstanding citizens regularly used the hotels for purposes that, while perhaps embarrassing, were neither dangerous nor socially unacceptable. With the exception of serious love-hotel opponents, love-hotel visits, as a political insider from the time told me, “usually provoke giggles and red faces, not scorn and outrage.” Accordingly, it might have been difficult for lawmakers seriously to consider stricter proposals.

Whatever the precise causal mix that led to the approach, instead of attacking the social problems that accompany love hotels, Japan opted to regulate love hotels directly under the Entertainment Law. Before examining the specific Japanese provisions, consider the approaches adopted by legislatures in the United States that, like Japan, attempt to regulate adult motels directly.<sup>58</sup> United States approaches to regulating adult-oriented businesses usually include

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<sup>58</sup> As a group, adult motels in the United States are difficult to describe succinctly. The one listed in the Manhattan phone directory advertises itself as luxurious, and their recorded message suggests the same, but the lobby, such as it is, is a small, dimly lit room populated by waiting prostitutes and drug abusers. In more rural areas, roadside “no-tell motels” are more common, but these facilities also have little in common with their Japanese counterparts.

The most direct analogue to Japanese love hotels outside of Japan appears to be the Korean love hotel, which may have more in common with the Japanese love hotel industry of the 1970s and 1980s. Korean love hotels are said to be “seedy,” used only by “illicit lovers,” and are said to have increased in recent years. Cho Se-hyon, *Many Splendored Things*, Korea Herald, Nov. 7, 2000, available at [http://www.koreaherald.co.kr/SITE/data/html\\_dir/20000/11/07/200011070040.asp](http://www.koreaherald.co.kr/SITE/data/html_dir/20000/11/07/200011070040.asp). As in Japan, one problem of Korean love hotels appears to be that the owners “seem to have a knack of finding places near primary schools or in residential areas to build their love hotels.” *Id.* Opposition groups have filed lawsuits, which have produced conflicting rulings. See Joon Hyung Hong, *Rule of Law in Korea: Recent Development and Trends*, at 22-25.

obscenity, zoning, licensing, or nuisance laws.<sup>59</sup> In the case of adult (love) hotels, obscenity is seldom an option, and only in extreme cases could nuisance be useful. When adult hotels are part of the regulatory scheme – and they typically are not --, they usually are regulated as part of comprehensive statutes that govern other adult-oriented businesses as well, such as strip clubs, escort agencies, and adult bookstores. Local governments usually rely on licensing<sup>60</sup> or zoning approaches.<sup>61</sup> There does not appear to be a preference for one approach over the other in the jurisdictions that regulate the trade.

The particular approach taken – licensing or zoning – often is not as controversial as the underlying statutory definition of adult hotels that defines what businesses may be regulated. One method of definition, upheld by the Supreme Court in *FW/PBS, Inc. v. Dallas* in 1990, is to define the hotel in terms of visual amenities or usage periods. The Dallas ordinance in question defined an “adult motel” in the following manner:

ADULT MOTEL means a hotel, motel or similar commercial establishment which:

(A) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”; [each as defined] and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; or

(B) offers a sleeping room for rent for a period of time that is less than 10 hours; or

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<sup>59</sup> See Jules B. Gerard, *Local Regulation of Adult Businesses*, 1999 Edition (1998).

<sup>60</sup> See *FW/PBS, Inc. v. Dallas*, 293 U.S. 215 (1990); *East Brooks Books v. City of Memphis*, 48 F.3d 220 (6<sup>th</sup> Cir. 1998); *Redner v. Dean*, 29 F.3d 1495 (11<sup>th</sup> Cir. 1994); *TK’s Video, Inc., v. Denton County, Texas*, 24 F.3d 705 (1994).

<sup>61</sup> See *Young v. City of Simi Valley*, 216 F.3d 807 (9<sup>th</sup> Cir. 2000); *Patel and Patel v. South San Francisco.*, 606 F. Supp 666 (N.D. Ca. 1985); *Town of Islip v. Caviglia*, 141 A.D. 2d 148 (N.Y. S. Ct. 1988).

(C) allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 10 hours.<sup>62</sup>

The Court stated, among other things, that the 10-hour rule did not violate plaintiffs' right to due process, at least in part because the legislature based its judgment on a 1977 study of Los Angeles that found increased prostitution and other negative effects for neighborhoods containing such short-term-stay hotels. Nor did it violate the right to freedom of association, the Court stated, as any "personal bonds" formed by the use of a motel room for fewer than 10 hours are not those that have "played a critical role in the culture and traditions of the Nation by cultivating and transmitting shared ideals and beliefs."<sup>63</sup>

The Court did not consider section (A) of the ordinance, which defined adult motels as those that offer certain video services. Although some courts have upheld such provisions,<sup>64</sup> others have found them to be impermissible. Some courts disallowed them because they were unsupported by factual findings that these hotels, as distinct from other sex-oriented businesses, contribute to neighborhood deterioration.<sup>65</sup> Other courts have found them to be overbroad, noting, for instance, that "some of Atlanta's finest hotels" offer similar adult programming.<sup>66</sup>

Neither of the above schemes would be entirely effective in regulating love hotels in Japan, as neither definition would adequately distinguish love hotels from "ordinary" hotels. A wide variety of hotels, from small business hotels to the country's finest, offer the same video programming that can be seen in love hotels (including the Imperial Hotel, often considered the

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<sup>62</sup> Dallas City Code, ch. 41A, Sexually Oriented Businesses @ 41A-2(19)(1986). Kansas has a similar provision, see Kansas Statutes Annotated § 12-770(a)(5) (1999).

<sup>63</sup> 493 U.S. 215, 237.

<sup>64</sup> See *Redner v. Dean*, 29 F.3d 1495 (11<sup>th</sup> Cir. 1994)

<sup>65</sup> *Patel and Patel v. City of South San Francisco*, 606 F.Supp. 666 (N.D. Ca. 1985).

finest in Japan, where until recently it was known by the euphemism “videography”). Moreover, most love hotels in Japan do not advertise the availability of videos with sexual content; their existence is assumed. And unlike adult motels in the United States, Japanese love hotels, while offering hourly rates, also serve many customers that stay all night, while other non-sexual establishments offer hourly rates. Accordingly, in Japan it was necessary to employ a more complex definitional scheme.

2. *The Japanese Approach.* The Japanese Entertainment Law regulates a wide variety of leisure establishments, from sex-related facilities to game centers and pachinko parlors. In the case of love hotels, it relies primarily on two elements: zoning and definitional restrictions.

a. *Zoning.* The Japanese Entertainment Law, as modified slightly by post-1985 revisions, creates five basic categories of immovable<sup>67</sup> sex-related establishments: soaplands (bathhouses that often offer “full service”<sup>68</sup>), fashion health (massage parlors that usually offer oral sex), strip clubs, motels and love hotels, and adult goods shops. A business that falls in one of these categories may not operate within 200 meters of schools, libraries, and similar institutions. Minors are prohibited from entry.

The Entertainment Law assigns most of the control of these enterprises and enforcement of the Law to local governments. Every love hotel must register with the local government, which

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<sup>66</sup> *Purple Onion, Inc. v. Jackson*, 511 F.Supp. 1207, 1220 (N.D. Ga. 1981); see also Patel and Patel, *supra* note 55, at 672 & n. 9.

<sup>67</sup> The Law also designates two categories of movable sex-related establishments: pornographic video delivery services and “delivery fashion health” (*deriheru*), a thriving home-delivery version of “fashion health” stores described above.

<sup>68</sup> “Full service” (*honban*) is in fact illegal, but some soapland operators and customers attempt to legitimize the arrangement by having customers pay the front desk clerk for the “bath,” but having customers pay the woman individually for the “full service,” thus supposedly creating no legal liability for the soapland (which is facilitating a bath, not prostitution) or the woman (who, by not soliciting publicly, is not covered by the law). See <http://zombie.free-city.net/tokushu.html>. Although it might seem to be a blatant violation of the law, the law in this legal gray area is seldom enforced, and many soaplands thrive.

regulates advertising, hours, and location, and may suspend business or close the establishment if it does not comply with the law.<sup>69</sup> To start a love hotel, an entrepreneur must give notice and a detailed business plan to the local prefectural public safety commission. If the commission grants building approval, the plan is forwarded to the police, who work with prefectural officials to supervise construction and operation.

The reliance on zoning by local prefectural governments is a key element of the statutory scheme. As Michael Young<sup>70</sup> and Frank Upham<sup>71</sup> have each shown in the contexts of sunlight law and large retail store regulation, community involvement is one of the hallmarks of Japanese regulation. Although in this case the government did not resort, to use Upham's phrase, to "privatized regulation," the reliance on prefectures to regulate the sex industry pursuant to local community mores and concerns involves some similar issues, as in each case, local groups are able to exert influence over the location of neighborhood undesirables. In some cases, influence comes through bribery of local officials, as reflected in the "political contributions" line of the budgets of upstart hotels.<sup>72</sup>

Legislators created a significant exception to the zoning scheme: hotels existing before 1985 were grandfathered out (Article 28(3)). In a nod to local interests, a constitutionally guaranteed freedom of choice of occupation, and the principle against ex post facto legislation,

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<sup>69</sup> Arts. 2, 27, 28, 30, 31. In 2000, Japanese police reported 5 violations of the law for love hotels (3 operating without a license, 2 operating in restricted areas) and 3 violations for motels (2 operating with a license, and 2 additionally operating in restricted areas). See Keisatsucho, Heisei 12-nen no Hanzai [2000 Crimes] <http://www.npa.go.jp/toukei/keiji4/hon290.pdf>.

<sup>70</sup> Michael K. Young, *Judicial Review of Administrative Guidance: Governmentally Encouraged Consensual Dispute Resolution in Japan*, 84 *Columbia L. Rev.* 923 (1984).

<sup>71</sup> Frank Upham, *Privatizing Regulation: The Implementation of the Large-Scale Retail Stores Law*, in *Political Dynamics in Contemporary Japan* 264 (Gary D. Allison & Yasunori Sone eds. 1993).

<sup>72</sup> The decision to leave much of the zoning portion of regulation to local governments appears to reflect the fact that local governments have diverse views on love hotels. Some local governments appear to accept the positive

love hotels already in existence in 1985 were free to maintain their location, whether those locations were otherwise counter to the national scheme (next to schools, for example), or the local scheme (in neighborhoods not zoned for love hotels).<sup>73</sup> In some cases, entire neighborhoods of love hotels were grandfathered. Still, the grandfathering clause has a catch: *any* love hotel – grandfathered or not -- that rebuilds, renovates, or changes its facilities must re-register with local authorities (Article 9). The requirement of new registration allows the prefecture to consider the love hotel in the same way it would any non-grandfathered love hotel, thus allowing closure if the hotel's location is prohibited by national or local rules.

b. *The Definitional Scheme.* Definitional approaches to sex-shop zoning regulation are notoriously troublesome,<sup>74</sup> and Japanese lawmakers apparently were not unaware of the difficulties. As one Dietmember expressed in a 1984 House of Councillors Finance Committee Meeting, “love hotels where I come from don't put ‘love hotel’ on their signs, so you can't tell what's a love hotel, what's an inn (*ryokan*) and what's just a simple place to spend the night.”<sup>75</sup> Still, once the decision was made in Japan to include love hotels under the existing 1948 Entertainment Law scheme instead of seeking more creative solutions, such definition became necessary.

The 1985 Entertainment Law revisions define love hotels simply as an establishment designed specifically for staying all night or rest by customers of opposite sex, the structure,

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economic consequences so long as the facilities do not interfere with local communities; in others, community involvement effectively controls the industry.

<sup>73</sup> See generally *Sumiyoshi K.K. v. Japan*, Supreme Court, Case No. 120 of 1968 (Apr. 30, 1975)(geographical restrictions on pharmacy location unnecessarily and unreasonably restrict plaintiff's freedom of choice of occupation).

<sup>74</sup> When New York City attempted to regulate business that devoted a “substantial portion” of its inventory and space to adult business, enterprises responded by stocking kung fu videos and serving sushi. Dan Barry, With John Wayne and Sushi, *New York Sex Shops Survive*, Jan. 1, 2001, at A1; Rachel Simon, Note, *New York City's Restrictive Zoning of Adult Businesses: A Constitutional Analysis*, 23 *Fordham Urban L.J.* 187 (1995).

facilities, and equipment of which are to be decided “by [government enforcement] order.” Under this definition alone, of course, love hotels cannot be distinguished from ordinary hotels. The teeth of the statute are in the accompanying Enforcement Order, which defines the relevant structure, facilities, and equipment.<sup>76</sup> Article 3(1) specifies that love hotel facilities have (a) rental rooms for rest by members of opposite sexes<sup>77</sup> and (b) either no lobbies and restaurants or lobbies and restaurants of small size only. For hotels that can accommodate thirty customers or fewer, the lobby and restaurant (neither of which may be divided into separate rooms) must be more than thirty square meters each to avoid classification and regulation as a love hotel; more customers require greater floorspace. Merely building a space and calling it a lobby is insufficient; a “lobby” technically must be a place in which customers meet employees face-to-face, sign a guest register, pay for rooms, and receive a room key.

Article 3(2) specifies the structure of a love hotel. If a hotel has (1) separate garages for each car or cars separated by walls or curtains, (2) parking spaces specified by room number, or (3) hallways that lead directly from parking space to room, it’s a love hotel. Finally, article 3(3) specifies love hotel equipment. If a hotel has (1) revolving beds, mirrors larger than one square meter on the ceiling, wall, or attached to the bed, or other device to arouse “sexual curiosity” or (2) vending machines selling sexually exciting products (separately defined to include nude pictures, albums, movies, tapes, disks, cd-roms, or other sexual products), it’s a love hotel.

Finally, the vagaries of the Enforcement Order are defined in the Standard Commentaries, a legal reference used by police officials enforcing the law. Police are the central enforcement in

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<sup>75</sup> Minutes of Sangiin Okurainkai [House of Councillors Finance Committee], No. 12, Apr. 7, 1984, at 17 (statement of Shigeru Aoki).

<sup>76</sup> Fuzoku Eigyo to ni Kisei oyobi Gyomu no Tekiseika to ni Kansuru Horitsu Sekorei, Order no. 319 of 1984.

<sup>77</sup> Love hotels catering to a gay clientele would be legal under this definition. But see *supra* note 2.

the institutional scheme and frequently are consulted by love hotel operators to determine the legality of their operations. Accordingly, these Commentaries are relied upon by hotel operators as a safe harbor.<sup>78</sup> According to the Commentaries, equipment includes “transparent bath tubs, sadomasochistic goods, and video camera equipment with which to film persons in a reclining position.”<sup>79</sup> And according to the Commentaries, a mirror over a sink – even if it’s a big one – doth not a love hotel make.<sup>80</sup>

### B. *Effects*

The 1985 revision of the Entertainment Law had two primary effects. First, it gave power to local boards, which means that the location of hotels within a prefecture is predetermined. Second, despite the potential death knell that prefectural governments could have handed hotels using this power, the legislation ushered in a new era of love hotel prosperity and growth.

1. *Location.* After the adoption of the new love hotel regulatory regime in 1984, each of Japan’s forty-seven prefectures quickly revised its local ordinance system to regulate love hotels. Before revising their zoning codes, most prefectures held public meetings or formed study groups that included community leaders. Based at least in part on these meetings, many prefectures restricted the areas in which love hotels could advertise. In a move with potentially more significant ramifications, every prefecture, in almost every case relying on existing zoning regulations for the formal framework, restricted the areas in which love hotels could function. The

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<sup>78</sup> Keisatsucho Seikatsu Anzen Kyoku, Fuzoku Eighyo to no Kisei Oyobi Gyomu no tekiseika To ni kansuru Horitsu no to Kaishaku Kijun, Feb. 1999.

<sup>79</sup> Art. 5, subsection 4, 17.

<sup>80</sup> Id. at 16.

result is that love hotels are often grouped closely together in zones, and some neighborhoods seem awash in neon.

The granting to prefectural governments of the power to regulate love hotels doomed potential love hotel owners like Torii, the builder in the small town of Iimori discussed in Part I. Torii's victory in High Court came in March 1983. But unfortunately for Torii, the revised Entertainment Law was passed in 1984. In December of that year, before Torii could build his hotel, Nagasaki prefecture, under the authority of the revised law, passed its own public morals regulations, which included, among other things, a provision allowing love hotels only in designated zones.<sup>81</sup> With the Nagasaki Prefecture provision firmly in place, Iimori abolished its permission ordinance, mooted the pending Supreme Court appeal.<sup>82</sup> Thus, Torii lost the battle, and the land on which his love hotel was supposed to be built now sits vacant.<sup>83</sup>

Although pre-1985 hotels, which were grandfathered, had few qualms about the placement rules, those rules played a role in determining location for potential new love hotel market entrants, which were forced either to change location or change their business plan. The next section illuminates their choices.

*2. Prosperity and Growth.* A dramatic restructuring of the entire hotel industry occurred after 1985. The changes can be seen in three hotel categories: (1) hotels that fit the 1985 statutory definition of love hotels ("statutory love hotels"), (2) hotels that do not fit the statutory definition of love hotels but nevertheless clearly function as love hotels ("extralegal love hotels"), and (3)

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<sup>81</sup> Fuzoku Eigyo to no Kisei oyobi Gyomu no Tekisaeika to ni Kansuru Horitsu Seko Joretsu, Nagasaki Ordinance 42, Dec. 25, 1984.

<sup>82</sup> Torii v. Mayor of Iimori, Supreme Court, 19 Hanrei Chiho Jichi 60 (June 6, 1985). See also Iimoricho Ryokan Kenchiku no Kisei ni Kansuru Jorei wo Haishi suru Jorei [Order to Abolish Order Relating to Iimori Inn Construction Rules], 36 Gyosei Jiken Saiban Renshu 131. A few local governments still maintain provisions like that of Nagasaki that require mayoral consent for love hotel construction, see, e.g., <http://www.city.sakai.osaka.jp/reiki/honbun/s0000382041310101.html>.

non-love hotels at which businesspeople, singles, and families are welcome (“ordinary hotels”). Categories two and three sometimes overlap. Because the data allow it, I further divide ordinary hotels into large hotels (full-service Western-style hotels) and inns (smaller hotels that include some business hotels, some city hotels, and all Japanese-style *ryokan*).

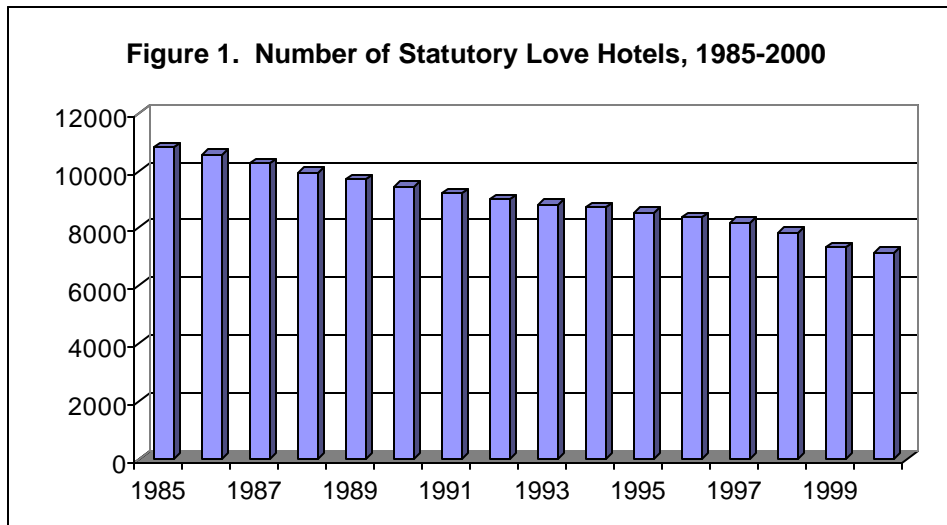
I first attempt to determine the extent of industry change in these categories. I then argue that industry changes were caused primarily by the law, and that one mechanism by which the law effected change was social legitimization. Finally, I discuss alternative explanations for the observed changes.

I rely primarily on two types of evidence. First, I examine the available quantitative data, including publicly available data and data obtained from anonymous sources. Second, I rely on interviews of the persons mentioned in the Introduction. In a few cases in this section (each of which I clearly note), either because the speaker is particularly important or the wording particularly interesting, instead of presenting my own interviews, I present interview data collected by Japanese scholars. Importantly, the data collected by other scholars mesh remarkably well with the data that I personally collected, suggesting that my sample is not unrepresentative. In all cases, of course, the evidence is imperfect, but given that parts of my claim concern information held by insiders and the perception of love hotels in Japanese society, it does not seem inappropriate to rely on the statements of insiders and those who hold such perceptions.

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<sup>83</sup> Telephone Interview with Chiaki Matsuo (plaintiff’s attorney), Jan. 11, 2001.

a. *Post-1985 Change.* Figure 1 shows the changes in the number of statutory love hotels from 1985 to 2000.<sup>84</sup> As the figure shows, the total number of statutory love hotels nationwide declined from about 11,000 in 1985 to about 7,000 in 2000 (including 453 in Tokyo).



As the Figure suggests, the traditional love hotel *as defined by the statute*, with rotating beds, mirrored ceilings, and sex toys is becoming extinct. Interview data complement the quantitative evidence. Although national data on new love hotel registrations are not publicly available, hotel industry executives and public safety commissioners uniformly told me that to their knowledge, there have been *no* new registrations – since 1985, not a single new love hotel has registered under the Entertainment Law.<sup>85</sup> In other words, the decline in statutory love hotel population from 1985 to 2000 is solely the result of pre-1985 hotels closing their doors.

<sup>84</sup> Source: Keisatsucho, Keisatsu Hakusho [White Paper on Police], various years. Keisatsu Hakusho from pre-1984 list only number of motels and are thus incompatible. The data for motels alone suggest that the number of facilities increased steadily until 1984.

<sup>85</sup> For an owner’s explanation, see <http://www7.plala.or.jp/hotelforest/syosinsya/chisiki.htm>.

But a silver lining for the love hotel industry exists in the form of extralegal love hotels. The total number of statutory love hotels, as seen in Figure 1, is around 7,000.<sup>86</sup> But no one with even passing familiarity with the industry seriously believes that the number of hotels in Japan that exist primarily for sex is only 7,000. Industry data are quite specific: there are 37,417 love hotels, with an average of 16.87 rooms, supporting 576 million couples and generating 4.32 trillion yen (\$43 billion) in annual revenue.<sup>87</sup> Another author, citing no specific data source, says 35,000,<sup>88</sup> and the *Tokyo Journal*, relying on an older love hotel guidebook, says 30,000.<sup>89</sup> Whatever the actual figure, the 7,000 statutory love hotels are only the official, regulated portion of this larger group.<sup>90</sup> The remainder is extralegal love hotels.

To become an extralegal love hotel, an entrepreneur need only avoid the narrow definitional provisions of the Entertainment Law. A hotel that has a lobby and a restaurant and has no rotating beds, large mirrors, or sex toys is not a statutory love hotel. It still must register -- all types of hotels, from luxury hotels to small inns, are required to register with prefectural authorities -- but it registers as an ordinary hotel, not as a love hotel. Because of the smaller size of extralegal love hotels, they usually register as inns and not as large hotels.

Determining precisely the number of extralegal love hotels is difficult. The combined total of registered large hotels and inns fell from 84,328 in 1985 to 73,051 in 2000, while the

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<sup>86</sup> Keisatsucho, Keisatsu Hakusho [White Paper on Police] (2002).

<sup>87</sup> Futabasha ed., supra note 1, at 104-05.

<sup>88</sup> Yasuda, supra note 4, at 8.

<sup>89</sup> Andreas Stuhlmann, Love Hotels: Between a Rock and a Soft Place, *Tokyo Journal*, Apr. 2000, available at <http://www.tokyo.to/backissues/apr00/tj0400p6-10/>.

<sup>90</sup> Note that these estimates were formulated as early as 1980, and as late as 1999, see Futabasha ed., supra note 1, at 104-05. If each is accurate, one possible interpretation is that the total number of love-hotel facilities changed little over the period, but (a) hotels that would have been statutory love hotels under the 1985 system decreased substantially and (b) extralegal love hotels increased substantially. Even still, it is significant that the Entertainment Law did not lead to a love hotel *decrease*.

number of rooms rose from 1.28 million to 1.57 million.<sup>91</sup> The decline in hotels and inns comes from the inn component; as the number of big luxury hotels increased over the period from 3,332 to 8,220, the number of smaller inns decreased from 80,996 to 64,831. But these statistics do not tell us how many of those hotels – especially inns -- and rooms are actually extralegal love hotels, and each is of course affected by the specifics of the Japanese leisure and travel industry. Industry insiders and experts whom I interviewed estimated that the total number of extralegal love hotels rose from a handful in 1985 to approximately 30,000 today. This figure of course lacks scientific precision, but it is not inconsistent with the industry’s gross love hotel figures.

Extralegal love hotels arose from three sources to create the love hotel “Big Bang.”<sup>92</sup> First, new love hotel market entries chose the vehicle. The extralegal love hotel option thus helps explain the lack of new love hotel applications; it seems unlikely that an entrepreneur would purposely subject himself to increased policy scrutiny by furnishing rooms with mirrors and rotating beds when in fact he could omit these amenities, replace them with others, and register as an ordinary hotel or inn.

Second, many pre-1985 love hotels that converted to extralegal love hotels love hotels often had good reasons to avoid the new statutory love hotel classification; in addition to placement restrictions, many wanted to avoid excessive consultation with police and other state officials. To evade scrutiny, many love hotels made cosmetic changes such as the addition of dining rooms. But to the surprise of love hotel managers, customers actually began to *use* the

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<sup>91</sup> Koseisho Hokoku [Statistical Report on Health Administration Services], various years.

<sup>92</sup> Inoue, *supra* note 4, at 399.

dining facilities in the same way that they might use such facilities at a ordinary hotel.<sup>93</sup> As one long-term maid told me:

[The boss] tore out a stairwell to make space for a dining room. I thought he was crazy; what does he think a love hotel is for? But apparently he had to do that to avoid getting shut down. I couldn't imagine that anyone would use such a thing. I occasionally made simple things for room service, but that was a pretty short menu – eggs, toast, rice balls. When people actually came and sat at the table to order stuff, I was really surprised! It's like all of a sudden we were the Prince Hotel or something; it was such an exaggeration.

Third and finally, some extralegal love hotels were initially very ordinary hotels. As statutory love hotels decreased and became more expensive, many customers chose ordinary hotels for liaisons in their place.<sup>94</sup> Ordinary hotels in Japan traditionally made about 70% of their revenues from wedding parties; room rentals were a relatively small part of the business. But with the new customers from declining statutory love hotels, ordinary hotels began to introduce hourly rates for “day use” in order to capture the love hotel crowd.<sup>95</sup> Although these day-use plans were not explicitly advertised as sexual in the same manner as love hotels, usage patterns were quite similar, and these establishments, formerly ordinary hotels, thus became extralegal love hotels.

As love hotels and ordinary hotels evolved toward a common model, distinguishing the two became more difficult. Enterprises with King Kong on the roof are extremely likely to be love hotels, but not all cases are so clear-cut, as with some modification, both love hotels and ordinary hotels fit in the category of extralegal love hotels. And with only slightly more modification – adding a big mirror or two or providing hardcore sexual paraphernalia when the police are not looking – they can easily function illegally as “true” love hotels.

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<sup>93</sup> See, e.g., Nagai, *supra* note 4, at 166.

<sup>94</sup> See, e.g., Inoue, *supra* note 4, at 365.

<sup>95</sup> Suzuki, *supra* note 1, at 151-53.

The distinction between love hotels and ordinary hotels is based largely on factors not mentioned in the statute, but known to most Japanese adults. For instance, love hotels, whether they be statutory or extralegal, often hang a curtain-like divider in the driveway (except those in prefectures that prohibit the practice), while ordinary hotels do not. Love hotels have a “vacancy/no vacancy” sign, while most ordinary hotels do not. Love hotels post rates for short-term stays, while hotels do not. Excessive neon remains a love-hotel giveaway.

While most extralegal love hotels are identifiable as love hotels from the outside, many ordinary big hotels also are said to run a sex-related business that was either not available or seldom used before 1985. Insiders such as Shiroo Kimura, the representative director of real estate developer and hotel owner Tachibana Corporation, which owns many love hotels, offer the following estimates of ordinary hotel usage patterns:

When we recruit new employees and ask them about their prior employment, more than half of them come from big ordinary hotels in cities. From interviews of those recruits, we learn that more than half of those big hotels are actually love hotels. When they go to clean the rooms, the evidence is all over the place. Rooms without the “evidence” are a slim minority. . . . The only difference between the big ordinary hotels and love hotels is the process. . . . These estimates don’t just spring from my head; they come from years of interviewing people who actually work in such places.<sup>96</sup>

The phenomenon about which Kimura speaks is not the conversion of inns into extralegal love hotels, but the use of big luxury hotels as a romantic getaway, often for the noon crowd. Kimura’s comments suggest that about 4,000 of the 8,00 ordinary big hotels function to some extent as extralegal love hotels. My interviewees, including those from ordinary hotels, made similar statements.

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<sup>96</sup> Hanada, *supra* note 4, at 159.

While it may not sound unusual for couples to use a luxury hotel for sex, before 1985 they were seldom viewed as an avenue for that purpose. Big hotels were primarily for weddings, banquets, family trips, vacations, and foreigners; not for romantic hideaways. One hotel industry expert whom I interviewed was particularly forthcoming about the change:

Do you think that the Hotel Nikko Tokyo and all those other hotels out that way [by the coast and Disneyland] are just for schoolgirls who want to see Disneyland? Those places couldn't survive without sex. It's only a quick jump on the train from the city, and [the man] gets big points for taking his girl there.

At the aforementioned Hotel Nikko Tokyo, which indeed has a reputation as a romantic spot, I was told:

We most certainly are not a love hotel. . . . Our customers are very discriminating people with good taste, and we strive to please all elements of our broad customer base . . . It is true that we make special advertisements to couples at romantic holidays such as Christmas, but that is only one small element of this hotel's service . . . we also hold many weddings, host foreign dignitaries, and hold musical and other special events.

Again, this particular usage pattern may not be unusual by American standards; hotels in the United States similarly advertise weekend getaways, cater to "nooners," and host parties and other social events that may lead to sex in its rooms. In this respect, Japanese luxury hotels are more akin to their American counterparts than to Japanese love hotels, and I do not wish to exaggerate the importance of these 4,000 Japanese establishments. The point is not luxury hotels' share of the love hotel market, but the fact that usage patterns changed after 1985.

Combining the available quantitative evidence and the estimates gleaned through my interviews allows us to construct a rough – perhaps *very* rough – picture of the changes that

occurred from 1985 to 2000. Figures 2 and 3 show the state of hotel population for each of those dates.<sup>97</sup>

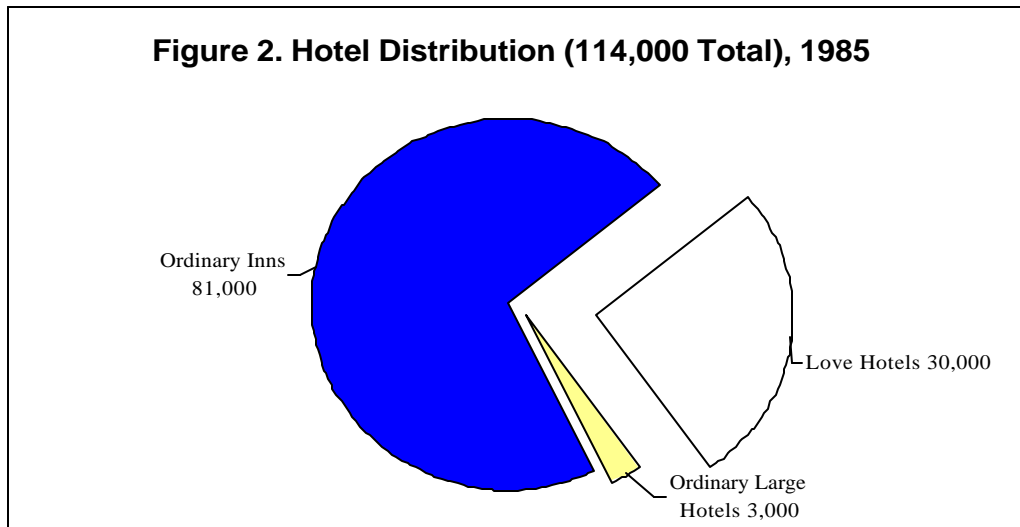


Figure 2, which relies on official registration data for all but the love hotel estimate, shows that inns comprised the bulk of the hotel industry in 1985. Love hotels, which were regulated at the time only by the Inn Law, numbered only about 30,000 establishments, while large luxury hotels comprised only a tiny share of total establishments.

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<sup>97</sup> I omit from each figure a few minor establishments such as bed-and-breakfasts and public facilities that house school groups and focus only on the large players.

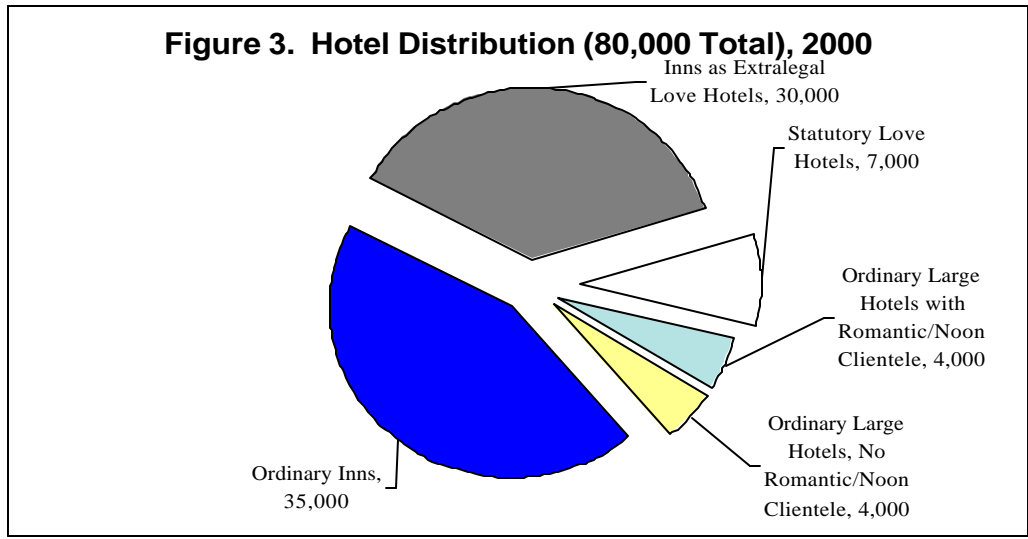


Figure 3 uses official registration data for statutory love hotels and the total numbers of ordinary inns and ordinary large hotels, but relies on interview estimates for the breakdown of the latter two categories. As the figure shows, inns have now effectively split into two separate categories: ordinary inns and inns functioning as extralegal love hotels. Statutory love hotels comprise only a small category, as extralegal love hotels are the primary love hotel vehicle. Ordinary big hotels have doubled in number, and about half of that number is said to serve a sex-based clientele.

Allowing substantial leeway for the imprecision of the above estimates, love-hotel-like establishments appear to have increased by about one-third over the fifteen-year period. The data are even more imprecise on issues like customers and profits; the available time-series estimates typically assume maximum usage rates and simply multiply the number of establishments or rooms by estimated room charges and turnover rates. Inevitably, these estimates show increases in both customers and profits. Still, all interviewees to whom I spoke firmly believed that each increased substantially over the period, and this trend indeed appears to have been the experience at the hotels that I visited. It is of course possible that interviewees are inaccurately extrapolating

their personal experiences or unintentionally exaggerating industry health, but I see little systemic reason to doubt the interviewees' veracity.

While I was unable to obtain precise customer and profit data over the period for the industry as a whole, the evidence that I was able to compile suggests increases for some establishments even in arguably the weakest segment of the industry -- the shrinking statutory love hotel market. Statutory love hotels that chose *not* to convert to extralegal, less sexual facilities after the 1985 revisions faced two possibilities: closure or survival as statutory love hotels. As the data in Figure 1 suggest, closure was likely. Statutory love hotels that did well before the regulation could not survive the intense competition from extralegal hotels that faced less police scrutiny. More damning for many hotels were the renovation provisions, as renovation meant new registration, and new registration for grandfathered hotels in otherwise prohibited areas meant closure (or conversion to extralegal love hotels). Hotels that never renovate lose customers as they deteriorate.

But for a few statutory love hotels, the 1985 legislation signaled prosperity. The new legal scheme effected at least two economic trends. First, and perhaps most obviously, the new legislation eliminated competition from certain areas by granting grandfathered hotels a monopoly over business in prohibited areas. Second, the law effectively segmented the market between overtly sexual statutory love hotels, extralegal love hotels, and ordinary hotels, allowing consumers to differentiate among them more easily. As a result of these two trends, the new limits placed on statutory love hotels, to the dismay of their critics,<sup>98</sup> actually increased the prominence

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<sup>98</sup> See Hanada, *supra* note 4, at 209.

and profits of survivors. Although the data on usage is more difficult to ascertain, industry officials claim, and private data also suggests, increased usage over the unregulated period.<sup>99</sup>

I examined financial data supplied to me on the condition of anonymity from ten statutory love hotels. Of these ten, seven have been in business since before 1984. Seven is admittedly not a large number, and this evidence is by no means definitive. Perhaps most obviously and potentially problematic, these data are subject to survivorship bias: firms that are still around for me to interview did well enough in the 1980s to stick around. To supplement these data, then, I obtained financial information from three additional statutory love hotels that no longer exist – one closed in 1986, one in 1990, and one in 1991.

Of the seven existing hotels, two – both coincidentally in Kyushu – kept detailed customer records. One hotel showed a customer increase of nearly 75% in 1985; the other, an increase of 24%. One hotel raised rates in 1985; the other, in 1986. All seven hotels had general data on profits and losses on at least an annual basis. All seven hotels recorded an increase in net profits in 1985, the year the law took effect, and six of the seven hotels recorded further increases in 1986. Both because of promises of anonymity and questions regarding precisely how each hotel kept its books, it would be both inappropriate and misleading to report here the financial data for each particular hotel. But taken as an aggregate, and with the requisite caveat on the accounting standards of love-hotel operators, the average increase in net profits for the seven hotels in 1985-1986 was 27.8%.<sup>100</sup>

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<sup>99</sup> Yasuda, *supra* note 4, at 9(private estimate of 1,312,500 couples a day, which calculates to 479 million couples annually).

<sup>100</sup> The increase in love hotel profits was by no means predetermined. As the line between love hotels and city hotels was blurred, surviving statutory love hotels were forced to compete with ordinary hotels for business, which might have resulted in profit losses. The available evidence suggests that this did not always occur, at least in part because the law effectively segmented the market. Some customers chose to frequent statutory love hotels, with their full range of sexual adventure, while others preferred the more mundane ordinary hotel locale.

Data from the three now-defunct hotels show an unexpectedly similar story. The 1990 and 1991 hotel closings, their owners told me, occurred because of insufficient revenue, which they attributed to (a) an inability to renovate without facing closure and (b) a lack of viability of the extralegal love hotel vehicle among their customer base. The owner of the Tokyo-area hotel that closed in 1986 gave me a panoply of reasons why his “family-run” hotel was forced to close, including “I was tired of dealing with the police,” “the girls [prostitutes] wanted more money,” “we couldn’t keep up with the competition,” “I wanted more time for fishing,” and “we wouldn’t pay dues to the yakuza.” None of the three hotels had solid customer data, but all three owners stated that their customers *increased* after the law’s passage. The hotels that closed in 1990 and 1991 experienced increased profits of 5.6% and 8.2% respectively in 1985; it was not until 1989-1990 that profits began to fall. Somewhat surprisingly, even the hotel that closed at the end of 1986 performed slightly better in 1985 than in 1984.

b. *Cause of Change.* The previous section suggests a restructuring of Japan’s hotel industry in the mid- to late 1980s, the creation of a new love hotel sector with no apparent decrease in overall numbers, and an increase in profits for surviving statutory love hotels. While we can never be certain about causation, interview data strongly suggest that the law was a dominant causal factor.

Love hotel operators, love hotel design and management consultants, regular customers, city hotel operators, love hotel industry representatives, anti-hotel campaign leaders, and police in charge of enforcing the Entertainment Law all told me of vast increases in profits, customers, and reputation— and all attributed that result to the revisions. Importantly, these interviewees were not all success stories; some actually failed in the love-hotel industry restructuring and made “comebacks” in other related roles. Although each person told the causal story with different

nuances and from a different perspective, among interviewees, the vote for law as a causal factor was virtually unanimous. For instance, one Tokyo-area consultant and owner told me:

The Law was supposed to break our back. For some of the old-style love hotels, it did; those guys have a really hard time. But for the rest of us, the law just poured money right into our pockets. We just ate up all the love hotel business, and started more new business at the new hotels than the older generation could have ever dreamed. About all we did at most places was take out the rotating beds, take down the mirrors, and write “sex” in English instead of Japanese, but that was enough.

Tatsuo Koyama, the president of Aine System Group, a corporation that owns and operates 129 hotels with 2,743 rooms from Hokkaido in the north to Kagoshima in the south, expressed similar sentiments to a Japanese interviewee:

After the new Entertainment Law, as long as you followed the rules for building – not for building a love hotel, but for building a *ordinary* hotel -- you could build anywhere you wanted. Financial institutions were lending money more freely than in the past. The outside changed to look like a “business” hotel but the inside was just a love hotel. . . . To put it simply, it made our business a lot easier. The essence of a love hotel is a place for men and women to have fun; a place may look like a “business hotel,” but inside it’s really a love hotel. On top of this, the new Entertainment Law wiped out our old dark image; rather than being a minus, the law was a real plus.<sup>101</sup>

Koyama’s reference to financial institutions is interesting. On one hand, it might refer to the booming late 1980s economy in which many financial institutions lend more freely to all players. On the other hand, it might refer independently to increased confidence on the part of banks in the security of their lending transactions. If the latter, the confidence might have been created or bolstered by the Entertainment Law, which gave lenders who cared some assurance in the legality of the enterprise. Although I was unable to speak with lending agents who regularly loaned to love hotels, the borrowers (love hotel operators) told me that they believed that both were factors, with greater emphasis on the latter.

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<sup>101</sup> Tatsuo Koyama interview in Hanada, *supra* note 4, at 205.

Both Kyushu hotel owners discussed above (whose records reflected profits after 1985) told me that they attributed their success directly to the law. One said that the law put their primary competition, which had previously been only 500 meters away, but, importantly, across the prefectural border, out of business. The other owner attributed to the law the fact that his customer base increased to include more “regular people.” Suzuki (a pseudonym), the owner of the hotel that closed at the end of 1986, told a similar story:

*Suzuki:* [My hotel] went under, but that’s not really the law’s fault. Every love hotel in Japan should have a statute in the lobby of whatever idiot politician came up with that law. As long as you’re not running a brothel with naked people running in the streets next to a school, everything is fine. And if you’ve been around a while you wouldn’t even have to close if you were next to the school.

*Q:* But you couldn’t build anything new next to a school, right?

*Suzuki:* Sure, but who wants to do that anyway? For most hotels, you just have to decide what kind of business you’re going to run and stick to the law. As long as they did that, customers came more after the law than before the law.

Compare these comments to those of a manager at a large ordinary hotel:

We had a hard time expanding our business. The Japanese hotel industry is really competitive, and about the only way we can compete in our price range is location. Before the law, we wouldn’t have dreamed of competing with the love hotels. Those places were too far removed from what we do; they were the “underside” (*ura*) of the hotel industry, like a black market. But when they became regulated, we decided to change our business to compete with them for two reasons . . . . First . . . we knew what the limits were now, because the law defined them. Second, the public now knew the limits as well, and they started to come to hotels in droves.

The ordinary hotel manager’s comments echoes those of others who suggested that the post-revision trends would not have occurred in the absence of the law. Managers and owners of ordinary hotels, including both the former inns operating as extralegal love hotels and luxury hotels whose clientele includes a similar crowd, had feared that entry into the love hotel market

would be risky, tarnish their image, and might be illegal. As for love hotels, while some love hotels could have attempted to make their services appear more legitimate (and some did before 1985) to attract more customers, such efforts alone were, I was told, insufficient to change public perception.

Interestingly, anti-love-hotel campaigners expressed similar views on causation, but with a more negative slant. While those who oppose love hotels might be expected to be pleased with the cleaner and more upscale love hotel market, many blame the law for the increase in population:

*Opponent:* Many of us viewed the 1985 law as a victory. There had been no law to control the industry, and now there was. What we didn't realize was that by defining love hotels, the law was actually defining what a love hotel is not. If you don't want to be treated as a love hotel, all you have to do is create a "non-love-hotel" love hotel, and of course that's what everybody did.

*Q:* But isn't that success? Some "dirtier" establishments appear to have gone out of business.

*Opponent:* I wouldn't call it a complete failure. For instance, there now is regulatory authorization for local governments to keep the more dangerous elements out of some neighborhoods. But the old hotels, even though they're dying off, are still right there, and even the more decent hotels still cause the sorts of problems that we were worried about 20 years ago . . . There is no check of identification, so anyone who looks 18 to somebody watching the [outdoor or hallway] video feed can get in, and they're not going to stop anyone anyway. There still are crimes committed behind these closed doors that I can't even imagine . . . prostitution is just the obvious one. And of course, there's always the children.

*Q:* What does this have to do with children?

*Opponent:* Kids see this stuff all around them. Lots of kids can't even walk to school without passing a few love hotels.

*Q:* What do you see as the danger in that? . . .

*Opponent:* Most Japanese think that it's not a problem; that's why it's allowed. They just think that sex is part of life, like filling your car with gas. Actually, I think the same, but you don't have a first-grader take your car to the

service station. . . . Think about how [the love hotel regulatory scheme] would work for service stations. It's like saying "if you look like a candy store, kids can buy gas there." That's essentially what the Entertainment Law did for love hotels; it made them all try to look like candy stores.

Finally, some entrepreneurs who work exclusively with statutory love hotels lament their demise at the hands of the law. As love hotel "planner" Shin Amii (a stage name; the legendary Amii's designs are copied throughout Japan) puts it:

Young people don't know real love hotels. The revised Entertainment Law made it harder to do my job, but if you'll just try one of my rooms, you'll never go back. I don't try to be like an ordinary hotel or be cute. My thinking may be childlike, but I like to put things in the room that move. For instance, things like a tree swing with a built-in vibrator.<sup>102</sup>

*c. Mechanism of Legal Change.* The quantitative and interview data hint at two complementary mechanisms that may underlie the ability of the 1985 revisions to effect industry change. The first, market segmentation and monopolization, has been discussed, but a second possibility is more difficult to prove but also more intriguing: the law legitimized love hotels in the minds of consumers.

As discussed in Part I, many people in Japan traditionally viewed love hotels as seedy locales not for amateurs: inside is for pros. Through regulation, however, the state unwittingly legitimized the love hotel industry in three specific and related ways.<sup>103</sup> First, as discussed above, *ordinary* hotels turned to love hotel clientele. In so doing, the overall love hotel market *actually* became more legitimate, at least in the sense that hotels were cleaner, more open, and less overtly sexual.

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<sup>102</sup> Hanada, *supra* note 4, at 165-66.

<sup>103</sup> On legitimizing effects of pollution laws, see Bradley C. Bobertz, *Legitimizing Pollution Through Pollution Control Laws: Reflections on Scapegoating Theory*, 73 *Tex. L. Rev.* 711 (1995).

Second, the 1985 legislation increased incentives for love hotels to be less overtly sexual to avoid regulation or to build in non-excluded areas. To avoid being classified and regulated as love hotels, love hotel owners, in addition to the addition of dining rooms discussed above, removed the more explicit sexual paraphernalia from rooms. Gone were rotating beds, see-through bathrooms, and large mirrors specified in the regulations;<sup>104</sup> in their place, they added saunas, video games, tanning beds, massage chairs, and the like. The gaudy love hotel royal palace motifs of the 1970s gave way to more muted architecture, the “gorgeous” was replaced by the “cute,” and love hotels began self-advertising as “fashion” hotels.

To avoid the increased police scrutiny that accompanied the legislation, most love hotels, statutory or otherwise, stopped serving directly as liaisons between customers and prostitutes. To some extent, competition had already begun this trend; prostitutes found that they could avoid paying liaison fees to hotels by advertising directly to customers, and customers began negotiating directly with prostitutes for hotel-based services.<sup>105</sup> Most hotels now post signs banning male customers from entering alone, a policy designed to end the practice of hotel-arranged prostitution. The net result of these changes is that while many love hotels can still be identified from the exterior as such, the inside of many establishments look very similar to ordinary hotels.<sup>106</sup>

Third, many statutory love hotels in fact changed their business and marketing little if at all, but the mere fact of regulation, accompanied by spillover effects from the newly legitimate hotels, may have legitimized them as well. The legal revisions were well-publicized, and many customers knew of them. Industry officials and hotel operators told me the same story that I heard

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<sup>104</sup> See Yasutaka Abe, *Rabuhoteru Gekitaisaku* [Anti-Love-Hotel Measures], 430 *Hogaku Seminaa* 68 (1990).

<sup>105</sup> Inoue, *supra* note 4, at 373.

<sup>106</sup> I do not mean to imply, of course, that the legislation would have had an identical effect in all social settings. Surely one of the reasons why the statute led to greater legitimacy of extralegal hotels was an underlying societal norm that allows sex out of one's bedroom, a norm that may be less viable in other contexts.

informally from the customers themselves: some customers apparently interpreted regulation as a latent form of approval. As one operator, who first became a customer in 1985 and then entered the industry as a manager in 1996, explained:

*Customer:* I was just a stupid kid then from the countryside. We didn't have fancy things like love hotels, and the girls were so naïve that they probably wouldn't have gone if we had. . . . So when I came to Osaka and saw love hotels [in the early 1980s] I was really curious but at the same time scared. The girls were scared of these places too, at least the nice ones. So anytime I got a girl we just went back to my room, which was pretty small. Only four-and-a-half tatami mats, you know! But I was working as a taxi driver then, and taxi drivers don't have anything to talk about but roads, sumo, baseball, and sex, and I remember hearing from them that these gaudy places had now had government approval. Well, it must be OK then, I thought, so I went.

*Q:* And how was it?

*Customer:* It depends on where you went. Some places were really nice; others were just complete dumps. But even the dumps didn't seem so bad. I always figured, "If these places were *really* awful, the cops would have shut them down." They might have been dumps, but the law made them *official* dumps.

Suzuki, the owner of the 1986-closing hotel, continuing our conversation above, complemented these sentiments:

*Q:* Why did customers increase after the law was passed?

*Suzuki:* They stopped worrying that the police would haul them off to the pokey, or that the rooms would have dirty sheets. But most importantly, they stopped thinking that they were dirty people for going there. This was especially important for the women – the men usually propose the sex, so women want to at least have some say over the location.

*Q:* But even today, hotels hide license plate numbers in the garage, so somebody must still find this stuff a little embarrassing, at least, no?

*Suzuki:* A lot of people are just embarrassed about the person that they're going *with*, not the fact that they're going. "Doing it" is only natural. . . . Some people are still a little embarrassed, but it's not enough to keep them away anymore.

*Q:* But your hotel failed, right? Why was the law unable to give you enough extra unembarrassed customers to keep you in business?

*Suzuki:* In the beginning, it did. If it weren't for the law, I would have closed in 1984. I just lost out because I wouldn't play all the extra games. Cops showing up all the time and so on. Plus my little joint couldn't compete with the big new fancy hotels; it was just my wife and me running the place.

Finally, consider the statements of a successful female love hotel "advisor" who regularly helps hotel-owning clients with issues relating to facilities and décor. She was among my more colorful and helpful subjects, and when I asked her how she became involved in the love hotel industry, she told a spicy tale worth recounting in some detail:

*Advisor:* I became a hostess [in 1983] at 18. . . . I wasn't one of those tramps that sleeps with the customers, but I was a sucker for goodlooking guys, so when somebody tried to pick me up, I often said OK. They used to try to take me to love hotels, and I was curious, but my girlfriends had told me to avoid those places . . . there was something dirty about them, with all that "hardcore" (*etchi*) neon. I know that must sound funny coming from a hostess, but that's the way I felt . . . I went a couple of times when there was nowhere else to go but it was never my first choice. . . . But one of my boyfriends was really persistent; he was always pressuring me to go. I guess he liked that stuff, or maybe he just didn't like my apartment. We couldn't use his place because his wife would have objected. Ha! . . . When I kept saying no, one time he said "Don't you know? Those places are legal now."

*Q:* Did you think that they were illegal before?

*Advisor:* I had no clue. I mean, everybody went there, so I guess I thought that they weren't really illegal, but people were always worried that something bad would happen if you went there. I don't know what; hidden cameras or conmen or murders or something. But my boyfriend said they were legal, and I checked with my boss, who told me the same thing, so I thought maybe those places aren't not so bad after all. I started going, and I liked all that stuff. Ha! Do I look like someone who would enjoy mirrors on the ceiling?

*Q:* So the legal revision made you a customer?

*Advisor:* I guess that's right. Without the law, I might never have become a regular customer; it was just too scary. But what has that got to do with my liking mirrors on the ceiling. Ha! Actually it wasn't so much the mirrors-on-the-ceiling places as it was the nicer hotels that tried to wink at you and pretend that they weren't about sex, but what else are you going to do there on your lunch hour for 5,000 yen an hour? Ha! . . . Those are the places that I liked. But I saw lots of things from a

woman's perspective that needed improving, so I decided then that someday I would run my own hotel . . . .

I cannot postulate with any confidence that regulation created legitimacy equally among all hotels or all customers. Many consumers were unaware of the law and may have been responding more to economic changes than to legitimizing forces. Still, I heard enough similar stories in enough (roughly 50) interviews, and heard few competing explanations, to suggest that it must have mattered to some.

*d. Alternative Explanations.* In the preceding sections, I have attempted to show that the 1985 Entertainment Law revitalized the Japanese love hotel industry. But law does not operate in a social or economic vacuum, and these factors may play significant causal roles as well. Three contemporaneous and potential causal forces seem most relevant.

First, I have already hinted at one possible co-explanation: the timing of love hotel industry restructuring is contemporaneous not only with the passage of the legal revisions, but also with Japan's economic boom, or the "bubble years" that caused huge increases in wealth. While the bulk of the evidence points to law as a dominant causal factor, law may not have had the same force were it not for support of the hotel and leisure industry by freely lending bankers and freely lending consumers.

A second co-explanation relies on social phenomena. Perhaps, because of social changes (and internal market forces), industry changes were already coming, and the law was merely a reflection of these changes. Evidence that supports such an explanation exists; a few love hotels switched to less overtly sexual, "simple" themes in the early 1980s, *before* the legislation was passed.<sup>107</sup> Moreover, as Part I showed, social factors clearly played a role before 1985, as well as

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<sup>107</sup> See Inoue, *supra* note 4, at 364-65.

in the events that led to the passage of the revisions, and there is little reason to suspect that they ceased with the Entertainment Law revisions.

Still, it is difficult to determine *which* social factors might have contributed to the changes and in which direction; plausible arguments can be made that Japan is becoming both more liberal and more conservative regarding sex. “Telephone clubs” that allowed men to meet teenage girls for “compensated dates” (*enjo kosai*) began in the 1980s, and the “compensated dates” problem was prominent in the early 1990s.<sup>108</sup> But while such relations were said to have occurred long before telephone clubs came about, it was only in the 1990s that social outrage against the problem, as well as legal counterattacks, followed. Administrative rules that prohibited the showing of female pubic hair in Japanese media were removed in the early 1990s. But the showing of male pubic hair or genitals of any sort is still off limits, and social groups that were nonexistent two decades ago now protest sexually violent comic books. These potentially opposing social forces complicate analysis.

Finally, other demographic factors do not unequivocally point toward success or failure in the love hotel industry. Japanese society is aging, which might reduce love hotel guests, but more youth now have independent income to pay for the rooms, and more are sexually active. Japanese workers are working fewer hours, and thus might have more free time, but the post-1990 recession may reduce their economic options. Japanese young people are marrying and having children later, but this trend would not automatically lead to either an increase or a decrease in love hotel usage patterns.

Perhaps in part due to their complexity, persons connected with the trade do not mention such demographic factors, rarely mention social factors and only occasionally mention the

macroeconomy in their explanations of industry change. Instead, they routinely cite the law as the basis for industry changes. Their statements, if nothing else, show that there is at least a very strong *perception* that law matters. The evidence presented in the preceding sections suggests that the law did more than change perceptions; the removal of mirrored ceilings and addition of restaurant space was clearly undertaken in direct response to the statute. But such evidence by no means rules out alternative or correlating explanations, and it is likely that some of the forces that led to the law's revision affected the industry independently as well.

### CONCLUSION

Sex in Japan is different. This Article does not argue otherwise, and such Japanese merchandise as explicit comic books (to be read on trains) and used underwear (to be sold in vending machines), not to mention drastically differing gender roles, suggests that it would be foolish to do so. But in this Article, I have attempted to show that at least one often-noted peculiarity of Japanese sex – venue -- can be better appreciated, if not fully understood, by analyzing it in historical, social, and especially legal context.

The underbreadth of the 1985 revision of the Entertainment Law led to prosperity in and restructuring of the love hotel industry with no apparent decrease in love hotel numbers. Ordinary hotels began to compete with love hotels for clientele seeking a sexual hideaway. While some love hotels were forced to close, many upgraded to become “extralegal love hotels” to evade the law, and others succeeded within the law, as the law created barriers to entry that boosted their client base. Survivors appear to have benefited not only from the law's economic effects, but from the law's destigmatizing social effect. The net effect of the legislation and the social changes

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<sup>108</sup> Andrew D. Morrison, Note, Teen Prostitution in Japan: Regulation of Telephone Clubs, 31 Vand. J. Trans. L.

that fostered the regulatory change was a healthier love hotel market and few corrections of underlying problems. Whether a healthier love hotel market is a plus or a minus is hard to say, but the evidence suggests that one cause was the law.