# Race, Ethnicity, Biotechnology and the Law: Potentiality and Challenges for Law Enforcement in the Digital Age

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# OVERVIEW

1. **The project: how law conceptualizes and operationalizes race, ethnicity and nationality**
2. **Triadic relationship between law, law enforcement practices and science (i. biotechnology, ii. digital IT: databases)**
   - **science and race/ethnicity** (comparative constitutional law as the basis)
     - historically:
       - anthropology: phenology: races (Lombroso)
       - anthropology via geography: national origin, races
       - (social) anthropology: general knowledge, performative race/whiteness, unsubstantiated scientific evidence
     - contemporary: Biotechnology
       - DNA,"my heritage" (Israel: birthright)
       - race-conscious medicine
       - forensic analysis
       - suspect description, victim recognition: law enforcement data management
       - *race/ethnicity: social construct – social science discussions on race as a biological category silenced (compare: gender, sex) – yet re-biologisation and of the return of the marriage of geopgraphy and biology*
   - **law enforcement and race/ethnicity** (comparative constitutional law as the basis)
     - victimization: hate crimes
     - suspect:
       - specific description (+, -) by victim or witness
       - law enforcement profiling (traffic and border stop and search, anti-terrorist action)
       - algorithm, AI, predictive law enforcement
       - forensic DNA
   - **law enforcement and race/ethnicity and digital technology**
   - 1) forensic databases
   - 2) „regular" policing databases

**3. Hungarian case study for ethnic data in law enforcement**

# Background/The broader project:

past decades: transformative changes in how the meaning of the terms of (first of all gender, but also) ethno-racial identity are assigned and conceptualized in social sciences and humanities, and to a certain degree in politics and law.

destabilization of categorical frameworks, where race (and gender) as social classifications lost stability, self-evidence and clarity, thus transracial (and trangender) people can legitimately move between ethno-racial (and gender) categories.

Brubaker (2015): just like gender, the color line may be sharp and rigidly policed in theory, but is often blurred and porous in practice.

multiple forms of betweenness or new categories outside existing frameworks can be conceptualized, blending and blurring putative objectivity with affiliative self-fashioning; race, like gender, is "something we do rather something we have."

Do race and ethnicity have a fixed meaning susceptible to verification, or are these categories expressive and affiliative through self-discovery and public disclosure?

Can one change "genuine" racial identity (or even reject the existence or legitimacy of such categorization) or if it is only the social validation of particular public expressions that can be altered.

# Background/The broader project

**EU vs UK/US – GDPR and beyond**

**1. Definitions:**

- group recognition
- affiliation/membership

**2.Issues:**

- data protection vs human rights protection/efficient policy- making, the Murphy law of discrimination + obstacle to transparent and efficient policy-making
- the free choice of identity
- fraud, ethno-corruption

**3. Group recognition areas:**

- census
- Naturalization
- adoption
- minority rights (political, cultural rights, affirmative action: education, employment, electoral law)
- anti-discrimination legislation (ethno-racial law enforcement profiling, harassment and subjectivity)
- hate crime legislation
- asylum/refugee law
- ethno-religious identity: clothing, prison food, symbols

# Background/The broader project: affiliation/membership/operationalization:

– self-identification

– community agency

– objective criteria (language knoweldge, DNA, „documented ancestry," indiginenous law, Nurenberg revisited)

– third party identification

– proxy (name, address, parent's origin)

# Background/The broader project

**Need to define: target groups, goals, and tools/instruments (i.e. redistribution vs recognition)**

- 1) for hate crimes and discrimination, the perception of the majority and the perpetrators should be taken into consideration (TPI);

- 2) in political representation, the perception of the minority community should matter;

- 3) in preferential treatment (remedial measures and affirmative action), self- identification along with community identification or endorsement should be key.

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contemporary: Biotechnology

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victimization: hate crimes

suspect:

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# Hungarian case study for ethnic data in law enforcement

**in law enforcement training and education**

- historically: criminology: Gypsy crimes
- criminalistics: historically: Gypsy crimes
- DNA forensics

**in law enforcement practice and procedures**

- victim statement regarding him/herself – hate crimes
- victim/witness statement regarding suspect
- ex officio: hate crime indicators: proxies
- ex officio: wanted suspect *description*
- ex officio: unidentified body identification

**Technically:** codes for "personality description" "modus operandi",

1972 (walk, skin color, form of head, face, forehead, nose – column 23: Gyps looking, creol colored skin, very dark skin/arab/ negro/ Asian, albino)

1989 amended

2015 (?) again, race included

Diverse registries

Robocop: 22 entries, 4 mandatory (height, body type, walk, skin-cloro type),

Wanted list: 33

SIS II: 83

# •Thank you!

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