HAL
open science

Comments and Reply to “Appearance and origin…” (avec Anna Jabloner, Kevin Karpiak, Mark Maguire, David Skinner et Peter Wade)

Joëlle Vailly

▶ **To cite this version:**

Joëlle Vailly. Comments and Reply to “Appearance and origin…” (avec Anna Jabloner, Kevin Karpiak, Mark Maguire, David Skinner et Peter Wade). Current Anthropology, 2022, 63 (6), pp.637-659. halshs-03771745

HAL Id: halshs-03771745

https://shs.hal.science/halshs-03771745v1

Submitted on 14 Dec 2023

HAL is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L’archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d’enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

Comments and Reply to Vailly, J. (2022) Appearance and Origin: The Depoliticization of Genetic Privacy in France, *Current Anthropology*, 63(6), 637-659.

Comments

Anna Jabloner

Department of Anthropology, Harvard University, Tozzer Anthropology Building 406, 21 Divinity Avenue, Cambridge, MA 02138, USA (jabloner@fas.harvard.edu).

Surfacing Race in France

As we walked around Oakland, my friend stopped to tear a home-printed piece of paper from a pole, warning about neighborhood robberies and showing a blurry image. "All we see is a young Black man in a hoodie," she said, "all we learn is that young Black men in hoodies are suspicious. Racist bullshit." Joëlle Vailly's crushing ethnography shows that this structure of suspicion works no differently in France. As forensic DNA profiling is increasingly used in the French legal system, Vailly analyzes how applications of this new technology racialize whole populations in the service of carceral white supremacy. She shows that, like in the U.S., forensic DNA technologies only deepen longstanding associations between Black, brown, Muslim, "foreign" or otherwise suspicious men with criminality (Duster 2008). As forensic DNA profiling proliferates globally, Vailly extends anthropology's scope by showing what risks arise, and are reinforced, for racially marginalized groups often suspected of criminality. Like the

photograph my friend tore down, forensic DNA profiling promises an exacting portrayal of a suspect individual but provides another rough version of a social type (cf. M'charek 2020).

Having had the privilege to respond to this superb article first as reviewer (hereby outed) and now as commentator, I found so many significant components that I had to limit myself to two comments. First, briefly, Vailly further debunks a pernicious idea that geneticists often relate to ethnographers: that the benefits of forensic applications of molecular technologies outweigh the risks. Such statements are decontextualized from the reality in which forensic technologies are built and applied (Jabloner 2019). Thus, racially marginalized groups become increasingly ensnared in criminal investigations through these technologies' actual uses. Vailly helps anthropologists by making actionable policy suggestions for those weighing public safety vis-à-vis privacy violation: the legal application of forensic DNA profiling is not proportional, she shows, given the entailed stigmatization of essentialized groups.

Second, Vailly contributes to ongoing debates regarding genetics and race by offering *privacy* as a tool for racialization. This is an innovative perspective in the comparative study of racism. In short, the technologies she investigates cannot be debated as about race because officially there are no races in France. In post-WW2 French universalism, deducing origin genetically can, however, feel close to the anti-Semitic actions of the Vichy regime, and thus too private. So what does privacy mean here, concretely? For some legal experts outside of genetics, Vailly's interviews show, DNA is still understood as people's *essence* and thus as private information. Others assume that forensic DNA profiling only concerns suspects' appearance, and appearance cannot be private when it's visible to the public. As Vailly details, the technologies actually constantly cross between what is apparent, visible, and public (hair/eye/skin color) and what is invisible, private, and perhaps essential (molecules/origin/ancestry). Forensic DNA

profiling indeed uses genetic ancestry—the very markers Abu El-Haj (2012) analyzed as the former junk now rebranded as embodied history—to predict appearance. Vailly argues that understanding privacy as individual desire for secrecy is limited when it comes to investigative technologies that target groups by their origin. With Arendt, Vailly contends that privacy is inherently political, meaning it concerns relative equality among people. Meanwhile, she identifies in a France ridden with profound racial inequities "the commonly held illusion that equality prevails" and that it especially does so before the law. These ingrained ideas prevent a genuine discussion of the politics of forensic DNA profiling.

If in France one couldn't *expertly* speak of race before because of the Vichy regime's secret Jewish files, it seems that forensic DNA profiling provides a way to reconnect appearance and origin with race, and race with crime—making these links official again with the neutrality of science. Ultimately, no matter the terms, origin, ancestry, appearance, and race all end up doing the same racist job of identifying the usual suspects, very unfree from discrimination.

I wondered whether multiple EU countries' current readiness to use this technology (which differs from the still predominantly *probabilistic* forensic DNA technologies in the U.S., cf. Jabloner in press), and to re-instate a genetic, authoritative link between appearance and origin, relates to the fact that two key versions of (Euro-) racism have always been about presumed *invisible* essence and prepended judgment from surface to (group) essence (Frederickson 2002, Fanon 1952). Indeed, Vailly problematizes the relationship between the visible (bodily surfaces) and what is inside the body, concluding that when it comes to forensic DNA profiling, privacy norms grounded in what is visible are ridden with contradiction. With Coleman & Oakley-Brown (2017), she suggests that we cease dichotomizing the external/internal and understand the surface as an *interface*. But what does this really mean?

It seems that a comparative historical perspective might push this point on interface further. In the U.S. context, Hammonds & Herzig (2008) show how the American colonialist project moved into the body's interior, toward genetics, precisely to overcome the confusions of surface (from the French "on the face," as Vailly points out). The stable components of identity were presumed to reside in bodies and to allow for definitive categorizations of citizens, a conceptual gap necessitated by the parallel developments of slavery and (European-) American democracy. Wiegman (1995) analyzed how race as presumptive bodily truth motivated the emergence of biology as systematic study of humans as organic bodies, full of interiority, and Weheliye argues that "the coloniality of Man suffuses the disciplinary and conceptual formations of knowledge" writ large (Weheliye 2014:7). In a different tack, Browne (2015) framed biometric identification as surveillance of Blackness, placing new technologies in histories of (white) control over the movements of bodies and the distillation of (unmarked) definitional power over identity (cf. Aas 2006, Magnet 2011). Vailly's analysis might be deepened through comparison with such perspectives from American, African American, and Black studies and productively dislocate the American-centeredness of studies of anti-Blackness. In sum, Vailly here covers a vast conversation across Europe and the U.S. and makes an important contribution to the anthropology of race by surfacing its workings in France.

References

Aas, Katja F. 2006. 'The Body Doesn't Lie.' Identity, Risk and Trust in Technoculture. *Crime, Media, Culture: An International Journal* 2(2): 143-158.

Abu El-Haj, Nadia. 2012. *The Genealogical Science*: *The Search for Jewish Origins and the Politics of Epistemology*. Chicago: University of Chicago Press.

Browne, Simone. 2015. *Dark Matters: On the Surveillance of Blackness*. Durham: Duke University Press.

Coleman & Oakley-Brown. 2017. Visualizing Surfaces, Surfacing Vision: Introduction. *Theory, Culture & Society* 34(7-8): 5-27.

Duster, Troy. 2008. Selective Arrests, an Ever-Expanding DNA Forensic Database, and the Specter of an Early Twenty-First-Century Equivalent of Phrenology. In *Tactical Biopolitics: Art, Activism, and Technoscience*, Eds. Beatriz da Costa & Kavita Philip. Cambridge: MIT Press, pp. 159-176.

Fanon, Frantz. 1952. *Black Skin, White Masks*. New York: Grove Press.

Frederickson, George. 2002. *Racism. A Short History*. Princeton: Princeton University Press.

Hammonds, Evelynn & R. Herzig (Eds). 2008. *The Nature of Difference: Sciences of Race in the United States from Jefferson to Genomics*. Cambridge: MIT Press.

Jabloner, Anna. In press. American Bioinformation and U.S. Race Politics: The Values of Diverse Genetic Data. In *Bioinformation Worlds and Futures*, Eds. EJ Gonzalez-Polledo & Silvia Posocco. London: Routledge.

Jabloner, Anna. 2019. A Tale of Two Molecular Californias. *Science as Culture* 28(1): 1-24.

M'charek, Amade. 2020. Tentacular Faces: Race and the Return of the Phenotype in Forensic Identification. *American Anthropologist* 122(2): 369-380.

Magnet, Shoshana. 2011. *When Biometrics Fail: Gender, Race, and the Technology of Identity*. Durham: Duke University Press.

Weheliye, Alexander. 2014. *Habeas Viscus: Racializing Assemblages, Biopolitics, and Black Feminist Theories of the Human*. Durham: Duke University Press.

Wiegman, Robyn. 1995. *American Anatomies: Theorizing Race and Gender*. Durham: Duke

University Press.

Kevin Karpiak

Department of Sociology, Anthropology and Criminology; Eastern Michigan University;712 Pray-Harrold; Ypsilanti; MI 48197; USA (kkarpiak@emich.edu).

As I sit down to write a response to Joelle Vailly's analysis of the normative ramifications of a unique and emergent constellation of bioscience, police, privacy and justice in France, a video recording passes across my attention[1]. One of innumerable iterations on its form; shared, in this case, via Twitter; it stages what has become a well-worn, if still telling drama of our contemporary moment.

The video opens on the scene of a rural school in Washtenaw County, Michigan, where a county-wide mask mandate for schools has recently been issued in order to slow the spread of COVID-19. The first figure we see and hear is that of a white Washtenaw County Sherriff's Officer. "If you don't want to go in, you don't have to" he says with his hands in his pocket, walking away, "I'm not forcing anybody. I'm not putting masks on anybody. That's not my job."

"So they can go in without their masks?" a voice off camera asks.

"This is a County Health Department order and a policy of the school," the sheriff's officer responds, carefully removing police authority from his reply. Then, hesitating, "I'm not arguing with you," he waves, before walking way. This is the last presence the officer will have in the video, which continues for almost two minutes.

[1] https://twitter.com/RonFilipkowski/status/1435638694933942277?s=20, Accessed September 9, 2021

"OK, they can go in guys!" the parent/videographer announces, "Go on in guys. They can't enforce it."

The camera pans and reframes onto a hesitant crowd of white students, being physically blocked by a white masked school administrator, while we hear, off camera, the implorations of their parents. "You guys, they can't touch you. Just go ahead and go in," the parents encourage as the students hesitate, still, before the masked administrator blocking the doorway. The standoff continues for several more seconds, with some inaudible conversation happening between the administrator and the students at the front of the crows, before the administrator relents and allows their entrance.

A voice, perhaps the same one that announced police's incapacity to enforce the health order, can be heard offering further directives: "No pushing! Be kind! Be respectful!"

I watch the clip. I am disturbed by it. I gripe about it privately. I write about it publicly, here. But I am not quite sure what more to do about it.

Here, as in Joelle Vailly's article, the fact that policing, race, biology, and justice are imbricated in a tangle that outlines the possibilities of political action should be of no grand surprise. As any reader of Foucault knows by now, this knot has a centuries-long trajectory. What Vailly's work demonstrates, however, is that what may seem well-trodden territory for analysis can in fact, through novel sets of articulations, transferences, and minute transformations, produce entirely new normative structures that exist alongside of and in tension with those that preceded them. For example, Vailly is careful to point out that the DNA technology at the core of this analysis is not itself new, nor is its application to forensic police work. So, this is neither a technology-driven narrative of social transformation, nor an account of the imperial expansion of a fundamentally debased logic. Rather, in Vailly's telling, the

transformation at the center of this analysis occurs when the DNA technology is applied to police forensics in a unique manner: as an attempt to *predict* rather than merely *identify* individuals or substantiate corroborating evidence. Importantly, the ground for this novel application is made possible by a shift in the normative framework of concern in which it operates—a focus on "privacy" as the central ethical obligation—in a way that "depoliticizes" the police actions which links origin, crime and DNA. That is, the shift to racialized offender prediction, made possible through a normative emphasize on privacy also neutralizes what had been a central tool for anti-racist, or at least non-racist praxis.

One question this work raises for me concerns the role of anthropology in that knot, and what Vailly's work can tell us about the possibilities for the discipline in rethinking, and participating in, a form of political action calibrated to confront the type of normative frame described in the article. Anthropology has a long, if not well understood, history of engagements with policing. Since the 19th century, police work has created the material conditions which enable anthropological research in many field sites, especially in colonial and postcolonial contexts. Conversely, the theoretical work of anthropologists has served as foundational justifications for regimes of policing. For example, both the 'criminal anthropology' of Lombroso and the *anthropométrie judiciare* of Alphonse Bertillon were attempted engagements with contemporary anthropological problems such as parsing competing philosophical claims of free will, rationality, and the materiality of the body. This dialog extends through the work of Malinowski on informal social control mechanisms--central to much of the conceptual infrastructure of "community policing," "broken windows" and "order maintenance" initiatives--and various iterations of cultural theory, from "culture of poverty" frameworks through contemporary engagements with "police culture."

Conversely, all of these assemblages—understood as particular articulations of police, anthropology, biology, and justice—also called into being a kind of counter-politics, many of which themselves involved a kind of counter-anthropology. As much as Lombroso's work enrolled an anthropology, so did its refutations; as complicit as anthropology's "culture" concept has been to the justification of a particular style of police repression geared towards extra-judicial minutia, so may be useful the anthropological critiques of that same concept for undoing those grounds. Which brings us to the question: if Vailly is charting out a particular nefarious reframing of this set—one that differently politicizes what had formally been a limit to the reach of the police state (The private/privacy) so as to enable a kind of securitized racism based on origin, as traced through DNA—what is the appropriate counter-politics to that formation, and what is the type of anthropology a counter-formulation can be built upon? In other words, what counter-anthropology is required to foster an anti-racism attuned to this particular racist formation?

Mark Maguire

Department of Anthropology, Maynooth University, Maynooth, Co. Kildare, Ireland (Mark.H.Maguire@mu.ie).

Illuminations of privacy

We know that security is obsessed with the body, its appearance, type, and unruly passions. Throughout history, security regimes have devoted particular attention to the body of the Other. For example, eighteen-century New York's "Lantern Laws" commanded unaccompanied Black and indigenous people to carry cantle-lanterns to illuminate their appearance should they "presume" to walk about after dark (see Browne 2015). Such naked discrimination is certainly shocking, but lantern laws were a specific and inhumane answer to the larger question of *how* to discriminate to achieve security. Back in liberty-loving Britain, Jeremy Bentham meditated on precisely how to illuminate the bodily appearance of criminals, fugitives, and unruly populations and thereby bind them in "invisible chains"—he went so far as to flirt with universal tattooing. But Bentham always yielded in the face of liberty. The role of security after all is to nurture liberty. Consequently, numerous advantageous measures would remain unused by police, he realized, unless powerful examples were used to sway "public opinion" (1859: 557).

Joëlle Vailly's "Appearance and Origin" opens with powerful examples that sway public opinion. Just a few years ago, unidentified sexual predators were assaulting women on the streets of Lyon, and French police seemed incapable of responding. Surely they should have every possible instrument at their disposal, including DNA phenotyping? In many European countries,

forensic DNA phenotyping to illuminate bodily characteristics is permitted in extreme cases such as the apprehension of serial predators, with considerable public support, even if there is no legislative basis for its use. Indeed, the debate in Europe, or what passes for a debate, is an over-rehearsed Punch and Judy show that sees the demand for security jousting with the right to privacy. Gone is Bentham's philosophical discussion of liberty; forgotten is the long history of racist securitization includes lantern laws, "yellow files" kept in North American police stations, anthropometric pass cards for European Roma, and so much more. Privacy now stands where liberty once stood, stripped of context, washed of jurisprudence, a bare technical right. There are several important themes raised in the article, but in this brief comment I will focus on strange concept of privacy that we find in security bureaucracies.

At first glance, Vailly's treatment of privacy is itself rather narrow and technical: she employs a definition that emphasises control of access to places, information, and bodies. Very French. Elsewhere privacy is the right to be left alone, "to enjoy your assets," liberty being that which flourishes when government is suitably restrained. But even in common law countries the constitutional right to privacy yields in cases where the public good must take precedence. The ethnographic question that Vailly asks, then, is what happens inside security bureaucracies (and apparatuses) when extreme and persuasive cases are before the public, when dangerous criminals can potentially be unmasked if new security technologies are used? Her interviews with geneticists, police officers and judges show a professional class of experts unwilling to cave to public opinion. They struggle to pragmatically balance the public demand for security with the protection of privacy and in so doing reveal the accepted modality of elite governance. The protection of privacy, it seems, offers security bureaucracies virtue, perhaps even a sense of value, with a hint of protest culture.

In Vailly's ethnography the head of a lab worries about showing "ancestry" and refuses to cross a line he himself has drawn; judges worry that case information might fuel categorical suspicion in the media. For these different experts, privacy is obviously hook upon which to hang their discomfort, but it is also something that can be engaged with to produce "ethical security" (see Burgess 2008). Vailly makes several truly insightful remarks about privacy in this regard. She proposes that it "touches upon" security politics in the form of an accepted and depoliticized modality. In a Foucauldian sense, then, it offers a site of veridiction—think here of the cost-benefit calculations, and the test of *proportionality*—,a conceptual courtroom in which the bureaucracy can examine its truths and deliver ethical value judgement. Other researchers have noticed this. Each year, the European Union disburses a great many millions of euros on large-scale research and development project under its various security funds. Horizon projects, including VISAGE, which is cited in Vailly's essay, employ work packages on the societal impact, privacy, and ethical dimensions of the research. A denuded concept of ethics, and, just as saliently, a depoliticized concept of privacy is used to launder dubious technology and impoverished ideas.

Obviously, by focusing on privacy, I am not addressing the article's core thesis, namely that experts contribute to racialization by refusing to acknowledge the political and discriminatory qualities of ostensibly neutral technologies. I am sure other commentators will support or contest the presumption of sociological guilt. I am more interested in the salience of privacy in the contemporary moment, and the strange relationship between privacy and "public opinion". Throughout "Appearance and Origin" the public comes into ethnographic view as a population supportive of security, and uninterested or unaware of risks to their privacy. The protection of privacy comes into view as an elite discourse, then, one concerned with the

production of ethical security, potentially in defiance of "public opinion" and untrustworthy media translators. The article's conclusion is that the narrow definition of privacy, rather than offering protection to the public, enables bureaucracies and technology companies to work together. Therefore, I would welcome greater illumination as to why Vailly concludes her discussion of privacy on an optimistic note.

References

Bentham, Jeremy. 1859. *The complete works of Jeremy Bentham, vol. 1*. Edinburgh and London: William Tait; Simpkin, Marshall & Co.

Browne, Simone. 2015. *Dark matters: on the surveillance of blackness*. Durham and London: Duke University Press.

Burgess, J. Peter. 2008. "Security as ethics". PIRO policy brief 6/2008. Oslo: International Peace Research Institute (PIRO).

David Skinner

Humanities and Social Sciences Department, Anglia Ruskin University, East Road, Cambridge CB1 1PT, United Kingdom (david.skinner@aru.ac.uk).

On seeing and not seeing race

Joëlle Vailly considers the adoption of a genetic technique known as Forensic DNA Phenotyping (FDP) and, in doing so, offers an important insight into the changing politics of knowledge about 'race'. FDP aspires to provide crime investigators with a description of a yet unidentified person. A controversial aspect of its application in France, as it is elsewhere, is the generation of 'predictions' of a suspect's race or ethnicity. Vailly's discussion of this issue is informed by in-depth empirical work with legal, police, forensic, and genetic experts shaping the implementation of FDP. The definition of and immersion in this field of study is her first contribution: showing the interplay of the realms of science, policing, and the law; the ways in which actors engage in anticipatory ethical debate about racialised identification within and across these realms; and in doing so enable the science to be made usable.

Developments in forensic genetics can be understood in three waves (Williams and Wienroth 2014). The first wave focused directly on matching DNA to an individual. The second involved the mass retention and routine searching of DNA profiles in specialist police databases. FDP is part of a third wave of nascent innovations that also encompasses the use of partial 'familial' DNA matches, new techniques for analysis of mixed samples, and the repurposing of genetic data originally collected for genealogical or medical purposes. What unites this

seemingly disparate list is the attempt to generate potentially useful investigatory leads from imperfect genetic source-material, gathered from a variety of different sources. Wave three developments consequently raise novel questions about their accuracy, the control of data, and the speculative construction of suspect populations.

Innovation in forensic genetics rests on the international credibility of genomic science but alongside globalising tendencies, the distinctive local articulations of new techniques and their accompanying legal and governmental frames are significant. One feature of the French case is the unwillingness in public discourse and policymaking to sanction official use of racial or ethnic categories, yet this squeamishness sits alongside unofficial and coded forms of racialisation. This is a striking example of a wider European phenomenon: in expert and governmental discourse race is often a slippery *absent presence* that oscillates between reality and nonreality (M'charek, Schram, and Skinner 2014). Vailly shows how the assumption that race is unavoidably detectable through direct experience of appearance allows people to side-step restrictions on and reservations about using racial categories; many of her interlocuters appeal to a common sense of a racialised visual field when asserting "all that is visible is public".

The refrain that racial differences are so manifest that it would be obtuse not to acknowledge them is all too familiar. We should, however, cultivate curiosity about the mechanisms whereby race is perceived in skin tone, facial features, or other bodily traits and how these ways of seeing are embedded in culture, locality, and history. Osagie Obasogie's research (2013) on blindness and racialisation in the USA, shows, for example, that Americans blind from birth effectively understand and experience their own and others' race in much the same way as sighted Americans; they access a variety of cues such as voice, accent, smell, and touch to ascertain 'visible' differences. Obasogie draws a wider lesson from this: sighted people

are ‘blinded by sight’, that is “seduced by the immediacy of visual perception” (p36) and consequently unable to appreciate the processes through which markers of race are established and interpreted.

Questions about how, when, and why race appearance matters have renewed urgency because of the application of emerging technologies of identification in policing and the courts. FDP is one example of many in this respect. The quantity, quality, and range of images potentially in play has expanded rapidly driven by both the growth of surveillance technologies including CCTV, the availability of local recording devices such as body cameras and smart phones, and the wider emphasis on visual images in digital culture. Databases, biometrics, facial recognition technology and data management software rationalize and speed identifications. Advances in computing also bring new possibilities for the storage, dissemination, and analysis. In these developments race is being revalued and reinvented as an object of expertise through interlocking processes of biologization, datafication, and visualization.

A paradox at the heart of Vailly’s article is that the operationalisation of racial differences in appearance is not straight-forward. The use of racialized descriptions in policing and criminal justice goes hand in hand with concerns about their reliability that are now being displaced into the scientific realm. A key issue highlighted by Vailly is the challenge of divining external appearance for internal genetic characteristics. Identifications, descriptions, and representations produced via new technologies entail other kinds of translation between registers (for example between 2D and 3D) and contexts (for example between the laboratory, the streets, and the courts). They present complex challenges of interpretation that are likely in practice to be simplified using a common sense of ‘obvious’ differences and problematic minorities.

New policing technologies replicate a longstanding pattern whereby minorities are special objects of surveillance, a phenomenon that Simone Browne (2015) terms the 'luminosity of race'. Here the issue is seeing race and only race: the science of description risks compounding existing patterns of stigmatization and over-policing whilst making it hard to move beyond the resulting collective group suspicion to effective individual identifications. Vailly rightly insists that the intractability of racialisation is inseparable from the problem of systemic racism. Her analysis shows how FDP is being depoliticised through a concerned but bland discussion of individual privacy rights; the final irony is that this takes place through a universalistic discourse of citizenship and community that is not fit for purpose precisely because it is colour-blind.

References

Browne, Simone. *Dark matters*. Duke University Press, 2015.

M'charek, Amade, Katharina Schramm, and David Skinner. "Topologies of race: Doing territory, population and identity in Europe." *Science, Technology, & Human Values* 39, no. 4 (2014): 468-487.

Obasogie, Osagie. *Blinded by sight*. Stanford University Press, 2013.

Williams, Robin, and Matthias Wienroth. "Ethical, social and policy aspects of forensic genetics: A systematic review." 2014.

Peter Wade

Social Anthropology, School of Social Sciences, University of Manchester, Arthur Lewis Building, Manchester M13 9PL, UK (peter.wade@manchester.ac.uk).

This very interesting article by Vailly presents us with data and ideas that are, up to a point, familiar. For example, those who work on the issues addressed by Vailly are aware of the processes of racialisation that operate through ancestry testing; we know about the dangers of racial reification that beset communicating genetic data to people who are not genetic specialists, whether these are people working in the criminal justice system or in the mass media. However, Vailly gives a novel and intriguing twist to all this with her analysis of privacy and the way the concept can be seen as both political and apolitical.

In the broadest terms, we can understand the relational difference between "the private" and "the public" in terms of how it works as a tool in the governance of liberal democracies (McClintock 1995; Pateman 1988; Wade 2016). The public sphere (marked as typically male) is defined as "political", while the private or domestic sphere (marked as typically female) is defined as irrelevant to politics. In the public domain, debates about value(s) and the competition to define them are legitimate, while factors deemed to belong to the private domain - such as gender and sexuality - are seen as out of place. As we know, feminist critiques have long challenged this classification by arguing that "the personal is political" and showing that the classification itself - seemingly neutral and self-evident - is in fact intensely political.

In Western liberal democracies, the place of race and ethnicity in this classification has varied over time and place, but, simplifying, we can say that, while racial identity was once

deemed “public”, over the course of the twentieth century it became increasingly defined as “private” and - like gender or religion - to be excised from the public domains of the market and the state, or only tolerated under controlled conditions. Under state multiculturalism, for example, some public space has been ceded, but typically in ways that, by focusing on “culture” (defined, for example in the UK context, as “steelbands, saris and samosas”), reinforce the marginality of race and ethnicity to the public sphere of markets and bureaucracy (Modood and May 2001). Race and ethnicity may also be given public space - e.g. in censuses - with the rationale that it is necessary to (temporarily) recognise them, in order to quantify racial inequalities, with a view to ultimately reducing the influence of racial difference in the public sphere (Bliss 2012; Epstein 2007).

The point is that the boundary between private and public - if “boundary” is an adequate concept here - is a moveable feast, or a contested political space, that has crucial implications for political inclusions and exclusions. Like the difference between “formal” and “informal” economic practices (Portes 1989), the difference between public and private is an unstable and relational one that can be used as a tool in governance.

Vailly shows how DNA tests revealing appearance and origins are seen by a majority as linked to the visible and thus the public: she argues that it is this that makes them seem neutral and apolitical, but I would contend that, because they are in the public sphere, they are already in the domain of the political. It is rather that, within that domain, the decision about their politics - their political value - has already been made by this majority: if such tests help catch criminals, they are legitimate. At the same time, however, it is true that, although the racialized dimensions of the tests are in the public sphere, not counted as relevant there: they are defined as individual personal traits - politically speaking, a private matter - which can help processes of forensic

identification, but are not seen as politically relevant. As Vailly herself says, “The public or private nature of a subject is determined not only by its content, but also by its relevance in the social world in question.” The alternative perspective is the minority view that links DNA to racism and contests the majority rationale: it asserts the need to recognise that racial difference is not just a “private” matter but a question of public concern because it touches on political questions of value, such as social equality and justice; this view considers “the problem of racialization and stigmatization as more important than the ability to use an investigative technique” (Vailly).

Vailly argues that, if we see privacy as inherently political (because of its necessary relational connection to the public domain), then we can also see internal DNA (usually deemed private) as political because of the uncertain and manipulable or “folded” way it is connected to visible appearance (seen as public). This is an intriguing insight. But it seems to me that the issue is perhaps more one of where racial difference sits in the folding of the private and the public - i.e. in the porous interpenetrations of these mutually constitutive classificatory devices. Is it seen as a matter of political concern, a question of public value(s); or is it seen as a simple fact of nature pertaining to an individual’s private life? Vailly shows us that the majority of her interviewees take the latter view.

References cited

Bliss, Catherine. 2012. *Race decoded: the genomic fight for social justice*. Stanford, CA: Stanford University Press.

Epstein, Steven. 2007. *Inclusion: the politics of difference in medical research*. Chicago: University of Chicago Press.

McClintock, Anne. 1995. *Imperial leather: race, gender and sexuality in the colonial contest*. London: Routledge.

Modood, Tariq, and Stephen May. 2001. Multiculturalism and education in Britain: an internally contested debate. *International Journal of Educational Research* 35(3):305-317.

Pateman, Carole. 1988. *The sexual contract*. Stanford, CA: Stanford University Press.

Portes, Alejandro, Manuel Castells and Lauren Benton, ed. 1989. *The informal economy: studies in advanced and less developed countries*. Baltimore: Johns Hopkins University Press.

Wade, Peter. 2016. Mestizaje, multiculturalism, liberalism and violence. *Latin American and Caribbean Ethnic Studies* 11(3):323-343.

Reply

Joëlle Vailly

With this "reply", I wish first and foremost to express my gratitude to the colleagues who agreed to comment upon my text and who, in doing so, made some extremely valuable remarks. Some of their questions and comments now give me the opportunity to develop my argument further and to clarify certain points.

First of all, I would like to thank them for reminding us that anthropological work on the theory and experience of "origin", "race" and DNA is often focused on the United States, even though some of the authors cited previously have made important contributions in other geographical spaces such as Europe or Latin America. This allows us to complexify our understanding of how these notions are perceived, connected, and constantly transformed in the contemporary world. Where France is concerned, it will be clear by now that it is trapped in its own historical and social contradictions. It therefore seems opportune to return to history in order to understand the French debates (or lack thereof) on phenotyping and origin. From the sixteenth century onwards, France, like other countries, sought to justify the enslavement of millions of Africans by establishing a biological hierarchy between populations and by racializing the world. Conversely, in 1789, the French Revolution wrote into the Declaration of the Rights of Man and the Citizen that "men are born and remain free and equal in rights" (a formulation much appreciated by feminists…), while the 1958 French Constitution later stipulated, in an article still valid today, that "[France] shall ensure the equality of all citizens before the law, without distinction of origin, race or religion" (removing the term "race" from the Constitution is the

topic of regular debates that would be too long to relate here). The Republic has therefore consistently advocated equality between citizens in its very principles. To return to the chronology, after the definitive abolition of slavery in 1848 (following an initial attempt in 1794, repealed in 1802) came France's colonial conquests—in Algeria, from 1830 onwards, then in Indo-China, Oceania and parts of Africa. In addition to the biologizing of race, France now asserted its civilizing mission with regard to its Empire's indigenous populations, still based on racial hierarchies but with an added cultural tone (Ndiaye 2006). It was ultimately the Second World War and Nazi atrocities that brought a clear condemnation of biological racism, echoed by Unesco's 1948 Charter. In the post-war period, while racism had obviously not disappeared in France, it had become less acceptable and more focused on "cultural" differences. Social science studies and blind tests conducted by associations have clearly demonstrated the existence of discrimination in police checks and judicial rulings, as mentioned above with the example of minorities being more likely to be stopped by police. Similar results have been obtaining concerning discrimination with regard to employment, housing, and access to certain spaces such as nightclubs. This everyday racism, which is not openly framed in such terms and which is often not even recognized as such, has been described as structural racism in France as in other countries. However, in France, the label is challenged and sometimes considered controversial: in a country that has been attached to universalist principles since the eighteenth century, it continues to be difficult to identify and recognize "structural" racism for what it is, as though doing so might endanger the country's very foundations. Last but not least, we must also take into account the ever-increasing place of the far right in France, which has a substantial impact upon these discussions and controversies. Today, rather than saying that genetic tests of appearance directly reinforce the association in people's minds between otherness and

criminality, it is perhaps more important to indicate that these tests run the risk of producing false, unjustified claims about the relationship between "races" and biology, or even indirectly between crime, origin, and DNA. In short, the idea of "origin" evolves hand-in-hand with scientific developments, follows the international circulation of ideas and norms, is fuelled by the political context and ambient prejudices of its time, and always takes different forms according to spaces and historical moments.

The use of DNA analyses in criminal law lies at the intersection between, on the one hand, the development of genetic and digital knowledge that are placed at the top of the scientific hierarchy and, on the other, a key concern with safety, or in other words "security principle" (Gros 2012), in Western societies. In this context, appearance and origin are used to try to narrow down the population of suspects, and the professionals we interviewed considered this issue in terms of private life. It should be noted that our interviews were mainly conducted in 2016 and so our respondents could not have been influenced by the European Court of Human Rights (ECtHR) 2017 judgment against France that did not concern phenotyping but rather a traditional genetic profile database and that emphasized the question of privacy, as I have already explained. However, even though the judgment was handed down after our interviews, the question of privacy had been circulating in the background of debates about the use of DNA analyses in criminal law for a relatively long time. Going back as far as 2008, the case of *S. and Marper v. The United Kingdom* can be considered to have played a role here. The case was filed by two suspects whose DNA and genetic profiles were going to be stored indefinitely and the ECtHR ruled against the United Kingdom's use of its genetic profile database as constituting "disproportionate interference" with the "right to respect to private life". It should also be noted

that the question of proportionality foregrounded by the ECtHR is different from the notion of "balance" between individual rights and population safety, commonly used in the public space, which seems to suggest that the two notions interact as though according to the principle of "communicating vessels" whereas in reality less freedom does not necessarily mean more safety.

Beyond the professionals, my hypothesis about the contemporary issue of private life in the French population, to which the comments refer, is based on the idea that the potential abuse of data in matters of security is diluted in two ways: first, through the idea that it only concerns criminals and not citizens who respect the law, and second, through the idea that the genetic approach is an effective means for ensuring public safety. It is also more complicated to oppose police collection of various kinds of data when we ourselves divulge considerable amounts of personal data on the Internet, whether on social media or elsewhere, and are generally happy to do so in order to obtain the goods, services, or social relationships that we want or need. More broadly, despite obvious differences, it seems relevant to draw a parallel between digital and genetic tools. In what can be read as an echo of the interface or "folds" I mentioned previously between what is inside and what is outside the body, Bernard Harcourt (2015, 120) makes the following remarks about the digital approach, which can easily be transposed to genetics:

> [I]n our digital age, we have moved beyond the internality of transparence. Our ambition is to see through brick walls and physical barriers, to turn internal structures inside-out, to break down entirely the internal-external differentiation, in order to see into devices and to decipher the invisible. The mirrored glass structure allows us to do that by using reflections to open up spaces and break down walls.

In connection with the aporia of genetics being used to separate the internal and the visible, I do not wish to end my article on either an optimistic or a pessimistic note, but rather to leave open the question of potential future developments and tensions when geneticists in forensic science come up against the complexities inherent to their object of study.

One of the questions raised in the comments concerns the role of anthropology with respect to these developments, in a context in which nineteenth-century physical anthropology gave a pseudo-scientific basis to theories about racial hierarchies, as we know. For example, the founder of the Society of Anthropology of Paris, Paul Broca, with his cranium measurements and extrapolations about the workings of the brain, was a great proponent of these theories. To address this question, I shall draw on the thinking underway in sociology about current research in genetics (Roberts and Rollins 2020). While my article does not focus on the genetic study of deviant behavior, it is important to note that an increasing amount of research is looking into the relationships between bodies and the "environment", understood as social life, eating habits, exposure to chemicals, stress, etc. As a result of these projects, a new "biosocial" movement has emerged bringing together social science researchers, epidemiologists, and geneticists who consider the nature-culture divide to be obsolete—a shift that is likely to have an impact on conceptions of public policies regarding inequalities in particular, as well as on research disciplines themselves. Within what is a very real general movement, it is necessary, however, not to overstate the importance of research that remains marginal and challenged by peers, whether in genetics or sociology. One example would be biosocial criminology, a field involving sociologists and criminologists who advocate genetic and neuroscientific research into the alleged inscription of violent behavior in DNA—something false that has never been

scientifically proven. Certain researchers claim to have linked higher rates of criminal behavior among African American males with the presence of a rare allele. We can see here the specter of a long-defunct perspective being revived by recent genomic and statistical research. In France, these disputed theories have not taken hold among researchers in genetics or sociology, particularly because behavioral genetics does not enjoy the same legitimacy there as in the United States. However, the more generally porous nature of the boundary between biology and sociology does offer the opportunity to consider an agenda that places the body in its rightful place between nature and culture.

In this regard, we must first distinguish between two types of research. On the one hand, there are the studies showing the *effects* of how disparities and social lives are inscribed in bodies, including at a molecular level, and examining, for example, how experiences of stigmatization and discrimination are incorporated. On the other hand, there are the studies claiming to identify biological markers that allegedly *produce* behaviors, disparities, or social groups, with deterministic explanations for social behaviors. Moreover, when social science is applied to biology, it is important that it not fuel biological determinism absorbing social and biological definitions of "race", nor must it engage in what could be described as "embedded" anthropology (by analogy with "embedded journalism" dependent upon governments) that would consist in only studying the ethical, legal, and social implications of the major projects in genetic research. In this respect, I subscribe to the proposition of the anthropologist Jörg Niewöhner (2015, 235) who rejects the aim of achieving a biosocial synthesis. Rather than describing his collaborative work in biology as interdisciplinary, he coins the term "co-laboration" emphasizing the fact that this approach does not require a shared agenda or outcome: "Co-laboration is temporary joint

epistemic work", he writes. Co-laboration transforms each discipline profoundly whilst at the same time maintaining the principle of disciplinary demarcation. More broadly, anthropology's capacity to resist some of the different ways in which the social can be "absorbed" depends upon its ability to show the specificity of its theoretical, conceptual, and methodological contributions.

References

Gros, Frédéric. 2012. *Le principe sécurité*. Paris: Gallimard.

Harcourt, Bernard. 2015. *Exposed. Desire and Disobedience in the Digital Age*. Cambridge, MA: Harvard University Press.

Ndiaye, Pap. 2006. Questions de couleur. Histoire, idéologie et pratiques du colorisme. In: D. Fassin and E. Fassin (eds). *De la question sociale à la question raciale.* Paris: La Découverte, pp. 37-54.

Niewöhner, Jörg. 2015. Epigenetics: Localizing Biology Through Co-laboration. *New Genetics and Society* 34(2):219-242

Roberts, Dorothy E., Rollins, Oliver. 2020. Why Sociology Matters to Race and Biosocial Science. *Annual Review of Sociology* 46: 195-214.