Troy Duster: “Criminal Justice/Genomic Justice?”

SJWG Rapporteur Report

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This event began with Reardon recapping Duster’s previous talk about the “CSI effect” and DNA databanks. She mentioned that there was lots of attention on DNA data when she lived in the UK last winter. The front page of the “Observer” recently had a headline, “‘Put Young Children in DNA Database,’ Police Urge.” She asked, “How do we respond to this?” In the UK, there is now biometric scanning/storing of biological information for migration and immigration policies … In Troy’s earlier talk, he discussed the bias of the database being 2/3 people of color, so Jenny raises the question, “Can we put everyone in the database?”

Duster responded that it doesn’t change the operation of race. He noted that there would be a false sense of universal justice. That is, having everybody in the database assumes that since we are all in, we are all equally subject to whatever it means to be in the database. Troy discussed a case in the late 1980s that took place at University of Virginia. There were about a dozen white fraternity boys, mostly from privileged backgrounds, who were raided by the police for what turned out to be a cocaine raid. The community could not believe the police would target college-attending white boys while real “criminals” are out on the street. Duster contends that the apparatus of state will always turn primarily to vulnerable populations, which consequently turn out to be predominantly black and Latino arrests. He stated that if there were a universal database, such as in Portugal since 2004, there would continue to be arrests in targeted areas. “Cold hits” are arrested on the streets and not on privileged college campuses. The important thing to think about is what is the context and specifics of question. That is as long as we have the apparatus of the state, it’s fool’s gold to have universal database.

Donna Haraway turned discussion toward the question of positive harm. She agreed that racial, class distributions are fundamental issues, especially in regards to incarceration populations. However, Donna questions whether the current database harms and whether the universal database would do positive harm or will it be a money issue? Would it be a waste of distribution? Haraway questions whether bias is structured in system and whether DNA bias is irrelevant to system or is it doing harm? Duster responded that there are both exonerations and releasing of innocent people—it’s always about individual cases.

Discussion turned towards privacy issues and whether it would be possible to protect 4th Amendment rights through technical solutions. For instance, it may be possible to divide individuals’ genetic sequences in order segment control of the sequences and allow for exonerative use without disclosing the entirety of one’s sequence at any one time. Duster responded that having technical solutions can be misleading and assumes an amount of expertise and standardization that is typically not available on a large scale in law enforcement. Presently,
local, state, and national law enforcement agencies have widely divergent standards for taking, storing, and using genetic data on suspects and convicts.

In response to this, discussion moved toward how to change policing practices. Duster responds to this by suggesting that we change the reward structure within policing and challenge the funding priorities that favor prisons over schooling. For instance, there are overtime policies in police departments that encourage extra arrests and the end of shifts, incentivizing officers to make excess arrests. Similarly, the state often chooses funding law enforcement and prisons over universities because prisons create jobs for economically depressed communities and these jobs cannot be outsourced.

Several participants raised questions about how much biometric and genetic infrastructure feeds into police state and how much of it can actually be used positively to release innocent prisoners. Duster responds that DNA at best is going to handle 1-2% of all crimes. Out prisons have 2 million people. Maybe 3000 exonerates for 300,000 who are not getting it. Beatriz da Costa mentioned her experience of being an immigrant to the US and skepticism of being subject to laser scanning and questioned something along the lines of where that information is going or how might it be used against her. Duster responded that it seems to depend almost entirely on who is in control of database. The answer is going to come in context of who is asking the question and who has got the power.

SJWG member Jake Metcalf raised the question of whether we are giving DNA too much power and notes there are all sorts of ways of reading the genome and more subtle ways of understanding DNA. Some the concerns over genetic databases seems to rest on sketchy science and an incomplete understanding of exactly what types of information get stored and how they are used. As important as it is to resist the police state, it is important to avoid reifying an overly powerful understating of DNA because then it is reinforced, when really it should be challenged empirically and politically. Chelsea argued that the power of DNA in criminal justice will largely be settled by legal precedent.

Mark Diekhans made the point that there is a privilege to identifying as/with the socio-economic class that isn’t scared of being targeted as “criminal.” Duster mentioned that there is this pushing together of “criminals” that started off as just sexual offenders, to then violent, then, felons, then misdemeanor, to now arrestees – there’s a long continuum that we need to be aware of. Duster highlights importance of possible, practical solutions. The ACLU says “arrestees, no; felons, OK…” but at level of arrestees there is potential for mobilizing.

Rebecca [politics student?] then brought up the epistemological assumption of the body. That is, without too much science how can the body tell the truth? From a political and ethical standpoint, is the idea of the body property? What are underlying assumptions about the body? Reardon added, who owns the self? Whose property is it? We’ve moved from ownership of land to the self…is it white guilt? Who owns a body? Can anybody have property of the self?
Beatrice notes that classification is issue too. We don’t have to have a good science—looking at donor profiles online; there are spaces for “homosexual tendencies” are being pathologized.

A question was raised whether there is fear of the “criminal gene”? Is there fear that we might use new or find new categorization by developing a universal database. Duster responded that crime is socially defined—even murder and rape. Historically, rape could not have happened to black women by white men or slave owners. Haraway suggested that the politics of DNA storage need to consider the politics of where samples are taken from? There is an issue of the quality of science here and assurance regulating and limitations of a set of samples/data. We are not looking at DNA but more a repeat of sequences. The politics of sampling raises the question of “who is compared to what?” Donna reminds us that DNA is not one god but is a variety of practices—the dog genome is useful to investigate—and thus we should not let DNA stand as a single word.