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Participatory panopticon: Thomas Mott Osborne's prison democracy

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> To breed an animal with the right to make promises—is not this the paradoxical task that nature has set itself in the case of man? Is it not the real problem regarding man?
>
> (Friedrich Nietzsche)

> You solemnly promise that you will…cheerfully obey.
>
> (Thomas Mott Osborne)

1 | INTRODUCTION[1]

Thomas Mott Osborne's early-20th-century experiment in prison democracy shows us how domination can be disguised as participation. Osborne knew a thing or two about disguise. As the mayor of Auburn, NY, he would go about his business in disguise to eavesdrop on citizens' conversations. When the Governor of New York asked him to prepare railroad reform recommendations, Osborne dressed as a "hobo" and snuck onto trains. As a cautionary measure, he had "TMO, Auburn, NY" tattooed on his arm so that he could be identified in case of an accident and he did, indeed, die in costume, in 1926 (Chamberlain, 1935; Tannenbaum, 1933).

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Osborne's most famous masquerade took place in 1913 when he voluntarily committed himself to spending a week in confinement disguised as prisoner "Tom Brown." This extraordinary move was intended to inform a reform committee he had set up with the aim of further enlightening NY's prisons. It was during his confinement that a fellow incarcerated person,[2] Jack Murphy, suggested to him a mechanism that would become the central pillar of Osborne's prison reform plan (Osborne, 1914, p. 315): granting some authority to the prisoners themselves in managing their communal day-to-day lives inside. Osborne seized on the idea. Seeing an opportunity to encourage prisoners' participation as a means of correcting them, he orchestrated a prisoners' assembly that was given responsibility for many aspects of prison life, even prison discipline.

The Mutual Welfare League Osborne initiated was meant "to promote in every way the true interests and welfare of the men[3] confined in prison … [b]y gaining for them the largest practical measure of freedom within the walls to the end that by the proper exercise of freedom within restrictions that they may exercise worthily the larger freedom of the outside world" (Minutes of the Meeting of the Delegates, December 28, 1913, Box 269, Osborne Family Papers, MSS 64, Special Collections Research Center, Syracuse University Libraries [hereafter cited as OFP]). Osborne wanted to allow prisoners to practice freedom as a way to prepare them for freedom outside the prison walls. More than that, he contended that prisoners' participation in setting their own ways of living, as part of such freedom, was the key to "correcting" them. Yet, quite how they were to exercise "worthily" the outside freedom was kept beyond the incarcerated people's reach. Counter to how political theorists usually discuss the exercise of freedom or the concept of "giving voice," giving prisoners a voice in setting their "true interests" and allowing them to "exercise freedom within restrictions" were Osborne's mechanisms of domination. Through the League, he sought to use democratic methods such as participation in an assembly and committees to attain undemocratic aims: to make the incarcerated people change who they were ("correct" them) according to norms they could never affect. Osborne enabled the prisoners to contest and influence even his own conceptualizations (e.g., of what might count as "good conduct") and yet, counterintuitively, his mechanism sought to exploit such progressive participatory practices to form a disciplined subject.

Osborne's reform plans ultimately did not succeed but his use of participation for the purpose of domination provides an insightful example of the dangers of a *circumscribed* participation.[4] This highly confined form of agency foreclosed the possibility of what Michel Foucault discussed as a breaching (*franchissement*) of constraints, limitations, and boundaries that are imposed on us yet are presented as universal, necessary, or obligatory (Foucault, 1997b, pp. 315–319). The sweeping changes the U.S. carceral system underwent in the 20th century—including the changes in the numbers and race of those incarcerated—make it clear that the insight Osborne's vision offers does not reflect the vast majority of contemporary U.S. prison policies, which rarely rely on participatory practices (Berk, 2018).[5] Yet, looking at carceral participatory practices is illuminating, in that prisons make *visible* power relations that are obscured in political contexts more traditionally conceived as "free," such as ballots or townhall meetings. As *conspicuous* mechanisms of social control, prisons help identify patterns of social control outside of prison walls too. Osborne's "piece of social machinery"—which I dub *the participatory panopticon*—offers the contemporary reader a glimpse into the use of participation as a means of subject formation over which the subjects themselves have little control (Osborne, 1916, p. 186).

[2] When discussing Osborne's texts, I refer to the incarcerated people he mentions as "prisoners" and intentionally avoid the derogatory term "inmate." When presenting my own analyses, I use "incarcerated people" to remind us that these people's identities are not reducible to the fact that they were incarcerated.

[3] While Auburn Prison only held men, adjacent was a smaller women's prison where Madeleine Doty, a fellow member of Osborne's reform committee, entered into voluntary confinement (Doty, 1916).

[4] Contemporary U.S. prisons "very" rarely implement participatory methods. Within prison management literatures, as well as current penal practice, advocates for incarcerated people's participation, such as prison officer J.E. Baker (who views "advisory councils" as beneficial for prison administration), have little support in comparison to those, such as John DiIulio, who warn against incarcerated people's participation as a destabilizing element (Baker, 1974, p. 244; DiIulio, 1990, pp. 38–40). For a recent analysis of the advantages of incarcerated people's participation and some contemporary examples, see Lerman and Weaver (2016).

[5] The important question of race and incarceration, and its relation to waning calls for prison democracy, is beyond the scope of this article. However, the fact that 10% of the people incarcerated at Auburn in Osborne's time were African American while, today, the *majority* of those incarcerated there are African American is, without doubt, deeply connected to the demise of participatory experiments in American prisons (Correctional Association of NY, 2011, p. 4).

While literatures of democratic theory continue to address the dangers of domination, such dangers are usually located in *exclusionary* practices. Even democratic theorists, such as Carole Pateman, who focus on "power structures, subordination, and freedom" (Pateman, 2010, p. 246) underplay the misuses of participation. From her classical *Participation and Democratic Theory* (1970) to her 2011 American Political Science Association presidential address, Pateman advocates expanding participation from the traditional practices of voting and into the factory, the family, the nursery, or the school. Her proposal is based on the grounds of participation's ostensible immediate benefits and long-term effects as generating an "'active,' public-spirited type of character" (Pateman, 1970, p. 29; Pateman, 2012). Yet, the troubling picture that emerges from Osborne's prison democracy demands a more nuanced understanding of participation that inquires into the nature of "action" therein. Note that Osborne's reforms sought to "correct" the prisoners through norms placed *forever* outside of their reach. This alone should point our attention to possible undesirable results of participatory practices: in short, they alert us to how predetermined norms that structure participation serve as tools for domination.

Foucault's conceptualization of productive power is key to questioning how a person's actions, even if participatory, can be used to extend control over them. *Discipline and Punish* (1977) differentiates between subjection (*sujétion*) as the mere use of force versus subjectification (*assujettissement*) as subject formation that relies on the subject's action. For this reason, *Discipline and Punish* is central to the proposal presented here to reevaluate participatory practices. Yet, to achieve this goal also requires revisiting Foucault's work. Despite the framing of *Discipline and Punish* around principles of productive power, the book's periodization (roughly 1790–1830) leads it to focus on penological theories that left little room for incarcerated people's actions or interrelations. If Foucault suggests that we utilize Bentham's panopticon design to locate "panopticism" as a "generalizable model of functioning" (Foucault, 1977, p. 205), then reading Osborne's participatory panopticon reveals even more sophisticated control mechanisms. Relying on active participation and relations with others, Osborne's reforms offer an important addition to Foucault's analysis and thereby assist political theorists in questioning the relationship between participation and domination. Furthermore, there is a pressing need to understand the underlying premises of Osborne's innovation at a time when more and more participatory practices—for instance, in the 21st-century technologies of social media—are exposed as exploiting our *actions* and *relations* to increase domination (the Cambridge Analytica case being one obvious example). Thus, the focus in *Discipline and Punish* on limitation and isolation diverts scholarship from clearly delineating the alarming and ever-relevant notion of subjectification based on active and collective participation—or, in other words, the participatory panopticon.

It is not my purpose here to describe a "better" prison or to lay a theoretical foundation for a truly liberatory practice of subject formation. It certainly is not to equate participation and domination. Instead, this article turns to Osborne's participatory panopticon to explore the dangers masked by models of subject formation that further entrench hierarchies under a liberatory guise. Far from discouraging participatory action, Osborne's clarity in illuminating the risks of political action in concert invigorates the search for, and insistence on, participatory practices. This tour of Osborne's laboratory invites political theorists to assess whether or not the structure of participation is circumscribed, such that only those actions and relations that sit within certain predetermined limits, norms, or conceptualizations are permitted. Certainly, Osborne's experiment suggests, even if only as a first step, that a more meaningful, or "full," participation could breach any such circumscriptions.

2 | THOMAS MOTT OSBORNE'S PARTICIPATORY PANOPTICON

The *enfant terrible* of progressive thought and of a town whose land and sustenance derive from settler colonialism, white supremacy, and a famous prison, Osborne was born in Auburn in 1859. The most conspicuous part of the town's skyline, and of the young Osborne's nightmares, was Auburn Prison. This institution gave its name to the Auburn System of imprisonment, which, in the early-19th century, was considered an innovative contribution to the reform mechanism of the older Philadelphia System. Regardless of how ingenious Auburn Prison was considered in the 19th

century, Osborne remained haunted by the subjugated faces he saw during a childhood visit and, as a grown man, set about changing this reality. His family, which enjoyed considerable wealth, was no stranger to such progressive political causes. Osborne's grandmother was Martha Coffin Wright, a noted suffragist and abolitionist, who assisted Harriet Tubman's "underground railroad." Osborne dreamed of a new technology of rehabilitation that would transform prisoners' subjection to harsh treatment by allowing them a measured and supervised degree of freedom. Continuing his progressive family's trajectory, Osborne's vision for the 20th century was to democratize the prison: to correct the prisoners via their active participation in prison management and their very relations with each other. Between 1913 and 1926, it was this vision that he endeavored to realize with the Committee of Prison Reform, his leadership of Auburn Prison's Mutual Welfare League, and as warden, first, of Sing Sing Prison and, later, of the Naval Prison at Portsmouth.

While its goal was to step further away from the panopticon-inspired design of Auburn Prison, Osborne's new mechanism nevertheless remained committed to Bentham's aspirations. The League, as presented in Osborne's (1914, 1916, 1924) three published books and countless archival materials,[6] shares with Bentham's inspection house the goal of controlling individuals with an efficient mechanism. Yet, Osborne's mechanism also mirrors the shift from 19th-century utilitarian efficiency to the early-20th-century Taylorist efficiency that stressed workers' motivation over external supervision. At the same time, Osborne gave this shift to internalized motivation a political twist. "The fundamental principle of the League," he stipulated, "is the same that underlies all true education, which forms the very foundation of the political and social institutions of our democratic republic – the principle of *individual responsibility for the common welfare*" (emphasis in original, Osborne, 1924, p. 96). By "responsibility," Osborne meant granting the prisoners the ability to take circumscribed control both over their individual lives and over the management of the prison (McLennan, 2008).

Set in a context of extremely uneven power relations, Osborne's scheme demonstrates how participation can be used to produce malleable subjects while simultaneously calling them "citizens." In its first instantiation at Auburn Prison in 1915, membership in the League was open to all prisoners, and all but 17 of the 1400 chose to join it. One factor that explains the high response rate, and also shows that subject formation is rarely independent of the use of force, is that members of the League were allowed to participate in a weekly cultural event on Sundays, whereas nonmembers remained confined to their solitary cells. While force was not the main modality of power at play here, it consistently lurks in the shadows of subjectification. Osborne's aspirations, however, were to encourage the prisoners to take part in the League's activity of their own volition. According to Osborne (1916), "this was a genuine system of prison discipline" and, simultaneously, a vital "prison democracy" (p. 167). The League incorporated both deliberative and participatory aspects: its governing body consisted of elected delegates, who consulted the members of their respective shops—their constituencies—on what goals to pursue. Additionally, all the members of the League could make their voices heard at the weekly assembly.

According to Osborne (1924), the "system of [prisoner] responsibility" (p. 43) presented a profound change from the previous systems of discipline and their attempt "to break down the man's nerves and force him into subjection" (Prison Efficiency Lecture, November 1915, p. 11, Box 230, OFP). Older systems—Bentham's panopticon most of all—viewed horizontal communication between prisoners and any transfer of authority to them as a threat both to the goal of reform and to prison order. Osborne's system, by contrast, understood the prisoners' assembly as precisely the site for true correction to take place. Osborne's amendment—the process of encouraging a prisoner to re-associate himself with the truth put forth by society—is much harder to accomplish if the prisoner's mind is "left to commune exclusively with its own thoughts, in solitude" (Hall, 1829, cited in Osborne, 1916, p. 90).

Bentham attributes the idea of the panopticon to a visit his brother took to the Parisian *École Militaire* where cadets' beds were separated by partitions to impede sexual liaisons between them (Bentham, 1843 [1791], vol. 4, p. 63; Foucault, 1977, p. 172). While sex between incarcerated people—an important aspect in Auburn Prison's history and in

[6] Located at Syracuse University's Special Collections Research Center, the Osborne Family Papers collection holds more than 100,000 documents left by Osborne.

Osborne's motives for prison reform—lies beyond the scope of this article, it does raise one important point. Osborne's approach, in contrast to Bentham's panopticon, assumes that a more effective way to ensure "morality" between prisoners than to physically separate them is to utilize their own "public opinion" against such acts and their active participation in preventing them. The same Jack Murphy who had initially suggested to Osborne the idea of transferring some of the prison management authority to the prisoners, now a prisoner-delegate, had this to say on the matter: "I propose to stop any fight that occurs in my presence, and also to interrupt any act of immorality that comes to my notice, and that not any too gently" (Speech to Weave Shop, Feb. 18, 1914, p. 2, Box 270, OFP). Osborne's reliance on prisoners' actions—evident in the active role prisoners played in the committees—and his use of relations between prisoners—evident in the imposition of societal values by the prisoners themselves—points our attention to possible dangers in participatory action and horizontal social relations. For Osborne, his novel contribution was not in the creation of a system lacking in guardianship but rather one that turned each and every prisoner into "his brother's keeper" (Salvaging Sing Sing, p. 254, Box 359, OFP). Osborne's "prison democracy," in which people were granted authority without the capacity to challenge the overarching structures shaping their participation, invites democratic theorists to look beyond the impetus to expand the scope of democracy to new participants and to scrutinize the content of that democratic expansion.

3 | CIRCUMSCRIBED PARTICIPATION

Democratic theorists have long argued that participatory democracy can never be separated from domination, and, yet, the connections between participation and domination are more commonly examined in terms of inclusion or exclusion. Indeed, analyses of how a demos dominates the excluded or only partially included, such as slaves, women, people with disabilities, communities of color, or various intersections between these positions, are vital to our understanding of democracy (Shklar, 1991; Sparks, 1997; Young, 2002). In a more recent development, scholars have also begun to stress the additional value of locating domination in contexts of inclusion and participation (Kramer, 2017; Olson, 2004; Temin, 2018).

Carole Pateman's texts are central to the following analysis not only because of the prominent position her work holds in the study of participatory democracy or due to her well-known call to expand the study of participation beyond parliaments and into more quotidian institutions. They are also critical to the present study because—unlike participatory democrats such as Jane Mansbridge—Pateman's work focuses on power imbalances (as her main example of the factory demands) and demonstrates an awareness of the importance of differentiating between types of participation.[7] This renders Pateman's texts well-suited to the discussion of a neglected site in democratic theory—the prison—and its potential contribution to our understanding of how participation can play a role in enhancing domination (Harcourt, 2014). Moreover, Pateman's work marvelously demonstrates her awareness of how even realities that some might understand as "liberatory" are, in fact, not entirely so. She writes, for example, that, "although the context has changed, the social and economic legacy of old forms of women's subordination and racial superiority linger on, and newer forms have emerged" (Pateman & Mills, 2007, p. 154). In her later works, Pateman discusses the results of the feminist movement and anticolonial struggles to examine how, even in such allegedly more "equal" or "self-governing" realities, one should nevertheless analyze the persistence of "patterns of power" (Pateman & Mills, 2007, p. 154). In other words, Pateman challenges political theorists to search for signs of domination even in the wake of liberation movements. Pateman's challenge to identify persistent patterns of power in such movements can also be extended to an inquiry into conceptions of participation.

Osborne's early-20th-century model for carceral participation provides an excellent basis for this additional step in examining larger questions of subject formation and participation. Turning to Osborne invites political theorists to

[7] Mansbridge's (1980) discussion of townhall meetings includes details about the different subject positions of the participants—for example, the difference in wealth between the town's trailer dwellers and more affluent residents—and yet these differences are not the center of her analysis (pp. 244–245).

build on Pateman's suspicion regarding the re-entrenching of hierarchies and update her gradations of participation in light of the half-century that has passed since the publication of *Participation and Democratic Theory* (1970). Pateman introduces her gradations by arguing that workplace participation is likely to improve workers' well-being, even though not every form of participation has this effect. Pateman defines cases where a supervisor has already reached certain decisions even before they seek workers' input as *pseudo-participation*. However, Pateman is highly encouraging of what she calls *partial participation*—when workers can influence management's decisions even when lacking equal standing—or *full participation*—when "groups of workers are largely self-disciplining and a considerable transformation of the authority structure of the enterprise takes place, at least at the level of the everyday work process" (Pateman, 1970, p. 59). This gradation of forms of participation, however, can only go so far, and this is where Osborne's laboratory becomes very useful. It alerts us that to advance Pateman's own suspicion of persistent patterns of power requires us to take the additional step of questioning situations of *partial* or *full participation*.

Pateman's work serves to clarify the main components of the participatory panopticon. On this basis, my proposed inquiry focuses on scenarios in which, even if participants can influence or reverse decisions or even hold semi-autonomous spaces, these arrangements might nevertheless be used to acclimatize the participants to norms they could never affect. Osborne's Mutual Welfare League clearly shows how even "self-discipline" and "the transformation of authority"—the components of Pateman's definition of *full participation*—can, in some cases, become tools of domination. For example, Osborne grants the members of the League the right to vote for their shop-floor representatives precisely so that the League can serve as a Janus-faced mechanism that transfers some measure of authority while legitimizing the League as a disciplining force. Although Pateman's answer to such phenomena is that participation is perspective based and that, therefore, one could be a full and active participant on the shop-floor and only a pseudo-participant in management already clears some ground, Osborne's model provides us with a deeper understanding. His participatory panopticon allows us to evaluate the context in which "shop-floor" participation takes place. Full participation, in this instance, ensures active buy-in to larger structures of domination; or, in Osborne's words, it increases the chances that the prisoner will "*cheerfully* obey" or, at the very least, obey even if reluctantly so (Osborne, 1916, p. 165).

Osborne's experiment with prison democracy genuinely meets the criteria that Pateman sets for participatory practices and therefore demands further gradations of the concept of participation. The core of Pateman's (1979) argument is that, in contrast to the liberal practice of voting that is merely a "promise to obey" (p. 19), participation allows the citizen to retain the right to make political decisions. For Pateman, participatory democracy invites citizens to move away from the flawed assumption of "property-in-the-person" (that can then be delegated to another) and instead "to build and maintain their common undertakings" (Pateman, 1985, p. 193). She adds that "citizens collectively must create their political obligation and political authority through participatory voting in a democratic community" (Pateman, 1979, p. 174). Pateman's understanding, in contrast to the assumptions of liberal political theories, that "citizens" are never completely free, enables her to extend the participatory logic into hierarchical settings such as the factory.

Osborne's harnessing of mechanisms that enable "citizens" to collectively create their political obligation and political authority through participatory voting in a democratic community provides a new vantage point that enriches the participatory argument. For example, members of the League could set their own code of "good conduct" and set the membership threshold for the League (even when Osborne initially had different ideas, as I discuss later). This is precisely the heart of Pateman's schema for a desirable participatory democracy: people that "act collectively together to decide on and implement the political good of their community" (Pateman, 1975, p. 464). To political theorists that would subscribe to Pateman's contention that citizens should, indeed, have such influence, Osborne's example strengthens a nuance. His participatory panopticon not only suggests a move toward action and collectivity but also provides an opportunity to examine whether such actions and collectivities take place within a larger fixed structure. In other words, to exercise participation beyond domination requires us to question whether norms are placed beyond the participants' reach.

Osborne's texts are an invitation to extend Pateman's participatory arguments by differentiating between circumscribed participation—that is, an "active" and "collective" participation that nevertheless takes place within norms that

participants could never affect—and more far-reaching forms of participation. Pateman's breaking-down of participation into different desirable components helps underscore Osborne's specific contribution. In Pateman's articulation, "the political sphere within a participatory democracy … is brought into being *whenever* citizens gather together to make political decisions" (my emphasis, Pateman, 1975, p. 464). This participatory schema assumes that the very act of gathering, premised on horizontal social relations, coupled with the decision-making process—an active component that requires some authority—automatically creates a desirable political sphere. A critique of Osborne's participatory panopticon—where even conditions of acting with others and wielding authority are susceptible to exploitation—takes this formulation one step forward. This appraisal demands that scholars reach beyond the components of collectivity and action to question the *context* of these horizontal social relationships and the *quality* of action that characterizes them. Osborne's efforts demonstrate that, when participants work within untouchable conceptualizations, practices of horizontal social relations and the transferring of authority, although well-intentioned, can bolster further domination. Consequently, we can derive from Osborne's texts the following Lydian stone for assessing participation: limits imposed on participation that disguise themselves as "natural" alert us to the possibility that participatory action might constitute yet another mechanism of control.

Osborne's mechanism of harnessing prisoners' limited freedom introduces degrees of variation between subjection and freedom that can help political theorists to better analyze subjectification. Following and developing Patemanian logic requires an adaptation of Pateman's frames of "opposition between autonomy and subjection" or "distinction between freedom and subjection" that considers the gradations between these two positions (Pateman, 1988, pp. 66, 232). Osborne argues that society can only correct prisoners by allowing them to practice a circumscribed freedom. His logic is that people denied all freedom while incarcerated will soon turn astray once their prison-term ends and they can freely act and form relationships beyond the watchful eye of the warden. For true correction to take place, Osborne contends, prisoners must enjoy a measured amount of freedom with which to conduct themselves and undergo a training process to ensure that they use this limited freedom properly (Osborne, 1916, p. 153). Osborne's texts thus breathe life into the unexpected reverberations between Pateman and Foucault. Pateman's insistence that "'control' and 'participation' do not represent alternatives, rather there can be no control without participation" resonates beautifully with the Foucauldian adage that "freedom is the ontological condition of ethics," both thinkers understanding how, without the subject's ability to act, there can be no subjectification (Foucault, 1997a, p. 284; Pateman, 1970, p. 71).

Osborne further demonstrates the dangers that lie in a dichotomous apprehension of subjection and freedom: it is his either/or conceptualization of the two that allows him to give prisoners the false choice between them. For Osborne, his system of utilizing the prisoners' actions is the only possible alternative to the old system of subjection. For example, when he attempted to establish a prisoners' court that would hold prisoners responsible for infractions of rules, some prisoners expressed reservations about punishing each other. Osborne's reply presented them with the following alternative: "You are either going to be ruled by arbitrary power, or else you are going to rule yourself and assist those whom you select. In other words, are you going to be held as slaves or are you going to be treated as men? You must take the responsibility of men and one of these responsibilities consists in seeing that the rest of you … behave" (Minutes of the Meeting of the Committee of Twelve, December 30, 1913, p. 6, Box 269, OFP). Thus, Osborne shows us how a dichotomous understanding of subjection and freedom can actually serve domination: the call for prisoners' action—even under the conditions of self-discipline and transferring of authority that Pateman defines as *full participation*—was meant to mold them to standards of conduct they had no say in shaping. Undoubtedly, incarcerated people do gain certain freedoms when they move from a modality of subjection to one of subjectification. However, these freedoms (e.g., the freedom to punish each other) and the prisoners' active participation are precisely the engine of Osborne's correction.

Osborne's encouragement of incarcerated people's collective action also opens up a critique of participation that goes beyond what previous analyses of the dangers of participation—such as those by Barbara Cruikshank—allow. Cruikshank argues that welfare-related governmental practices of "empowerment" produce recipients in ways that both enable and constrain the possibilities of citizenship (Cruikshank, 1999, pp. 67–69). Yet, while Cruikshank demonstrates how action can strengthen domination, she focuses on relatively *thin* activities such as filling-out applications

for welfare, food stamps, or general assistance (Cruikshank, 1999, p. 119). In part due to what Cruikshank defines as the choice made by people living in poverty to avoid participation in the more active segments of the War on Poverty (such as Community Action Programs), she focuses on practices that Pateman would characterize as no more than *pseudo-participation* (Cruikshank, 1999, pp. 72–76). Consequently, Cruikshank's analysis does not enable an assessment of participation, as the practices within the cases she examines are far from what Pateman defines as "full participation." The nature of the participation in Osborne's vision is different. It requires a scrutiny more alert to the dangers of active and interrelational participation. In this regard, Osborne's work prompts 21st-century readers to revisit the model of subjectification that inspires critiques of participation (such as Cruikshank's) and that is crucial for envisioning, alongside Pateman, what a more profound kind of participation might look like: Foucault's *Discipline and Punish*.

4 | SUBJECTIFICATION REVISITED

The distinction Foucault draws between subjection and subjectification problematizes the understanding of collective action as always already a practice of freedom, and yet his main text on subjectification, *Discipline and Punish*, underemphasizes the importance of incarcerated people's actions and interrelations.[8] Foucault claims that, to understand relations of power, scholars should scrutinize the actions that such relations encourage more closely than those they prevent. Nevertheless, some critiques of Foucault's work, and specifically *Discipline and Punish*, focus on repression rather than production. Regardless of how many times (including in the United States) Foucault gave talks provocatively entitled along the lines of "we are not repressed [*réprimés*]" (Davidson, 2016, p. 56), even an astute reader such as Sheldon Wolin insists that "in Foucault's political world we are oppressed" (Wolin, 1988, p. 194). Similarly, Nancy Fraser finds Foucault to claim that "in the early modern period, closed disciplinary institutions like prisons perfected a variety of mechanisms for the fabrication and subjugation of individuals as epistemic objects and as targets of power" (Fraser, 1992, p. 228). But Foucault clearly states that individuals are *not* targets of power but vehicles of power relations, and not only objects of subjugation but subjects of subjectification. Nevertheless, the focus in *Discipline and Punish* on coercive mechanisms contributes to the continued misunderstanding of Foucault's emphasis, even in the carceral context, on the active element in subject formation and obscures its usefulness for reassessing participatory theories.

This section of the article will, first, clarify the difference between subjection and subjectification. It will then demonstrate the additional contribution that an analysis of active and interrelational components makes to scholarly understanding of contemporary (as opposed to 19th-century) modalities of power.

To this day, many readers still miss Foucault's differentiation between subjection (*sujétion*) and subjectification (*assujettissement*). Subjection describes a situation of force, strict coercion, and violence that attributes little significance to the subject's agency (e.g., slavery).[9] Subjectification, on the other hand, relies on the subject's agency, ability to make choices, and relative freedom—although constricted—as the means for transformation. According to Foucault, "if [a subject] were completely at the other's disposal and became his thing, an object on which he could wreak boundless and limitless violence, there wouldn't be any relation of power" (Foucault, 1997a, p. 292). In other words, in such a scenario, only a dynamic of coercion is in operation; and, therefore, with no choice to act otherwise, the subject cannot

[8] A growing number of political theorists use Foucault's analyses of the prison to reevaluate democratic practices. Andrew Dilts analyzes the relationship between the Lockean figure of the thief and the modern political subject *qua* member to propose that to truly democratize society means to unlearn this relationship. Nancy Luxon demonstrates how Foucault's late lectures and the study of *parrēsia* rework the "political and epistemological impasses of *Discipline*." For Bernard Harcourt, Foucault emphasizes not only the prison as an institution but also truth-forms that permeate the whole of society. Robert Nichols examines Foucault's shifting attention: from a focus on subjects being conducted, to the possibility of conducting oneself. Thus, these political theorists all examine the possibility of self-fashioning in relation to the carceral construction of subjectivity both inside and outside prisons. I follow this line of inquiry in delineating the utility of Foucault's concept of subjectification for understanding democratic practices as well as its inadequacies for the contemporary moment (Dilts, 2012, p. 75; Harcourt, 2015, p. 267; Luxon, 2013, p. 106; Nichols, 2014).

[9] For a discussion of the roles that subjectivity nevertheless plays in relations of slavery, based on the possibility of *marronage*, see Roberts (2015).

be transformed. It is precisely this choice that enables the fabrication of subjects. Subjection, then, as a strictly coercive mechanism, offers only a foil for Foucault to describe his interest in the other end of the continuum between coercion and action. But, while *Discipline and Punish* distinguishes between *sujétion* and *assujettissement*, that distinction is often obscured by translations that register both as "subjection."[10] Foucault uses the word *sujétion* only twice in the entire book to describe a complementary attribute of control that accompanies the increasing of abilities:

> The historical moment of the disciplines [in contrast to slavery, domestic servitude, and vassalage – S.G.] was the moment when an art of the human body was born, which was directed not only at the growth of its skills, nor at the intensification of its subjection [*sujétion*], but at the formation of a relation that in the mechanism itself makes it more obedient as it becomes more useful … Discipline increases the forces of the body (in economic terms of utility) and diminishes these same forces (in political terms of obedience). In short, it dissociates power from the body; on the one hand, it turns it into an 'aptitude,' a 'capacity,' which it seeks to increase; on the other hand, it reverses the course of the energy, the power that might result from it, and turns it into a relation of strict subjection [*sujétion*]
>
> (Foucault, 1977, p. 138)

Subjection is thus only mentioned in *Discipline and Punish* as a tool to accompany the productive aspects of subjectification rather than as an independent mechanism. Precisely because subjection is a situation of strict coercion, it is of less interest to Foucault.[11] In the carceral context, Foucault's use of subjectification makes it clear that the modern art of correction unfolds through the utilization of the incarcerated person's actions and not, as Wolin suggests, on an incarcerated person "without choice" (Foucault, 1988, p. 193). An incarcerated person with no choice whatsoever cannot take part in subjectification. In contrast, efforts to accustom the incarcerated person to a routine schedule or to put them to work are meant to discipline the body by use of its own operation (Foucault, 1977, p. 224). Hence, our actions—possibly, even participatory ones—can be used against us. Foucault's differentiation between subjectification and subjection thus assists in unsettling claims that every movement away from subjection leads one closer to freedom. Notwithstanding, *Discipline and Punish*'s analysis of subjectification through technologies of limitation and isolation is too close to the very description of power that Foucault argues against ("subjection"). The focus of the book itself thus adds to the longstanding confusion surrounding Foucault's account of productive power and also attenuates the applicability of Foucault's ideas to the 21st century.

Bentham's panopticon plays a central role in the new disciplinary array that Foucault describes, but it also reveals its shortcomings for analyses of productive modalities of power (Foucault, 2000, p. 58). First, the inspection-house inhabitant's action is extremely restricted and, obviously, no transfer of authority to the inhabitant takes place. Foucault contributes to our understanding of power as productive with the following articulation: "We must cease once and for all to describe the effects of power in negative terms: it 'excludes', it 'represses', it 'censors', it 'abstracts', it 'masks', it 'conceals'. In fact, power produces; it produces reality; it produces domains of objects and rituals of truth" (Foucault, 1977, p. 194). However, as his next sentence makes clear, Foucault's analysis of the fabrication of the individual focuses not on the incarcerated person's actions but on the actions of those who acquire knowledge on the incarcerated person: "The individual and the knowledge that may be gained of him belong to this production." While incarcerated people's actions matter, they only matter in a very narrow sense, in terms of the knowledge that "the sciences, analyses or practices employing the root 'psycho-'" produced about them for the purposes of correction (Fou-

[10] For a discussion of the inadequate translation of both *sujétion* and *assujettissement* as "subjection," see Milchman and Rosenberg (2007) and Chambers (2013, pp. 98–101). Even the lexicon of Foucault's concepts mistranslates "subjectification" back to French as *subjectivation* instead of *assujettissement*. Foucault only started to use the French word *subjectivation* in 1978, no earlier (May, 2014, p. 496).

[11] At the same time, current studies of Foucault's modalities of power tend to focus on the difference between subjectification and his later concept of subjectivation (*subjectivation*) and miss the difference between subjection (*sujétion*) and subjectification (*assujettissement*). See, for example, Cremonesi et al. (2016).

cault, 1977, p. 193). For the most part, the incarcerated person remains "the object of information" (Foucault, 1977, p. 200). The question of what role incarcerated people's actions—for example, in an assembly or committee—may play in a process of subjectification remains unanswered.

Second, the inspection-house inhabitants are completely isolated from one another. Foucault argues that, during the second half of the 18th century, technologies of punishment moved away from a "public, collective model" toward the solitary model (Foucault, 1977, p. 131). However, in practice, only the very initial experiments of the Philadelphia System of the early-19th century attempted to isolate all incarcerated people. Very soon, the failure of these experiments led to various models based on incarcerating people *together*, and the model of isolation was mostly abandoned by the mid-19th century. Philadelphia's Eastern State Penitentiary (also known as Cherry Hill, built in 1829) was designed according to Bentham's plan. When it became clear that complete isolation badly affected the incarcerated people's mental health, the Philadelphia System was replaced by the Auburn System where the incarcerated people would work in groups under a regime of silence. Yet, for Foucault, the prison achieved its goals through "coercive individualization, by the termination of any relation that is not supervised by authority or arranged according to hierarchy" (Foucault, 1977, p. 239). Indeed, isolation and individualization were part of the panopticon's design: "[the cells] are like so many cages, so many small theaters, in which each actor is alone, perfectly individualized and constantly visible" (Foucault, 1977, p. 200) but few prisons rely solely on such isolation. *Discipline and Punish* describes a power–knowledge nexus organized around the individualizing procedures of punishment and leaves out the additional role that relations *between* incarcerated people play in processes of correction. Consequently, Foucault's chosen periodization and his insistence on analyzing technologies of isolation deprive contemporary readers of a necessary suspicion toward a society of control that builds increasingly on interrelations between subjects.

In the latter years of his life, Foucault took an interest in more active forms of subject formation that do give a prominent place to relations with others. In 1982, he wrote: "perhaps I've insisted too much on the technology of domination and power. I am more and more interested in *the interaction between oneself and others* and in the technologies of individual domination, the history of how an individual acts upon himself, in the technology of self" (my emphasis, Foucault, 1988, p. 19). Foucault's study of technologies of the self thus suggests attention to areas that his earlier work, and specifically *Discipline and Punish*, neglected: namely, relations *between oneself and others*. However, he never returned to the prison to study it as a site where relations between incarcerated people serve as a means for the construction of subjectivity.

Foucault makes it clear that his interest in the period of the birth of the prison is genealogical. His analysis' underlying assumption is that the panopticon tells us something about our own society. However, if ours is a society in which horizontal communication between persons and active participation is not only possible but constantly accelerated, Foucault's suspicion toward panopticism requires an expansion.[12] Indeed, this is precisely the difference between Osborne, with his early-20th-century model, and the prison reformers Foucault considers: if, in Bentham's panopticon, no horizontal social relations exist among inhabitants and their actions are extremely restrained, then, for Osborne, such relations and proper action are the crux of correction. First, Osborne turned to the relationships between prisoners as a tool of control. For example, when a prisoner named George remained unaffected by various punishments for his misbehavior, Osborne conceived a new plan. He sent for George and asked him to name his friend in prison. Osborne then sent for the friend, Jones, and told both of them that, henceforth, it would be Jones who would be punished for George's transgressions. Osborne then spoke with Jones separately and told him that, in fact, he would not punish him but *would* seek his help in changing George's behavior. While George remained a disturbance to prison discipline, his misbehavior noticeably diminished: "He did for his friend what he would not do for anybody else and the result was that George began to straighten around" (Democracy in Prison Organization, 1920, pp. 23–24, Box 230, OFP). Such was the principle that guided Osborne's system: the instrumentalization of relations between prisoners, such as friendship, as a means of subject formation.

[12] Although Foucault's 1972 seminar mostly deals with the 17th century, his notes for the seminar's introduction make it clear that the systems of moral differentiation he discusses are alive and well: "No need for an introduction, it's enough to open one's eyes" (adjusted translation, Foucault, 2019, p. 1).

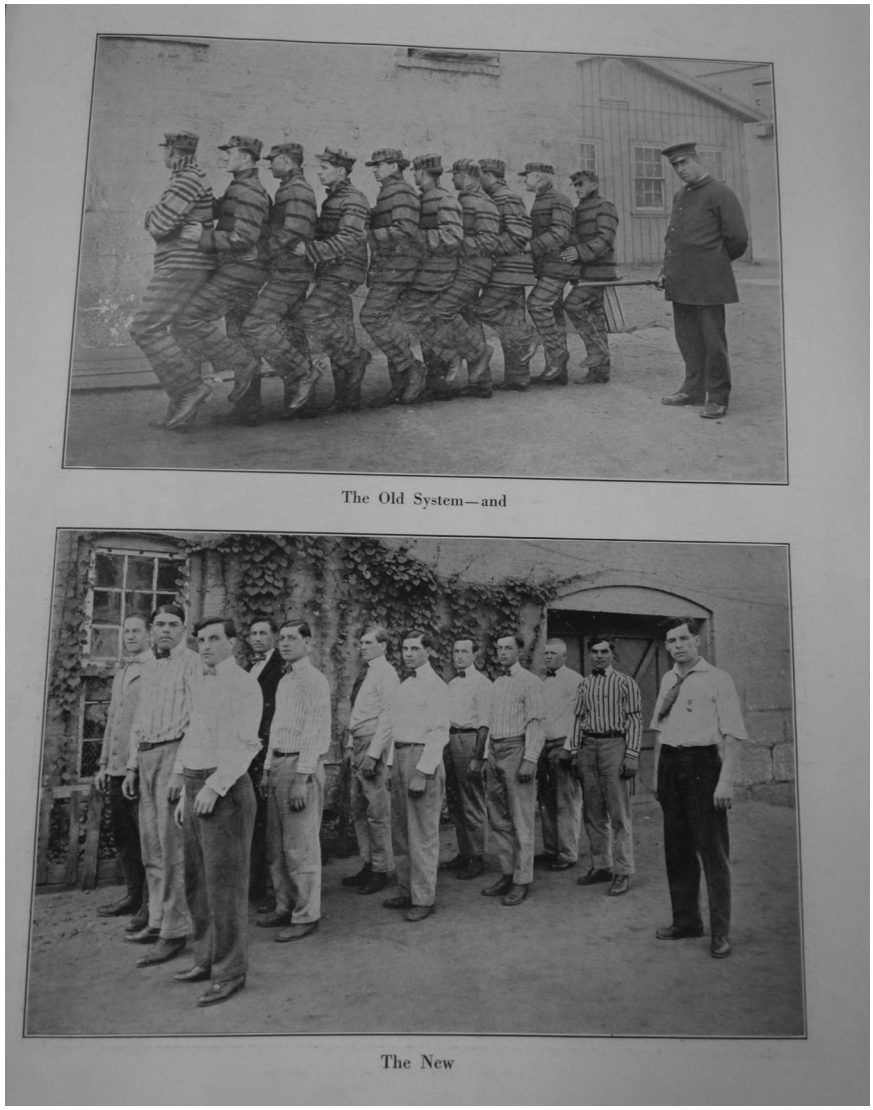

FIGURE 1 Welfare League Association publication, Auburn Prison, 1922, Box 269, OFP

Second, Osborne's texts also reveal that subjectification is more effective when restrictions delineate responsibilities and the actions that such responsibilities require. In *Discipline and Punish*, while the prison reformers of 1790–1830 distanced themselves from the cruelty of earlier methods of punishment, they still relied heavily on the use of strict coercive mechanisms that left very little room for people's action. Foucault included several illustrations in *Discipline and Punish* that manifest this logic, one of which discusses the education of children and demonstrates the idea of "social orthopedics": a crooked tree that is straightened-out with the use of a rope that ties it in several tight loops to an upright pole (Foucault, 1977, p. 169). Foucault's focus on the mechanism that so narrowly delimits the person's actions as *the* model of subjectification based on their actions contributes to the misunderstanding of his argument. Osborne, on the other hand, demonstrates a participatory mechanism that gives the incarcerated person a substantially different quality of action. Rather than emphasize the constraint of the rope, Osborne's imagery (see Figure 1) stresses the subject's own actions: "reform of an institution or an individual," he insists, "must come from within" (Prison Efficiency Lecture, November 1915, p. 19, Box 230, OFP).

In contrast to straightening-out a tree using confining coercion, Osborne states:

> Give the child healthy surroundings, freedom to develop as Nature intends him to develop, and you will find that his whole being springs upwards as inevitably as the tree rises to the light. Remove all unnatural restrictions – give him affection, sympathy, love, a wholesome atmosphere and surroundings – and you will find that like the tree he will grow straight and true, of fair proportion, and yield good fruit.
>
> (Democracy and Progress, p. 5, Box 230, OFP)

Osborne's attack on earlier carceral mechanisms for their inefficacy is worth quoting as well:

> No one can teach a man how to exert his citizenship – he must learn that for himself. I have often compared it to the ways in which a tree grows. You cannot reform a man any more than you can make a tree grow. If you try and make a tree grow you merely pull it up by the root. The only thing you can do is to create favorable conditions and the tree grows. It is exactly the same way with a human-being. Create conditions, and the child or the man grows.
>
> (Democracy in Prison Organization, 1920, p. 13, Box 230, OFP)

In contrast to the earlier coercive and severely restrictive mechanisms, Osborne argues that the art of correction should concentrate on creating conditions that would utilize the subject's actions. In lamenting the coercive traits of the Auburn System (the *least* coercive mechanism that *Discipline and Punish* would later discuss) as traits that regrettably make "the path of duty a narrow one carefully walled in" (Osborne, 1916, p. 109), Osborne expands our understanding of how subjectification operates.

Osborne supplies us with an example of the carceral technology of the self that is absent from *Discipline and Punish* and thus shows how even active participation with others can be used to form subjects. His deliberate use of political participation through the partial transfer of authority—creating conditions in which the incarcerated people would discipline themselves precisely through their quasi-autonomy—aligns with Pateman's *full participation*. The carceral context highlights that the results of the political participation (strengthened adherence to the norms of the society that has placed these people in prison in the first place) can be used to intensify their domination—by preventing incarcerated people from coming together to challenge those norms. Herein lies Osborne's contribution to our understanding of participation and thus to a further refinement of Pateman's gradation of participation. While Foucault's concept of subjectification helps us contend with these possible undemocratic effects of participation, Osborne's case sharpens and updates our understanding of subjectification and thus provides touchstones for examining participatory possibilities.

5 | OSBORNE'S TOUCHSTONES

Critically, Osborne's texts help readers to destabilize the dichotomy between subjection and freedom by reassessing the role of conditioned action and relationality in processes of subjectification. Positively, we can identify in Osborne's program three key characteristics of participation-as-domination: cemented change, circumscription, and inviolable conceptualizations that are beyond challenge. First, the change that Osborne sought to effect among the prisoners was a permanent one, which should persist after their release from prison. The temporary correction achieved by the old systems affected the incarcerated person's behavior only when under the gaze of the warden and ceased once the prisoner was released. In contrast, Osborne's use of the prisoner's ostensibly voluntary action was supposed to

bring about an enduring transformation. Thus, the prisoner would also stay out of harm's way even when beyond the watchful eye of power, either in prison or when released back into society. According to Osborne, his "prison democracy … produced most astonishing results in the way of temporary good conduct and permanent reform" (Osborne, 1924, p. 43). The permanence of the change the prisoner undergoes thus becomes an important trait of Osborne's suggested mechanism for reducing recidivism, a treatment that would enable the prisoner "to come out permanently cured" (ibid., p. 14). In taking this approach, Osborne allows the incarcerated people only one transformation—from "deviant" to "corrected"—and prevents them from continuing to transform themselves. His program puts forward a "new man" and yet these incarcerated people are denied the possibility of performing the same function themselves: they are *not* welcome to continue to rework their subjectivity.

A second prominent characteristic of Osborne's model is *circumscription*. The thrust of Osborne's argument is designed to counter the prevailing tendency in the penology of his day that viewed the transgressor as a singular, unchangeable figure defined by special traits and behaviors. "'[T]he Criminal' has been extensively studied," Osborne laments, "and deductions as to his instincts, habits, and character drawn from the measurements of his ears and nose; but I wanted to get acquainted with the man himself, the man behind the statistics" (Osborne, 1914, p. 1). Osborne offers a vision of a shared humanity, arguing that, if born under other circumstances, his readers might have also found themselves incarcerated. Notwithstanding, a closer look reveals that Osborne's humanism, echoing da Vinci's "Vitruvian Man," is circumscribed. Yes, by gaining capacities, the prisoners can transform themselves into docile workers and thus contribute to the workforce. Yet, the transformation does not entail the capacity to determine the limits of participation.

As Rebecca McLennan demonstrates, Osborne and his supporters simulated a civil economy "in which prisoners would be disciplined as consumers and producers" (McLennan, 2008, pp. 394–395). For Osborne, "prisoners must be trained in honest labor" to occupy the roles of "worker" and "consumer" rather than to exist as equal citizens (Osborne, 1924, pp. 38–40). But this limitation turns out to be, in Foucault's words, an "intensification of power relations" (Foucault, 1997b, p. 317) in which the prisoners know their place in a societal order and are bound to it. Consequently, in Osborne's schema, they can never fully share the civic position of Osborne himself. They are expected to internalize societal norms and transform themselves only as far certain limits allow, rather than fully participate in determining where the limits to their participation should be placed. Osborne did not allow the prisoners the same freedom he allowed himself—a freedom we might trace in his love of disguises and the frequent games of self with which he started his prison-reform career. However, under conditions of equality, he would not demand incarcerated people to stop at the change from "criminal" to "worker" or to accept the caged version of the human produced with this transformation. He would encourage them to set their own limits on their participation.

A third, and most prominent, characteristic of participation-as-domination in Osborne's laboratory is that the subject's action takes place according to *predetermined conceptualizations*. Even while Osborne critiques the antecedent Auburn System for its restriction of prisoners' actions, in his own mechanism, the prisoners' freedom remains delineated by him. When he allows the prisoners to contest the prison's values, he only allows them to act "freely" within terms and conditions placed beyond their reach. Osborne describes a meeting of the prison's executive committee in which there was deliberation over whether membership of the League would be restricted to prisoners who had demonstrated good behavior. One of the committee members asked: "If the membership is to be only of those who have shown good behavior, who is to decide what is good behavior?" To this, Osborne replied, "Why, I suppose the prison authorities will, of course." "'We don't recognize those standards' was the decisive rejoinder" (Osborne, 1916, pp. 161–162). The committee members remind Osborne that society's inviolable definition of "good" and the prison authorities' enforcement of their own conceptualizations of "good" are responsible for the regrettable situation of incarcerated people.

Following the discussion, Osborne changed his mind and accepted the committee members' position that membership in the League should be open to all. League members were permitted to construct their own code of conduct that would lay out principles for the exclusion of members according to its own definition of "good behavior." This exchange is precisely Pateman's definition of *partial participation* as opposed to *pseudo-participation*, and a case where

citizens come together to "decide on and implement the political good of their community" (Pateman, 1975, p. 464). For Osborne, however, it was a story of efficiency in promoting his own goals: "the only self-government that would be successful in prison was the self-government that the prisoners themselves would bring about—their own self-government" (Osborne, 1916, p. 159). To be clear, it is not that this instance proves that prisoners did, in fact, have the standing to challenge norms. Rather, it shows that the main characteristic of Osborne's mechanism was to allow prisoners *some* influence—thus making it seem as if the government was their own—while dictating the larger context in which this limited influence took place. Although the League enabled the prisoners to be active in discussing their own definitions of "good behavior" and helped them develop what Pateman calls a "public-spirited type of character," in the end, the League itself was a mechanism to acculturate the incarcerated people to inviolable societal conceptualizations that they could never be in a position to influence.

In its alternation between Pateman's *partial participation* and *full participation*, Osborne's model of subjectification alerts us to variants of political action that may seem to promise greater freedom but, in fact, serve to further adherence to norms set elsewhere. The key point is that a given sphere of influence (such as the executive committee meeting and the particular conceptualization of "good conduct" the prisoners were allowed to define) is located within sealed limits, circumscriptions, and conceptualizations. Osborne's texts and archives are unique in that they give prisoners a voice, providing us with actual words expressed by people whose utterings are rarely present in such documents. At the same time, incarcerated people's inability to participate in setting the very terms of the debate reminds us that "giving a voice" under these conditions is de facto meant to secure obedience.

6 | CONCLUSION

While the demise of Osborne's experiment is a meandering tale too long and winding to fully recount here, one point must be stressed in conclusion: its downfall was triggered by Osborne's insistence on carcerality. He actively objected to legislation that would ease eligibility for parole by allowing every incarcerated person to go up for parole after serving just half their sentence, and he dissuaded the NY Governor from signing the bill. Instead of this more lenient approach, Osborne's search for a better prison included the position that "the safety of society consists in keeping in prison for their full terms those who cannot or will not learn their lesson" (Lecture at the Free Synagogue, May 9, 1915, p. 21, Box 231, OFP). Osborne thus reminds us that a reformed prison is a prison nonetheless.

His move sparked fierce opposition to his policies. Some incarcerated people, who had once held highly influential positions on the outside, built on a growing bureaucratic and political dissatisfaction with Osborne's insubordination, accusing him of misusing his power by having sexual relations with incarcerated people. Osborne was indicted, including on the charge of "unnatural and immoral acts," and, after a fierce legal battle, he was acquitted of some charges, while others, because of their weaknesses, were not brought forward. Osborne's reputation as a reformer, however, suffered a blow from which his design for prison democracy would never recover.

While Osborne's reform did not succeed in either the short or the long term, it allows us to examine the troubling notion of a participatory panopticon. Even if Osborne's democracy operated within extreme conditions of constraint, it offers us a timely critique of participation that extends beyond the realm of prisons. Osborne is easily discernable as encouraging participation according to his own principles and, yet, participation can have detrimental effects even when power differentials are less visible.

This article presented a reading of Pateman and Foucault that considers the detrimental effects of subjectification that even active and collective participation can bring forth. First, I argued that Pateman's attention to persistent patterns of power helps nuance her own gradation of *pseudo-*, *partial*, and *full* participation. Second, I suggested that, in contrast to Foucault's emphasis on productive power, *Discipline and Punish* focuses on practices of isolation and limitation and thus provides insufficient tools for examining collectivities and actions, including some forms of participation. A democratic project that aspires toward freedom, Osborne inadvertently teaches us, should question the nature of participation that guides it. Osborne's progressive example stresses that any limit, norm, or conceptualization placed

beyond the participants' reach is cause for alert. While participation with others will always place certain confines on the participant, it is nevertheless worthwhile to question what bounds are presented as universal, necessary, natural, or obligatory (Foucault, 1997b, p. 315).

These aspects of participation, and especially the expansion of political subjectivity in accordance with limits, norms, and conceptualizations put in place by others, invite political theorists to continue to challenge our understanding of participation. Here, I have analyzed a clear historical example that unsettles the dichotomous positioning of subjection and freedom by showing that participation qua domination can manifest even through action and relations with others. Yet, more work is needed to theorize counter-carceral practices of freedom.[13] While it is tempting to invert Osborne's utilization of cemented change, circumscription, and inviolable conceptualizations to suggest that democratic participation would thus include fluidity, equality, and the standing to challenge conceptions, these alone may not suffice. Although they constitute a first step, such contrary characteristics might, themselves, be utilized to regulate behavior. One can already envision future research on how these characteristics, too, are open to manipulation by even more sophisticated mechanisms of domination. Osborne's case, precisely because it is such a clear example of conditions of constraint, paints a lucid picture of how one's actions can be co-opted for the purposes of domination, and thus helps us sharpen our suspicions regarding some participatory practices. In sum, Osborne's experiment shows that, despite democratic aspirations for more inclusive and participatory action, in some cases these progressive goals might enhance control. The participatory panopticon thus invites us to continue to think critically about participation.

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