

Anatomy of Breed Specific Legislation

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INTRODUCTION

During the past one hundred years the demographics of America shifted the paradigm from a country that was principally rural to another that had become urban. By the turn of the century, seventy-five percent of all Americans were living in cities. This massive shift in population and demographics resulted in an increase in real estate costs, zoning restrictions and pet laws which today have emerged as a growing concern in every state. The impacts of these changes have forced breeders to adapt their facilities to fit the problems of urban sprawl or to relocate. In short, the ownership of dogs has come face to face with a new set of social, economic and legal issues.

In 2005 the AKC tracked 106 breed-specific measures that were adverse to purebred dogs. In 2006 that number surpassed the previous year. A cursory look at history shows that the pervasive trend in anti-dog legislation is no longer a problem peculiar to just the large cities. It has become endemic throughout the country. Unfortunately, most anti-dog measures seem to begin with a tragic incident where a person, very often a child, was bitten. The incident then becomes the catalyst for some kind of legislation. In most cases, the scenario begins with the incident, followed by the press which usually avoids or ignores the details surrounding the tragedy, the owner's responsibility, or the history of the dog or dogs involved. A typical case begins when officials respond with proposals that restrict ownership of one or more breeds. A broad look at this kind of

legislation shows that whether the proposal was successful or not, the impact on the dog-owning community is becoming a cumulative problem that has risen in almost every community.

Officials typically claim that anti-dog legislation and breed-specific laws are needed to control the dog population, address the "dangerous pet" issue and provide the public with a measure of safety. What seems to go unnoticed is that the owners of the "bad" dogs often hide them or choose another breed which leaves the responsible owners the innocent victims of excessive fees, licensing requirements and restrictive zoning. Now, after more than two decades of this kind of thinking, the legal approach has gained momentum.

THE PROBLEM

The steady and extreme nature of anti-dog legislation over the past few years has raised awareness to new levels among owners and breeders who are struggling to retain their basic rights and privileges. Unfortunately, the interest in removing dogs and breeds from communities has gained momentum at an alarming rate. This is a problem that deserves to be called by its proper name, breed-specific legislation (BSL).

The term BSL is often intermingled with the term anti-dog legislation. Both translate into the banning or restriction of ownership of a breed or those dogs that have a resemblance to a silhouette or profile. A typical case begins with restrictions or a proposal to ban an entire breed and all dogs that look like those that were involved in an incident. In some cases these measures begin when there has been no incident. Following close behind are efforts to limit or restrict ownership -- another detrimental phenomenon called the trickle-down effect. It includes restrictions on zoning, changes to airline policies, the prohibition of certain breeds at dog shows, increases in homeowner insurance rates, mandatory spay/ neuter, muzzling on or off the owner's property, high licensing fees to breed or sell pups or to own adults of any breed etc. Most of these events go unnoticed by the dog world even though they are increasing each year. Underneath the exterior of these actions is an anatomy that deserves to be examined and understood.

ANATOMY OF ANTI-DOG LEGISLATION

A proposal to restrict or eliminate ownership and breeding very often begins on the desk of some official whose motives are not always transparent. At other times they begin with a dog bite to a person. In the latter case, the bite incident does not receive a fair and impartial evaluation and rarely do the actions taken produce a lasting solution. In most cases, the dog's behavior is considered central to the problem and the owners are seen as having only a secondary role. Experts such as Peggy Moran agree that "dog breeds don't bite, individual dogs bite". A fundamental problem underlying anti-dog legislation is that the larger audience of responsible owners and breeders who are the innocent victims become burdened with the excessive restrictions of ownership. Because of the disconnect in thinking between the legislation and its intended purpose, anti-dog proposals only serve as a catalyst that eventually polarizes the community.

The chronology surrounding this kind of legislation typically begins with an incident- -very often a bite. The process that follows identifies one or more breeds as an important threat to the community. The participants and victims include dog owners, interested citizens, the media, elected officials and the animal rights groups. One of the ingredients used to promote this kind of legislation is the use of undefined labels which effectively stigmatize or characterize the owners and the breed(s) in a negative way. Undefined labels such as "puppy mill", "dangerous dogs", "vicious dogs", and "dogs out of control" are used to promote the need for severe legal action. Throughout the process no one questions the use of the undefined labels, perhaps because they are aimed at a lesser species that cannot speak for themselves. Others believe the answer may lie in our lack of understanding how the media, elected officials and the animal rights groups see the problem, and how they are drawn to use and apply undefined labels to achieve their goals. A useful way to review this phenomenon is to notice what factors are needed to produce the incendiary reaction that gives credence to anti-dog legislation and BSL.



In order to better appreciate the issues and the social factors involved in this kind of legislation, a review of other problems that have a parallel or similar pattern may exist elsewhere. For example, when well-known athletes or their institutions become involved in a scandal, the press is quick to use undefined labels that depict them as "rich", "out of control" or "well-connected bullies" etc. Murray Sperber, author of *Beer and Circus: How Big-time College Sports is Crippling Undergraduate Education*, says that "many rich athletes have gone wild with their money and connections because they are able, through their contacts and wealth, to get themselves out of the problems they cause". Recent examples in the NFL include running back Jamal Lewis in his 2000 cocaine case. Lewis, who faced a 10-year sentence, served four months, was suspended for two games and was back in time to play 15 games for the Baltimore Ravens in 2005. Miami Dolphins wide receiver Tony Martin was found guilty of laundering drug money and went on to play three more seasons. No player rebounded stronger than Mike Bell, Kansas City linebacker, who was convicted in 1986 on two counts of arranging cocaine sales, served a short sentence, and returned to play the 1991 season.

How the media takes advantage of these situations is well-illustrated in the more recent incidents involving athletes at a Colorado (2004) and at Duke University (2006) which left both schools with accusations about rape and sex parties involving their recruits and players. Both events made national news. At the outset, the media, with only a few facts, were able to give credibility to both incidents. A series of follow-up stories identified the victims, plaintiffs and defendants, and within days the media was able to provide a media trial for the public with a parade of "experts" (lawyers, DNA technicians, psychological counselors) who were asked the "what if" questions. Before the institutions or the NCAA were able to conduct their own investigations, guilt was inferred and penalties classified. In each case, the school and league officials were expected to make announcements to explain their situation. At the same time, local and state officials were called upon to make public statements.

In most instances, what usually follows is a series of dissonant reporting and commentary that reflects far more than the difference between what the public would learn before they would hear, see or read the news. By getting a head start on their competitors, the press is able to drive the story. Within hours, politicians will usually begin to make announcements which are designed to expose, clarify or fix the problem. In most instances there is more than enough blame to go around, but none draw as much interest as those involving a high profile person or event such as the football, baseball or basketball scandals. By 2004, only a few editors were bothering to require two or more sources to corroborate a story. Instead, they blame intense competition for ratings and circulation in a "24-hour" news cycle as the reason for inaccurate reporting. After months of live coverage, the Duke rape story lost its ratings. Several months later, in January and again in April, 2007, buried several pages back in a small article, mention was made that the charges were dropped against the Duke athletes for lack of creditable findings. The media which gave this story front page status showed little interest in it once the facts became known. Only a few talk shows found the story useful enough to interview TV attorneys and journalists who were willing to speculate on the impact the incident had made on the lives of the innocent victims.

These self-made conditions produce a scenario that the social critics say are right for a media circus. In many ways, dog bites and public scandals both provide a platform for stories that can focus on national flashpoints whose characteristics typically include one of the following: race, class, gender, violence, money or privilege. According to Robert Thompson, a communications professor at Syracuse University, "the forces all come into place to produce a journalistic perfect storm", which will use some or all of the

elements for a national flashpoint story. The elements of a story are then used to stir “the fundamental and foundational themes in American Culture”. Once the media and politicians expose their interests and get credit for reporting or suggesting a solution, they tend to go on to their next issue or their next story leaving behind a community that is left to sort through the rubble of their solutions. In most BSL cases, there are special interest groups which become embedded in the issues of the incident. They serve as a lever against all dogs and the dog-owning community. Their involvement often comes in the form of financial support that is used to push their agenda forward. Social scientists who observe these incidents begin their analysis by identifying the key players which are the elected officials, the media, the animal rights groups, and the dog-owning public. Each serves an important role in what can be called a social and legalistic puzzle. The elected officials claim they are acting in the interests of the public good; the media sees it as a story that will increase ratings; and the animal rights groups become involved because it fosters another opportunity to limit or eliminate more breeds and dogs. But in the end it is the majority of owners who are affected and become the innocent victims of these actions.

History shows that banning breeds has not accomplished the intended purpose of protecting or eliminating the threat of dogs that bite. If anything, these proposals only serve to polarize and disrupt communities. In spite of the opinions offered by the AVMA and others who do not advocate BSL, officials continue to use the legal system as their preferred solution to the ownership of dogs as a perceived social problem. There is little evidence to show that legislation has changed the behavior of those who are said to own the “bad” dogs. In an open and free society, it is easy to hide from and neglect the requirements of this kind of legislation. When new laws are passed, many owners seem to rapidly adjust by hiding their dogs or simply choosing another breed. Owners of the “bad” dogs in many instances can well afford the small fines levied by local courts and magistrates. History suggests that new laws do not motivate those who function outside the norm to change their behavior. To believe otherwise is to assume that the laws against drugs and their use have produced the desired changes in the behavior of those who sell and traffic in them.



CHOICE AND REACH

One of the most important elements of anti-dog legislation and BSL that go unnoticed is the social reach they have into the life of a community. These laws not only ban, limit and restrict ownership, they function with the authority of a class action lawsuit and, by extension, are able to reach deep into a community and affect a much larger group of owners whose dogs were not involved. In principle, anti-dog legislation promotes the notion of guilt by association and functions as another form of back door legislation. It is the equivalent of telling the parents of teens they can no longer live in their neighborhood because the son of a neighbor was involved in a fatality while using the family car. Proposals that ban and limit dogs are best known for their ability to produce tension between many groups with vested interests. They are able to bring relationships to a boiling point based on the use of undefined labels combined with the proven and unproven allegations. The social and economic strategy underling many of these cases confirms that the behavior of a few can be used to change the fundamental rights of many.

In 2006, the city of Louisville proposed major changes to their breed-specific legislation which would further limit and restrict breeders and dog owners. Their new restrictions were specific to “pit bulls,” which the city defined as several breeds including American Staffordshire Terriers, Staffordshire Bull Terriers, American Pit Bull Terriers, Cane Corsos, Presa Canarios, Dogue de Bordeaux, Dogo Argentino or any other dog having the appearance and characteristics of these breeds. In human terms, dogs and breeds were profiled based on a general structure or silhouette and not their behavior. Each breed determination and the designation of “dangerous dog” would be made by the Director of Metro Animal Services. The appeal process was limited to the Secretary of Public Works with no opportunity for the dog owner to be heard in court. The proposed ordinance would require owners to obtain a \$100 unaltered pit bull license, even for dogs that were in the city for less than 30 days. All owners would be required to provide proof of insurance in Kentucky and demonstrate that their dog had been microchipped and registered with the Metro Animal Services Department. Exhibitors who were in the city for a dog show from out of state would also be required to obtain a \$100 license. In spite of the fact that there is no science or evidence to show that the physical structure or body type of a human or animal portends its behavior, Louisville pursued its goal to ban thousands of dogs from its boundaries. No other community has proposed such a far-reaching legal set of requirements on its citizens.

Unfortunately, what usually follows many anti-dog legislation proposals is a phenomenon that is called the ripple effect. These are the post events that spawn from extreme proposals that usually come in the form of mandatory spay/neuter laws and license differentials. For example, \$5 for a spay/neutered pet, \$150 for a breedable animal, litter permits that require disclosure of sales, limits on the number of litters per year and restrictions on the number of breedings allowed per year. What goes unnoticed about the fallout from the ripple effect is the cumulative nature they have on the hobby breeders of purebred dogs.

Although these cases in many ways closely parallel the scenario of the scandalized athletes and their institutions, the key difference involves the species and the elements of the story. In a BSL case, all dog owners and, indirectly, the American Kennel Club,

become involved. With over 20,000 events for purebred dogs which attract more than 3 million entries annually, the AKC feels the immediate effects of these cases through the loss of registrations, which in 1992 were at their all time high of 1.5 million. By 2006, they had declined to less than 970,000.

The AKC, with nearly 5,000 licensed and member clubs along with its affiliated organizations, advocate for the purebred dog as a family companion. The AKC works to protect the rights of all dog owners and promotes responsible dog ownership. It offers more than 20,000 competitions for AKC-registered purebred dog owners each year. The venues include conformation, agility, obedience, rally, tracking, herding, lure coursing, coonhound events, hunt tests, field and earth dog trials. Despite its size and influence, even the AKC feels the effects of these cases. With its operating headquarters in Raleigh, North Carolina, nestled among many diverse ethnic groups, the AKC knows there are many reasons why Americans own a dog.

Those who choose the AKC purebred do so because of their good breeding and reliability. Some cost upwards of \$5,000 - \$10,000 and require complicated and binding contracts as part of the sale. Owning and campaigning a purebred can also be expensive. The best will spend in excess of \$50,000, which exceeds the medium household income of Durham, North Carolina (\$43,337). These facts alone tend to separate the AKC purebred dog owners from all others. But regardless of their pedigree or their value, BSL and anti-dog legislation fails to distinguish between those who are AKC registered, the mongrels and those that live on the streets. In each instance public officials bundle all dogs that have a similar "look" into one package regardless of their breed, gender or class of owner. Seldom do these cases focus on the care, conditions, treatment, history or behavior of the dogs or the people that own them. Rarely do the politicians or the media make distinctions or offer constructive or preventative solutions that can solve the problem. In the simplest of terms, BSL can be summarized as a class action against the innocent and the guilty without having to meet the high legal standards set for this kind of legal action.

Sociologists who study the social, economic and legislative aspects of these cases tend to focus on the social forces and policies that drive them. They examine how undefined labels are used to describe and characterize the targeted victims and the innocent bystanders. They look for the factors that result in the incendiary mix of accusations that involve the victims, defendants and breeds. They study the conditions leading up to the incident, the behavior of the victims and the impact of the legislation on the community. Their studies focus on the social and economic life of the community and how these actions are used to change the fundamental rights of citizens to own property as well as their right to choose a breed of their preference. Their conclusions usually address the unintended consequences of these events by those who are well meaning.

STANDARDS

The irony of this kind of legislation is that the media and the politicians do not apply the same logic, strategy or standard to other similar problems in our society. For example, one must wonder why the speeders and drunk drivers who kill and harm far more people each year are not dealt with in the same harsh fashion. The record shows that while many parallels occur in how human and canine problems are handled, it does not explain the extreme differences. The real problem behind the speeders and the drunk drivers is not the car or the alcohol ... neither breaks the law. It is the behavior of the person, whether they are driving a car or drinking too much. Common to both are the use of undefined labels which are used to target the victim. Calling a person a "drunk" or "speeder" introduces a stereotype that can be applied and expanded to a person or a group of individuals. Insurance companies use the stereotypes to raise rates and elected officials use them to generalize to the larger community. The use of labels provides a vehicle that makes it politically correct to characterize the "bad" people as drunks and speeders. But when the incident involves a lesser species, they seem to be anxious to apply another brand of justice using undefined labels such as "dangerous", "vicious", or "out of control dogs" which allows them the opportunity to ignore the behavior of the owner.

Robert Thompson says that the events leading up to social disruptions in a community oftentimes are used to produce national stories which bring forward a whole new Animal House quality that makes for good TV stories and feature articles for the newsprint industry. The controversy produced by anti-dog proposals seems to come from the idea of contrast. Telling dog owners they must give up their property because someone else who lives in their community owned a "bad" dog that may have injured or killed a person is fundamental to understanding the anatomy of this kind of legislation. When the media, politicians and animal rights groups combine the incendiary elements needed to introduce anti-dog legislation or a BSL case, they are able to produce a national flashpoint for a perfect social storm. Because many incidents will begin with a horrific event such as a child who is mauled, bitten or killed, it provides opportunity for the media to exercise journalistic license with their version of the story using undefined labels and quotes from local politicians, victims and their families. All this is used to fuel the strategy for rigid limitations, prosecution and/or banishment. The strategy of these proceedings is to reach deep into the dog community without ever knowing how many "good" dogs and responsible owners will be adversely affected. Rarely does anyone look beneath the incident or the facts leading up to why a limitation is necessary. The solution to punish every



owner mirrors mob psychology. The irony of this logic bears review. For example, no one proposes sweeping legislation each time a human injures or kills another human. In a study conducted by the AAA, they found that after-school hours rivaled weekend nights as the peak time for fatal crashes involving teenage drivers. The Travel Club reported crash data for 16-17 year-old drivers from 2002 - 2005 and concluded that just as many people died between 3pm and 5pm on weekdays as on Friday and Saturday nights, and that drivers 16-20 accounted for a disproportionately high number of these accidents. In 2004, there were 1.8 million crashes with 8,535 fatalities caused by young drivers. When the data was presented to the media they found little use for it and no politician proposed that teenagers be removed from their communities. Instead, the insurance companies pay the damages, settle the lawsuits and raise the rates. Sociologists, criminologists and psychologists all agree that there are specific and identifiable individuals who are clearly more dangerous to a society than others. While many are wellknown to the authorities, no legislation is proposed that removes them from the densely populated areas. Even repeat offenders are allowed to live anywhere they choose. Only in a limited number of cities have restrictions been adopted that keep child molesters from living near school zones and certain bus lines. The facts surrounding the horrific incidents they produce are rarely compared to the dangers of living with or near those who own animals. For example, which is more dangerous, a few "bad" dogs that can be contained and controlled or thousands of drunk drivers and repeat sex offenders who can live anywhere they choose and are free to act again?

The reason that BSL and anti-dog legislation is allowed to stand and, more importantly, function as a class action suit, has a basis in the etiology of social conflict. To this end, one can find that it resonates with a certain level of public support for a simple solution. Almost everyone can recall a dog problem they have experienced and most can either tell a familiar dog story of their own or one that involved a friend. "Oh yeah, I know of a neighbor or friend who also never controlled his/her dog." Being able to tell a story about a friend or a neighbor's dog gives this kind of legislation a measure of support. Experts see it as a social problem with many parallels. J. Douglas Toma, Associate Professor at University of Georgia Institute of Higher Education and author of Football University, Spectator Sports in the Life of the American University thinks that when social conflict occurs, there is a segment of the population which enjoys seeing others get "knocked down a peg or two".

A closer look at those who own the dogs involved in bite incidents suggests that the owners of the "bad" dogs can well afford the small and insignificant fines meted out by the local courts. In this regard, there are few differences between the speeders, drunk drivers and rich athletes who are back on the street in a matter of hours. Police records show that small fines typically do not serve as a deterrent to unacceptable behavior, nor has the registration of handguns stopped senseless murders. On the other hand, rarely do officials propose laws, rules or codes that establish a fair and impartial process by which the owner's behavior is evaluated based on measurable actions. In short, the breed, rather than the deed, is over- looked. Dr. Julie Gilchrest, medical epidemiologist and pediatrician with the Communicable Disease Center, stated that while the CDC maintains the nations largest database on fatal wounds caused by dog bites, it is firmly against breed-specific legislation. Data from the CDC shows that dog bites are misunderstood. Of the 2.8 million children bitten, boys are bitten twice as often as girls and most are between the ages of 5 and 9 years of age. More interesting is the fact that the dogs that bite most often are not the "dogs on the street". Sixty-one percent of the bites to children come from dogs belonging to the family or a friend.

CONCLUSION

Anti-dog legislation is gaining momentum at an alarming rate. Unfortunately, in most communities, dog owners do not become involved until they are faced with the consequences of the legislation. This means that others drive the agenda that affects their pets. Historically, the response to dog problems has been to fight each proposal one by one, city by city. This approach no longer works as more proposals are prepared each year. A new strategy with a more penetrating and focused effort is needed...one that embraces coalitions of informed citizens whose purpose is to guide and steer the course of legislation and the political future of officials who are bent on eliminating dogs from their community.

At a minimum, every state and local community needs a well-defined code of conduct and a set of definitions that address the key labels used in anti-dog legislation. Coalitions must begin to collect data of their own that addresses a wide range of subjects. They must develop statistics to show that "pet overpopulation" is a myth and that, in many instances, the problem is the lack of responsible dog ownership. There continues to be communities who rely on data collected by the CDC, police and hospitals to craft their legislation and stigmatize breeds. Those who use CDC data do so based on the assumption that certain breeds are inherently more dangerous than others. While there is no science to support this approach, this idea has been allowed to stand mainly because the dog community and all of its recognized organizations have done nothing to disprove it. Data must be developed to show that breeds should not be characterized based on the behavior of a few and that there are no genes that produce aggression

A broad look at BSL and anti-dog legislation suggests that this area has grown so large that containment is no longer a viable strategy. The paradigm must change. Organizations and individuals must step up and help meet the challenge. They must commit to gathering facts and developing relationships that result in a working relationship between the elected official and the dog community. The relationship must be cultivated so that the elected official relies on the dog community for information and facts about dogs. The dog community must learn to do more than lobby against legislation. They must learn who their representatives are at the city, county, state and federal levels. Coalitions must engage the broader voting community through education in order to

respond with a greater impact that is aimed at the political life of certain officials if necessary. The dog-owning public must protect their rights to own and control their own destiny and begin to hold accountable those officials who continue to support legislation adverse to dog ownership. In a democracy, the will of the people is not irrelevant.

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