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Why Legalizing Prostitution May Not Work



Capital Flows Contributor 

Guest commentary curated by Forbes Opinion. Avik Roy, Opinion Editor.

GUEST POST WRITTEN BY

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There appear to be some noteworthy similarities between the market dynamics of the ivory trade and prostitution. (AP Photo/Boris Grdanoski)

As a potential means to displace sex trafficking, legalizing prostitution has an obvious appeal. In addition to being a [desirable policy among many](#) of those who engage in prostitution on a consensual basis, legalization is assumed to help the market crowd out violent clients, abusive pimps and evil traffickers. [Advocates argue](#) that making it legal to sell sex [increases the supply of consensual prostitution](#) whereas making it legal to buy sex attracts better-behaving consumers—both of which should make the market for commercial sex [less exploitative](#). This line of reasoning makes sense, and is also what basic economic theory would predict.

But in reality, the effects of legalization are much more complex and harder to foresee. Recent research on exploitative practices on the supply side of the ivory trade illustrates why. A [paper](#) co-authored by Solomon Hsiang of University of California, Berkeley and Nitin Sekar of Princeton University analyzes the impact of a one-time legal sale of ivory stocks in 2008. The study, titled “Does Legalization Reduce Black Market Activity?” and published earlier this summer by the National Bureau of Economic Research, concludes that the

legal sale, contrary to what [economic theory might expect](#), corresponded with a sudden increase in illegal ivory production in Africa and Asia.

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Why did the creation of a legal market for ivory not displace exploitative suppliers? The authors point to two possible factors. First, they write, if “illegal supplies can masquerade as legal” then their production costs will fall, giving them a competitive edge over lawful suppliers. Second, they continue, if “legalization reduces stigma associated with consumption of the banned good,” the demand may increase by such a large magnitude that part of the void will be filled by an increase in illicit supply.

Hsiang and Sekar’s study proves a broader point: If legalization changes the nature of demand and supply, the policy may not lead to an intended reduction in unlawful production. Needless to say, ivory trade and prostitution are wildly different practices. But the relevant question to root out exploitative suppliers is only to what extent the market dynamics are comparable across the two industries. And there appears to be some noteworthy similarities.

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On the authors’ first point, while sex trafficking implies force, fraud or coercion, it may not be easy for either consumers or law enforcement to distinguish individuals who are selling sex with their consent from those who do not. In a legalized environment, unlawful commercial sex acts can therefore masquerade as legal. In addition, with respect to the researchers’ second proposition, prostitution has long been a stigmatized practice. Legalization could therefore substantially increase demand, not only by removing the deterrent effect of punishment, but also by reducing stigma, which would make sex trafficking even more profitable. The net effect of legalizing prostitution may thus be, at worst, an increase, rather than a decrease, in the prevalence of trafficking.

Although these concerns about legalized prostitution may appear purely theoretical, there are some pieces of evidence to corroborate them. One [paper](#), for example, looked at the legalization of brothels in the Netherlands in 2000. The researchers found that “screening of brothel owners and the monitoring of the compliance of licensing conditions do not create levels of transparency that enable sex trafficking to be exposed.” They therefore concluded that “fighting sex trafficking using the criminal justice system may even be harder in the legalized prostitution sector.”

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Similarly, official figures from Denmark lend support to the notion of a considerable increase in demand following the creation of a legal market. [Estimates](#) by the Danish National Board of Social Services suggests that after prostitution was made legal in 1999, the number of individuals in prostitution rose by more than 40% from 2002 to 2009, which would correspond with a significant jump in demand. Meanwhile, in neighboring Sweden, where the purchase of sex was criminalized in 1999 (but selling sex remained legal), a comparable increase in prostitution has [not been observed](#).

If the worries are warranted that legalization can both help traffickers subterfuge and boost demand for illicit supply, then the policy in question may be linked to higher trafficking prevalence. Some studies indicate that this could possibly be the case. [A paper](#) that analyzed up to 150 countries [suggests that](#) “countries where prostitution is legal experience larger reported human trafficking inflows.” [A study](#) of two different sources of trafficking data in Europe similarly concluded that sex trafficking is “most prevalent in countries where prostitution is legalized.” In my own research on the same topic, I have also found results that suggest a relationship between legal prostitution and sex trafficking.

Of course, the evidence here is not at all conclusive. It is important to note that none of these three investigations pin down a robust causal relationship; they all look primarily at correlation. And [other papers](#) have found different results regarding the potential effects of making prostitution legal. Moreover, the data on sex trafficking is generally bad and doing research on this topic is admittedly exceptionally difficult. It is also true that prostitution laws have consequences that stretch [beyond the realms of modern slavery](#). Policymakers have to be concerned not only with sex trafficking, [but also with other factors](#), such as the welfare of those who voluntarily engage in prostitution.

It seems highly unlikely that anybody at present could say without a shadow of a doubt whether the U.S. State Department’s [favored approach of tackling demand](#) or the route of legalized prostitution is the policy that is better at reducing sex trafficking. What appears clear, however, is that there are reasons to be concerned with the efficacy of legalization. For all its theoretical appeals, it may ultimately not work as intended.



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