

# Illegal Detention without Intent? Experimental Evidence of Misgovernance

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## “Cogs and the Machine”

- A prominent defense for those accused of human rights violations, e.g. Arendt (1963)
- The role of “cogs” and the “machine” in promoting or undermining the objectives of a political principal
- Two logics, distinguished by objective of political principal:
  - **Repression**
    - Political principal values/orders repression
    - Bureaucrats tasked with repression “work” ⇒ human rights abuses
  - **Misgovernance**
    - Political principal is “welfare oriented”
    - Bureaucrats tasked with protecting rights “shirk” ⇒ human rights abuses
- We study the misgovernance route to abuses

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## Misgovernance and Human Rights

- Describe the misgovernance mechanism for human rights abuses
  - Here, focused on illegal pretrial (remand) detention
- Understand this logic in Haiti
- Describe the potential scope of this type of abuse

## Evidence:

- Characterize objective of political principal  $\Rightarrow$  88 qualitative interviews, descriptive statistics
- Test whether an intervention aimed at state officials in the courts changes case trajectories
  - Legal assistance provided by aid organization
  - Randomized rollout design: effects of presence and dosage on case outcomes

# What we do:

## Misgovernance and Human Rights

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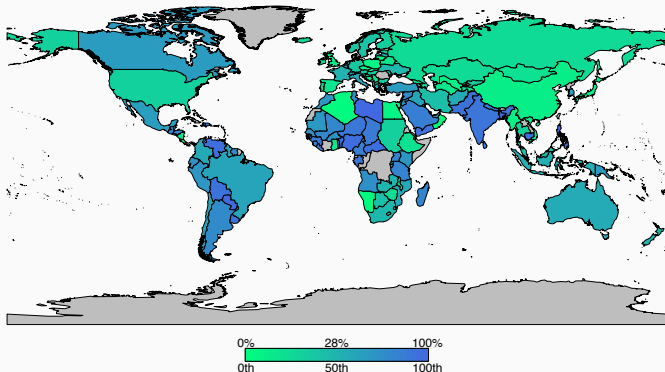
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# Pretrial Detention Cross-Nationally

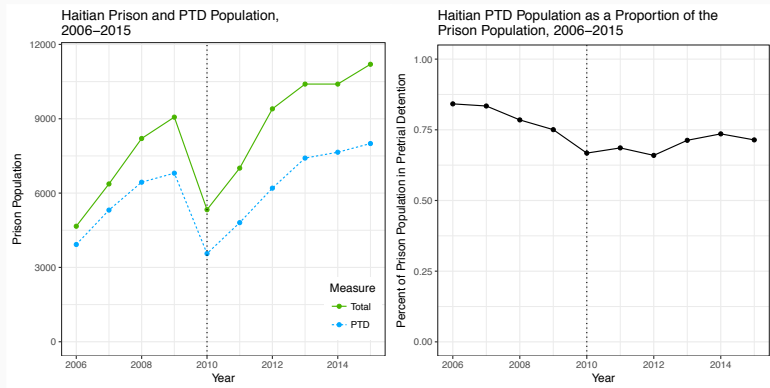
Approximately 3 million Pre-Trial Detainees Globally



**Figure 1:** Rates of pretrial detention, not *prolonged* pretrial detention. Data from Walmsley (2014).

# Pretrial Detention in Haiti

≈70% of Haiti's Prison Population in PTD



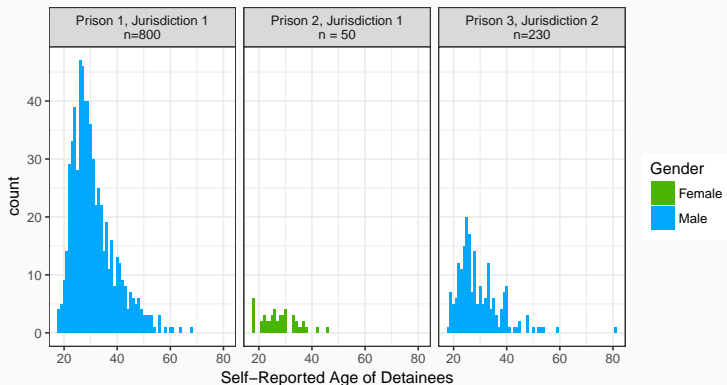
**Figure 2:** Rates of *prolonged* pretrial detention. Data from US State Department Human Rights Reports 2007-2016.

# Pretrial Detainees in Haiti

## Who is Detained?

- Disproportionately young men
- Poor, though asset index resembles DHS median in relevant districts

Age of Detainees in the Experimental Sample, by Prison



# Why are there high rates of PTD?

## Families of Explanations

- Rights are expensive (Holmes and Sunstein, 2000)
  - Lack of state funds ⇒ understaffing, lack of material support
  - Aid disproportionately devoted to policing (i.e., MINUSTAH)
  - Irony: Expensive to imprison people
- Incentives of Officials in Criminal Justice
  - General public sector issues → Lots of shirking
  - High levels of corruption
- Institutional Structure of Criminal Justice System
  - Inquisitorial criminal justice systems – colonial legacy (Langer, 2007)
  - Poor outcomes, including PTD, motivated reform across Latin America, 1990s-2000s

# Research Design

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## How do we deduce this?

- 88 semi-structured interviews with:
  - Court officials
  - Bar association members (esp. defense lawyers)
  - Prison officials
- Ministry of Justice gave USAID/us access
  - For lawyers to work in prisons and courts
  - For survey in prisons
- Characteristics of detainees
- “Exogenous” change of president during experiment
  - Didn't change access
  - Didn't change efficacy of treatment

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# Experimental Overview, Objectives

## Treatment

- Provision of legal assistance on behalf of a detainee and her case
- Some heterogeneity in the treatment

## Objectives

- Alter existing program as minimally as possible
- Maximize the beneficiary population given time and human resource constraints

## Population, Sample

- Population: Detainees with  $\geq 6$  months in *illegal* PTD (3 prisons)
  - Defined by prison registers 2 months before baseline,  $\approx 3000$  individuals
- Sample: 1080 detainees, stratified random sampling by prison
  - Excluding those accused of “un-representable” charges

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## Maximize Beneficiary Population

- Qualitative fieldwork (88 interviews) provide no suggestion that legal assistance is *harmful*
- Maximize beneficiary population: randomized rollout design
- End date is exogenous and was not shared with lawyers

## Ethical Allocation of Rare Treatments

- Bioethics literature on the allocation of rare treatments
- Operating in limited information environment precludes several (non-randomized) methods
- Random assignment fairer than first come first serve (FCFS) (Persad et al., 2009)

## Maximize Beneficiary Population

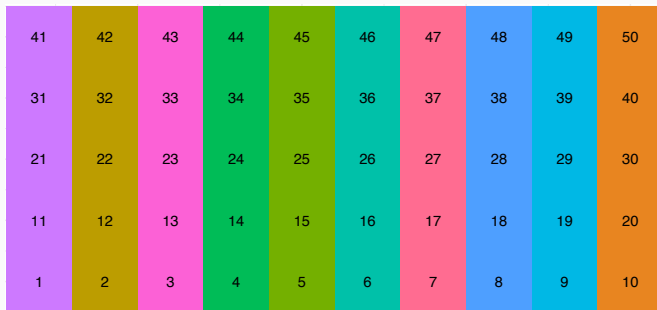
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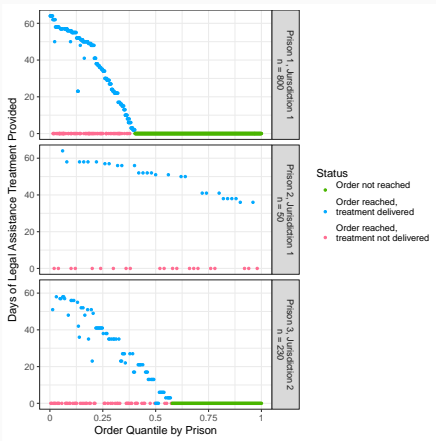
# Randomization

- $Z_{ip}$ : Order within prison, so  $Z_{i1} \in \{1, \dots, 800\}$ ,  $Z_{i2} \in \{1, \dots, 230\}$ ,  $Z_{i3} \in \{1, \dots, 50\}$
- Create quintets based on violent offense indicator, number of charges, age, time in detention, and education
- One quintet member per quintile of order distribution



**Figure 4:** Illustration of randomization.





**Figure 5:** Visualization of research design

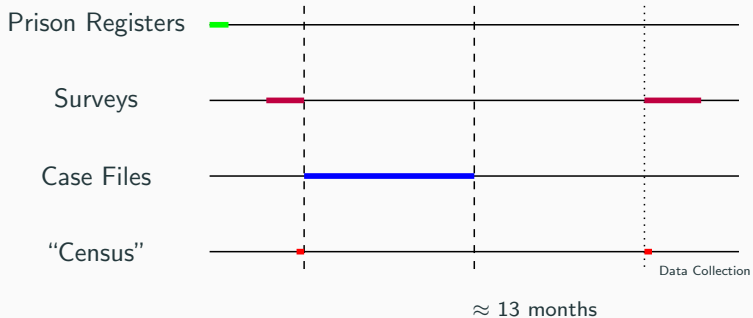
## Variation in:

1. Assignment to treatment or not (exogenous cutoff)
2. Dosage of treatment received

## Complications for Analysis:

1. Non-compliance
2. Differential probabilities of assignment to treatment by block

# Original Data Collection



**Figure 6:** Depiction of data sources and temporal coverage as well as the sequencing of data collection.

# Operationalization of Treatment and DVs

## Measurement, Operationalization

- $o_{ip}$  is order of individual  $i$  in prison  $p$
- $q_{ip}(\cdot)$  is the quantile function of the order indicator

DV	Liberation	Case advancement
Sample	All Imprisoned at Baseline	All assigned to non-zero dose of treatment
$n$	876	505
Measured	9 months after start of treatment	3.5 months after start of treatment
Counterfactual	1. Treatment/Control 2. Dosage of treatment	Dosage of treatment
Assignment	1. Binary (Order reached) 2. $1 - q_p(o_{ip})$	$1 - q_{ip}(o_{ip}   o_{ip} \leq k_p)$
Treatment	1. Binary (Defined by partner) 2. Weeks treated	Days treated

## ITT

- Estimated using OLS:

$$Y_{ibp} = \beta_0 + \beta_1 Z_{ibp} + \kappa_b$$

- IPW when  $\Pr(\text{Assignment to Treatment})$ -defined relative to the indicator-varies by prison

## CACE/Various LATEs

- Estimated using 2SLS:

$$D_{ibp} = \gamma_0 + \gamma_1 Z_{ibp} + \chi_b$$

$$Y_{ibp} = \beta_0 + \beta_1 \widehat{D}_{ibp} + \kappa_b$$

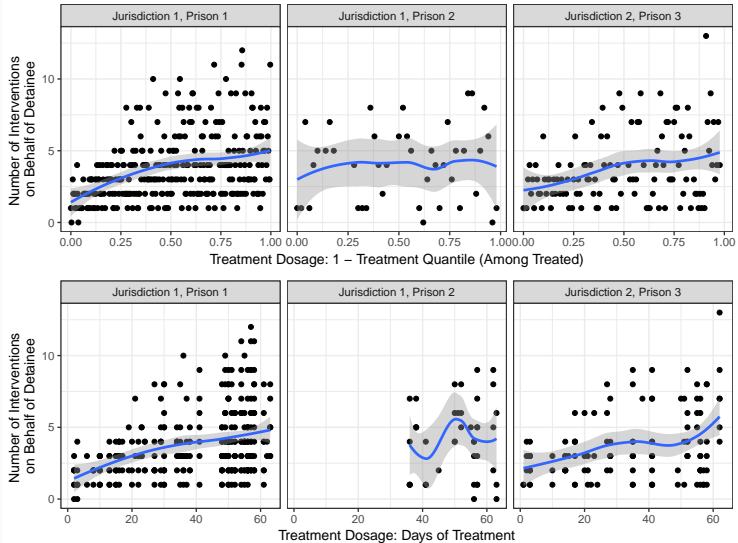
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# Results

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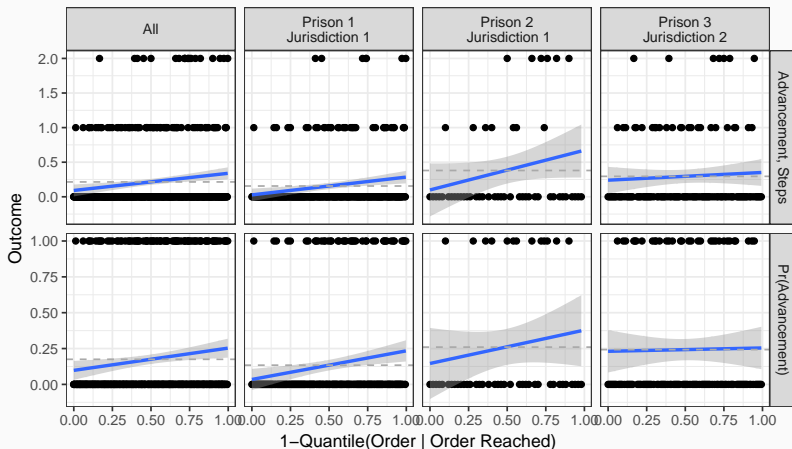
# Validating Interpretation of Dosage

Earlier Assigned Order  $\Rightarrow$  Longer Treatment  $\Rightarrow$  More Interventions



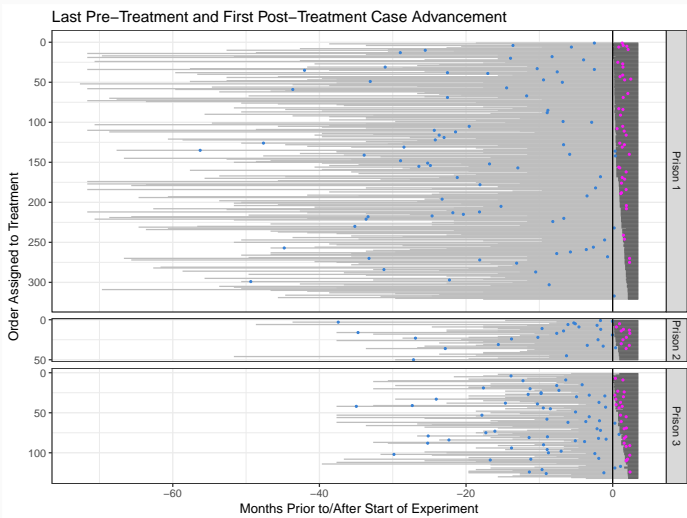
# ITT Effects on Case Advancement

## Legal Assistance Increases Amount, Rate of Case Advancement



# Legal Assistance Increases Rate of Case Advancement

## Last Pre-treatment, First Post-treatment Advancement

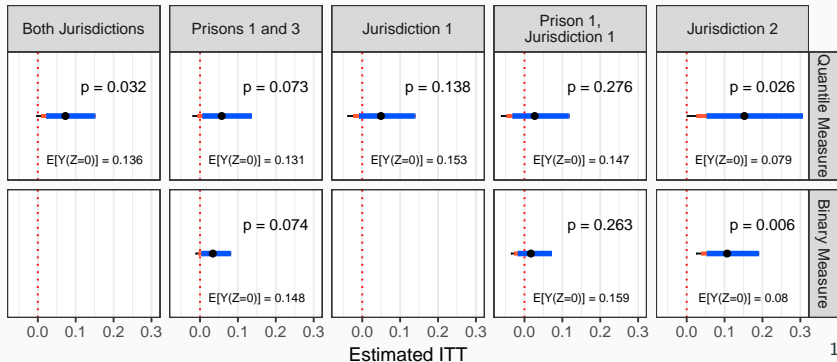




# ITT Effects on Liberation

## Legal Assistance Increases Pr(Liberation)

- One-tailed tests hypothesis tests (p-values on graph)
- Cannot reject null of no heterogeneity by jurisdiction with pre-specified two-tailed tests



# How Big Could Effect Have Been?

## We focus on Liberation

- But how many should have been liberated during experiment?
- Detainees should be liberated if:
  - Acquitted
  - Convicted + given time for time served (*Loi Lespinasse*)
  - Pre-trial detention overruns constitutional maximum sentence (we can measure this)

	Prison			
	1	2	3	All
No Charges Recorded (Prison Register)	0	.022	.121	.028
Non-Violent Offenses with Max Senences, De- tained Beyond Max	.139	.087	0.061	.088
Criminal Association, Detained $\geq 2$ years	.113	.065	.056	.098
Criminal Association, Detained $\geq 3$ years	.081	.022	.015	.072
Est. share released, $\sigma_{ip} = 1$	.179	.514	.185	.197
Est. share released, $\sigma_{ip} = n_p$	.147	.223	.079	.136

## **Conclusions/Policy Implications**

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## Contributions

- Misgovernance and Human Rights
  - Describe the objectives of the government
  - Identify “cogs and the machine” as a source of human rights concerns by treatment directed at this level
- Implications for State Capacity
  - Capacity as potential: Findings suggest some degree of latent capacity not exercised
  - Institutional design and capacity, especially rule of law
  - Research design: Need to exploit some *shock* to study capacity empirically

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