

HOW RIGHTS CLAIMS EXPAND CARCERAL STATE

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ABSTRACT

The production of prison is assumed to be a humane, reformist, and a radical step toward rooting out corporal punishments. Contrary to the common assumption, this study shows how liberal reforms worked actually within the judicial system as a state apparatus to distribute power among all state authorities. Rights, which are supposed to free individuals from state repression and the arbitrary use of power, function in a paradoxical way which can ultimately contribute to the carceral state. This study illustrates, through a genealogical perspective, how liberal rights by their universal characteristics fail to emancipate individuals from state coercion and violence, and can instead ultimately legitimate and provide a place for disciplinary power of the state. In this thesis, I will work through this paradox through an analysis of rights discourses against the rise of mass incarceration in the United States.

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CHAPTER ONE INTRODUCTION

Introduction

The purpose of this thesis is to demonstrate the role of right claims in the mass incarceration era, to explain how liberal movements and reforms in the legal system eventually have contributed to the increase of prisoners and the development of the carceral state. I argue, that instead of being humane- as they claim- they are going to keep more and more people in jails and prisons or as Foucault describes they have this tendency to create a “tuned justice towards a closer penal mapping of the social body” (Foucault, 2012, p. 78). The right as a mechanism of the state historically has had a paradoxical nature. On the one hand, it functions as a tool to stand against the political coercion and servitude, arbitrary use and abuse of the state, and on the other hand, it is how the dominant social powers can apply and enforce their power and interests.

The methodology that I am using is Foucault’s genealogy and critical theory. As I will illustrate in the method’s section of this research, there are some common characteristics among these methodologies which enable us to combine some elements of their approaches to explain how structural changes in society reproduce a constant social problem like mass incarceration. I use genealogy and critical theory because, on the one hand, critique is embedded in genealogy as an inherent feature, and on the other hand, problematization as one of the main characteristics of Foucault’s genealogy can be found in critical theory, especially in the work of Theodor Adorno (Allen, 2016).

The research question of this thesis is: ordinarily, one might assume that rights claims are essential for positive and progressive movements against incarceration. In this project, I ask how the right claims produce and expand incarceration? And how this paradox is evident in the foundations of Foucauldian theories of liberal rights? And then how is this paradox bound up with how liberal movements expand carceral states?

The plan of this chapter begins with introducing and diagnosing the issue in hand which is mass incarceration in the US as the biggest jailer in the world (Berger, 2018) and its importance in everyday lives of modern individuals especially the poor and minorities. “More than two million people (out of a world total of nine million) now inhabit U.S. prisons, jails, youth facilities, and immigrant detention centers” (Davis, 2011, p.10). Then, I will explore and define briefly other main terms and concepts of the research question, which are rights discourses, liberalism, liberal movements, and reforms.

Project Rationale

Rights embody a paradoxical mechanism for individuals. Many contemporary legal and punishment scholars argue this paradox in a variety of ways and some empirical examples as it relates to liberalism, rights, and reform. For examples, Murakawa (2014) claims that the liberal notion of race-neutral agenda and racial violence policies of law-makers contribute to the development of the carceral state (Murakawa, 2014). Furthermore, reform litigation -as an outgrowth of the civil rights movement- on behalf of state prisoners aimed at reducing incarceration ultimately led to a massive increase in prison capacity in Florida (Schoenfeld, 2018 & 2010). Also, Hinton (2016), argues that the formation of mass incarceration in the US is a bipartisan story of Republicans and liberal welfare programs (Hinton, 2106). Miller& Stuart

(2017) explain how mass incarceration affects political rights of individuals and is producing a kind of second citizenship for people with criminal records (Miller& Stuart, 2017). Gilmore (2007) explains the role of governmental- organized and funded policies such as the dispersal of minorities and marginalized people from urban areas to rural regions had a huge impact on mass-incarceration in the US.

Moreover, Foucault (2012), as a foundational theorist of incarceration and social control, introduces the irrational or inhumane history behind the formation of imprisonment, which has been described as a humane and rational reform movement by its earliest advocates. In other words, Foucault (2012) argues that the production of imprisonment is a mechanism for the distribution of power within the judicial system, although it is being claimed that it is a humane reform.

This research aims to offer a full and detailed understanding of how liberal movements and reforms, in the long run, have contributed to the increase of prisons and the development of the carceral state; by tracing rights discourse regarding incarceration, from the first case involving movements toward the production of prison as a humane alternative for corporal punishments in the eighteenth century to the more recent case such as the civil rights movements of the 1940s and early 1960s.

My research will help to trace the process of the development of liberal rights, which I argue are the essence of rationality which has brought by itself the complex and intense bureaucracy. This complex system has led to irrational consequences. Mass incarceration is one of these irrational consequences. To articulate and find the connections between rights claims, liberalism, rationality, and imprisonment, I try to analyze genealogically the way that reforms

and rights claims make the prisons increase. They not only do not make any progressive step toward emancipation, but also eventually contribute to more exclusion, marginalization, and consequently mass incarceration.

In the debate leading up to the role of liberalism and neoliberalism to mass incarceration, several scholars made arguments for or against the idea that right claims function in different ways. Murakawa (2014) asserts that the liberal notion of race-neutral agenda and racial violence policies of law-makers contributes to the development of the carceral state. Murakawa (2014) tries to draw how the different liberal policies in the US expand the carceral state. The difference between Murakawa's study and this study is about the methodology he used and also the way I theoretically address the issue of mass incarceration. He tries to analyze specifically the social, economic, and political policies, which led to the development of prison more empirically and show how these policies directly or indirectly affected incarceration in the US. However, my study tries to give the readers a comprehensive foundation of the role of liberal ideologies-such as universal liberal rights, the new notion of responsibility, and intensified individuality-ultimately expand the carceral state. Besides, this study aims to critique these well-established notions and institutions in a genealogical though reconsidering whether the creation of the prison at the first place and after that the universal and liberal rights as a progressive step in human beings history.

Furthermore, this study has borrowed many critical ideas from the works of Brown (1995) in respect to the understanding of how rights can be paradoxical in contrast to what they are claimed to be an emancipatory force and the role of the liberal and neoliberal state on marginalizing, excluding people especially racial minorities. Brown's (1995) main

concentrations are on how the sexual and gender role are defined by neoliberal legal and political power. However, much less work has been done to identify how right's paradox is bound up with the role of liberal movements in expanding the carceral states.

My research also contributes to knowledge due to its unique methodology (genealogy and the critical theory) by which I could analyze the dominant right discourses and found out how these discourses affect the formation of prison and prison development over time. This study, also, tries to develop the notion of how liberalism affects the way we think and disable individuals to think critically and assume all well-established notions and institution something pre-determined and inevitable. This research wants to question this idea through genealogical and critical theory in order to show how these notions are questionable, such as rights, reforms, and progress. There are plenty of rooms for future work in these areas, especially about their theories in universality, rights, and state. This research tries to discover some of these theoretical connections. Overall, I hope that this research provides information that can be valuable in understanding how the well- established liberal rights, rationality and prisons are being used to protect status-quo. This study, will critique these liberal values by a genealogical perspective

Conceptual Framework

Mass incarceration

For most of the twentieth century, the mean of the prison population was about 110 per 100,000. Since 1973 this amount started to increase and has continued to increase until now. (Garland, 2001). The mass incarceration or mass imprisonment is used to describe the institution that has emerged in these last four decades despite the reduction of American crime rates of the

1990s afterward (Garland, 2001). Today, 10 million people pass through America's jails annually, more than 1.5 million are held in prisons and detention centers on any given day, 4.5 million are on parole or probation, and uncounted masses daily are stopped, frisked, harassed, and surveilled (Berger, 2018) which is an unprecedented and extraordinary phenomenon in the history of the US and in general, in the history of modern societies (Garland, 2001). Mass incarceration has two criteria that the US meets these two. First, it is about the amount of prison population, which is incomparable with any time in the history of the US (Garland, 2001). It is about the "masses," which means that specific types of groups and populations are dealing with the criminal justice system and imprisonment, especially young black poor males in large urban areas (Garland, 2001). Imprisonment has become a part of their everyday lives and normalized as a predictable experience among these groups in which they are socialized. Furthermore, it is about the "mass" because, although, it directly affects prisoners, it indirectly affects their families, communities, and society as a whole to the extent that they have direct personal knowledge about the imprisonment (Garland, 2001).

The prison growth happened at a time in the late twentieth century when the crime rate came down (Gilmore, 2007; Zimring, 2006). For example, in the state of California, although, the crime rate peaked in 1980 and declined afterward, the prison population increased about 500 percent between 1982 and 2000 comprising disproportionately of African American and Latinos- two-thirds of the state's 160,000 prisoners (Gilmore, 2007). The disconnection between crime and prison is nothing new; Foucault (2012) believes that this phenomenon happened at the beginning of prison development in France. He states that "prisons do not diminish the crime rate: they can be extended, multiplied or transformed, the quantity of crime and criminals remains stable or, worse, increases" (p. 265).

Why did the US experience the growth in prison population even though the crime rate went down in the late twentieth- century until now? The first explanation is about the demand of the public for reducing crime and concern for social order. Government officials, policy makers, and the media repeatedly referred to society condemnation of prevalent deviant behavior to justify prison growth. It was more moral panic instead of legal one at the time when unemployment and inflation should be caused more worries than the crime rate. However, if the crime rate were the concern of people and their demand, they would have what they wanted, which is crime reduction (Gilmore, 2007).

Another explanation for mass incarceration and prison growth is about the unrestrained drug using and trading, which are claimed to be a threat to public safety. The drug commitments to state and federal prison system, which increased 975 percent between 1982 and 1999 can support this argument (Gilmore, 2007). However, according to the Federal Bureau of Justice Statistics (BJS), illegal drug using declined dramatically since the mid-1970s in the United States and among all kinds of people (Tonry, 1995).

The third argument toward mass incarceration and prison growth relies on the structural changes in employment opportunities. Based on this explanation, lack of job opportunities for masses and a large number of people opens this room for them to find some illegal alternatives and sources for their incomes especially for those committing property crimes and trading illegal substances which account for a substantial amount of prison populations. Although government officials and media reported long-term drop-in crime rates began in 1980 (Gilmore, 2007), they argued that this growth in prison populations is about the aggressive intolerance of public toward crimes which make lawmakers to introduce new kinds of sentences for those behaviors that used

to punish differently (Gilmore, 2007). The weaknesses of the mentioned explanation make us conclude that the relationship between crime rate and prison growth cannot justify the pathological phenomenon of mass incarceration. In the next paragraphs, I will describe other alternatives and explanations toward mass incarceration.

The first explanation argues that the prison growth targets people of color and gets rid of them, especially young black men, through a set of agendas such as lawmaking, prosecution, and policing which is called racial cleansing (Miller 1996; Mauer 2006; Goldberg 2002) in order to exploit and force them to work and make profit. The problem of this explanation, which is called “new slavery,” is that only a few prisoners work for anybody during their sentence (Gilmore, 2007). Two other counter explanations are based on pursuing profit as a reason for prison growth. The first one relies on the privatization and outsourcing of prisons. However, the fact that 95 percent of prisons are publicly owned (Gilmore, 2007) makes us conclude that this explanation is not accurate. The second one focuses more on extracting surplus cash out of prisons. These arguments lead us to the next explanation for prison expansion, which focuses on the role of the state to provide more jobs for white guards by keeping people of color in jails in rural areas. The fact that prisoners, most of the time, are concentrated far from their homes, especially in rural areas, and the difference between host communities and prisoners support this argument (Gilmore, 2007).

The last explanation of mass incarceration and prison growth that is the main focus of this research is what is called the reformist school. This theory analyzes the interlocking of prison and legal reform and inquires the role of various groups of activists, such as benevolent liberals or women fighting domestic and sexual violence in normalizing prison; it also analyzes

the expansion use of prison as a remedy for the thwarted rights of both prisoners and injured persons (Gottschalk, 2002 & Davis, 2011). This perspective considers how political identities are defined by injury (Brown, 1995) and the orders which derived by punishment identify state norms and practices (Garland, 2001).

Right discourse

In this part, I try to draw a brief history of the theories of right to make sense of the next chapters which are based especially on a Foucauldian theory of right and his critique on modern natural right. I review the dominant discourse of right called natural right, which has been claimed or attributed to being a part of the United States Declaration of Independence and some other countries' constitutions. MacGuigan (1966) defines the following four universal characteristics of natural law:

(a) Natural Law usually consists of one or several generalized but nevertheless essentially concrete, moral or legal 'values' or 'value judgments'; (b) these 'value judgments' are, in accordance with their 'absolute source' - 'Nature' Revelation (God) or Reason - universally valid and immutable; (c) they are within the reach of human reason properly employed and therefore, the objects of ratiocination; (d) once perceived in their absoluteness and 'pure rationality' they overrule very form of Positive Law...It never ceases to search for a unifying higher point of view which would endow the notion of law with something above its naive 'givenness' (p. 239-240).

The following paragraphs will clarify how the classic doctrine of natural law has altered and developed by the effort of Renaissance's legal and political philosophers, and it was given a modern and liberal notion called "natural right".

Classic natural law

The natural theory of law has a long history from the ancient Greek to contemporary legal theory and political philosophy. Socrates is said to be the founder of the traditional doctrine of natural law which has developed afterward by Plato, Aristotle, the Stoics, and the Christian thinkers, especially Thomas Aquinas (Strauss, 1950). In the classical notion of natural law, the individual can become complete and perfect only within the context of political order and in the corporal world. In other words, classical political philosophy considered civil society as a requirement for human perfectibility. The perfection of man is possible when a society kept together by mutual trust, and without such trust, freedom would be impossible. According to classical political philosophy and the ancient notion of natural law, man is a social being and cannot live or live well without others. Man's speech, which means communication distinguishes him from other creatures. Humanity means sociality, and man is defined usually in relations to others regardless of whether his act is "social" or "antisocial" (Strauss, 1950).

The basis of natural law in its strict sense according to traditional political philosophy is the man's natural sociality. Since the nature of human being is social, "the perfection of his nature includes the social virtue par excellence, justice; justice and right are natural" (Strauss, 1950, p. 129). Based on this notion of natural law, all individuals in relation to one another are aware of the fact that there is no freedom to act as they please or want. "Man's freedom is accompanied by a sacred awe, by a kind of divination that not everything is permitted. We may

call this awe-inspired fear man's natural conscience" (Strauss, 1950, p. 130). Therefore, restraint is as natural as freedom.

Modern natural right

The modern concept of natural right is closely related to natural law and has developed by the Renaissance thinkers such as Hobbes, Locke, and Rousseau who radically changed some of the presupposition of natural law theory. In other words, although, the natural right theory is a post-Renaissance notion, the natural law is an ancient and medieval concept (Strauss, 1950). In contrast with the ancient notion of natural law, in the Hobbesian doctrine of natural right human beings are considered as autonomous and self-developed creatures before they enter the social world. In other words, instead of this idea that society forms the individuals, it is individuals who shape civil society and even further, the rights of civil society derive from individuals. The focus of the natural right theory is on human labor and what is produced by individuals as the foundation of property (Strauss, 1950).

Furthermore, it is the individual who defines what is right to achieve self-preservation. This means that the individual's consent is above rational reflection and wisdom, which are the basis of natural law in the classic point of view. In the modern doctrine of right, authority becomes the basis of the laws instead of truth. This notion is Hobbes' famous theory of sovereignty in which individuals reach a mutual contest to provide peace, which is prerequisite of their self-preservation. Hobbes' theory of sovereignty does not mean that the right to govern is based on positive law or a convention. Rather, it is based on natural law, which flows from the individual's right and contest (Strauss, 1950).

John Locke's theory of state nature will be the state of peace if everyone obeys the law of nature without civil society (Strauss, 1950). In Lock's (1947) theory of the state of nature, all individuals are free to do their actions, their dispositions or possession, and they do so based in related to the law of nature. Locke states that "The state of Nature has a law of Nature to govern it" (p.102). In his view, the law of nature means "reason," which teaches individuals that no one ought to harm the life, liberty, property of other people. For Locke, the civil society is driven by the perpetual existence of the state of nature (Locke, 1947).

The natural right in Locke's doctrine is innate and universal, and a tool for pursuing happiness (Strauss, 1950). For reaching happiness, man can do whatever he thinks is fit to it, which can lead to continual conflict. The condition of public happiness in this view is formulated through law. The law is not inhered in nature, but it was driven from understanding and a notion in mind, and it is no longer a discovery of what is in the things themselves (Strauss, 1950). This notion of right is a reflection of the development of subjectivity in modern principles, and as Strauss (1950) states "if everyone has the natural right to preserve himself, he necessarily has the right to everything that is necessary for his self-preservation" (p 235). Here is where the modern theory of natural right is distinguished from traditional natural law in the sense that law is no longer objective and independent from human understanding (Strauss, 1950). In Locke's doctrine of natural right, the right to self-preservation does not need any absolute power or supreme right of sovereignty. Both Hobbes and Locke believed that individuals should resist against the established government when their self-preservation and freedom are endangered.

The ideas of Renaissance's political philosophers especially John Locke about natural right, human, freedom, and the state were the foundations of liberalism in the 17th century in the

western societies which became a distinct characteristic of enlightenment age. In the next section, I will briefly explore the main features of liberalism. Since the right claims and reforms are mainly discussed and developed in the age of liberalism and through liberal movement, it will be worthy of discussing it in the next section of this chapter.

Liberalism and liberal movements

The philosophical foundation of liberalism goes back to Kant thoughts about the preference of right over good, justice, fairness, and individual rights, which is basically in opposition to utilitarian conceptions. The Kantian notion of liberalism is accepted by contemporary moral and political philosophy (Sandel, 1998).

Liberalism is mostly understood as an ideology or political doctrine which is focused on the maximization of liberty of people and especially concerned with the minimization of the state and defend the individual's freedom and liberty against the state. The early liberalism sets limits to the capacity of the state through the free market and commercial exchanges and more importantly, through the civil society and its dynamic of self-regulation (Barry, Osborne & Rose, 2013). In fact, "in the liberal view, each person is a rights bearer whose autonomy rests metaphorically on placing the person inside rigid walls protected from the invasions of state power" (Garth & Sarat 1998, p. 145)

Beside its concern with the free market and the minimal state, the school of liberalism as I discussed in the previous section, deals with human right, secularism, democracy, gender and racial equality, and religious freedom (Hashemi, 2009, Donohue, 2003, & Wolin, 2016). Further, as Garth and Sarat (1998) state "in the liberal legal discourse, the body gains significance as the

“territory of the self”- abounded sphere of the human being preexisting legal authority” (p.145) or as Nedelsky (1990) argues that liberals use the concept of property rights to create “a picture of human beings that envisions their freedom and security in terms of a bounded sphere” (p. 163).

The liberal ideas mostly are driven by the reforms and the liberal movements in the history of the US and other societies. They are commonly called Left, liberal, or radicals as opposed to Right or conservatives, or reactionary who are generally skeptical of popular government and oppose plans of reformers and men in the substantial stake in established order (Lowi, 1969).

Liberalism, for Foucault (1989) is different from the established notion of it that I showed earlier in this section to the extent that he focuses on problematizing rights and the critical character of liberalism. Foucault’s approach to liberalism consists of analyzing it from the perspective of governmental reason; the rationality of political government as an activity rather than as an institution. In this perspective, liberalism is not an ideology, a theory, a juridical philosophy of individual freedom, or a particular form of policies applied by the state. Liberalism, in this view, is defined as a rationality that functions as particular methods and principals to rationalize state practices. So, the activity of government has been made practicable and thinkable as art through liberalism and its policies (Foucault,1989).

All the aforementioned conceptual frameworks and definitions were an effort to make sense of and also to clarify the main concepts of the research question which I try to answer in this thesis. Mass incarceration, rights discourse, liberalism, reforms, and liberal movements are the central frameworks of this thesis. So, based on what I discussed in the first chapter, the next

chapter will discuss and introduce the main and more relevant theoretical background and sociological theory regarding the research question and will be categorized based on the different aspects of the research question. In the third chapter, I will discuss the methodology that I use in the research and show how genealogy and critical theory is fitted to the purpose of the study. In the fourth chapter, I will analyze the theories and try to answer the question based on sociological theories which I discussed in the second chapter, and finally, in the last chapter, I will conclude and reach a reasonable answer for the question and suggest some alternatives.

CHAPTER TWO THEORETICAL BACKGROUND

Overview

The production of the prison itself is connected with the concerted efforts of reformers seeking to construct more humane punishment for those who violate the norms of society. So, it is not surprising that “prison reform” is common in the history of imprisonment because ‘prison’ and “reform” have been associated with each other as a reformist institution from the beginning of prison (Davis, 2011). Or, as Foucault (2010) states, “one should recall that the movement for reforming the prisons, for controlling their functioning is not a recent phenomenon. It does not even seem to have originated in a recognition of failure. Prison ‘reform’ is virtually contemporary with the prison itself: it constitutes, as it were, its program” (p. 234). The prison system was assumed to be humane in comparison to other types of punishment, like capital and corporal punishment (Davis, 2011). This seems ironic today among abolitionists because citizen contact with the American criminal justice system is now incomparable with other modern societies and also in the history of imprisonment (Garland, 2001).

So, how is it possible that movements claiming to reform the inhumane punishments, replace them with a humane one and bring emancipatory rights for criminals they were encountering, have helped to produce a crucial social problem called “mass incarceration”? The answer is hidden in the nature of right as absolute power (Foucault, 1980a) of the state or as Foucault says “sovereignty” and the paradoxical structure of it (Brown, 1995).

As it is mentioned in the first chapter of this research, the purpose of the study is to determine how rights claims expand mass incarceration and the carceral state. The issue is not

only how the population of prisoners has increased in recent years but also, as Weaver & Lerman (2010) state, “how the carceral state has become a routine site of interaction between government and citizens” (p.1). It becomes routine through the implementation of law and criminal justice institutions which have emerged as an important force in defining citizen participation and understandings, with potentially harmful consequences for democratic ideals (Weaver& Lerman, 2010).

In this chapter, I will provide and elaborate a comprehensive theoretical background and show the significant works related to the issue and the role of right and liberal movements in the mass incarceration or as I said in the research question “carceral state”. I chose the carceral state to show how important the state is in developing and worsening the issue of mass incarceration. This chapter is divided into seven parts. 1. Contemporary empirical and theoretical studies; 2. The history of imprisonment as a reform; 3. Prison as a product of enlightenment age; 4. The paradoxical nature of the right; 5. Critique of natural right; 6. Right consciousness as a part of the right claims; 7. Rights as a disciplinary mechanism of Sovereignty.

Right Claims and Mass Incarceration in the US

Many researchers and scholars have challenged the role of liberal movements and liberal state policies on mass incarceration and studied how they affect the way the state treats people who violate the law. They specifically studied the certain types of legal rules and policies such as race-neutral agenda, racial violence policies, drug regulation, reform litigation, welfare programs, and dispersal of minorities and marginalized people from urban areas (Murakawa, 2014, Schoenfeld, 2018 & 2010, Hinton, 2016, Gilmore, 2007).

To illustrate how liberal civil rights notions eventually aimed and developed mass incarceration and produced the racial disparities in prisons, it is worth to clarify the consequences of Richard Nixon's speech or in general the dominated ideology in Civil Rights movements era. Nixon (1968) stated that:

The first civil right of every American is to be free from domestic violence... We shall re-establish freedom from fear in America so that America can take the lead of re-establishing freedom from fear in the world. And to those who say that law-and-order is the code word for racism, here is a reply: Our goal is justice—justice for every American. (Nixon, 1968)

By this statement, Nixon established a rank order that implicitly meant that White rights to safety, freedom from fear and domestic violence were paramount and not to be threatened by “minorities” and “criminal” rights (Murakawa, 2014). These beliefs were executed in the policies of the fight “narcotics peddlers” and “merchants of crime” which resulted to mandatory penalties, funding prison construction, and increasing the prison population from 1968 to 2010 (Murakawa, 2014). Two decades before anti-black law and order policies of Nixon, liberal law and order campaigns were seeking the “right to safety” as the initial requisite for racial equality.

“The Right to Safety and Security of the Person” was a part of the report of President Harry S. Truman's Committee on Civil Rights in 1947 which resulted in the executive order of 9980 and 9981. These orders desegregated the federal workforce and ended segregation in the armed services. The 1947 right to safety was “an explicit sanction against white-on-black violence, and not as it was for Nixon two decades later, an implicit summoning of black-on-white crime” (Murakawa, 2014, p. 3).

Murakawa (2014) argues that lawmakers constructed the civil right carceral state in which the race-neutral and racial violence policies developed the punitive carceral state. He believes that the expansion of the carceral state was not a reaction to civil rights; they were exactly the civil rights which were defined by the lawmakers. In her point of view:

Liberals “criminalized” the race problem, often toward the end of compelling reform. Across the postwar period, liberals explained a range of disparate phenomenon—organized civil disobedience, mass uprisings, individual acts of petty crime—as indicators that white supremacy was unsustainable. Characterized as “volcanic threat” or “socio-racial dynamite,” black lawlessness was, for liberals, an expression of rage, frustration, or aggression. Not biologically preordained, black lawlessness was a product of white social engineering (p. 9).

These liberal ideas come from the notion that racism is an individual psychological problem which can be handled by state policies and is treatable by teaching tolerance and color-blind institutions. These liberal policies naturalized racial hierarchy and rejected the fact that racism is rooted in social, political, cultural, and economic practices. Further, Liberal Democrats defined “crime problem” as the “Negro Problem” (Murakawa, 2014). Considering racism as an irrational belief and individual problem resulted in the criminalization of private act which can be solved through modernizing carceral efficiency by decreasing discretionary decisions, increasing procedure protection, and cleansing the criminal justice system from arbitrary bias. All these efforts were seeking to protect society from racial violence (Murakawa, 2014).

Furthermore, Schoenfeld (2010, 2018) analyzes how prison condition litigation in the 1970s which was assumed as a progress for the civil rights movement or as successful court

challenges with long term institutional changes and aimed to reduce incarceration, eventually expanded incarceration and helped to the explosion of the prison population in the United States. This paradox is the result of the different political and historical context in which the initial legal framing of prison condition litigation, policies for racial equality, and solving the problem of overcrowding prisons translated as a court order to build prisons and expanded the coercive capacity of the state (Schoenfeld, 2010).

The civil rights movements made this hope and provided the recourses for black prisoners and their lawyers to seek “rights” for inmates (Cummins 1994; Jacobs 1980; Strum 1993) and change the overcrowding litigation, and prison conditions especially reduce the reliance of state on incarceration (Schlanger, 2006). However, the assumed “success” of prison litigation, decarceration goals, and racial justice never happened, and the opposite happened. In fact, since 1973, “the incarceration rate in the United States has grown by 700 percent” (Western, 2006, p. 13) and “the civil rights injunction is more alive in prison, and jail setting than the conventional wisdom recognizes” (Schlanger 2006, p. 555).

The growth of incarceration has been disproportionately concentrated on poor black men and attributed second-class citizenship on black American since the civil rights movement (Wacquant, 2002; Western,2006). In other words, the dominant political discourse recognizes blacks as drains on the state and not as individuals who can have the right to equal opportunities (MacLean, 2008). Further, it recognizes prisoner as an object of potential risk, not rehabilitation, and that is why the court order of overcrowding was translated and interpreted to build prison by policymakers because the problem in their perspective was not keeping masses in jails and

prisons, instead, the problem was the risk of too many people being freed from prisons (Schoenfeld, 2010).

Other policies which led to the expansion of prisons in the United States was the liberal social welfare or the so-called “War on Poverty”. These policies had an indirect impact and justified the expansion of law enforcement, surveillance, and police violence through the policies of “War on Crime” in the US (Hinton, 2016). By declaring the “war on poverty” legislation by Lyndon B. Johnson in 1964, the afterward uprising especially in Los Angeles California in black urban areas, “exposed the existing failures of the War on Poverty and yet ironically became a metaphor that rationalized a further retreat from the more transformative notions of liberal social reform” (Hinton, 2016, p. 65). These uprisings all around the US which rooted in the Civil Right grievances made these assumptions among policymakers even more insidious, pathologizing African-Americans and criminalizing behavior which facilitated the War on Crime legislation and dissolved the initial movement of the War on Poverty (Hinton, 2016).

The History of Imprisonment as a Reform

It was a time when, in Europe and in the United States, the entire economy of punishment was redistributed. It was a time of great ‘scandals’ for traditional justice, a time of innumerable projects for reform. It saw a new theory of law and crime, a new moral or political justification of the right to punish; old laws were abolished, old customs died out. ‘Modern’ codes were planned or drawn up. (Foucault, 2012, p. 7)

Foucault (2012) starts his study, *Discipline and Punish: The Birth of the Prison*, with a horrible description of the public execution of a man who was convicted of attempted regicide in

the mid-18th century in Paris. These types of punishments were common in Europe. For instance, under English common law, a conviction for heretics was burned alive, a conviction for sodomy led to the punishment of being buried alive, or the penalty for a convicted female treacherous was burning alive. However, in 1790, burning alive was replaced by the burning of the corpse (Davis, 2011). Other modes of punishment such as banishment -which were common before the appearance of prison- where forced labor in galleys and transportation and facilitated the way of colonization for England in Australia and also in the North American colony of Georgia. These wave of convicts as free labors from England during the early 1700s predated the rise of prison and consisted of one in eight of women mostly as prostitution (Hirst, 1995).

American and European reformers started to protest against the execution in public, torture, and other corporal punishment such as the whipping, branding, amputation and stocks and pillories. Such punishments had more effect on the crowd of spectators and not so much on the person who was punished and was, in essence, public spectacle (Davis, 2011). Reformers such as Benjamin Rush in Pennsylvania and John Howard in England believed that incarceration can lead to reform those who had violated the law if it carried out behind the walls and in isolation (Davis, 2011). It is worth to say that the prison reforms did not target the domestic punishments of women and slaves because what was happening for them occurred behind the wall of their home and the amount and types of their punishment depended on their husbands or owners (Davis, 2011).

It was not until the eighteenth century in Europe and the nineteenth century in the United States that the imprisonment was employed as a main form of punishment. Prison system was established by Europeans in Asia and Africa as a part of colonial rule (Davis, 2011). The

transformation of corporal punishment and torture to imprisonment was the result of tendencies of philosophers and intellectuals. For example, Cesar Beccaria (1764) who was influenced by philosophers -especially Voltaire, Rousseau, and Montesquieu and the notion of equality-, argued that punishment should not be a private and violent matter, rather, it should be public and non-violent (Davis, 2011). Furthermore, in the second half of the eighteenth century, protests against public executions increased rapidly among the philosopher, theoreticians of law, lawyers and, parlementaire, in popular petitions, and among the legislators of the assemblies. As Foucault (2012) argues, the transformation of physical punishment, the disappearance of the display of the tortured body, burning alive and these sorts of punishments were associated with the disappearance of punishment as a public spectacle. Punishment altered to the less immediately physical one, more subtle, and lenient and not a public ceremony. Foucault (2012) argues:

Another form of punishment was needed: the physical confrontation between the sovereign and the condemned man must end; this hand-to-hand fight between the vengeance of the prince and the contained anger of the people, through the mediation of the victim and the executioner, must be concluded. Very soon the public execution became intolerable (p. 73).

The creation of prison as a state mechanism and the primary mode of punishment was very much related to the rise of capitalism as well as and the appearance of the new sets of ideologies. These new conditions reflected the rise of the new social class called bourgeoisie, whose aspirations and interests advanced scientific, philosophical, cultural, and legal ideas. (Davis, 2011). With the advancement of the bourgeoisie, individuals became the bearer of rights and liberties. The notion of natural rights as the inalienable rights and liberties was included

eventually in the American and French revolution. Although this notion was not applied to women, workers, indigenous, and slaves, it was considered as a new and radical idea (Davis, 2011).

The purpose of imprisonment, according to John Howard, the leading Protestant reformer of the penal system, was religious self-reflection and self-reform (Davis, 2011). Eighteen and nineteenth-century reformers believed in solitary confinement, which is today considered as the most severe form of punishment after death and as a form of torture. However, the prison reformers argued that this solitude can help criminals to help themselves to flourish their souls. From this vantage point, it is not surprising that most of the penal reformers were religious leaders and considered the penal system the same as monastic life (Davis, 2011).

The connection between the notion of self-reflection and self-reform, which have been applied through the model of solitary confinement and the notion of panopticon by Jeremy Bentham (1995), the utilitarian philosopher, is how the panopticon prison with its specific architecture and prison, in general, is designed to make working class self-disciplined individuals capable of performing the industrial labor of the capitalist system (Davis, 2011). In the panopticon model of prison, the prisoners are in constant fear of being watched by the warden in isolation and the complication play of light and darkness. They cannot talk to each other also cannot see the warden who is in the tower right in the middle of the cells circle. According to Benham, in this way, prisoners can internalize labor habits (Bentham, 1995).

As I mentioned, it is important to know the appearance of the prison was the result of the new conditions during the eighteenth and nineteenth centuries and not as a superior form of

punishment for all time. Foucault (2010) states that the carceral system must be regarded as a complex institution comprising four dimensions:

the additional, disciplinary element of the prison; the production of an objectivity, a technique, a penitentiary 'rationality'; the de facto reintroduction, if not actual increase, of a criminality that the prison ought to destroy; lastly, the repetition of a 'reform' that is isomorphic (p.271).

Therefore, the production of the prison was the result of many different historical events and the development of a new ideology. Would be whether a punitive system which emerged in a particular historical moment and specific circumstances during the eighteenth and nineteenth centuries can be the only and absolute claim on twenty-first century? (Davis, 2011)

Prison Development as Economic Rationality

The penitentiary movements against corporal and capital punishment were associated with the new waves of intellectual tendencies against the formidable traditional punishment like execution in public with torture and other corporal types of punishment. These waves were the result of the enlightenment age as well as “activist interventions by Protestant reformers, and structural transformation associated with industrial capitalism” (Davis, 2011, p. 42).

Foucault (2012) argues that the transformation from applying “inhumane” punishment on a criminal who is considered as “outside nature” to what is assumed to be “humane”, is not because of some profound humanity that the criminal conceals within him, but it is because of a “necessary regulation of the effects of power” (p.92). This “economic rationality” must determine and calculate the proper penalty through certain techniques (Foucault, 2012). So,

“humanity,” according to Foucault (2012) is a respectable name that justifies this particular economy and calculation.

There is, therefore, a problem here: how was this man-measure opposed to the traditional practice of punishment? How did he become the great moral justification of the reform movement? Why this universal horror of torture and such lyrical insistence that punishment be “humane”? Or, which amounts to the same thing, how are the two elements, which are everywhere present in demands for a more lenient penal system, “measure” and “humanity”, to be articulated upon one another, in a single strategy? (Foucault, 2012, p. 74)

The concept of “economic rationality” by Foucault is built upon the idea of rationality and its consequences in modern society. Weber (1993) and after that, Ritzer (1983) defines the notion of rationality and irrationality. Weber (1978) defines formal rationality as the degree to the action that is happening as an outcome of quantitative and proper calculations. He states that formal rationality requires the rational calculation of means to the ends that are established on laws, rules, and regulations (Kalberg, 1980). Moreover, formal rationality, according to Weber, is connected to a legal and economic structure and the bureaucratic supremacy with industrialization (Karlberg, 1980).

For Ritzer (1983), formal rationality is “the search by people for optimum means to a given end [that] is shaped by rules, regulations, and larger social structures” (1983, p. 19). Furthermore, Weber (2013) states that “the development of economic rationalism is partly depended on rational technique and law; it is at the same time determined by the ability and disposition of men to adopt certain types of practical, rational conduct” (p. xxxix).

The formal rationality is processed through a social mechanism called bureaucracy that Weber describes it as the “paradigm case of formal rationality” (Ritzer, 1983, p. 20). For Weber (1993), there is nothing natural about Western rationality, which represses natural human feelings and aspirations. So, the increased rationality results in an “Iron Cage,” which traps individuals in rational calculation and control (Weber,1993).

According to Ritzer (1983), rationality functions through bureaucracy, which is a dehumanizing place in which to work and by which to be serviced. He introduces one form of rationality called McDonaldization, which has swept across the social world because it offers increased efficiency, calculability, predictability, and control. However, these characteristics conceal with them some serious disadvantages. As Ritzer (1983) states, “Rational systems inevitably spawn irrationalities that limit, eventually compromise, and perhaps even undermine their rationality”. So, McDonaldization as the manifestation of rationality can lead to inefficiency, unpredictability, loss of control, incalculability, homogenization, and dehumanization (Ritzer, 1983). Irrationality shows that rational systems have lost their mystery and magic or in general are disenchanting. Furthermore, irrationality reveals that rational systems are unreasonable system and dehumanizing (Ritzer, 1983).

Rights claims as the product of rationality and a manifestation of reason function through bureaucratic mechanisms and can lead to irrational consequences that ultimately through its techniques and economic rationality dehumanize individuals and trap individuals into the iron cage. In the last chapter of this study, I will expand this argument more.

The Paradoxical Nature of the Right

it is not through recourse to sovereignty against discipline that the effects of disciplinary power can be limited, because sovereignty and disciplinary mechanisms are two absolutely integral constituents of the general mechanism of power in our society. If one wants to look for a non-disciplinary form of power, or rather, to struggle against disciplines and disciplinary power, it is not towards the ancient right of sovereignty that one should turn. but towards the possibility of a new form of right, one which must indeed be anti-disciplinarian. but at the same time liberated from the principle of sovereignty (Foucault, 1980b, p 108).

Wendy Brown (1995) illustrates how rights claim can be paradoxical in contrast to what it is historically claimed to be as an emancipatory force on behalf of politicized identities in contemporary American political life. Brown (1995) challenges this traditional notion of right as a force for formal emancipation for individuals who have been stigmatized, marginalized, and traumatized by particular social identities and asks these questions:

What does it mean to deploy rights on behalf of identities that aim to confound the humanist conceit? What are the consequences of installing politicized identity in the universal discourse of liberal jurisprudence? And what does it mean to use a discourse of generic personhood-the discourse of rights-against the privileges that such discourse has traditionally secured? (p. 96).

According to Brown (1995), rights are irresolute signifiers in the sense that they have diverse, inconstant, and even a contradictory nature, varied based on time, culture, race, gender,

class, ethnicity, age, wealth, and education. To illustrate these contradictions, Brown (1995) asserts, rights can be manifested as markers of power, masking lack, as boundary and as access, as claims, as protection, as disciplinary and anti-disciplinary, as an indication of one's humanity and also as a reduction of one's humanity.

For example, although rights can have an emancipatory force in a specific time and location like Civil Rights movement in America, they can be in another time and place a regulatory discourse and as a means of obstructing more radical political demands or without any valuable promises. Another example is the prison itself, although putting people in jail may provide some rights to individuals against those who violate these rights, like civil rights which are violated by sexual assault and harassment, or property rights which can be violated by theft or robbery, it can also limit or destroy the right of freedom of many other people.

In fact, as Derrick Bell (2018) argues, although the historical and political event of Civil Rights is undisputable, the emancipatory forces of these movements are not durable over time or as Nietzsche states "liberal institutions cease to be liberal as soon as they are attained: later on, there are no worse and no more thorough injurers of freedom than liberal institutions" (p. 213).

The liberatory and egalitarian force of rights have always been limited historically and culturally and have no "innate capacity either to advance or impede radical democratic ideals" (Brown, 1995, p. 97). Therefore, the ahistorical, acultural, acontextual characteristic of rights distances them from specific political and historical contexts and that is why they operate as a universal and generic political discourse rather than provisional or partial (Brown, 1995). Accordingly, as Brown (1995) illustrates rights function within "dissimulating ideology of

modernism," and consequently, a deep gap between the discourses of rights and their operation would consistently exist (p. 97).

Furthermore, another paradoxical characteristic of rights can be found in occasions that right can offer some privileges to one group and at the same time can disempower someone else in other places or the same people in the other time (Brown,1995). In fact, "at the moment a particular "we" succeeds in obtaining rights, it loses its "we-ness" and dissolves into individuals" (Brown, 1995, p. 98). The good example of this paradox can be found in the writings of Karl Marx (1842) on wood theft. He argues how right of landowners monopolized the common properties as a part of the private property and disadvantaged the poor from their customary rights on fallen wood they collected in the forest. Landowners have this right in two ways. They earn not only compensation (fine) from this so-called crime, but also, they stand in the position of the state by punishing these "criminals".

The other paradox of right is in the universal-local paradox of right itself. According to Brown (1995), the contradiction occurs when in the late modernity, we historicized rights even though we discredit history at the same time. In other words, we link rights to history in the sense that the value of rights for us is based on which political power has situated them and which social groups have them historically, and simultaneously we question the structures and stability of the existing identities and try to measure the political effectiveness of the right with respect to the analysis of social stratifications and classifications (Brown,1995). This paradox leads to another paradox of rights in the sense that the late modernity effort to modify the individualist and universalist notion of rights in order to provide a more productive form of political recognition such as "group rights", "right of differences" or right of "cultural minorities" is

limited by “the contemporary historical, geopolitical, and analytical destabilization of identity upon which such formulations depend” (p. 99). In other words, might the relationship of contemporary rights claims- that intend to protect historically and contextually contingent identities- with the universal idiom of rights results to resubordinate by renaturalizing of what it was supposed to emancipate? (Brown, 1995). As Meister (1991) states “for itself, representation is a means for the people to transform the state [while] in itself, it is a means for the state to control the people” (p.172). That said, rights which were sought by identities by “itself” become a means of administration and regulation for “themselves” or identities who expressed through rights become production and regulation of identities by bureaucracy and law.

On a different note, the rights that emerged in modernity function in two paradoxical ways; as a means for emancipation from political coercion and institutionalized servitude, and as a vehicle for privileging the emerging bourgeois class within a “discourse of formal egalitarianism and universal citizenship” (Brown, 1995, p 99). Rights, on the one hand, is a means of protection against the arbitrary use of power by the state, and on the other hand, is a means for naturalizing and securing dominant social powers. Accordingly, the bourgeois discourse not only depoliticizes the social power of institutions such as private property and family but also provides a place for exploitation and regulation for the mass (Brown, 1995). So, the effort of rights to recognize identities as the political identities like “group rights” or rights of “differences” or the rights of minorities is evidence of regulation and bureaucratization of rights(Brown, 1995) or what Foucault (1990) called it “bio-power”.

Critique of Natural Right Theory

Foucault and Ewald (2003) address the question of right through a certain political philosophy which he terms “theory of sovereignty”. In order to do so, he is not trying to develop the actual function of law as the presupposition of thinkers such as Hobbes and Rousseau and the idea that law reasonably established by people or by particular wills based both on a unity of power and a set of limits to apply it (Golder, 2013). These notions of law became a sufficient qualification of power and also unshakable confidence for law in seventeenth and eighteenth centuries in France and Britain. Foucault tries to criticize the traditional notion of law by showing the “transition of power” in modern societies with the formation of “bio” and “disciplinary” powers (Golder, 2013).

Sovereignty, according to Foucault and Ewald (2003) are not referring to the exercise of repressive and massive power, but it is about the right of public power which is embedded in the sacred and natural rights of subjects. Individuals in this sense are the original and only bearers of rights whose rights are above every juridical system, and they decide to delegate them to the sovereignty to apply the public power which will rule over them (Golder, 2013). Foucault and Ewald (2003) argue that this cycle is the basis of sovereignty, which tries to subjectify the subjects -from natural subjects to political subject. In his words:

An individual who is naturally endowed (or endowed by nature) with rights, capabilities, and so on—can and must become a subject, this time in the sense of an element that is subjectified in a power relationship. Sovereignty is the theory that goes from subject to subject, that establishes the political relationship between subject and subject (p. 43).

Although Foucault (1997) argues that the appeals of natural law have an important role for limiting the right to govern, his practice of critique is about the particular event- like structure and configuration of power and knowledge and not the universal structure of them. This argument applies to the system of punishment that emerged at a particular time, place, and social context. Foucault (1997) insists on the “pure singularity” of the modern system of punishment and believes that “there is no foundational recourse, no escape within a pure form” (p.56).

Foucault’s preference of the particular or event-like over the universal character of both the system of power and knowledge means to rule out any appeal to right or rights (Patton, 2005). His reluctance to accept any universalist characteristics of human nature is because, in contemporary moral and political philosophy approaches, rights are usually perceived as relying on universal characteristics of human nature or the human condition suppose that “right bearing” inheres in human nature (Patton, 2005).

The natural theory of rights, especially Locke’s ideas that introduce the central tenets of modern liberalism, has been continued by contemporary political philosophies. These liberal notions of rights have been attacked by sociologists. For example, Morris (2006) criticized three fundamental aspects of the liberal view of rights.

First, Morris (2006) questions the liberal view of the right’s perception of personal identity as a given or as a property of individuals before social participation. This perception of personal identity became common in the Rawlsian notion of an “original position” behind an imagined “veil of ignorance” (Rawls, 2009). By contrast, the sociological notion of personal identity perceived it not as a “given”, but as an achievement. In fact, according to this perspective, right as a part of the personal identity is an achievement won in the life course of

participation in social practice (Morris, 2006). So, personal autonomy can be achieved when individuals have interpersonal, cultural-linguistic, social and structural, emotional condition of life (Morris, 2006).

Second, the liberal notion of rights assumes that individuals can devise and progress a life-plan as long as they not interfered with by others (Morris, 2006). This liberal view of right presupposes that everyone has an equal chance to achieve a self-identity that requires a social, cultural, and structural condition in an individual's life. So, any failure to have these conditions can result in the failure to progress a life-plan. (Use it in Chapter 4 as discussion)

The third critique is expressed in Durkheim's work (2005), indicating that human life is not possible without some connection with the life of society. Even the most isolated people have some cultural and social attachment to society, such as the hermit or religious recluse. So, the life- plan of an individual includes a certain version of his relationship with others and his life-plans (Morris, 2006).

Right Consciousness as a Part of Right Claims

As Nielsen (2000) argues the study of legal consciousness of ordinary people requires "exploring how they think about the law and how their understanding of legal institutions and legal rules affect their day-to-day lives" (p.5). She believes that the study of the legal consciousness illustrates both how people think and perceive law and how their unconscious ideas about the law affect their lives. Furthermore, legal consciousness studies determine the role of law and legal norms in constructing understanding, affecting actions, and also shaping some aspects of life (Nielsen, 2000). Using law is not the same for all individuals in society and every

social group and class use it differently. Merry (1990), also, defines legal consciousness as “the way people conceive of the natural and normal way of doing things, their habitual patterns of talk and action, and their commonsense understanding of the world” (p.5). Thus, the way a white male in a privileged social class use law is completely different from the Black prisoners from a lower class. In fact, prisoners in the United States using their rights in a way conducted and guided by activist courts and guided by thick volumes of regulations which are hard to understand and unreachable.

The different legal consciousness based on the different social and structural background of people and consequently, and different right- assertion is illustrated in the work of Williams (1987). Williams (1987) believes that Blacks and whites experience different levels of right-assertion as they are empowering and disempowering. The difference in their experience results in a discourse boundary, complex and contradictory social understanding of rights. Therefore, for Williams, rights are essential: “for the historically disempowered, the conferring of rights is symbolic of all the denied aspects of their humanity: rights imply respect that places one in the referential range of self and others that elevates one's status from human body to social being” (p. 416)

Williams (1987) insists on the importance of rights for blacks, poor, and other minorities, and believes that rights can be the only tools for emancipation for blacks and civil rights movements can prove this. When African- American achieved their purposes partially for civil rights through the established political, economic, and legal system, however, I argue that these temporal achievements that as I said can be assumed “reforms” are inherently not humane or some radical steps toward emancipation and freedom, but they are the part of an institutional

transformation which has its own goals. That is true that it sounded to us now that the only way to limit the repressive power of the state is through the right mechanism, but we cannot ignore the paradoxical nature of right which is always at work. That is why the prisons in the U.S now are full disproportionately by African- Americans because rights always function through disciplinary mechanisms of the state.

Rights as a Disciplinary Mechanism of Sovereignty

The political, ethical, social, philosophical problem of our days is not to try to liberate the individual from the state ... but to liberate us both from the state and from the type of individualization which is linked to the state (Foucault, 1982, p. 785).

If men wish to be free, it is precisely sovereignty they must renounce” (Arendt & Kohn, 2006, p. 163).

The early reform movements against traditional punishments began by the reformers wanted to limit state power to punish both in the means they used and the extent of their use by creating fixed and defined rules and subjecting the authorities to rigid control (Rusche & Kirchheimer, 2003). The attempts of Beccaria, Bentham, and Montesquieu targeted to organize regulation and to calculate the way punishment is applied by recognizing the correlation of crime and punishment. The reforms for changing law in terms of the public trial, free choice of lawyer, trial by jury, suppression of torture, a clearly defined law of evidence, protection against illegal imprisonment were the examples of how these reforms limited and defined the role of state in criminal procedure in the name of humanity and human progress which supposed to make some

progress for all classes. But the experience has shown that the effects of new procedures differed widely among the different social classes, races, and genders (Rusche & Kirchheimer, 2003).

Foucault (2012) believes that the true goal of reform movements was not actually to reform the traditional punishments in a more equitable form but to establish a new “economy” of the state to punish and to “distribute” power in a more organized form. By this way, power cannot be concentrated at the certain privileged points or give a room for the discretion of judges and prosecutions to apply law and justice, and it can be divided between opposing authorities (Foucault, 2012). Therefore, the actual goal of penal reforms tried to distribute power in a more homogeneous, effective, continuous, regular, constant, and more detailed way which enabled it to operate everywhere and effectively while decreasing the economic and political costs of punishment. In summary, the new judicial theory of punishment was consistent with a new “political economy” of power to punish (Foucault, 2012).

The modern punitive system is based on a certain “economic rationality” that functions through some techniques and mechanisms. Punishment in the disciplinary power regime is not trying to take vengeance, expiate, or repress, but it is trying to differentiate individuals through a value-giving measure in a quantitative term based on the value of abilities, the level, and the nature of individuals (Foucault, 2012). Further, it provides “a space of comparison, differentiation, and the principle of a rule to be followed” (p. 182). These rules function as a minimum, average, and optimum to follow and respect. Accordingly, through the system of value-giving and differentiation, the boundaries of conformity is clarified and is limited to facilitate the recognition of abnormal. Therefore “The perpetual penalty that traverses all points

and supervises every instant in the disciplinary institutions compares, differentiates, hierarchizes, homogenizes, excludes. In short, it normalizes” (p. 183).

Normalization, according to Foucault (2012) is one of the most important instruments of power at the modern age. The degree of normality determines “membership of a homogeneous social body” (p. 184). It also functions as a tool for classifying, hierarchizing, and distribution of ranks. Foucault (2012) argues the power of norms is compatible with the system of “formal equality” because of the homogeneity that normalization imposes.

Normalization, according to Foucault (2007), constructs individuals within a network of techniques of power and tools. Normalization functions through introducing a model. All the disciplinary mechanisms try to get individuals, movements, and any actions to conform to this model (Foucault, 2007). That said, in normalization, individuals are distinguished between normal and abnormal based on the degree they follow the norms that disciplinary techniques offer.

The reform movement of punishment, according to Foucault (2012), has not only one origin. Many different interests such as enlightened members of the public, philosophes who supposed themselves as the enemies of despotism and friends of mankind, social groups who criticized parliaments, instigated the reform movements. The reforms were not completely outside the “legal machinery and against all its representatives” (p. 81), but they were organized within the legal machinery and by a large number of administrators seeking common objectives and the power conflicts that divided them (Foucault, 2012).

For Foucault (1980a), the dominant ideology of the bourgeois class in judicial system affected both proletarianized and non- proletarianized classes that created and maintained a division between these two. The bourgeois ideology affected especially on proletarian in terms of defining what is just and what is unjust. For instance, about theft, property, crime, and criminals. This ideology affected, also, non- proletarianized class in many ways, for example, it offered them some choices; being in prison or joining the army, being in prison or going to colonies, going to prison or joining the police. Thus, they became racialist when they were in colonies; became nationalist when they armed, and became fascist when they were police force (Foucault, 1980a). These influences were very profound in both proletariat and non- proletariat people in a completely subtle way to the extent that bourgeoisie is unconscious about how it works and progress.

Therefore, punishment in disciplinary mechanism is opposed to a judicial penalty which functions through referring to the text of laws, specifying acts based on certain general categories, and making binary opposition of what is permitted or forbidden. On contrary, Dicipinary mechanisms operate by differentiating, hierchizing, and homogenizing individuals (Foucault, 2012, p 183).

Finally, the general goal of punishment is not to eliminate crimes, but it is trying to distribute, distinguish, and use them (Foucault, 2010). Therefore, punishment is not seeking to deter those who are supposed to obey the law, but it tends to assimilate the disobedience in a “general tactics of subjection” (p. 272). The main purpose of penalty, thus, is not checking illegalities, but it differentiates them and provide a general economy for them (Foucault, 2010).

If now we can talk about justice, it is not only because the law benefits a class, it is also because “differential administration of illegalities through the mediation of penalty forms part of those mechanisms of domination. Legal punishments are to be resituated in an overall strategy of illegalities. The failure of the prison may be understood on this basis” (p.272).

Therefore, as I illustrated in this chapter, the expansion of prison, especially in the US can be understood not because of the failure of prison reforms, or failure of its functioning, but failure is a part of the prison agenda. It is functioning through this apparent “failure”. Thus, if we are witnessing the mass- incarceration in the US, it is not because there is something wrong in a specific part of the prison system; instead, the prison functions through this way. It differentiates individuals, It excludes racial minorities, especially blacks from other people, It makes minorities “others, It subjectifies individuals, and these purposes can be fulfilled by rights discourse. The way state uses and applies the rights- as its absolute power- contributes to the realization of these purposes. Understanding the actual functions of the prison requires a genealogical perspective which questions not only the internal defects of the established institution of the prison but also, it questions the external situations and conditions which as Weber (2013) states have “elective affinities” to create a phenomenon (imprisonment).

CHAPTER THREE METHODOLOGY

I use genealogy and the critical theory as my methodology to analyze how the dominant right discourses affected the formation of prison and all its institutions. Relying on archival documents, I studied the role of right claims and liberal reforms on the formation of the carceral state and also traced how those reforms paved the way for mass incarceration. In this chapter, I will define genealogy and describe how it connects to the critical theory as a methodology. I will illustrate how critique is inherent as a component in genealogy and how it is associated with critical theory, especially in the works of Theodor Adorno. The purpose of this chapter is to justify why I used genealogy and critical theory as my methodology.

Genealogy's Definition

According to Foucault (1980b) genealogy is “the union of erudite knowledge and local memories which allows us to establish a historical knowledge of struggles and to make use of this knowledge tactically today” (p. 83). Foucault (1978) defines genealogy as a “gray, meticulous, and patiently documentary” (p. 139). Genealogy needs detailed knowledge, and vast accumulation of materials and recourses about events not only in a gradual process of their evolution but also it should be enabled to understand them in isolation when they tend to be engaged with other roles (Foucault, 1978). Further, genealogy must define those instances and moments where and when they are absent or remained unrealized (Foucault, 1978). Moreover, the Foucauldian notion of genealogy of the subject accounts for the “constitution of knowledges, discourses, domains of objects, and so on, without having to make reference to a subject which is

either transcendental in relation to the field of events or runs in its empty sameness throughout the course of history” (Foucault, 2003, p. 306).

Genealogy and History

Foucault (1978) argues that genealogy does not reject history; rather, it rejects “the meta-historical deployment of ideal significations and indefinite teleology and opposes itself to the search for origins” (Foucault, 1978, p. 140). As Delacroix (2006) points out, “A genealogy without history would be like a diving board without spring” (p. 100). However, genealogy differs from and is not reducible to mere history (Delacroix, 2006). Genealogy’s commitment to history mainly concerns the critical reevaluation of the given phenomenon. In other words, genealogy does not apply history as a prerequisite of deconstructing or critiquing the events; rather, history is a tool for doing so among other tools to reveal the impact of the historical process that brought the institutions about (Delacroix, 2006). Genealogy uses history to interpret the human institution by the formulation of hypothesis and “undermining ahistorical and inflationary interpretation of human institutions” (Delacroix, 2006, p. 98).

According to Foucault (1978), genealogy opposes the search for history. That said, in a genealogical study, a researcher knows the fact that finding the origin or ‘degree zero’ of the objects he or she studies is impossible. The purpose of genealogy is to find the social and cultural factors that have contributed to the emergence of the phenomenon under study (Delacroix, 2006). Genealogy’s concern is not to discover some ‘founding principle’ which would show some definite grounding of the event, but it is seeking to illuminate and challenge the aspects of a phenomenon which have not been shown or have been hidden (Delacroix, 2006). Genealogy functions as a tool for revealing the artificial character of certain institutions (Delacroix, 2006).

The genealogy of values, knowledge, and morality does not question their origins and beginnings, but it focuses on the details and accidents which are necessarily accompanied by their beginnings (Foucault, 1978). Genealogy rejects the argument that past actively exists in the present and imposes a predetermined form to all aspect of the present. Therefore, genealogy rejects the notion of the uniformity and regularity of history and insists on irregularity and inconstancy of truth and refuses that history has a linear path (Foucault, 1978).

I used genealogy as the method for this study because it is improbable to isolate and imagine a situation which is not preceded by right claims. In other words, the origins of right claims will always vanish to some further, inaccessible points. Consequently, genealogy would contribute to avoiding the ambiguities inherent in an inquiry through making the sources of rights claims explicit or clarify the hidden aspects of right discourse. Another reason why I used genealogy is its purpose as revealing the artificial characters of certain phenomenon and institutions. Accordingly, the question of this study is to reveal the hidden parts of liberal reforms and rights claims and to question the established understanding of their artificial characters which is claimed historically to be humane and emancipatory.

The Descriptive Nature of Genealogy

A genealogist is more interested in description rather than an explanation of historical events and is trying to describe how the historical paths (the established traditional punishments) are disrupted by discursive (rights claims) and non-discursive shifts and clashes. He/she also is trying to answer “how” we are in this situation now rather than “why” (Isenberg, 1991). So, the selection of “how” in “how right claims expand the carceral states” is based on this feature of the genealogy.

Genealogy as Critique

As I clarified before, the ultimate goal of genealogy is to reveal and question the artificial characters of institutions by illuminating the hidden parts of the established understanding of events. There are some elements of critical thinking in genealogy that can be appropriately associated with the objectives of this study. I am going to criticize the dominant right discourses in the formation of the carceral state which despite the claimed function of rights, as emancipation or being humane, contribute to incarceration and keeping people in prisons. That said, the critical feature of genealogy is important for this study. For this purpose, my main question addressed the role of critique in the Foucauldian notion of genealogy which I used as my method. Some “critical theorists” (Habermas, 2018, Baudrillard, 1978) criticized genealogy and describe it as a methodology, which leads to a counter-discourse, irrational or conservative in its nature (Habermas, 2018). Habermas (1989) also argues that “genealogy is overtaken by a fate similar to that which Foucault had seen in the human sciences: to the extent that it retreats into the reflection-less objectivity of a non-participatory, ascetic description of kaleidoscopically changing practices of power, genealogical historiography emerges from its cocoon as precisely the presentistic, relativistic, cryptonormative illusory science that it does not want to be”. However, the genealogy of knowledge converges with the Frankfurt school’s critique of instrumental rationalization, the point that Foucault acknowledged at the end of his career (Morrow & Brown, 1994).

Foucault (1984), however, proposes a notion of enlightenment as a critical ethos or as an art of critiquing the authority and power that manifests itself in opposing, analyzing, and reflecting limits which are imposed to us. According to Foucault, the critical question, today,

should be a positive one. The question must ask, “in what is given to us as universal, necessary, obligatory, what place is occupied by whatever is singular, contingent, and the product of arbitrary constraints?” (Foucault, 1984, p.45). So, by this question, Foucault tries to transform the critiques conducted in the form of necessary limitation into the practical critiques that take the form of possible transgression (Foucault, 1984). This critique is genealogical in the sense that it is not trying to conclude from the form that we are, what is impossible for us to know or do, but it separates the form that we are from the possibility of no longer being, doing, and thinking what we are, do, and think (Foucault, 1984). In other words, he describes critique “as the problematization of the present”. He, also, defines critique as not being governed or at least not being governed in a particular way or so much (Foucault, 1997).

Furthermore, Delacroix’s (2006) argument about the critical feature of genealogy is compatible with what Foucault believed about the critique in genealogy. Critique in its everyday sense has a negative approach toward a given phenomenon (Geuss, 2002) which is trying to falsify, prove invalidity, or inappropriateness of the event in question (Delacroix, 2006). However, genealogy’s concern is not to test the falsification or the validity of the objects, but to unveil the factors, circumstances, and contexts which have led to the emergence of a certain institution and given phenomenon (Delacroix, 2006). The ‘true’ critical ambition of genealogy may threaten or makeover the established legitimacy of the human institutions and their traditional resistance to revealing the historical process, which led to their emergence. As Williams (2000) points out some ideas, values, and concept are resistant to becoming clear and subject to explanation as they claim authority. However, this will be true and more common in some institutions and values.

The excellent example could be the legitimacy of rights. Right historically resist questioning the hidden aspects of its functioning, which makes it sacred and as the only tool toward emancipation. However, a genealogical study about rights can reveal how rights historically have served not always the interests of the marginalized and excluded individuals, but they have served an economy that tries to empower and maintain the interests of the bourgeois class. Property rights, rights of security, even the rights to freedom and equality, in their liberal notions, serve the dominant discourse of power and the moments that we think rights are bringing justice for human beings, are the moment that the rational economy of rights requires such a change like what we had in the rights of blacks, women, and LGBTQ communities. Rights at these moments try to assimilate, normalize, and make the abstract citizens by its universal and harmonized rules and principle.

In addition, In respect to rights claims and their role in the development of incarceration, the critique component of genealogy is not trying to falsify or reject the criminal justice system or its institution, but it is trying to challenge their established legitimacy or unveil the hidden historical process in which they emerged. Although ordinarily, we assume that rights are the only and the best ways to fulfill individual needs which necessarily have an emancipatory nature, genealogy wants to shake these foundations and reveal the dark side of the legitimated institutions. So, genealogy is not a neutral methodology; rather, it has its own interventionist program operated by an agenda. In this methodology usually, a specific concept, value, or institution is condemned at its very beginning (Delacroix 2006). “Whether it be applied to the concept of justice, morality, the prison system or legal normativity, a genealogical endeavor seeks to trigger or renew reflections on the phenomenon to be explained” (p.103).

Therefore, using genealogy in this study means questioning, critiquing- not necessarily in its negative notion- the situations the conditions in which the prison had room to emerge. That is why it is necessary to explain the role of critique in genealogy, the way that it can be used in this study. In the following part, I will argue how critique can be an inherent feature of genealogy and what is its common characteristics with the critical theory.

Genealogy and Critical Theory

Progress occurs where it ends (Adorno, 2005, p. 150).

I would like to say something about the function of any diagnosis concerning the nature of the present. It does not consist in a simple characterization of what we are but, instead—by following lines of fragility in the present—in managing to grasp why and how that-which-is might no longer be that-which-is. In this sense, any description must always be made in accordance with these kinds of virtual fracture which open up the space of freedom understood as a space of concrete freedom, that is of possible transformation (Foucault, 2013, p. 36).

For doing this research, I used genealogy and critical theory. Critique is the inherent component of genealogy but not in the everyday sense of critique, which is a negative approach. I found many commonalities and rich harmonies between critical theory, especially in the works of Theodor Adorno and the genealogy of Foucault.

Although Adorno, does not use the term of genealogy, the method which can be used for understanding this recognition of history can be understood as a kind of problematizing genealogy. For instance, Adorno (2003) in *Negative Dialectics* like Foucault, draws the

simultaneous historical emergence of both the promise and the ideals of the enlightenment as the unity of discontinuity and continuity. He also, like Foucault, does not reject all the norms and values of enlightenment modernity (Allen, 2016).

Both thinkers are famous for their skepticism of progress and offering a negative philosophy of history (Allen, 2016). For instance, Adorno (2006) states that the emergence of the catastrophe of Auschwitz makes “all talk of progress towards freedom seem ludicrous” (p.7) and even makes the “affirmative mentality” that engages in such talk look like “the mere assertion of a mind that is incapable of looking horror in the face and thereby perpetuates it” (p.7).

Allen (2016) believes that an alternative methodology of thinking about history can be found in the works of Foucault and Adorno. This methodology is neither progressive nor repressive, but it reconstructs history as a story of both progress and repression. For Foucault and Adorno, critique is a historical problematization. Adorno doubted the backward-looking claims, which show that “progress” as a historical “fact” is actual. This skepticism about the historical progress is shared by Foucault (Allen, 2016). Foucault (2013a) wants to “remove all chronology and historical succession from the perspective of a ‘progress,’ to reveal in the history of an experience, a movement in its own right, uncluttered by a teleology of knowledge or the orthogenesis of learning” (p.122).

Foucault’s perspective toward progress is more philosophical than moral. However, the way Foucault analyzes how progress in human sciences is built on the exclusion of madman, homosexuals, social deviants and prisoners, and other “abnormals” shows that moral sensibility is at work (Allen, 2016). Also, in a philosophical point of view, Foucault (1978) like Adorno

(2005), believes that the traditional conception of progress, which is assumed to be atemporal and supra-historical, is a metaphysical illusion.

Foucault and Adorno perspectives toward social transformation were not just about the better and fuller realization of our normative ideals for a more transparent and less distorted liberal democracy, or a more inclusive and egalitarian recognition, but also, the possibility of the radical transformation of those ideas themselves (Allen, 2016). The radical transformative ideas can be found in the work of Foucault, which is called the problematization. According to Foucault (2013a), “problematization doesn't mean representation of a pre existing object, nor the creation by discourse of an object that doesn't exist. It is the totality of discursive or non-discursive practices that introduces something into the play of true and false and constitutes it as an object for thought”(p.257).

By problematization, Foucault tries to know how certain behavior, phenomenon, or processes became a problem. Foucault (2013b) applied this approach in his early work, *History of Madness*. In this book, the question was how and why, at a particular moment, madness was problematized through a certain institutional practice. Also, in his other work, *Discipline, and Punish* (2012), Foucault problematized the relation between crime and punishment through penal practices and penitentiary institutions. Foucault, in one of his late interviews, states that “I would like to do the genealogy of problems, of problématiques. My point is not that everything is bad, but that everything is dangerous, which is not the same as bad. If everything is dangerous, then we always have something to do” (Foucault, 1997, p. 256).

These works are posing the possibilities as Allen (2016) states: “someday we might look back on our present preoccupation with mental illness and wonder what all the fuss was about, and from that point of view our current historical a priori may well seem benighted” (p. 338).

Although it is hard to imagine living with that point of view, there is a critical value of being open to this possibility that we might live in the future in a different point of view. So, for being truly critical, critical theory has to be open to both reformism and radical transformative changes (Allen, 2016).

Applying these approaches toward the history, progress, repression, and social transformation, I developed a genealogical study of the role of rights claims, liberal movements, and reforms on the expansion of the carceral state. I used the concept of problematization and posed the questions of how and why rights claims contributed to carceral state and when they became problematized through a certain institutional practice and apparatus of knowledge.

Using both critical theory and genealogy, I tried to question the legitimacy of well-established institutions which are assumed to be a “progress”. Right claims, liberal reforms, all assumed to be “humane” and progressive steps toward emancipation. But I argue that mass incarceration and the expansion of prisons like what Adorno (2006) thinks about Auschwitz is a catastrophe. This is because as Adorno (2006) states “in the society in which we live, every single progressive act is always brought about at the expense of individuals or groups who are thereby condemned to fall under the wheels” (p.12).

In fact, the approach -which I have applied in the study of the history of rights claims and their connection to the carceral state is trying- as Foucault (1978) states- to challenge the

traditional conception of historical progress (i.e., rights claims) that we know now to be a metaphysical illusion in order to pave the way for the idea of radical transformation or to suggest something different rather than rights claims (use it in chapter 4 discussion)

As I argued, genealogy is trying to question the established concepts and institutions. I used this methodology to question the value of right by going back to the origins of rights, especially liberal rights- property right, liberal equality, freedom, security. To devalue these notions, I analyze why liberal rights emerged at particular moments and how they became the inseparable parts of the liberalism and the disciplinary power. To do a genealogical study for revealing the hidden aspects of right claims, reforms, and social movements which contributed to the carceral state, it is not enough to study only the one important historical events; it requires to understand many historical events, situations, social force, and different discourses affected the emergence of reforms toward mass-incarceration. Also, genealogy does not mean merely the study of historical moments, but it is the “history of the current”. I use genealogy to understand the contemporary phenomenon of mass incarceration in the US with a neo-liberal economic and social structure.

For instance, civil rights movements or the reforms toward rooting out the corporal punishment may be evident to the extent that they are understood as the only way for freedom and emancipation, but genealogy’s role is to clarify the inhumane aspects of them by looking for the origins of prison and rights. For example, as we learned in the second chapter, right-assertion for Williams (1987) is considered as an essential way toward black’s freedom. However, a geological study about rights- as I discussed- can reveal how these rights function within the economic rationality of punishment and in general, serve the disciplinary power of the

state to exclude. In sum, the valuable events such as civil rights movements operate in a complex apparatus of the liberal state to marginalize, exclude, normalize, homogenize all subjects and it seems to us that we had partially “justice” because the rights of sovereignty and disciplinary power are entirely compatible with the liberal and neo-liberal goals for making individuals responsible for their self-realization. That is why after more than five decades of civil rights movements the US is dealing with the racial discrimination not only in the criminal justice system, but also in the whole social, cultural, and economic systems.

CHAPTER FOUR THEORETICAL ANALYSIS

In this chapter, I am trying to develop a theoretical discussion, find the connections between the sociological theories that I have developed previously to answer the research question. To do so, I will divide the discussion into two parts. In the first part, I will discuss how the liberal notion of rights and freedom is against the actual freedom and how this established notion eventually contributes to the expansion of the carceral state. In the second part, I will develop the idea of how formal rationality, bureaucracy- as an expression or application of formal rationality- ultimately expands prisons.

Liberal Rights and Carceral State

To the isolated, isolation seems an indubitable certainty; they are bewitched on pain of losing their existence, not to perceive how mediated their isolation is (Adorno, 2003 p. 312).

As I illustrated in the second chapter, the new type of power was established based on the bourgeois ideology and under the “disciplinary power”. In fact, in modern society, power is no longer be transcribed to sovereignty. This new type of power is the foundation of industrial capitalist society (Foucault and Ewald, 2003). Theory of sovereignty tries establishing the subject to subject cycle. Individuals who are the only bearer of natural rights delegate these rights to sovereignty to rule them. Individuals who were the subjects of rights that they have by their nature now delegate this power to the state to govern them. In other words, sovereignty requires individuals to be governed and regulated by the rights that they gave them at a particular moment. (Foucault and Ewald, 2003).

By rights, Foucault (Foucault and Ewald, 2003) means all apparatuses of it, from law and rules to all institutions related to it. Right in this point of view function as a means for domination, not only sovereignty relations but the whole of all domination relations (Foucault and Ewald, 2003).

But the theory of sovereignty no longer lives as a theory of right. In fact, it is continued as an ideology and as the organized principles of juridical codes which superimpose on the mechanisms of discipline a system of rights that conceal the actual disciplinary power of the state and its domination (Foucault and Ewald, 2003). This new system of power guarantees everyone's practicing of the sovereign right, which can be exercised by them. So, the right of sovereignty and the mechanisms of disciplinary power are inseparable in modern society. But this confrontation has its own discourses; under sovereignty, we have rights discourse, but the scientific or clinical knowledge is the disciplinary power's discourse which operates through normalization and not a code of law. So, in our day, power is exercised through both right and discipline in a way that discipline and its techniques are invading rights (Foucault and Ewald, 2003). However, the only way to limit the exercise of disciplinary power is by invoking the old formal bourgeois right, which is, in reality, the right of sovereignty (Foucault and Ewald, 2003). But, using sovereignty against discipline does not enable us to limit disciplinary power. These two, sovereign and discipline- are the "two things that constitute the general mechanism of power in our society" (p. 39).

Sovereign rights of individuals (juridical power) and disciplinary normalization bringing play together is "repression". Repression today is used as a tool for coercive social control. Imprisonment is one these social control policies, especially in places that African-American,

poor, and other minorities are deprived of their political and economic participation. Repression is used by the state both through the juridical system (right of sovereignty) and the disciplinary mechanisms. First, repression is applied through the prison mechanism, with all its institutions. It is justified by crime control and the right of security and safety- both the liberal rights; On the other hand, it functions through complex mechanisms of disciplinary normalization. Imprisonment (as a way to repress) operates through the scientific calculation in order to normalize, differentiate, hierarchize, and make a division between those who are the first degree citizens in terms of respecting the rules and those who are excluded.

Liberalism, as the mentality of rules, creates an atmosphere in which market, civil society, and citizens have their own logic and intrinsic mechanisms of self- regulation. In this system of governing, sovereign tries to totalize its will across the national space (Burchell, 1991). However, rulers, on the one hand, confront with subjects who have rights and interest that should not be interdicted by politics and, on the other hand, they faced with the situation in which they cannot govern by the exercise of sovereign will because they do not have the prerequisite knowledge and capacities (Barry, Osborne, & Rose, 2013). So, they need to reformulate the objects, instrument, and tasks of rule based on the market, civil society and citizenship aiming to ensure that they serve the national as a whole and function to benefit it (Barry, Osborne, & Rose, 2013).

However, discipline and bio-power- apparently illiberal- finally found their places within liberal mentalities of rule. These rules become practicable and understandable as a prerequisite condition for production and governing free citizens (Foucault, 2012). Disciplinary logic

operates through mechanisms in prison aimed to produce subjective conditions, self-control, self-mastery, and self-regulation to govern free and civilized citizens.

On the other hand, bio-political strategies, including censuses, statistical inquiries, reproduction control, and health programs, provide the related laws that liberal government must know and respect. That said, the legitimate government is not arbitrary, but it is based on the policies which are necessary for the wellbeing enhancement of those whose interests are mandatory to respect (Foucault, 1980a). These laws function through the good amount of knowledge of the areas that should be ruled, such as prison, family, economy, community.

Liberalism tries to invest in the subjects of government. It means that in politics, law, morality and so forth, subjects are individuals whose freedom, rights and liberty are to be respected by setting limits to the legitimate political and legal regulation to regulate the particular and new type of individuality (Barry, Osborne, & Rose, 2013). Thus, the liberal strategy behind prisons is not to regulate individuals, but they are seeking to create individuals who do not need to be governed by others and be able to be governed, mastered and cared by themselves.

In liberalism, the abstract subject of right takes a “universalistic” form (Barry, Osborne, & Rose, 2013). Or, as Marx (1843) asserts, liberalism is trying to eradicate the intrinsic distinctions of individuals under the shadow of abstract citizenship. Marx (1843) argues that these liberal rights and liberty, are nothing except the right of separation from others, the rights of self-interest, and all individuals are treated equally in the liberalism if they become isolated and severing. Thus, the liberal constitutional state is built upon depoliticized inegalitarian social powers and naturalizing egoistic civil society and rights are the form for securing and legitimizing these tendencies (Brown, 1995).

The solution of Marx (1843) for depoliticized human beings and their isolation because of the liberal notions of rights and freedom is “every emancipation is a restoration of the human world and of human relationships to man himself. Political emancipation is a reduction of man, on the one hand to a member of civil society, an independent and egoistic individual, and on the other hand, to a citizen, to a moral person” (p. 46).

The liberal policies contribute both directly and indirectly to the carceral state. First, in the way that liberalism identifies the rights and second by its economic strategies. However, these two ways are integrated.

The importance of these liberal notions of rights will be evident when we think how these rights are defined and whom they serve. Let us talk about the property right, for example, and its effects on racial minorities, poor, and people who are historically marginalized and the way these rights expand the carceral state. The rise of capitalism, the accumulation of wealth, the development of the bourgeois class determined many acts as illegal and criminal. These new areas of criminality tended to secure and maintain the capital, property, and wealth in the hand of the dominant, powerful, and capitalist class. This tendency requires the state to provide a safe place for upper and middle-class whites to maintain their properties, which result in the imprisonment for those who violate these liberal rights.

On the other hand, liberalism can indirectly expand the carceral state by its economic and political principles. For example, the free market intensifies inequality to the extent that as those who are in the very top socio-economic status accumulate more wealth, those who are deprived of the resources tend to live in the urban, suburban area, and in general in streets. Since they work more hours for less wage, benefit, and security, they seek alternatives to pay for their living

expenses. This situation is the basis for the first way that liberalism defines the rights. Thus, cleaning the streets of criminals serves the upper and middle-class interests to make and maintain their capital. Also, attracting local and foreign investment is a principle in a liberal and neoliberal economy which requires a “safe” place for an investment of companies. However, the way that liberalism handles this situation is situated in an intensified “individualism”. Individuals are self-regulated, self-controlled, and responsible for their action. As Margaret Thatcher (1978)- Prime Minister of the United Kingdom from 1979 to 1990- states, “rising crime is not due to “society” but to the steady undermining of personal responsibility and self-discipline”.

In liberalism, everyone has an equal right without considering race, class, gender, religion, age, etc. Throughout this system, disciplines specify subjects not based on their inherent characteristics but based on the certain norms of civilization and divide subjects to a civilized member of society and those who fail to exercise their citizenship responsibility. Thus, in liberal governmentalities, the purpose is that free individuals fulfill the voluntarily assumed obligations to make their existence by conducting life responsibility (Barry, Osborne, & Rose, 2013). On the other hand, must make their decisions about their self-regulation and self- control surrounded by a web of norms and normativities.

(make this part separate) As I illustrated before natural rights are universal in the sense that human rights can be applied on all human beings regardless of their intrinsic human characteristics. This notion of rights is fundamental for the foundation of liberalism where rights of citizens are distinct from the actual right of a man seeking to internalize and volunteer obligations and switch responsibility form state to individuals.

What are the correctional policies for individuals who fail to be self-regulated, self-controlled, or fail to be self-realized in order to restore them to society as normal citizens who function properly according to the liberalism's value and goals? Besides other disciplinary mechanisms to keeping citizen in the flow of making profit such as school, hospitals, and the intensified surveillance in the every corner of streets, workplace, etc, one of the policies that ensures that people who fail to fulfill the tendency of liberal disciplinary power to make self-regulated individuals, is through imprisonment as a tool for correction. As I illustrated in the second chapter, the first reforms that led to the production of the prison originated from the efforts of religious leaders toward spiritual cleansing. This purpose of imprisonment has turned at the rise of capitalism into correcting prisoners as the effort to make them productive human beings. This goal of imprisonment is argued by Bentham and his suggestion about the panopticon prison. The architecture of panopticon is designed to work on inmate souls in order to turn them to efficient workers. All the prison mechanism functions through a timetable to make inmates again efficient and productive citizens.

Furthermore, the universalistic characteristic of liberal rights is paradoxical. Adorno (2006) shows a theoretical paradox of universal perspectives toward progressive rationality in which the universal aspects turn into the particular aspects which causes us who are likewise particular, to anguish. The dominant universality can no longer mean history or any positive value (Adorno, 2006). However, any form of consciousness is highly reluctant to admit that its assumed supremacy of objective power over human beings who are confident that they are in the full possession of self, is only a function of the universal (Adorno, 2006). So, our immediate sense or experience implies that what happens to us is universal, and there is nothing particular

with our experiences. For example, if someone fails to find a job, or being ignored or discriminated, our immediate thought would be we are in full possession of our life and future.

The paradox appears where science, with its magical tools, shows us whatever happens to us is not universal, and it is all about us. There is nothing universal, and all happenings are the result of spontaneous individuality. Universality is a metaphysical and abstract thing which does not exist in actual life (Adorno, 2006).

How can we apply these arguments in the current phenomenon of rights claims and its role on the carceral state? Using Foucault and Adorno's arguments to the question of this study, as I argued before, the disciplinary power - the foundation of the capitalist industrial society- is founded based on the scientific and clinical knowledge which is best suited to liberalism. The rights discourse in a liberal society is defined as the universal and inalienable rights which individuals have regardless of time, space, or their intrinsic features such as race, age, gender. These notions of rights has a paradoxical nature in the sense that, although they claim to be universal and a mechanism toward emancipation and even as individuals assume to have them regardless of their differences and conceive them as their first and immediate experiences – the universality creates a false consciousness in individuals. In actual life the disciplinary power which is seeking to normalize individuals tries to internalize certain obligations into the citizens and make them self-regulated, self- controlled and responsible for what happens in their lives or in short as Adorno (2006) states make everything particular and completely individual.

Now we can see how this notion of rights functions through the criminal justice system in a liberal society. Historically, and especially after the civil right movements in the US, the human rights assumed to be universal with a sacred focus on equality for the different races,

religions, genders, and ages leads individuals to believe and assume that they are in a full possession and domination of their lives and nature. But what happens in actual life or in the current criminal justice system is the fact that the liberal disciplinary power considers all individuals and especially prisoners or those who violate social norms to be responsible for their actions. Here is where the universal feature of rights can be paradoxical. These liberal policies are exist in different contexts and eras in contemporary liberal societies and apply to prisoners, addicts, students, or patients.

Here, we can see why Marx (1843) criticizes the notion of universalism when the actual human being is eradicated in society and becomes an abstract citizen. When we are talking about the rights, we are talking about justice, freedom, and equality that are all universal concepts. But, in reality, what we have is intensified individuality. As I illustrated, the prison population in the US is disproportionately occupied by young, poor black men. This disproportionate amount is because of many liberal social and economic policies, which eventually impose many challenges in the minorities lives.

The policies like War on Drug or Three Strike in California state are the examples of that in that these policies presupposed African- American responsible for the violation of the norms through the disciplinary mechanism and techniques like efficient litigation, prosecution, policing, and all other disciplinary institutions (school-to-prison pipelines, etc.). So, all these institutions are not at work to ensure universal human rights, but rather to normalized and self-regulate individuals in categorical ways.

In summary, discipline, through its complicated institutions and based on universal norms, tries to normalize individuals. For example, through psychiatrists, prosecutors, police,

therapists, and some universal instructions toward a better, efficient and more productive life, tries to internalize that the deviance, mental disorder, or crime are individual or personal problems which should be solved by these universal institutions. Therefore, the purpose of discipline is not to create a particularism that defends the actual rights of man. It neither aims to recognize all the intrinsic human differences nor different social circumstances. Instead, it seeks to specify, particularize individuals in a society based on their variation of following the rules and respecting citizen's obligations.

Rationality and Carceral State

As I illustrated in the second chapter, rationality defines as the degree to the action that is happening as an outcome of quantitative and proper calculations (Weber, 1987). Rationality leads to irrational consequences through a variety of bureaucratic institutions and organizations. Further, as Adorno (2006) states "the growth of rationality is something like the growing ability of the human species to preserve itself or, as we may also say, the growth in the universal principle of the human self" (p. 16). One of these universal principles of the human self in our age is rights and the way these rights are defined universally. For example, we can see how the rights in the US constitution or other countries are more or less identical and also the national wide feature of them can be considered universal in the sense that they can apply in many people from different social background. So, natural rights and after that, liberal rights have universal validity to the extent that everyone has these rights regardless of any particular time, space, race, gender, age, and other intrinsic characteristics.

The emergence of irrationality, according to Weber (1993) is the result of increased rationality which traps individuals in rational calculation and control called the "Iron Cage,"

which repress natural human feelings and their aspirations. Also, Adorno (2006) argues that irrationality is the product of manipulation, which has always appeared in the service of rational or irrational domination and the growth of the techniques of rational domination.

The question is how rationality- rooted in reason- by its inherent mechanisms, produced irrational consequences and, in this case, mass incarceration. To answer this question, I argue that rationality can develop mass incarceration in two ways; first, as a foundation of the modern judicial and legal system and second, as a means for exclusion and making “others”.

As I discussed before, the emergence of prison at its beginning was not the result of reforms and humane efforts of reformers. It was the result of the distribution of power within the judicial system and its institutions. So, the prison institutions built upon a complex bureaucratic system which tried to make the punishment efficient, more calculatable, optimal, or as Foucault (2012) states it emerged as “economic rationality”.

The new system of punishment was the part of the whole great institutional transformation. Therefore, the general, explicit, and unified codes and rules of procedure, the universal adaption of the jury system, the calculated crime and punishments occurred within the transformation of the political economy of the state (Foucault, 2012). Thus, as Foucault (1989) argues, liberalism is not an ideology, a theory, a juridical philosophy of individual freedom, or a particular form of policies applied by state. Liberalism is nothing but the rationality that functions as the particular methods and principles to rationalize state practices.

Further, the notion of the carceral state is not only about the criminal justice system, but all state institutions, policies, and personnel become a part of the carceral state when for example

they require exclusion based on the criminal history of individuals, exclusion for education loans, assigning criminal justice personnel to regulating and disciplinary practices. All these interventions are about state institutions and formal law, but the disciplinary mechanisms can expand within a society when observation, surveillance, measurement move through schools, factories, families, hospitals, and workplaces (Murakawa, 2014).

The bureaucratic systems of juridical power in a liberal society are assumed to be universal in the sense that all the judicial system and its mechanisms function through universal norms and techniques from the prisons to probation services, police, and courts. These techniques are universal because they oppose homogenous norms and are based on the universal scientific principles such as psychology, economy, and law. All these institutions and their administrations are trying to normalize individuals based on this universal rationality and divide them based on the degree they obey the universal norms. As Weber (1993) argues, the increased rationality eventually traps individuals into the iron cage, which I argue that in the given study can be interpreted as the prison. To put it differently, as Adorno (2006) states “where human beings strive to internalize the universal, the very thing that should harmonize with their reason, they almost always act irrationally” (p. 72).

The criminal justice system of the US, is entirely a bureaucratic system. The police investigation, litigations, court hearings, appealing, and all the prison guards and its architecture try to increase the efficiency within the system, distribute the power and calculate the crime and punishment based on the new scientific knowledge. The rationality and calculation-based techniques and policies are not limited to the criminal justice system. It is widespread among all the state’s practices, all of which culminate in the carceral state. For instance, as I argued in the

first chapter, one of the reasons for prison expansion is the need for white employment/labor in rural areas, leading white guards to be employed in the rural areas, policing populations marked as urban, racialized, and surplus in the US or War on Poverty policies and its afterward protests that eventually rationalized other regulations regarding War on Drug that target mostly African-American and poor.

Further, as discussed before, rationalization contributes to the expansion of prison by excluding “others”. As I illustrated in the second chapter of this study, the disciplinary normalization divides individuals to normal and abnormal, people who respect the defined models and norms and those who violate them- the division between rationality as a form of truth and unreason as an ultimate form of madness (abnormality) (Foucault, 2012).

Universal liberal rights which are embedded in liberalism functions based on this division. That is to say; liberalism defines individuals as the subjects of a set of rules and social citizenship appropriate to a bourgeois political and economic culture. Therefore, being rational or reasonable is the foundation of exclusion and division in society. Rational individuals are the basis of rationalizing government activities in the sense that rational activities of state must be intrinsically connected to free and privately motivated conduct of individuals because the rationality of these individual’s conduct is what enables the market to function optimally (Burchell, 1991).

In this situation, individuals become expert of themselves and adopt an educated and knowledgeable relation of self-care in respect of their bodies, their minds and their form of conduct (Barry, Osborne, & Rose, 2013). That requires individuals to accept and be expert for

being responsible for their current and future risks. Social works, privatizing counseling, and self-help strategies are all techniques that individuals should apply to achieve happiness.

This new configuration has its own exclusion and complexities; the reproduction of new psychological techniques and languages of empowerment of those who coded as “excluded” and “marginalized”. Disadvantaged individuals have come to be seen as potentially and ideally an active agent in the fabrication of their own existence. Their exclusion from the benefits of self-fulfillment and life of choice are no longer considered as the support for social determination, but they are considered as people whose self-steams, self-responsibility, and self-fulfilling are destroyed and deformed by the dependency culture and learned helplessness (Barry, Osborne, & Rose, 2013). The solution that liberalism offers to these excluded individuals is through their engagement in the varieties of programs like skills of self-promotion, counseling to reform the sense of self-worth, and programs to enable them to find their rightful place “as the self-actualizing and demanding subjects of an "advanced" liberal democracy” (p. 59).

As I illustrate, disciplinary power tries to normalize individuals. It does so through the objectification of criminals, which eventually leads to the exclusion of them from the dominant discourse of rights and the whole society. The criminal becomes the enemy of all in the sense that it will be in the interest of all to push her outside the pact, disqualify him as a citizen, recognize her as a wild fragment of nature, identify him as a monster, villain, a madman, and in general “abnormal” individuals. Here is where s/he becomes the subject of scientific experiences and the target for correction and “treatment” (Foucault, 2012).

One of these marginalized group which historically have been considered as “others” are racial minorities in the US and especially African- American which- as I discussed- occupied the

prisons disproportionately. Mass- incarceration is linked with the history of racial discrimination and slavery in the United States. The civil rights movements were the efforts toward diminishing racial discrimination against African-Americans. However, almost six decades later, the United States is struggling with racial discrimination and disparities in prisons. Many scholars (Williams, 1987) believe that the way of freedom for blacks is crossing from the right claims and making an effort toward changes within the established structure of liberalism and its abstract rights. For example, the slavery clause in the 13th Amendment to the United States Constitution is considered as the way to facilitate the mass incarceration of African-American. This Amendment states that “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction”. However, I argue that the problem of mass incarceration will not be solved by removing this clause from the Amendment; instead, we are only underestimating this complex phenomenon. The problem cannot be solved within the framework of liberal rights and without considering all the structural conditions behind carceral states. This clause is a tiny part of the complex network of the economic rationality of punishment and in general the rationality of government.

CHAPTER FIVE CONCLUSIONS

Right Claims have always been assumed to be a mechanism for the emancipation of individuals who historically have been marginalized, excluded, and stigmatized, to rid societies of the oppressive conditions imposed upon them based on their class, gender, race, religion, and age. Rights and reforms are also supposed to limit and control the state power. Rights claims and liberal movements, also, are assumed as protection for individuals from being subjects of violence both by the state and other people. Rights claims and reforms are of importance toward the emergence and production of imprisonment, claiming to reform the inhumane corporal and harsh punishments and to create a humane punishment which is not directly applied to the body of the convicts.

However, as this study shows, rights claims and reforms are not separated from the whole agenda of the state's distribution of power not only within the judicial system but also in the whole of society. Disciplinary power, through its sophisticated techniques and mechanisms and based on the scientific knowledge and tools such as policing, psychology, and especially in rights discourse, tries to normalize individuals in order to divide individuals into two categories; normal and abnormal, on more precisely prisoners and not prisoner, madman and rational human beings etc.

This whole bureaucratic system, or as Foucault (2012) calls it "economic rationality", seeks to maximize the efficiency in both the state branches and individual's life through defining the new notion of responsibility and making everyone the active agent of his failure or success. The rationalization of the state depends on the rationality of governed, people whose self-fulfillment, and self-realization help the state to be legitimate and reach its goals.

Liberal natural rights operate in order to fulfill these political and economic tendencies of liberalism. They do so by making individuals abstract, isolated, depoliticized citizens. In sum, liberal rights try to make a homogenous society of separate individuals in which everyone has the rights regardless of their different intrinsic characteristics. And this denial promotes inequality under the law and state.

This research aims to offer a full and detailed understanding of how liberal movements and reforms, in the long run, have contributed to the increase of prisons and the development of the carceral state; by tracing rights discourse regarding incarceration, from the first case involving movements toward the production of prison as a humane alternative for corporal punishments in the eighteenth century to the more recent case such as the civil rights movements of the 1940s and early 1960s.

My research helps to trace the process of the development of liberal rights, which I argue are the essence of rationality that has brought by itself the complex and intense bureaucracy. This complex system has led to irrational consequences. Mass incarceration is one of these irrational consequences. To articulate and find the connections between rights claims, liberalism, rationality, and imprisonment, I tried to analyze genealogically the way that reforms and rights claims make the prisons increase. They not only do not make any progressive step toward emancipation, but also eventually contribute to more exclusion, marginalization, and consequently mass incarceration.

In the debate leading up to the role of liberalism and neoliberalism to mass incarceration, several scholars made arguments for or against the idea that right claims function in different

ways. Murakawa (2014) asserts that the liberal notion of race-neutral agenda and racial violence policies of law-makers contributes to the development of the carceral state. Murakawa (2014) tries to draw how the different liberal policies in the US expand the carceral state. The difference between Murakawa's study and this study is about the methodology he used and also the way I theoretically address the issue of mass incarceration. He tries to analyze specifically the social, economic, and political policies, which led to the development of prison more empirically and show how these policies directly or indirectly affected incarceration in the US. However, my study tries to give the readers a comprehensive foundation of the role of liberal ideologies-such as universal liberal rights, the new notion of responsibility, and intensified individuality-ultimately expand the carceral state. Besides, this study aims to critique these well-established notions and institutions in a genealogical though reconsidering whether the creation of the prison at the first place and after that the universal and liberal rights as a progressive step in human beings history.

Furthermore, this study has borrowed many critical ideas from the works of Brown (1995) in respect to the understanding of how rights can be paradoxical in contrast to what they are claimed to be an emancipatory force and the role of the liberal and neoliberal state on marginalizing, excluding people especially racial minorities. Brown's (1995) main concentrations are on how the sexual and gender role are defined by neoliberal legal and political power. However, much less work has been done to identify how right's paradox is bound up with the role of liberal movements in expanding the carceral states.

My research also contributes to knowledge due to its unique methodology (genealogy and the critical theory) by which I could analyze the dominant right discourses and found out how

these discourses affect the formation of prison and prison's development over time. I think finding the similarities between these two methodologies (genealogy and critical theory) is of importance. Allen (2016) did a great job to define how these two methodologies relate to each other, especially the work of Adorno and Foucault in terms of the notion of problematization and progress. However, this study tries to develop the notion of how liberalism affects the way we think and disable individuals to think critically and assume all well-established notions and institution something pre-determined and inevitable. This research wants to question this idea through genealogical and critical theory in order to show how these notions are questionable, such as rights, reforms, and progress. There are plenty of rooms for future work in these areas, especially about their theories in universality, rights, and state. This research tries to discover some of these theoretical connections.

This study has tried to diagnose the problem of mass incarceration in terms of the role that liberal rights and reforms have played and still playing in the prison expansion. The genealogical and the critical theory which has been used in the study and also the theoretical discussions which are used made me think about the alternatives which can be used instead on the universal law toward freedom, equality and in general emancipation. The following alternatives may seem not to be feasible in the era of domination of "liberal virus" (Amin, 2019), neoliberal, and capitalist society, which has affected all domains of human being's lives and all around the world. This system is assumed to be the "eternal truth," and the "truths of reason" and the best possible world that we can live with make us disable to critique the world has surrounded us. This idea has been dominated, especially after the collapse of the alternative socialist experiments in China and the Soviet Union (Amin, 2019). However, as Amin (2019) states, these ideas of liberalism are founded on the ideological and para-theoretical principles.

Having said that, it is worth to talk and think about the structural and radical transformations that some sociologists have introduced to us (Marx, 1843, Foucault, 1980a, & Arendt 2006).

One of the alternatives is argued by Marx (1843) in response to Bauer (1843) who argues that the political emancipation of Jewish would be achieved when the Christian state turn into a secular state and on the other hand Jewish peoples themselves relinquish their religiosity. Marx (1843) states that the solution is not to eradicate the religion both from the state and individual's domain, we should eradicate the historical, social condition in which religion has emerged. In fact, as long as both Jewish people and Christians do not understand what they respect and consider as religious privilege is only the different development stages on the human mind, we cannot talk about freedom and emancipation for individuals.

Using these arguments to the problem of mass- incarceration, we can say that liberal notion of rights, freedom, and equality have nothing to do with the problem in hand; These notions were the result of the specific social, economic, and political events and the different stages of human mind development that should be questioned from their beginning. The social, economic, and cultural conditions which resulted in the issue – the possibility of prisons and the necessity of liberal rights - should be eradicated in order to get rid of or devalue the notions that we assume today are valuable and progressive such as prison reforms, liberal rights.

Furthermore, the alternative justice or power, in opposition to the existing neoliberal power and criminal justice system, can help eradicate mass incarceration. However, as Foucault (1980a) states, it is right that we can have alternative power, but as long as we are going to solve the problems through courts, litigations, and in general through all the established mechanism of

state and the bourgeois ideology to archives the rights and freedom we are not practicing alternative power. In we want to practice in this way we must play according to the rules of the judicial system. So, it would be impossible to have a counter-justice as the judicial system operate as a state apparatus. The counter justice would be possible when a man in the usual case of events be able to get away from the consequences of his action such as seizing, bring him before a court, persuade a judge, and sentencing.

Arendt and Kohn (2006) argue, although it would be hard to imagine that individuals can be free without sovereignty, the freedom can be achieved when the people renounce the state. Although it would be hard to think about freedom without sovereignty in the traditional philosophy, it is as dangerous as to believe that human beings are only free if they are sovereign. The sovereignty of political bodies always has been an illusion which can be achieved only by violence and repression and trough non- political tools. Sovereignty and freedom cannot be together at the same time in the sense that when individuals want to be sovereign, they actually must to practice oppression of will. Also, as Marx (1843) states, states paly an intermediary role between individuals and their general human emancipation.

This research opens the room for future works in different areas. One of the crucial situations which needs to be studied regarding the role of liberal rights is the issue of immigrant rights. The importance of these types of studies about immigration is evident especially these days with the concentration camps all over the world from Autralia, France, and the United States, and also the recent mass shouting targeted immigrants in El Paso, Texas, and Dayton, Ohio on August 5 and 6, 2019.

The rights of immigrants are important in two ways. First, immigration itself is considered as a crime, treated by criminal law, are considered as a violation of citizens rights, and the rights of sovereignty. Second, immigrants have disproportionately occupied the prisons in the US and some other host countries like the United Kingdom (Aas & Bosworth, 2013).

The relationship between state and citizens and the way individuals delegate their rights to the sovereignty to regulate them and consequently protect them from outsiders and serve the will of people has been argued by Foucault (2003). Thus, the liberal or the neoliberal state offers the universalistic rights to abstract citizens within the national borders in response to the duty and responsibility that individuals have as citizens. In other words, individuals and state interests are considered to be intertwined and integrated. These rights, such as the right to citizenship, are exclusive in nature, try to differentiate, categorize, and hierarchize individuals and categorize them in terms of who is a citizen and who is not. Therefore, more theoretical work should be done to illustrate the paradox of rights not only regarding people who have been historically marginalized and excluded, but also the paradoxical nature of liberal rights in general and the way they try to intensify individuality, isolate and separate form from the society.

The theoretical analysis of this study also can be used to illustrate to what extent the other social movements such as environmental movements, gay movements, or feminism movements have contributed to the emancipation. The Liberal reforms like these movements and their actual consequences should be reconsidered in terms of evaluation of their claimed “progressive” steps toward freedom and equality.

Further, a genealogical study is useful in these areas in order to question the process that the well-established institutions and notions have received authority. Also, the theoretical background which has been developed in this research can be used to critique the rationality

behind these institutions like immigration rights, criminal law, policing and surveillance in borders or schools, workplaces, etc.

Finally, this study can help future work both in a methodological way- genealogical and critical theory- and theoretical analysis which has been developed through the study. I hope this research could provide even a small room toward diagnosing social issues, especially in areas that historically have been considered as progress and reform.

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