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**Cave Canem:
The Moral Regulation of the Domestic Dog Owner in Ottawa and
Criminology of the Dangerous Dog from 1890 to 2001**

by

Karen Edgar B.A. (Hons.)

A thesis submitted to
the Faculty of Graduate Studies
in partial fulfillment of
the requirements for the degree of

Master of Arts

**Carleton University
Ottawa, Ontario
January 2002**

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**Cave Canem:
The Moral Regulation of the Domestic Dog Owner in Ottawa and
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Submitted by

Karen Edgar, B.A. Hons.

**in partial fulfilment of the requirements for
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Thesis Supervisor

Chair, Department of Law

**Carleton University
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ABSTRACT

Stimulated by recent calls for policy mandating the sterilization and elimination of certain breeds of domestic dog thought to be “dangerous” this thesis seeks to understand why these demands are being made. Using Moral Regulation theory, a survey of the historical formal legislative regulation and the informal moral regulation of dog owners through governance literature (dog breaking/training manuals) is presented which yields shifts in conceptions of the roles of owner and dog, notions of dangerousness and the responsibility required of dog owners to cultivate and control the dog’s behaviour. Most fascinating is the insertion of prevailing social discourses into the owner/dog relationship that circularly connects the perceived deviance of one to the other. Supplementing the groundbreaking work of Piers Beirne is a “criminology” of the “dangerous” or biting dog as derived from the governance literature. With the growing link between dog and owner and an increasing volume of “expert” knowledge which incorporates positivist psychology, canine behaviourism and medical science, the owner has become implicated as a causal agent of the dog bite. The Ontario *Dog Owners Liability Act* incorporates this criminology in its application of absolute civil liability on the owners of dogs who bite. Contrary to the criminology derived from the manuals, the discursive connection between breed, aggression and dangerousness is more consistent with the current climate of risk reduction and crime control than it is with the current elements of the moral regulation of the dog owner.

DEDICATION

To
Amber,
Mishka
and
Sasha:
the source of my inspiration.

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Dog ownership, once a barometer of confidence and cool, a link to a shared past of farm and field, now carries with it the faint but undeniable whiff of weakness, a presumption of moral flaw.... Like the smoker, the dog owner in the late 1990s is a presumed scofflaw, guilty until proven otherwise, a self-indulgent creature whose expensive little habit carries health risks that pose an unfair economic burden on the rest of society

M. Battiata, "Dog Owners are the New Smokers"
Ottawa Citizen (20 July 2000) A4

INTRODUCTION

Although domestic dogs have very likely bitten humans since the advent of their interaction in prehistory, the issue of pet dogs who bite humans has recently gained prominence as a social problem. The president of the Canada Safety Council, Emile Therien, in comments to *the Ottawa Citizen* newspaper, called for a detailed collection of statistics on dog bites in Canada and declared approval for policy that targets specific dog breeds for sterilization and “elimination”.¹ The Humane Society has offered one million dollars towards a “nation-wide campaign to prevent dog bites.”² Strict legislation regulating the owners of dogs who bite has lawyers wrangling to spare the lives of the “criminal” dogs whose aggression offends against the unfortunate victim but also the greater cultural psyche. For “man’s best friend” to bite (unexpectedly and without direction from any human) is a betrayal of the human/dog relationship that is loaded with discourses concerning power, obedience, hierarchical roles, sentimental expectations, stereotypes of breed, and so many more. Because the domestic dog is, essentially, a product of human cultural and physical construction, when it bites back it is an insult, a challenge to commonly held assumptions about dogs and people.

Dogs have attacked humans for thousands of years. They have done so, however, at the direction of humans. In roles as guards, soldiers, and law enforcement officers, for example, it is acceptable for dogs to attack humans. The key difference between these and the biting dogs that constitute a “social problem” is the role of the human involved. Aggressive dogs become a problem when they act beyond human control. Unlike trained

¹ E.J. Therien, “Dog Bites are a Major Health and Safety Problem” *Ottawa Citizen* (16 June 2000); J. Bell, “Experts Blast ‘Bad Dog’ Theory” *Ottawa Citizen* (29 July 2000).

² Therien, *ibid.*

attack dogs, these dogs have no “off” switch. It is this lack of power which is problemized as a threat to the personal safety of the people around the dog: random people in public places, people who enter the dog’s territory, children who play with the dog or even, in some cases, the dog’s “owner”, the person to whom the dog is most expected to submit. A biting dog fundamentally disturbs the dominant social assumptions about the position of power a dog should hold relative to humans.

In medieval Britain, the dominant conception of animals was that they were a powerful part of nature, possessing individual agency. Animals had rights in the sense that when tried for crimes against humans they received the due process accorded to humans.³ As such, animals were seen to be morally responsible for their actions.⁴ Running parallel to the witch trials, animals were implicated as agents and “incarnations of the devil” and as guilty accomplices to bestiality.⁵ There is a colourful historiography of animal trials with a variety of interpretations depending on locality and period.⁶

A significant shift began, in the seventeenth- and eighteenth-centuries, in the ways in which animals were constructed, both in law and in popular conception. Prior to the eighteenth-century humans thought themselves to be dominant over and separate from animals. The conceptual separation and notion of a natural hierarchy of human domination served to justify the practices of “hunting, domestication, meat-eating,

³ E. Cohen, “Law, Folklore and Animal Lore” (1986) 110 *Past and Present* 6 at 11.

⁴ *Ibid.* at 35.

⁵ J. Liliequist, “Peasants Against Nature: Crossing the Boundaries Between Man and Animal in Seventeenth- and Eighteenth-Century Sweden” (1991) 1(3) *Journal of the History of Sexuality* at 393; K. Thomas, *Man and the Natural World: Changing Attitudes in England 1500-1800* (London: Allen Lane, 1983) at 40.

⁶ See Cohen, *supra* note 3; Liliequist, *supra* note 5; E.P. Evans, *The Criminal Prosecution and Capital Punishment of Animals: The Lost History of Europe’s Animal Trials* (London: Faber & Faber, 1906, 1987); P. Biene, “The Law is an Ass: Reading E.P. Evans’ ‘The Medieval Prosecution and Capital Punishment of Animals’” (1994 2:1) *Society and Animals*; G. Parker, “Is a Duck an Animal? An Exploration of Bestiality as a Crime” (1983) *Criminal Justice History* 95.

vivisection” and the extermination of “vermin and predators.”⁷ Although the aristocracy had long established close, affectionate relationships with pet animals, the expansion of pet-keeping beyond this elite class may be a contributing factor to the changing perceptions of the differences and similarities between humans and animals. A combination of humane sentiments, likely fueled by the pet-keeping of scientists and intellectuals (and clergy) served to bridge the well-honed gap between humans and animals.⁸ Whereas, before, humans were more likely to perceive themselves at the mercy of natural forces, including animals, Enlightenment thinking demystified nature with science, replacing fear and deference with manipulation, exploitation and control. Animals’ increased vulnerability and ‘humanity’ positioned them as objects of domination but also as objects in need of human compassion and protection. It is in this nineteenth century surge in the keeping of dogs as pets by all classes of people that this thesis begins to explore the emergence of the dangerous dog.

In many European countries until the nineteenth century, including England, dogs (and all sorts of other animals) who attacked humans were subject to formal court trials and capital punishment. Piers Beirne speculates that the medieval animal trial has given way to a new system in which animals are “‘tried’ and lawfully executed” as per the “bureaucratic regulations” of the animal shelter.

Far from declining, there has been a dramatic rise in the number of animals ‘tried’ and lawfully executed since that time. Has not the medieval courtroom been displaced by the animal shelter? Have not the awesome powers of medieval criminal law to punish animals simply been usurped by the bureaucratic regulations attached to the circumstances in which animal shelters and animal control officers are allowed to put animals to death? Have not the rack and the gibbet been displaced by the clinically painless euthanasia dispensed by lethal injections and vacuum chambers? Nowadays, instead of being executed for

⁷ Thomas, *supra* note 5 at 41.

⁸ *Ibid.* at 122.

crimes against humans, animals are far more likely to be executed – silently, invisibly and without advocates – for such ‘crimes’ as ‘homelessness’ and ‘aggression.’⁹

I will argue that, particularly in the last thirty years, it is not just the animal shelter that is responsible for making the decision to kill an animal because of its aggressive behaviour. Dog owners, as the advocate for the dog, may have the dog put to death due to its uncontrollable aggression. The law, too, still formally regulates canine aggression. Dogs, with their owners, are subject to litigation in Canadian courtrooms of the present.¹⁰

Rather than examining the role of humane societies and animal control offices in regulating aggressive dogs, this thesis looks at the role of the dog owner as the subject of formal and informal regulation and a slew of discourses which dictate the self-perception and lifestyle of dog owners. Chapter One introduces moral regulation theory, a perspective which is used to examine the formal and informal regulation of the dog owner. Law is presented as a coercive and discursive means of regulating behaviour while manuals written to provide advice on the governance of dogs are presented as an informal means of regulation. Governance manuals deploy a discourse of “truth” or expertise which is intended to affect the self perception of the owner and promote self regulation.

The topic of dogs is justified as an important focus of sociological study because of its utility in studying human social behaviour. The construction of the dog, as a biological and cultural product of human manipulation is examined, leading up to the issue of the phenomenon of dogs biting humans.

⁹ Beirne, *supra* note 6 at 43-44.

¹⁰ *Dog Owners Liability Act*, R.S.O. 1990, c. D-16.

As explained in Appendix A, the two major sources used in this discourse analysis research are legislation and dog training manuals (supplemented by the publications of the Canadian Kennel Club. Beginning in 1827, the discourses concerning the legal regulation of dogs, and those pertaining to the human/dog relationship as outlined in the governance manuals are used to create a picture of the patterns and trends in which discourse conglomerates to produce certain forms of regulation. Chapter Three outlines the legislation pertaining to dogs from the late nineteenth-century to the present in order to provide a backdrop of formal regulation and discourse. Chapter Four discusses the trends of child-dog comparisons, speculating as to the motivations for and implications of doing so. Chapter Five outlines the theories which are implied or presented in the manuals to explain the causes of aggression in dogs and the rationales for the recommended responses to it. In light of the current calls to eliminate “dangerous breeds” of dog, a special section outlines the development of the discursive connections between breed of dog and behaviour. This research takes a step closer to a greater understanding of the transient definitions of canine dangerousness, rationalizations for its occurrence and rationalizations for the various responses established in legislation and governance discourse.

This project is isolated, as a topic of moral regulation, and as a topic on dogs. As such, this research may, at times, follow leads beyond its scope but with the intent to create a broad picture of the formation of the concept of the dangerous dog and to make sense of the policy recommendations of the present.

CHAPTER ONE

Moral Regulation and Associated Theory

The act of bringing a puppy into a human household is fraught with expectations of behaviour for both human and dog. The human is expected to immediately begin indoctrinating the puppy to behave appropriately (where and when to defecate and urinate), and gradually, how to respond to human words and signals, and to regulate itself – constraining itself from inappropriate chewing, chasing, jumping-up, biting, and so on. At the same time, the dog owner¹ is aware that certain behaviour is required of her. Dog training manuals justify a dominant power role for the owner and offer training techniques. Other dog-owners at the park observe her behaviour and make suggestions or offer scornful looks, by-laws require that the dog be leashed and that faeces be removed from the ground, and the Criminal Code labels dogs as human property and prohibits people from being willfully cruel or negligent to them. The puppy learns how to function in a world dominated by humans. Still, the puppy finds means of resistance and negotiates some power for itself. The puppy can communicate with its owner that it needs to go outside, it may learn to find ways to run free and not return to its owner on command, how to function to get what it wants, in a sense, finding the loopholes in the owner's control such that it can exert some control over its daily existence. Each individual case varies. Dogs and dog-owners find a way of functioning under the formal and informal socially prescribed regulations that define how their relationship is to be.

¹ I will use the term “dog owner” as opposed to the currently favoured term, “caregiver”, and “dog” instead of “companion animal” in this thesis. These terms apply, with an acceptable accuracy, to the human/dog roles in all the periods examined in this thesis and, therefore, provide consistent terminology.

In approaching the topic of the human relationship with the domestic dog, a theoretical framework is required which is capable of appreciating the dog as an object of social control while simultaneously taking into account that the human dog owner is also subject to social control. To compound the problem, the theoretical framework should also recognize that the dog, in practice if not in the ideal, also exerts power over the dog owner.

This thesis seeks to challenge the seemingly “normal” concept of humans cohabiting with pet dogs: the expectations held by the dog “owner” and the society in which the relationship takes place. The following theoretical perspectives may assist in achieving a greater understanding of the recent problemization of dogs biting humans.

Foucault, Power, Knowledge, and Truth

In order to take into account the power relations between humans and dogs and the dominant discourses and regulations which steer and frame the relationship between dog owner and dog, the work of Michel Foucault is essential.

Power, according to Foucault, is to be conceived of in relational terms, it “exists only in action.” Power “produces knowledge.” Knowledge cannot be thought of in terms of “truth”.² Discourses are created by power and thereby are attributed with the status of “truth”. Power can only be exercised with the production of “truth”.³ Power permeates social relations, it is “interwoven with other kinds of social relations’ which may be linked together to produce a “unitary strategic form.”⁴ In this sense, power is not serving

² M. Foucault. *Power/Knowledge: Selected Interviews and Other Writings 1972-1977* (Brighton: The Harvester Press, 1980) at 142. [Hereinafter *Power/Knowledge*].

³ *Ibid.*

⁴ *Ibid.*

any interests, directly. Interests may be served because they are used in “strategies”.⁵

Foucault sees power as a productive entity, neither good nor bad. In a sense, power is something which simply *is*, and becomes apparent when pushed about by various forces, large and small.

What makes power...accepted, is simply the fact that it doesn't only weigh on us as a force that says no, but that it traverses and produces things, it induces pleasure, forms knowledge, produces discourse. It needs to be considered as a productive network which runs through the whole social body....⁶

Foucault's conception of power works well for the requirements of the theoretical framework for this project that demands a fluid understanding of power relations.

Foucault's dual conception of the “subject” is helpful in further conceptualizing power and its effect on individuals. “Foucault proposed that, rather than being the generative source of social change and cultural meaning, the modern subject – the autonomous, free, rational individual – is constituted as an ‘effect’ of historically specific disciplinary regimes and power relations.”⁷

This form of power applies itself to immediate everyday life which categorizes the individual, marks him [sic] by his own individuality, attaches him to his own identity, imposes a law of truth on him which he must recognize and which others have to recognize in him. It is a form of power which makes individuals subjects. *There are two meanings of the word ‘subject’: subject to someone else by control and dependence; and ties to his own identity by a conscience or self-knowledge.*⁸

This implies that when power is exerted on a subject, it may take an external form, being regulated from an outside source. The internal form, perception of self and self-regulation is the second form.

⁵ *Ibid.*

⁶ *Ibid* at 119.

⁷ K. Rousmaniere, K. Dehli & de Coninck-Smith. “Moral Regulation and Schooling: An Introduction” in K. Rousmaniere, K. Dehli & N. de Coninck-Smith, eds. *Discipline, Moral Regulation, and Schooling: A Social History* (London: Garland Publishing, 1997) at 8.

⁸ M. Foucault. “The Subject and Power,” in H.L. Dreyfus and P. Rabinow, eds. *Michel Foucault: Beyond Structuralism and Hermeneutics* (Chicago: University of Chicago Press, 1983) 208-226 in *ibid* at 8 (emphasis mine).

Foucault offers insight into how to understand the production of different forms of subjectivity. Power can be exerted on the subject through disciplinary technologies: surveillance, “hierarchical observation, normalizing judgment and ...examination” to produce “subjected and practiced bodies, ‘docile’ bodies.”⁹ This aspect of producing subjectivity applies more to the actions of the dog owner in obtaining a “docile” dog, a theme which is consistently apparent in governance discourse for dog owners. Also useful to understanding the influences to which the dog owner is subject is Foucault’s theory that power can also be exerted through its intimate connection with the production of knowledge and truth.¹⁰

In a society such as ours...there are manifold relations of power which permeate, characterize and constitute the social body, and these relations of power cannot themselves be established, consolidated nor implemented without the production, accumulation, circulation and functioning of a discourse. There can be no possible exercise of power without a certain economy of discourses of truth which operates through and on the basis of this association. We are subjected to the production of truth through power and we cannot exercise power except through the production of truth....In the end, we are judged, condemned, classified, determined in our undertakings, destined to a certain mode of living or dying, as a function of the true discourses which are the bearers of the specific effects of power.¹¹

That power can produce truth, and establish and perpetuate a “certain mode of living,” of understanding one’s world –is central to embarking on a project which seeks to challenge taken-for-granted assumptions of the human-dog relationship. Discourse has a strong effect in making the concept of having a pet dog “normal” and seemingly automatically eliciting certain behaviours and attitudes from both dog owners and dog.

⁹ M. Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1995 originally 1977) at 170 [Hereinafter *Discipline and Punish*].

¹⁰ *Power/Knowledge*, *supra* note 2 at 59.

¹¹ *Ibid.* at 93,94.

It is Foucault's concept of power, the strategies through which it can be exerted which help inform the second component of the theoretical framework – that of moral regulation.

Moral Regulation

Moral regulation is a theoretical framework in Sociology that has been sufficiently developed in the latter part of the twentieth century to be recognized as a stream of sociological inquiry.¹² Despite this, it has taken some time for sociologists to define its parameters of application.

Most discussions of moral regulation begin with the definition by Corrigan and Sayer of a “project of normalizing, rendering natural, taken for granted, in a word ‘obvious’ what are in fact ontological and epistemological premises for a particular and historical form of social order.”¹³ Corrigan and Sayer see the central source of such a project as emanating from the state. Writers elaborating on the concept of moral regulation have included other social agencies, in addition to or to the exclusion of the state, as playing a central role in projects of moral regulation.¹⁴

Ruonavaara, in an attempt to sort the multiple contributions of authors writing on moral regulation, provides a definition incorporating the following elements:

Moral regulation is a special kind of social control. Its target is primarily how people see themselves and their ways of life, and its method is persuasion rather than coercion.... (It is also) action taking place in a social relation between the regulator and the regulated.¹⁵

¹² H. Ruonavaara, “Moral Regulation: A Reformulation” (1997) 15:3 *Sociological Theory* 277 at 290-292.

¹³ P. Corrigan & D. Sayer, *The Great Arch: English State Formation as Cultural Revolution*. (Oxford: Basil Blackwell, 1984 at 4.

¹⁴ *Supra* note 12.

¹⁵ *Ibid.* at 290.

Alan Hunt, who has done a great deal to clarify the concept of moral regulation qualifies many of Ruonavaara's definitional statements.

The Contributions of Alan Hunt to Moral Regulation Theory

Alan Hunt has gone further than Ruonavaara in attempting to pinpoint the definition of moral regulation. Concurring with Ruonavaara's assertion, Hunt suggests that moral regulation "involves 'moralization' rather than 'morality' and thus is relational (whether to others or to the self) in asserting some generalized sense of the wrongness of some conduct, habit or disposition."¹⁶

Hunt's definition of moral regulation begins as follows:

Moral regulation involves the deployment of moral discourses which construct a moralized subject and an object or target which is acted upon by means of moralizing practices. The implication of this conceptualization is that the 'moral' dimension is not a distinctive characteristic of the regulatory target but rather is found in the linkage posited among subject, object, practices and their projected social consequences.¹⁷

To relate this definition to the project at hand, Hunt would note that in studying the moral regulation of domestic dogs and their owners, one should note each component: the moralized subject (the dog owner), and a moralized object or target (the dog), a set of practices (obedience training) and a feared 'social harm' (dangerous dogs, aggressive dogs).

One aspect of moral regulation noted by Valverde is "that moral regulation characteristically incites those at whom it is directed to engage in practices of self-

¹⁶ Hunt, A. "Moral Regulation and Making-up the New Person: Putting Gramsci to Work." (1997) 1:3 *Theoretical Criminology* at 280.

¹⁷ *Ibid.*

formation.”¹⁸ Ruonavaara and Corrigan and Sayer also concur, noting that one major aspect of moral regulation is “regulating identities, the ways of seeing oneself.”¹⁹

Valverde writes:

The aim of moral reform...is not so much to change behaviour as to generate certain ethical subjectivities that appear as inherently ‘moral’. Correct actions will of course follow: but the subjectivity is more important than the behaviour.²⁰

Hunt tempers this assertion by stressing that this is not a necessary aspect of moral regulation. “While agreeing that there are frequently significant links between moral regulation and self-formation, (Hunt) suggest(s) that such instances should be treated as especially important forms of moral regulation, but should not be treated as definitional.”²¹ Moral regulation can take many forms, including those characterized by coercion which may not involve self-formation.²² Hunt’s position is consistent with Foucault’s dual components of the subject, potentially having an external and internal influence on the subject. I will argue that the moral regulation of dog owners involves both forms, at times instilling self-formation, and at other times exercising a more coercive form.

Hunt further develops the concept of moral regulation and ‘ethical subjectivity’ by adding that it is not necessarily only the targets of moral regulation who may be encouraged towards practices of self-formation. Projects of moral regulation may also have the effect of involving “attempts to construct the ethical subjectivity” of the regulators, or agents of moral regulation.

In order to rule, agents need to demonstrate not only to themselves, but in particular to other participants, their entitlement and ability to rule. This therefore

¹⁸ M. Valverde. “Moral Capital.” (1994) . 9(1) *Canadian Journal of Law and Society* 216, in *ibid.* at 281.

¹⁹ *Supra* note 12 at 286.

²⁰ Valverde, *supra* note 18 at 216.

²¹ *Supra* note 16 at 281.

²² *Ibid.*

involves their self-formation as rulers. The nature of these self-formation processes, while varying widely, are always likely to encompass both moral and ethical techniques of self-mastery.²³

Hunt makes a final definitional distinction between “moral regulation (moral discourses acting on moralized objects via moralized practices) and moral regulation movements ... (which involve) the presence of the additional element of political subjectivity which grounds the legitimacy claims of agents to act upon moralized objects.”²⁴ At different points in history, both these terms may apply to humans and their dogs.

Governmentality and Dog Owners

Foucault identifies a growth in works which present “the art of government” beginning in the mid-sixteenth through late eighteenth-centuries. Political writings present prescriptions of “how to govern oneself, how to be governed, how to govern others, how to accept him who is to govern us, (and) how to become the best possible governor.”²⁵

Governance discourse for dog owners has become more prevalent and dominant in the last two centuries. This discourse, arguably, as a sociological object, is a curious conglomeration of the dominant discourses which surround it. In effect, the discourse on how to govern one’s dog is reflective of the broader sociological rationalities of governance. The dominant discourses insert themselves in the discourse of how to own a dog: discourses of the humane movement; disciplinary techniques; philosophies of punishment; psychological behaviourism; medical/veterinary; criminological. The

²³ *Ibid.* at 281-282.

²⁴ *Ibid.* at 282.

²⁵ M. Foucault, “Governmentality” (1976) 6 *Ideology and Consciousness* at 5.

governance discourse, present in dog training manuals and publications, can be viewed as a component or vehicle through which moral regulation is effected.

Governance and the Shift to Responsibility

A key pattern which serves to frame this thesis is the increase in demand for individuals to be responsible. Although dogs have, to varying degrees, been considered to have diminished responsibility for their actions due to the instincts of their species, humans have been increasingly called on to take responsibility for the behaviour of their dogs. This increased responsabilization is an overarching pattern which can be observed in the governance literature, in general.

Applying Foucault's theory of governmentality, Nikolas Rose writes about a significant shift in prescribed modes of governance from that of a "welfarist liberalism" to a "neo-liberal" mode of governance.²⁶ Under the governance mode of welfarist liberalism, the "critical mechanism of the government of the social was through an advancing governance by experts orchestrated under the umbrella provided by the agencies of the welfare state."²⁷ This gave way to "the linking of self identity to 'lifestyle' through techniques that involve governing the self through the self-governance of identities."²⁸ Rose suggests that we conceive of "neo-liberal rule...as a new alliance between the state, autonomous experts, and self-governing individuals."²⁹ The literature on dog governance seems to reflect this overall shift, while additionally taking on the

²⁶ N. Rose, "Expertise and the Conduct of Government" (1994) 14 *Studies in Law, Politics and Society* 359.

²⁷ T. Purvis & A. Hunt, "Identity versus Citizenship: Transformations in the Discourses and Practices of Citizenship" (1999) 8:4 *Social & Legal Studies* 457 at 469-470.

²⁸ *Ibid.* at 469-470.

²⁹ *Ibid.* at 470.

dominant sociological, medical, economic, race/genetics, and psychological discourses of each period.

It is this notion of governmentality, of being a good dog owner, as prescribed by the “experts” and deployed in dog training manuals, which operates as a component of the moral regulation of dog owners which is the focus of this thesis.

Perspective Models on Criminal Justice Policy

Because this thesis seeks to sketch the links between multiple discourses, it is necessary to explain the models which are used when discussing the ideologies surrounding legislation and policy. Certain discourses concerning human “dangerousness” and “criminality” are discussed because of their pertinence to the response to dogs perceived as “dangerous”. There are four different groups of ideology which contain particular sets of assumptions about crime: its causes, offender responsibility, response strategy, and crime prevention.

Reid and Reitsma-Street have found patterns in ideology which can be extrapolated to apply to understanding the assumptions behind the *Young Offenders Act* and Youth Justice discourse as well as the Canadian criminal justice system in general. The four models are “generalized representations or idealized versions of justice, not descriptions of actual practices.”³⁰ Reid and Reitsma-Street’s four models include; the community change model, the welfare model (which is complimentary to the medical or

³⁰ Reid-MacNevin, S. “A Theoretical Understanding of Current Canadian Juvenile-Justice Policy” in A.W. Leshied, P.G. Jaffe, W. Willis, eds. *The Young Offenders Act: A Revolution in Canadian Juvenile Justice* (Toronto: University of Toronto Press, 1991) at 3.

clinical model), the justice model, and the crime control (or similarly, the community protection) model.³¹

Both the community change and welfare models allow for considerations of diminished responsibility on the part of individuals who commit criminal acts. Both imply a lack of free will in the commission of crimes. The community change model posits that crime is a product of an individual's social environment and interactions, society being a major contributor to the crimes of individuals. According to this perspective, "little can be accomplished through reforms aimed at changing individual offenders."³² Sentencing should be aimed at building or restoring social ties to family and community, while crime prevention policies should be aimed at changing "the very processes that lead to inequality, poverty, and...crime by promoting the welfare of all individuals."³³

The welfare model sees crime as being determined by social or psychological (or biological) forces. The focus is on an evaluation of the individual and their life circumstances with the intention of providing aid and assistance.³⁴ Complimented by the medical model, proponents of the welfare model suggest that "there are criminogenic factors indigenous to the individual...and that by 'doing something for, to, or with him [or her] that rehabilitation can be affected.'"³⁵ In cases where individuals are deemed unrepairable (which was, historically, often the case when the individual flaw is seen to be hereditary) extreme segregation measures are recommended.

³¹ Reid & Reitsma-Street, 1984 in Reid-MacNevin, *Ibid* at 18; B.A. Burrows, J. Hudson & H.P. Hornick "Introduction" J. Hudson, J.P. Hornick, & B.A. Burrows, eds. *Justice and the Young Offender in Canada* (Toronto; Wall & Thompson, 1988) at 2.

³² Chambliss, 1974, 1975; Quinney, 1977; Krisberg, 1977 in Reid-MacNevin, *supra* note 30 at 22.

³³ Reid-MacNevin, *ibid*.

³⁴ Reid & Reitsma-Street, 1984 in Reid-MacNevin, *ibid*. at 28.

³⁵ MacNamara, 1977, 1984 in *ibid*. at 23.

Both the justice and crime control models see crime as a result of individual free will. The justice model focuses on “an equal balance of the rights of society to protection from criminal behaviour and the rights of the individual charged to fair treatment under the law.”³⁶ Based in the tenets of Classical Criminology, “punishments are strictly defined in the law, and vary according to the nature of the crime.” Crime prevention is based on utilitarian principles to ensure... “that the pain inflicted on criminals as punishment for their misdeeds, sufficiently outweigh{s} the pleasure they acquire through illegal activity so as to make further illegal activity unattractive.”³⁷

The crime control model views the state and courts as responsible for social order. The interests of society are seen to out-weigh the interests of the individual offender.³⁸ “Laws are designed to attach criminal sanctions and punishment to any behaviour that is perceived to be immoral or threatening to the collective social order. Social defence, deterrence, retribution, and punishment are seen as essential justifications to the use of criminal procedures.”³⁹ Proponents of the crime-control model are skeptical of the effectiveness of “treatment or rehabilitation” and view incarceration as justified in punishing offenders and as an added benefit, provides some secondary deterrence.⁴⁰

Intersecting these models is criminological theory which may provide support for practices or be excluded from consideration under a given model. Also intersecting these models is the discourse employed by the governance manuals for dog owners, and parallels between the legislation applying to both human and dog offenders.

³⁶ Reid & Reitsma-Street, 1984 in Reid-MacNevin, *supra* note 30 at 25.

³⁷ Caputy, 1987 at 131 in *supra* note 31 at 28.

³⁸ Packer, 1964; Horton, 1981; Van den Haag, 1975 in Reid-MacNevin, *supra* note 30 at 26.

³⁹ Van den Haag, 1975 in *ibid.*

⁴⁰ Conrad, 1981 at 157 in *ibid.* at 26,27.

CHAPTER TWO

Constructing the Dog

Dog as a Sociological Subject

This project attempts to use the dog as a subject of sociological inquiry, that is, as a means to explore human phenomena. What is immediately problematic about this is that it perpetuates a longstanding human tradition of using dogs as a means to an end. Therefore, another goal of this project is to acquire a greater understanding of the dog, in its own right, to explore issues directly related to the position of the dog in the contexts humans have constructed for it. Dogs are in the bizarre position of being one of the first “colonized” beings. From the start of the human/canine relationship, dogs have been forever altered. It is difficult to define what a dog is without giving reference or cause to human influence. Dogs are what they are because they have been made so, wholly or in part, by humans.

Tuan suggests that the dog is unique as a subject because “it exhibits uniquely a set of relationships we wish to explore: dominance and affection, love and abuse, cruelty and kindness.”¹ The dog is also useful because it mirrors societal attitudes not only towards animals but attitudes about humans within a society. To examine the state of the dog in an historical period is to examine the discourses of the society within which the dog exists.

Dogs, historically and presently, function in various and multiple roles alongside humans from servant, possession, warrior, to food source. This thesis focuses exclusively on the domestic dog as a pet and the historic period in which this role becomes the

¹ Y.F. Tuan, *Dominance and Affection* (New Haven: Yale University Press, 1984) at 102.

dominant one for the majority of dogs in England and Canada. The implications of pet-keeping in sociological inquiry are also significant. Thomas explains the validity of an inquiry into pet-keeping.

Sterilized, isolated, and usually deprived of contact with other animals, the pet is a creature of its owner's way of life, and the fact that so many people feel it necessary to maintain a dependent animal for the sake of emotional completeness tells us something about the atomistic society in which we live. The spread of pet-keeping among the urban middle classes in the early modern period is thus a development of genuine social, psychological, and indeed commercial importance.²

The dog as pet is a means to examine micro- and macro-sociological relations. Indeed, the dog as object of moral regulation is a curious phenomenon in that due to the owner/dog relationship and accompanying sociological discourses, the dog is subject to the influences of the dog owner and the dog owner is subject to moral regulation from numerous discursive sources.

The "Dog"

Canis means "dog" in Latin, so the dog is technically a domesticated wolf, which is a wild dog. *Canis lupus* is one of thirty-four living species grouped in Canidae (the dog family) of the order Carnivora, which also includes Ursidae (bears), Mstelidae (weasles), Procyonidae (raccoons), Ailuropoda (pandas), Otariidae (sea lions), Odobenidae (walruses), Phocidae (seals), Felidae (cats), Viverridae (civets), and Hyaenidae (hyenas).³

The foregoing classification of "dog" is based on the current knowledge of DNA which demonstrates that there is no major difference between wolves and the many known breeds of domestic dog.⁴ A glance through history demonstrates that animal

² K. Thomas, *Man and the Natural World: Changing Attitudes in England 1500-1800* (London: Allen Lane, 1983) at 119.

³ M. Derr, *Dog's Best Friend: Annals of the Dog-Human Relationship* (New York: Henry Holt & Co., 1997) at 15.

⁴ *Ibid.*

classification schemes are highly dependent on the dominant discourses of any given time and therefore should be viewed with skepticism. Still, it is a starting point.

In order to understand where the “dog” began to be constructed by humans it makes sense to begin with two elements: the physical construction of “dog” through domestication and the cultural construction of the dog. Domestication refers to “a time when humans, rather than just the natural forces, became agents in breeding.”⁵ It refers to “the process of turning a wild animal into one that serves humans, a tame animal.”⁶ Concurrent with the physical process of domestication is the cultural act of domestication in which the relationship with the wild canid and subsequent dog is defined. As Derr suggests, when domestication occurs, “the dog that was created was a creation of a particular community or geographic area.”⁷ As Derr suggests, “the creation of the dog was fundamentally a cultural act, like making tools, weapons, baskets.”⁸ This section will focus on the archaeological evidence of the relationship between humans and canids, theories on how the relationship began, and theories of the biological roots of the dog.

Where does wolf end and dog begin?

Using the above classification, there is archaeological evidence of the canid family as far back as 40 to 60 million years⁹ in the form of the miacid which was a “strange tree-dwelling,”¹⁰ “ferret- to fox-size (creature) with a longer body than legs,

⁵E. Woloy, *The Symbol of the Dog in the Human Psyche: A Study of the Human-Dog Bond* (Wilmette, Illinois: Chiron, 1990) at 7.

⁶Derr, in S. Feldman, *Wagging the Post-Modern Dog* trans. I. Godfrey (Toronto: Canadian Broadcasting Corporation, 1998) at 3.

⁷*Ibid.*

⁸*Supra* note 3 at 24.

⁹S. Coren, *The Intelligence of Dogs: A Guide to the Thoughts, Emotions, and Inner Lives of our Canine Companions* (Toronto: Bantam, 1995) at 19,20; *Supra* note 3 at 16.

¹⁰Coren, *ibid* at 20.

tails, and those mashing and cutting teeth.”¹¹ Approximately 15 million years ago, the *Leptacyon*, which is believed to be the precursor to wolves and foxes, emerged. In the Pliocene period, evidence indicates that a hyena-like creature existed, the *Cynodesmus*, as did the *Tomarctus* which is thought to look much like the modern dog.”¹² Also in the Pliocene period, approximately 5 million years ago, *Canis lepophagus*, which is thought to be the direct ancestor of wolflike canids is thought to have been present in Texas.¹³ Derr summarizes that “by the best current estimates, 7 to 10 million years ago the dog family begun to divide into the broad groupings we see today: the wolflike canids, South American canids, red foxes and miscellaneous.”¹⁴

The beginning of the relationship between humans and canids is suggested to begin as early as 500,000 years ago. Evidence indicating that humans and wolves were coexisting, sharing space, food and shelter, has been found in Zhoukoudian, China dated at 500,000 years ago; in Kent, England dated at 400,000 years ago; and Lazeret, France, 150,000 years ago.¹⁵

It has been suggested that the dog began to diverge from the wolf (or wild canid) approximately 135,000 years ago with the increasingly close relationship between archaic humans and wolves.¹⁶ A site at which wolf skulls were found arranged at the entrance of Paleolithic human shelters in France has led to speculation that early human culture was already attaching symbolic meaning to canids.¹⁷ Archaeologists concluded that a site in the Yukon Old Crow region, dated to 28,000 years ago yielded evidence of “one

¹¹ *Supra* note 3 at 16.

¹² *Supra* note 9 at 21.

¹³ *Supra* note 3 at 17.

¹⁴ *Ibid.*

¹⁵ *Ibid.* at 19; Derr in *supra* note 6 at 3.

¹⁶ *Supra* note 6 at 3.

¹⁷ M.E. Thurston, *The Lost History of the Canine Race: Our 15,000-Year Love Affair With Dogs* (Kansas City: Andrews and McMeel, 1996) at 3.

cooperative relationship with" canids.¹⁸ Canid remains at a 25,000 year old site in the Ukraine display signs now associated with domestication such as "foreshortened muzzles, diminished tooth size, and teeth crowding."¹⁹ Theorists now seem to agree that somewhere between 15,000 and 20,000 years ago, the human-canid relationship was well established for the purposes of hunting.²⁰ This conclusion seems to be based on what is known about human culture during this period. The earliest known fossil which is labeled "dog" was discovered at a site in Obercassel, Germany and is dated at 14,000 years ago.²¹ "Dog" remains have also been found in Iraq and are said to be 12,000 years old.²² It is important to note the criticism of Thurston, who cautions that in their eagerness to identify the time at which the "dog" emerges in prehistory, archaeologists are extrapolating a great deal from very little evidence. The conclusion that dogs existed 12,000 years ago, for example, rests on the length of the jawbone of the canid skull.²³ Unfortunately, much of the lack of evidence of canids in prehistory is due to selective excavation by archaeologists who did not record the presence of non-human bones.²⁴

More persuasive evidence exists to confirm an increasing relationship between humans and canids. Whereas the earlier evidence relies on skulls, the earliest skeletal evidence of dogs has been found in Iran and Iraq, radiocarbon dated to 6600 B.C. which also included clay figurines of dogs with curly tails.²⁵ Remains with knife-cuts found in Rumania suggest that dogs were a source of food. In addition, the bones demonstrated a

¹⁸ *Supra* note 5 at 7.

¹⁹ *Supra* note 17 at 4.

²⁰ American Kennel Club, 1992; McLoughlin, 1983; Wimbhurst, 1967 in J.R. Lilly & M.B. Puckett, "Social Control and Dogs: A Sociohistorical Analysis" (1997) 43:2 *Crime and Delinquency* 123 at 127; *Supra* note 3 at 26.

²¹ Derr, *ibid.*

²² S. Olson, 1985, in *Supra* note 17 at 14.

²³ *Supra* note 17 at 15, 16.

²⁴ *Ibid.* at 16.

²⁵ *Ibid.*

variety of shapes which lead to speculation about varied “coat textures and colors, different ear and tail lengths, and a broad spectrum of facial features, with some animals having more aquiline Greyhound-like profiles while others more square-headed and snub-nosed.”²⁶ Clutton-Brock discourages any connection with breeds (intentional breeding for physical appearance and/or function) noting that such wide variation occurs naturally, as can be seen in packs of “scavenging curs associated with any single peasant community at the present day.”²⁷

Thus concludes the available archaeological evidence on human-canid relations. As mentioned, it is somewhat lacking, largely due to the low priority put on dogs as a valid topic of research.

Neoteny

Much of the speculation on the shift from wolves, or wild canids, to dogs is derived from the shape of the discovered skulls. This is based, in part, on a theory of domestication which notes the cultivation, or spontaneous occurrence of neoteny (in which “certain juvenile characteristics of the wild progenitor are retained into adulthood by the descendant species”).²⁸ This refers to, in dogs, the fact that many adult domestic dogs have qualities of baby or juvenile wolves, or other wild canids. Juvenile characteristics include: shortening of the jaw and facial region; smaller teeth; more domed heads; pronounced eye sockets; short hair; curly tail; skin folds; and hanging ears.²⁹ Neoteny theorists have extended this to include juvenile wolf behaviour in

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Supra* note 3 at 29.

²⁹ *Ibid.* at 30; *Supra* note 1 at 101-102.

domestic dogs.³⁰ Derr counters this by arguing that “they overlook the fact that humans, not genes, make their dogs perpetual puppies by rewarding their playful behavior.”³¹

The domestication of foxes for the purposes of fur farming has unexpectedly demonstrated the phenomena of neoteny. Coren cites the case of breeding experiments on silver foxes which were bred in captivity for the purpose of creating a large supply of fur. Besides fur colour, an additional quality – docility – was also cultivated. In doing so, the Russians created foxes with dog-like features and behaviour. The foxes wagged their tails, licked human faces, “vocalized in yips and barks,” developed floppy ears, multi-coloured fur and the females came into heat twice a year.³² This finding suggests that the intentional breeding for docile characteristics in wild canids creates features found in the domestic dog.

Speculation as to the cause of neoteny has tended to focus on intentional breeding or selection by humans. Thurston suggests that women, who were likely responsible for rearing young puppies, were susceptible to the “baby-appeal” of certain dogs, favouring them and thus facilitating their continued existence and the perpetuation of their genes.³³ Thurston also suggests that puppy-like wolves would have coexisted better with humans, being more accepting of human leadership.³⁴ There is a practical advantage of dogs being distinct in appearance from wolves. With the domestication of other animals such as sheep and goats, dogs functioned in part to defend them from predators such as wolves.³⁵

³⁰ See e.g. K. Lorenz in *supra* note 1 at 102; *Supra* note 3 at 30.

³¹ Derr, *ibid.*

³² *Supra* note 9 at 28-29.

³³ *Supra* note 17 at 10.

³⁴ *Ibid.* at 7.

³⁵ *Supra* note 6 at 3.

Rather than focusing on human intent, some theorists have tried to explain the phenomenon of neoteny by pointing to circumstance. Instead of the intentional inbreeding of wolves, it is speculated that tame wolves may have found themselves traveling with humans and becoming isolated from wild potential breeding partners. The available gene pool could have been limited as a matter of necessity rather than direct human intent.³⁶ Other theorists have pointed to change in diet, or simply the effect of removing the stress of living in the wild as causal factors of neoteny.³⁷

The initial human-canid relationship

The similarities between wolves and humans may have facilitated their growing relationship. Humans are able to interpret wolf communication, and both “possess associative minds and wanderlust”....³⁸ The social behaviour of both humans and wolves, in that they are both “pack” animals, accept hierarchical and communicational groups, and both nurture and support vulnerable dependants, possibly made for enough behavioural common ground for the two to easily coexist.³⁹ Speculation based on archaeological evidence and knowledge of human and canid culture and behaviour suggest a wide range of early roles for canids as defined by their relationship to humans. Canids may have functioned as guards, hunters, totem figures, food source, consumers of human waste, and pets.⁴⁰ There are many theories as to how the relationship first began.

The most tentative form of relationship may have begun when, sharing the same territory and hunting similar animals, humans saw the advantage in a symbiotic

³⁶ *Supra* note 3 at 24.

³⁷ *Ibid.* at 30.

³⁸ *Ibid.* at 21.

³⁹ *Supra* note 17 at 5.

⁴⁰ *Supra* note 3 at 20,25,27; *Supra* note 5 at 9.

relationship. Derr suggests that early human hunters lacked the skills and ability of other animals, particularly wolves, and may have scavenged their kills and looked to them for hunting technique.⁴¹ Thurston speculates, “perhaps fear or hostile competition was replaced by admiration for the wolf’s hunting prowess and tactics. Or the wolf’s exceptional hearing and sense of smell that facilitates early prey detection led primitive people to attribute supernatural powers to the animals, and inspired the creation of rituals to endow human hunters with similar powers.”⁴² Also a possible contributing factor is the human trend towards engagement with the natural world.⁴³ Derr suggests that “early humans tamed nearly every animal they came into contact with, and that impulse to collect animals has remained as strong as the related impulse to hunt them.”⁴⁴

Although disagreeing on whether there was intention or lack of intention on the part of humans, it is postulated by some that wolves began living around human campsites. Lorenz suggests that early humans, realizing the advantage of jackals barking at signs of intrusion, wanted to keep jackals in close proximity to their camps to act in an inadvertent guard capacity.⁴⁵ Another theory on the closing gap between early humans and wolves suggests agency on the part of wolves. Thurston suggests that wolves were “attracted to butchering activities, cooking fires, rancid bones, and refuse” and chose to remain in close proximity to humans, following them when they traveled.⁴⁶

The dominant theory of the early domestication of wolves focuses on the acquisition of wolf puppies as the first intentional, direct contact with wolves. Because

⁴¹ *Supra* note 3 at 40.

⁴² *Supra* note 17 at 3,4.

⁴³ *Supra* note 5 at 19.

⁴⁴ *Supra* note 3 at 20.

⁴⁵ Lorenz, 1953, pp.1-13 in *supra* note 5 at 8.

⁴⁶ *Supra* note 17 at 3.

of the shyness of wild dogs, raising a wild canid puppy would likely have been the only way to make it part of the human household or camp.⁴⁷ “People adopted wolf puppies who were orphaned or whom they or their children lifted from dens during exploration.”⁴⁸ Alternately, puppies may have been abducted for the purpose of religious ritual and hand reared.⁴⁹ Women in hunter-gatherer societies likely tended to nurture young children and gather food and, therefore, were also the nurturers of the adopted wolf puppies.⁵⁰ This concept is further bolstered by recent evidence of aboriginal women who breast-feed young animals, including puppies.⁵¹ Ernest Baynes, writing in 1920, describes aboriginal women in Australia who “find [wild] Dingo puppies....They are well fed on meat and fruit, and often become an important member of the family.”⁵² Given what is known about canid early bonding, breast-feeding, compounded by the process of stroking which would be interpreted as grooming on the part of the puppy, would help it to identify strongly with its human adoptive pack.⁵³ So, although men may have taken a role at selecting dogs for tracking or hunting, women may have been responsible for the initial domestication of wolves. An 1860 book entitled Anecdotes of Animals describes Inuit sled dogs who are willing to obey Inuit women because “it is from them that they receive the only kindnesses bestowed upon them.”⁵⁴

The more deliberate manipulation of the breeding of wolves is suggested to have occurred during the Neolithic period. As suggested by Derr, wolves who were “unsocial

⁴⁷ *Supra* note 5 at 8.

⁴⁸ *Supra* note 3 at 21.

⁴⁹ *Supra* note 17 at 6.

⁵⁰ *Ibid.* at 5.

⁵¹ *Ibid.* at 6.

⁵² *Ibid.* at 7.

⁵³ *Ibid.* at 209.

⁵⁴ *Ibid.* at 7.

or overly timid” were culled.⁵⁵ Thurston cites recent evidence of American aboriginal people and their traditions which dictate periodically breeding their dogs with wolves and controlling for their behaviour and appearance.

Buffalo-Bird Woman, a Hidatsa Indian interviewed around 1924, recounted how ‘we gave away or killed the puppies we did not want. As a puppy grew up he sometimes developed a surly disposition. He would bite and snap at people or fight other dogs. Such a dog was killed. [We kept] puppies with large heads, wide faces and big legs.’⁵⁶

Such practices are thought to be based in longstanding tradition and, therefore, indicative of practices beginning in the Neolithic period.

The emergence of “dog” is thought to begin some time around the Neolithic period during which human populations started to settle, domesticating livestock. Already domesticated wolves with predispositions for guarding or herding would have been desirable.⁵⁷ The shift towards the domestic dog, however, “occurred so gradually that it is impossible to pinpoint where their taxonomic classification as wolves should end, and a new *Canis familiaris* should begin.”⁵⁸

Canid Ancestry Debate

There is debate about how positively we can ascertain that dogs came from wolves as opposed to other wild canids. Coren presents persuasive data in favour of the jackal as a progenitor of dogs. Jackals, like wolves are scavengers and hunters who form small packs. Tail markings in dogs, which are distinctive, can be found in the jackal but almost never in wolves or coyotes. Most persuasive, however, is Coren’s noting that the

⁵⁵ *Supra* note 3 at 24.

⁵⁶ *Supra* note 17 at 9.

⁵⁷ *Ibid.* at 11,13.

⁵⁸ *Ibid.* at 13.

eyes of domestic dogs are more like the jackal. Wolves frequently have oval shaped eyes which are not found in dogs.⁵⁹

The New Guinea Singing Dog, an aboriginal dog that became feral and bred in relative isolation for hundreds of years is thought to be a prehistoric form of domestic canid. Their DNA is distinct from other canids, although visually they resemble dingoes.⁶⁰ It is postulated that some domestic dogs may have derived genetically from both dingoes and the New Guinea Singing Dog.

Still, theorists seem content to assert that dogs are derived from wolves. As mentioned above, the DNA of domestic dog varies very little from that of wolves. The most logical scenario is that different species of wolves in different geographic areas were domesticated and subsequently resulted in the varied types of domestic dogs existing presently.⁶¹ Coren leaves open the possibility of non-wolf canids also being progenitors of dogs.

It is most likely that humans domesticated dogs at different times and in different geographic locations. It is also possible that many of these domestications started with different canid stock. In other words, whichever member of the dog family happened to be around became a candidate for domestication.⁶²

Breeding: Physically Constructing the Dog

It is useful to preface this topic of breeding with a late 1990's perspective. Wolves, and subsequently dogs, when left to their own devices, are generalists, "capable of hunting, herding, hauling, and guarding to varying degrees. (Dogs) became a

⁵⁹ *Supra* note 9 at 27-28.

⁶⁰ *Supra* note 17 at 19.

⁶¹ *Supra* note 9 at 23; *Supra* note 3 at 34.

⁶² *Supra* note 9 at 36.

specialist of rather unstable perfection by human design and training.”⁶³ The initial breeding of dogs (human influence over procreation) served primarily to hone certain skills within a dog to be developed through training. Breeding for particular skills was the dominant goal for much of the breeding up to the nineteenth century although breeding for appearance is a longstanding historic practice.

It is also useful to preface the discussion of breeding with a de-bunking of notions of blood-purity. Dogs in the wild have kept their distinguishing characteristics (particular aptitudes) despite breeding with dogs of other “breeds”. Huskies, for example, “retain their tough feet, somewhat wolfish appearance, and habits as sled dogs” despite being bred with other dogs with differing appearances.”⁶⁴ For many wild dogs, “hybridization has always offered life, not extinction.”⁶⁵ It is a natural survival mechanism. Derr notes that the human construction of the notion of blood purity has resulted in an obsession with inbreeding of domestic dogs and in the preservation of wild dogs which, it is perceived, must inbreed in order to avoid extinction.”⁶⁶

The breeding of dogs, for aptitude or appearance involves domination and manipulation on the part of the human “owner”. As Tuan scathingly puts it, “that compelling desire to intervene decisively in the life of another finds a certain satisfaction in dog breeding.”⁶⁷ Ideally a natural event, dog procreation under human influence is met with resistance on the part of some dogs. Besides lacking the choice to choose one’s mate, dogs may find themselves forced physically to perform the act. Tuan cites “expert” advice:

⁶³ *Supra* note 3 at 44.

⁶⁴ *Ibid.* at 14.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Supra* note 1 at 109.

Get a good firm grip on her ears. Someone else should then put a hand underneath her to steady her for the dog. With the other hand, a little helpful push at the right moment behind the dog might make all the difference. Steady him whilst he is tying the bitch; then when you are quite sure that tying has taken place, gently turn him round, back to back with the bitch'....It may even be necessary to put Vaseline on the vagina and take the dog's member 'into the palm of one's hand and exert a slight warming pressure.' At unscrupulous kennels, where breeding is a profitable business, bitches that do not show willingness are helped, and if they resist the help, they are forced, that is, muzzled and put in a sling to prevent them from resisting.⁶⁸

Forced sexual behaviour is usually not highly regarded. That it is acceptable in this context speaks volumes about how little regard some humans have for the well-being of dogs. Rather than associating with dogs as an end in itself, dogs are a means to an end which has more to do with economics, class, blood purity and status.

Besides being subjected, in some cases, to forced intercourse, dogs may find themselves being killed in the name of appearance and blood purity. The selection of puppies was, in Keith Thomas's words, "ruthlessly eugenic." Thomas and Tuan cite the same examples of two seventeenth century handbooks:

As soon as the bitch hath littered, it is requisite to choose them you intend to preserve and throw away the rest....Three of this litter given to Dr. Thornhill, the rest hanged, because not liked.⁶⁹

Such culling of litters can only be due to concerns for appearance because aptitudes do not make themselves apparent until the puppies age somewhat.

Even puppies who are allowed to live may find themselves being subjected to cruel treatment in the name of appearance. Such treatment was shunned, not because it was cruel, but because it was "cheating". The desired appearance of dogs was to be achieved through genetics. Citing the example of a Pekingese dog, valued for its small

⁶⁸ *Ibid.*

⁶⁹ *Supra* note 2 at 60; *Supra* note 1 at 108.

size and short nose, Tuan lists the cruelties endured by puppies in China in the nineteenth century.

One method lay in curtailing the exercise a dog should have over the period from the third month to maturity, with the aim of reducing its appetite and food consumption and hence rate of growth. A pup might be put in a close fitting wire cage and kept there until it had reached maturity. Another method lay in holding a pup in the hand for days at a time, inducing by gentle pressure of the fingers a slight exaggeration of width between the shoulders. To achieve the desired result of a small snub nose, some owners broke the cartilage of the nose with their thumbnail or with a chopstick when the pup was from three to seven days old. Others massaged the nose daily in the hope of restraining its growth.⁷⁰

The standards set for any given breed, then, seems to have deleterious effects for those dogs unlucky enough to fall short.

Even dogs lucky enough to survive the culling process and fall into the realm of “purebred” suffer mutilations. Where genetics fall short, institutionalized mutilations bring dogs up to the appearance standard for the breed. Kennel Clubs and other dog fancy groups set these standards. For example, standards have required that Dobermans must have “cropped ears and docked tail; a Great Dane, boxer, Boston bull terrier (must have) cropped ears; a cocker spaniel, old English sheepdog, poodle (must have) docked tails.”⁷¹

Classification of dogs changed significantly with the Victorian dog fancy, a hobby interest in domestic dogs which popularized and concentrated the breeding of dogs for appearance with the perpetual reinforcement of the dog show (effectively beauty competitions). Whereas dogs were previously categorized according to function, by the late nineteenth century many of those categories were devalued or no longer in existence. Thurston speculates that peasants had bred working dogs since the fifteenth century.

⁷⁰ *Supra* note 1 at 106.

⁷¹ Rollin at 508.

Dogs were classified for “herding;...turning cooking spits, butter churns, or cider presses; ...haul(ing) cargo and passenger wagons.”⁷² The aristocracy had cultivated hunting dogs and lap dogs for companionship from the fourteenth century onwards.⁷³ Caius, in the sixteenth century, offered seventeen categories of dog, “Terrar, Harier, Bloudhound, Gasehunde, Grehound, Leuiner, Tumber, Stealer, Setter, Water Spaniel or Fynder, Land Spaniel, Spaniel-gentle or Comforter, Shepherd’s Dog, Mastive or Bande-Dog, Wappe, Turnspit, Dancer.”⁷⁴ These categories all fell under three umbrella categories, based on general function: “hunting dogs, pet dogs (only the spaniel gentle), and dogs that did menial work.”⁷⁵ Still, there is “little evidence of the relationship between these ancient animals and the highly bred and well-documented pets of the late nineteenth century.”⁷⁶ There is evidence of classification shifting to a concern with appearance in the eighteenth century, with the incorporation of coat colour.⁷⁷ Ritvo suggests that the dogs identified by Caius “would probably been lumped together by Victorian fanciers in the catch-all class of mongrels or curs,” associated with poor breeding and negative characteristics.

The Victorian dog fancy and its redefinition of the concept of breed as “a subspecies or race with definable physical characteristics that would reliably reproduce itself if its members were crossed only with each other” is likely an unprecedented phenomenon.⁷⁸ Thurston suggests that the trend towards breeding for appearance began with dog-show judges who rewarded aesthetically pleasing dogs thereby leading breeders

⁷² *Supra* note 17 at 122.

⁷³ *Ibid.* at 75.

⁷⁴ H.Ritvo, *The Animal Estate: The English and Other Creatures in the Victorian Age* (Massachusetts: Harvard University Press, 1987) at 93,94.

⁷⁵ *Ibid.* at 94.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.* at 93.

to reduce the gene pool and inbreed their dogs to recreate those features.⁷⁹ Along these lines, dogs were increasingly judged for their appearance and the breed standards “were more the product of imagination than scientific principle, setting a precedent for the arbitrary alteration of dogs.”⁸⁰

The breeding of dogs primarily for appearance had the effect of reducing the aptitudes normally associated with breeds. Dog breeds (in the traditional aptitude sense) lost their authenticity, instinctual aptitude and in some cases intelligence due to the Victorian dog fancy.⁸¹ In some cases, breeding for appearance was the only way for some breeds to continue to exist. The bulldog, for example, after bull-baiting was made illegal in England in 1835, was associated with lower class moral depravity.⁸² In order to sustain the breed, a club of bulldog fanciers worked to change the rhetorical associations with bulldogs and make it appeal to dog fanciers. When the bulldog caught on as a breed, breeding standards were established which effectively erased the bulldog’s traditional aptitudes and drastically altered its appearance to please the aesthetic whims of the fancy.⁸³

Because the creation of a reproducible physical type requires inbreeding, one result of this is that many breeds have congenital health defects as well as physical characteristics that make it difficult for them to function as dogs. Very long hair in dogs impairs their vision and their ability to communicate with other dogs by raising their hackles. They are dependent on humans for grooming. Docked tails also reduce a dog’s

⁷⁹ *Supra* note 17 at 107.

⁸⁰ *Ibid.* at 106.

⁸¹ *Supra* note 74 at 84; *Supra* note 1 at 106.

⁸² Ritvo, *ibid.* at 111-113.

⁸³ *Ibid.* at 108, 110, 111.

ability to communicate with others.⁸⁴ Derr suggests that approximately “twenty five percent of the pedigreed dogs in the United States have some form of genetic ailment...crippling or harm(ing) the quality of their life.”⁸⁵ Thus, these “superior” dogs have been bred to the point that they are aesthetically pleasing ornaments with serious functional defects.

The notion of blood purity and class is at the root of this phenomenon. For the Europeans, knowledge that both animals and humans are genetically malleable combined with notions of class resulted in concepts behind breeding.⁸⁶ The practice of pet-keeping was traditionally associated with the aristocracy. Pet keeping by the lower and middle classes “constituted a metonymic attempt at assimilation, the elaborate certification and registration of pedigreed animals was hardly designed to guarantee their emotional qualities.”⁸⁷ “Victorian consumers emulated the aristocracy by acquiring the material trappings of affluence, and indirectly, gentility and exclusivity.”⁸⁸ The use of the dog as a status symbol resulted in a greater emphasis on the breed of one’s pet than the actual relationship between dog and human in the nineteenth- and early twentieth-centuries.

Human concerns with class were discursively foisted upon their dogs. A zoologist, Romanes, asserted that dogs “understood ‘the idea of caste’ and would snub dogs of ‘lesser’ breeding.” Dogs were even credited with racial discrimination. Whereas the dogs of aboriginal people were said to have “less fidelity and will steal from their masters,” indicating their lesser status, English dogs were said to “hunt down and kill aboriginal canines, but ‘show signs of great disgust afterwards, always, if they can,

⁸⁴ *Supra* note 3 at 32.

⁸⁵ *Supra* note 6 at 14.

⁸⁶ *Supra* note 2 at 133.

⁸⁷ *Supra* note 74 at 133.

⁸⁸ *Supra* note 17 at 104-105.

plunging themselves into water to rid themselves of the contamination caused by such contact.”⁸⁹ Dogs were thought to be complicit with the values of the humans who owned them.

Given the class aspirations of dog fanciers, regulations were put into place to ensure that a social class distinction still existed. The price of pedigreed dogs inflated prohibitively. Price then correlated with the dog’s status.⁹⁰ In addition, class divisions were established within the dog fancy institution. The Kennel Club was formed in 1873 and served to regulate the “authenticity” of each breed and reorganize competition implicitly along class lines.⁹¹ Competitions could proceed wherein for, according to registration fees, dogs could compete only with those attributed with similar social class.⁹² With the advent of the dog tax in Ottawa, and throughout Canada in 1866, many people could not afford to keep their expensive dogs and were forced to relinquish them.⁹³ Therefore, despite the class-based motivations behind the dog fancy, it was of limited success for many.

Definition of “Pet”

The word “pet” is problematic because it has such a range of potential meaning. As Serpell explains, “the trouble is that the word ‘pet’ covers a multitude of sins, and it is important, whatever the society, to distinguish between companion animals and animals used as objects of play, status, or indeed, any other purpose.”⁹⁴ Therefore, one option is

⁸⁹ *Ibid.* at 160-161.

⁹⁰ *Supra* note 74 at 87.

⁹¹ *Ibid.* at 103.

⁹² *Ibid.*

⁹³ *Supra* note 74 at 9.

⁹⁴ J.A. Serpell, “Pet-Keeping in Non-Western Societies: Some Popular Misconceptions” in A.N. Rowan, ed. *Animals and People Sharing the World* (London: University Press of New England, 1988) 33 at 46.

to apply the word ‘pet’ only to animals kept for purposes of companionship. The problem with this definition is that people may not always have such pure motivations. A kept animal may, at differing times, be a companion, a status symbol, a working dog, or all three at one time. To retain Serpell’s definition, it may be altered to state that the overriding reason for keeping the animal be for companion purposes, or that the animal is perceived primarily as a companion by the human who keeps it. It must be remembered that this definition arises in the context of the late twentieth century and is steeped in the attitudes towards animals and dogs of that period.

Thomas offers a definition of “pet” which is more descriptive of the trappings of pet-keeping than a requisite attitude towards the animal. For Thomas, a pet is an animal which is 1) allowed in the house; 2) given an individual/personal name; and 3) not eaten.⁹⁵ This definition, combined with that of Serpell creates fairly narrow parameters for a dog to constitute a pet. It is this combined definition which I will use when referring to the dog as a “pet”.

For the purpose of this thesis, it will be understood that while people keep dogs for a variety of reasons, the increasingly dominant discursive role for dogs, growing out of the latter nineteenth-century is that of companion ‘pet’. It is clear, however, that the motivations of dog owners may diverge significantly from the prescribed role for the dog as ‘companion.’

⁹⁵ *Supra* note 2 at 112, 113, 114.

Aggressive pet dogs

This thesis examines aggression by dogs against humans. Canine aggression has, throughout history, been used as a tool or weapon by humans against other humans.⁹⁶ It is quite another thing, however, when a dog displays aggression towards humans, when not intended or directed by any human. When a dog bites a human, seemingly from its own initiative, it is a violation of a longstanding Western cultural hierarchy of nature which places dogs (and all animals) beneath humans.⁹⁷ Dog bites turn the tables on the “truth” we have created about dogs.

⁹⁶ See *e.g.*, *supra* note 17.

⁹⁷ See *e.g.*, J. Liliequist, “Peasants Against Nature: Crossing the Boundaries Between Man and Animal in Seventeenth- and Eighteenth-Century Sweden” (1991) 1:3 *Journal of the History of Sexuality*; T. Regan, *All That Dwell Therin: Animal Rights and Environmental Ethics* (Berkeley: University of California Press, 1982).

CHAPTER THREE

The Rise of the Dangerous Dog

Legislation, as both a coercive and a discursive source of formal moral regulation, provides a unified backdrop against which the governance literature can be examined.

This chapter offers a sketch of the federal, provincial and municipal legislation pertaining to dog owners in Ottawa. Operating concurrently with the manual literature, as described in chapters Four and Five, it is possible to view the tandem shifts as the dominant discourses of each period are incorporated, altering the “truth” about dangerous dogs and their owners.

Dangerous Dog Legislation in the Nineteenth Century

The world of the domesticated canine changed quite significantly in the nineteenth century. Being included as a species warranting protection from cruelty under law made it such that dogs were no longer to be prize fighters or labourers, pulling carts or turning spits. With the increase in dogs being kept as pets by all classes, this role for dogs became dominant, the norm, while the other roles fell under the category of cruelty. Dogs could still labour as hunting dogs for the upper classes, but as labourers for the lower classes only certain occupations remained acceptable. Thus began a period in which class had a significant role in determining social attitudes towards dogs. An examination of the legislation pertaining to dogs indicates that the role of “pet” became a solidified norm, and concerns of class, health, and identity were subtly inserted into the law, which had the effect of targeting the dogs and owners who fell short of the norm.

Although British sheep protection and dog tax legislation had been enacted as early as 1829, Canadian legislation was implemented to replace it. In the 1866 act, a tax was placed on all dogs, the money contributing to a fund to compensate sheep farmers for the loss of their property due to attacks by unknown dogs. Where the dog was known, the owner was liable, regardless of the owner's knowledge "that his dog was mischievous or disposed to kill sheep."¹ The owner was then allowed forty-eight hours to kill the dog and fined every two days until the dog was dead.² Also, anyone was permitted to kill a dog seen "worrying or wounding" sheep.³ Where an owner did not pay the dog tax, a Justice of the Peace could order the dog to be killed.⁴ It is clear that the value of property (sheep) far outweighed that of the dog. The owner was absolutely liable for the value of the sheep, and the dog could be killed by any witness or more formally ordered to be killed by the dog owner. This began to change in 1869.

The value of dogs as property was recognized under bylaw in 1869 in larceny legislation which prohibited people from stealing any domestic dog ("kept in confinement or for any domestic purpose, or for any lawful purpose of profit or advantage"). Breach of this law warranted imprisonment and payment "over and above the value of the dog."⁵ This penalty likely reflected the growing popularity of purebred dogs and their highly inflated price tags. Dogs could be stolen and resold by enterprising and unscrupulous people. Most importantly, it reflected the elevated status of the

¹ *An Act to amend and consolidate the Acts to impose a tax on dogs, and to provide for the better protection of sheep in Upper Canada*, Cap. LV.s 7.

² *Ibid.* at s. 12.

³ *Ibid.* at s. 11.

⁴ *Ibid.* at s. 13.

⁵ *As to larceny of cattle and other animals*, Cap. 21. 1869 at s. 12.

domestic dog as “pet” and object of conspicuous consumption. This enhanced status had an impact on the sheep protection legislation in ensuing years.

In 1890, a number of by-laws were established in Ottawa that regulated dog owners and dogs. When a group of dogs was guilty of attacking sheep, each dog was assessed to determine the liability of their respective owners. Consideration was given to the dogs’ “strength, ferocity and character” (physical attributes and temperament) in determining the extent of their contribution to harming the sheep. This indicates an awareness of the individuality of each dog, an anthropomorphizing of dogs by allowing them “character,” and also the first indication of the speculation of potential or “risk” for physical harm.

Municipal legislation in 1890 covered a number of dog-related issues. The *By-law on Dogs* established an annual tax on dogs of \$1.00, and \$2.00 for “bitches” and required that dog owners give a description of each dog owned. In all previous dog tax legislation, all that was required was the dog owner’s name and the *number* of dogs owned. With this legislation, each individual dog was to be known. Also new was the requirement that, upon tax payment, the dog wear a tag as proof of payment which denoted “C.T.P.” or city tax paid, the year, and a number corresponding to that dog’s information in the licence office records.⁶ The dog tag implied an owner who could not only afford to pay the tax, but one who took the time and effort required to do so. Purebred breeders were afforded a \$10 cap on the dog tax while breeders of non-purebred dogs were potentially deterred

⁶ City of Ottawa, By-law No. 1083 *By-law on Dogs* (1890), ss.1 & 2.

from breeding by being fully taxed for each dog they owned, with the higher rate for “bitches.”⁷ This had special implications as will be discussed below.

Interestingly, dogs who wore their tags were allowed to “run at large” (in the community, off the owner’s property, without the presence of the owner).⁸ The only dogs not allowed to run at large were “any bitch or slut” (female dog) “while in heat” and dogs whose tax had not been paid. Particularly of note is the section which specified that if a dog was “of a vicious or ferocious disposition or accustomed to snap at or bite mankind” they must wear a muzzle while running at large.⁹ This means of regulating biting dogs is in stark contrast to the regulations of the late twentieth century and reflects a time before the issue of dogs biting humans is problematized. The bylaw, too, reflected the norm of allowing dogs to wander their neighbourhoods without human accompaniment.

Under the 1890s provincial legislation, despite being allowed to run at large, dogs who were suspected of being a threat to sheep were still at risk of being killed. Dogs running at large after dark were subject to being killed if found on the property of a sheep farm.¹⁰ Whereas previously the dog had to be seen in the act of worrying sheep, under this legislation, the simple presence of a dog having no apparent human restraining influence was sufficient for a sheep farmer to kill the dog. The status of the dog was elevated, however, by the stipulation that a sheep farmer may *not* kill a dog after dark on his/her property unless “there (was) a reasonable apprehension that (the) dog, if not killed, (was) likely to pursue, worry, or wound sheep or lambs then on the said farm,” if it was his/her neighbour’s dog, if the dog was muzzled, or if the dog was “accompanied by”

⁷ *An Act to amend the Act to impose a Tax on Dogs, and for the Protection of Sheep*, S.O. 1890 c. 62, s.1.

⁸ *Ibid.*, s. 9.

⁹ *Ibid.*, s. 8.

¹⁰ *Ibid.*, s. 6.

or “within reasonable call or control” of its owner or other person in charge of the dog.¹¹

With the visible indicator of a muzzle, the dog clearly had an owner and could not cause significant physical harm to sheep and therefore should not be killed. If a dog was under the “call and control” of someone, this was sufficient to prevent the dog from doing any damage. The dogs of one’s neighbours were known and expected to potentially stray onto neighbouring property. These dogs, too, were not to be killed for being on the farm primarily because they were known, as were their owners. The law really targeted dogs who were allowed to run at large at night, an indication of lack of ownership or at least lack of responsible ownership. Dogs who were clearly owned by someone were excused from suspicion. It is only if they appeared likely to chase or wound sheep that the spirit of the original sheep protection legislation was applied. The provisions requiring the death of a dog who worried sheep remained the same until at least 1950.¹²

Health concerns were also included in the 1890 Ottawa By-laws. Rabies was perceived as a health threat to both dogs and humans. Under proclamation, dogs could be required to be “securely muzzled by a good, strong and substantial muzzle” in order to be permitted to run at large.¹³ In some cases they could be prohibited from running at large.¹⁴ Under such a proclamation, dogs running at large without a muzzle could be impounded. Dogs thought to be rabid found running at large were to be “immediately killed.”¹⁵ These extreme measures to prevent contagion existed in a context in which special measures were legislated to prevent the spread of disease in horses, sheep, cattle, swine and other animals, and humans with “diphtheria, small-pox, scarlet fever, cholera,

¹¹ *Ibid.*

¹² Research on Sheep Protection acts was not followed up by the author after 1950.

¹³ *Supra* note 6, s. 12.

¹⁴ *Ibid.*, s.13.

¹⁵ *Ibid.*, s.14.

typhoid fever, measles, whooping-cough or other disease dangerous to the public health”¹⁶ through quarantine. ¹⁷

In sum, the dangerous dog of the late nineteenth century was the vagrant dog - one who, on appearance, did not belong to any person; the rabid dog, or potentially rabid dog - one who was visibly ill or not wearing a muzzle during times of proclamation; the dog who damaged property - one who chased and/or attacked sheep, or one found in the proximity of sheep and displaying no trappings of being owned or controlled. These dangerous dogs could be killed by the dogs’ owner, “any person” or an agent of the municipality of Ottawa.

Governmentality, Responsibility, Class, & Breed in the late Nineteenth, early Twentieth Century

It makes sense to dwell a moment on the significance of the “norm” of dogs running at large. When this norm was challenged in 1904 by strict legislation, even though it was not consistently adhered to until the late twentieth century, it was an indication of a shift in the perceived nature of the dog and the dog/owner relationship. Good dog owners did not allow their dogs to roam without supervision while bad dog owners did. Perhaps the monetary value of “pets,” (purebred dogs bought for reasons of conspicuous consumption as status elevators) defined dogs as valued property, at risk of being stolen and resold. To allow such dogs to run at large would have made little sense. Dogs who did not hold this value may have been perceived by their owners as autonomous companions and allowed to do as they please. It may follow that there was a

¹⁶ *Health By-law In force in every municipality until altered by the Municipal Council*, S.O. 1890, s.17.

¹⁷ See e.g., *An Act respecting Contagious Diseases affecting Animals* S.C. 1869, Cap. XXXVII.; *An Act relating to Quarantine and Public Health*, S.C., 1868 Cap. LXIII,

discursive linking of class with mongrels (non purebred dogs) and a particular behaviour (running at large). Association with a class that was perceived as a dangerous population implicated dogs as possessing similar dangerous attributes.

In an 1889 letter to *The Kennel Gazette*, the Canadian Kennel Club's first publication, the driving force behind the Dog Tax amendments, John Dryden, M.P.P railed against domestic dogs, denouncing them for their utter uselessness and dangerousness.

First, outside of exceptional cases, dogs are not a necessity, but, at best, an expensive luxury. Second, the vast majority can be shown to be utterly useless except as pets of the household. Third, they are dangerous both to person and property. Besides the destruction of sheep, so constant, how many ghastly wounds are inflicted on children by dogs roaming around in the streets?¹⁸ How many valuable robes are torn and ruined by a useless road cur grabbing at the sleigh and cutter? How many flower beds are scratched and torn by these night prowlers? How many vegetables are saturated and made unfit for food by these inveterated leg-lifters? How many horses are daily frightened and set to kicking, tossing the occupant of the vehicle headlong into a ditch, at the risk of neck and limb, by these barking whelps, who allow one in peace to use the Queen's highway? And this for what? Who can tell?¹⁹

What is particularly interesting is the response to this letter by readers of *The Kennel Gazette*. In a letter entitled "Response to Dog Hater," the author agrees with Dryden's assertion that it is primarily "persons unable properly to keep themselves" who allow their dogs to "prowl about the country at will."²⁰ Dryden suggests "dogs of value are greatly cared for and kept under proper control. It is the dog of no merit...which most needs extirpation." In response to Dryden's assertions, the author of the letter suggests heavily taxing non-purebred dogs and exempting purebred dogs entirely from taxation.

¹⁸ Here is another example that dogs biting humans is a problem but yet to be problemized as a significant social problem, warranting specific moral regulation.

¹⁹ J. Dryden, "Are Dogs a Necessity?" 1889 1:6 *The Kennel Gazette* at 7.

²⁰ *Ibid.*

Should the dog tax be increased? That would, no doubt remedy matters in part; but is it the best way? Is it fair to those that are spending time and money on high-class animals, and importing the many breeds of dogs, which belong to the classes that are not allowed to roam at large at all hours of the day and night, and do not fall under the condemnation pronounced on the vagrants?...About the proposal, viz., that all dogs should be kept under control, there can be no doubt.²¹

Class and breed are combined here as “other”. The common practice of allowing dogs to run at large was rejected as the discourse of “pet” became more and more dominant. The non-“purebred” dogs of the lower classes were blamed for all the undesirable dog behaviour because the owner was not constantly in control of the dog. The discourse of “training” meant that dogs could no longer be autonomous community members. By 1904 they were required to be supervised at all times when in public.²²

Independent dogs became synonymous with dangerous human classes. As one commentator explained, “In almost every neighbourhood there are dogs that are relatively wild, and many a one, left behind to shift for himself when the family to which he belonged has moved away, has in the struggle for existence become a midnight marauder or a canine vagabond – possibly a dangerous one.”

Not surprisingly, the Ontario legislature agreed with the linking of breed of dog with class and adherence to middle class ideals of dog ownership. The 1890 dog tax legislation included a special provision for those with purebred dogs. While all dogs were taxed, \$1.00 for males, \$2.00 for females, there was a cap placed on the tax for dogs “registered in the ‘Canada Kennel Register.’”²³ This was entirely consistent with the recommendations of the response letter in the *Kennel Gazette*, although it did not go as far as the author would have liked. “If valuable pedigreed dogs were exempt from

²¹ Anonymous, “Response to Dog Hater” (1889) 1:8 *The Kennel Gazette* at 5.

²² It is important to note, however, that enforcement of and adherence to these bylaws is not consistent until well into the latter twentieth century.

²³ *Supra* note 7, s. 2.

taxation, and all mongrels, especially females, heavily taxed, would not the case be better met than by doubling the tax on all dogs irrespective of distruction?"²⁴

It is clear that the notion of proper ownership was thought to reside only in owners of purebred dogs who were, necessarily, able to afford them. People "too poor to buy pedigreed dogs" were accused of being unable to care for any dog "without doing a violence to (the dog's) nature that is inconceivable" by starving or "otherwise misus(ing)" it. This linking of class and abuse is entirely consistent with the discourses of the period.

Besides discriminating against dog owners who could not afford the dog tax, the 1904 municipal legislation distinguished between dog owners who constantly supervised their dogs and dog owners who did not. Dogs were no longer permitted to run at large. Dogs had to be "accompanied by and...under the immediate control of some competent person" when on city property.²⁵ That dogs were to be constantly supervised was likely reflective of the changing discourses surrounding dog ownership and the nature of dog behaviour.

Human Dangerousness in the late Nineteenth and early Twentieth Century

Social theory in the late nineteenth century began to point to flaws within the individual as cause for concern. Criminology applied the medical model with positivist theories that centered the causes of criminal behaviour in genetics and mental illness. Welfare state policies applied middle class values to lower class persons and patronizing

²⁴ *Supra* note 21 at 5.

²⁵ City of Ottawa, By-law No. 2361, *By-law to amend By-law No. 1083, entitled 'By-law on Dogs' (1904)*, s. 2.

regulation and “assistance.” Recall the animal cruelty legislation which targeted the animals of the lower classes to the exclusion of those of the upper classes.

Only certain types of offences were considered a significant threat to Canadian society at the turn of the century. The shift from Classical to positivist criminology established that certain people, rather than simply certain actions should be viewed as harmful to society. Habitual criminals who committed property offences and fraud were thought to be a particular social threat. Positivist criminologist, Ferri, describes the “increasingly disquieting growth of habitual criminality,...a real gangrene on the social organism” which he proposed as stemming from congenital tendencies and other social causes.²⁶ Pratt suggests that habitual criminals were thought to be of predominant social concern because, with the increasing acquisition of knowledge about the population in this period by the welfare state, the identities of these habitual thieves and fraudsters remained elusive. “Their way of life, as well as their crimes...made them seem dangerous – their lack of fixed abode, separate argot and shifting identities.”²⁷ With the combination of the welfare state paradigm and the medical model, dangerous individuals “were looked upon as both dependent on the state by being deficient from its normative standards but redeemable through the effective treatment and training programmes of its experts.”²⁸ Pratt notes the “emphasis on property crime and fraud, to the exclusion of crimes against the body” in much of the writings on crime in the early twentieth century.

Closely paralleling the discourse on dangerousness, then, is the notion of the dangerous dog who appeared to have no identity (no outward signs of ownership). By

²⁶ E. Ferri, *Criminal Sociology* (New York: Agathon Press, 1886) at 440.

²⁷ J. Pratt, “Governing the Dangerous: An Historical Overview of Dangerous Offender Legislation” (1996) 5 *Social and Legal Studies* at 23,24.

²⁸ *Ibid.* at 26.

1904, it was the independent, autonomous dog who was dangerous – a vagrant, dangerous because of a lack of ever present human regulatory influence. In order to address these concerns, the dog legislation took steps to ensure that dogs were clearly connected to their owners, at first by visible signs (via dog tags, muzzles in 1890) and later by physical proximity and verbal control (in 1904).

Dangerous Dog Legislation in the 1970s

From the early twentieth century to the 1960s there was little change in the legislation governing dog owners and their dogs. The dog tax increased over time, the threats on the dog's life for non-payment of tax faded. It is not until the 1970s that things really changed for the dog deemed "dangerous."

If legislation is indicative of attitude, then the 1970s can be regarded as a period in which pet dogs began to be viewed as a social problem. Dog overpopulation, dog bites, dogs destroying other animate chattel, and unaccompanied dogs in public space were the issues identified as requiring legislation.

Gaining momentum in the 1960s and 1970s was a tightening legal grip on domestic dogs and cats in Ottawa. Provincial legislation continued the dog tax and provisions for the protection of "cattle, sheep and poultry"²⁹ while municipal by-laws put stricter regulations on kennels (for breeding or boarding and applying to purebred and non-purebred dogs), and restricted the number of cats and dogs which could reside in one domestic residence to a total of three.³⁰

²⁹ *The Dog Tax and Cattle, Sheep and Poultry Protection Act*. R.S.O. 1960 c. 111.

³⁰ See e.g. City of Ottawa, By-law No. 417-62, *A by-law of The Corporation of the City of Ottawa to provide for the licensing of dogs and regulating the keeping of kennels* (1962); City of Ottawa, By-law No. 170-67, *A by-law of The Corporation of the City of Ottawa to provide for the licensing of dogs and*

A by-law was enacted in Ottawa to explicitly address the problem of dogs running at large. Although there was an Ottawa by-law enacted in 1904³¹ to this effect, it was laid out in the 1975 legislation the definition of running at large, (being off the owner's property and not under the "control" of anyone), that no owner should "permit" their dog to do so, the enforcement officers who would impound the dog, and the conditions under which, if not claimed by their owners, the dog could be kept, sold or disposed of for scientific research.³² That the new legislation was deemed necessary indicates that the 1904 by-law was not adhered to or well-enforced.

Most significant in this period is the reinforcement of the *Vicious Dogs Act*, provincial legislation which had been in place since 1931. Whereas vicious dogs had to be muzzled if running at large in 1890, from 1931 onwards, if a dog bit a human, the owner had to demonstrate why the dog should be allowed to go on living. As indicated in the corresponding manual literature, although this law was "on the books" it was not accompanied by a corresponding "dangerousness" discourse or "moral panic" until the mid 1960s. The *Vicious Dogs Act* of 1970, (which was virtually the same as the 1931 Act) was a tiny Act with enormous implications for dogs and their owners. Where a dog was alleged to have bitten someone the owner of the dog had to show cause why the dog should not be destroyed. If the dog had in fact bitten someone, the judge could make an

regulating the keeping of dogs, cats and other animals, as well as the regulating of kennels for the breeding or boarding of cats and dogs (1967); City of Ottawa, By-law No. 59-76, *A by-law of The Corporation of the City of Ottawa respecting kennels and the limitation on the number of cats and dogs* (1976).

³¹ *Supra* note 25.

³² City of Ottawa, By-law No. 138-75 *A by-law of The Corporation of the City of Ottawa to prohibit the running at large of dogs in the City of Ottawa*, (1975) ss. 2 –9.

order that the dog be destroyed.³³ Still, it was not until 1980 that the saying ‘every dog has one free bite’ was not longer applicable.

Until 1980, in order for a dog owner to be liable for a particular dog bite, the injured party had to establish “scienter.” Scienter requires that the injured party prove:

- 1) that it was the dog in question which inflicted the injury;
- 2) that the dog had a mischievous propensity to commit the particular act of injury;
- 3) that the owner knew of such propensity, in other words, had scienter.³⁴

So, the dog had to have at least one incident to indicate an aggressive propensity and the owner of the dog had to be aware of this propensity. In order to be required to behave in a manner to prevent the dog from biting, the owner had to have been aware of the dog’s biting potential. The dog who had bitten a person was subject to guilt (due to the act regardless of establishing any malicious intent) and punishment (capital) while the owner was liable for the damage inflicted by their property, the dog.

Human Dangerousness Legislation in the 1970s

In the latter twentieth century, notions of dangerousness shifted from repetitive criminals and those whose identities were unknowable to concerns with violence against the body. The *Vicious Dogs Act* was consistent with this, as was criminal legislation aimed at violent human offenders. To aid in understanding the shifts in law, ideological models are applied which aim to characterize the overall assumptions about the causes and cures of criminal behaviour.

³³ *Vicious Dogs Act* R.S.O. 1970.

³⁴ J. G. Fleming, *The Law of Torts* 9th ed. (Canada: LBC, 1998) at 402.

In the 1960's and 1970's, a justice model of social control guided the response to humans who committed violent and sexual offences against other humans, whereby individual offenders' rights were considered. This is in stark contrast to earlier years in which a medical model was adhered to which emphasized treatment for offenders and public safety.³⁵ The influence of justice concerns was reflected in the removal of the medical model term, "Sexual Psychopath" and its replacement with the more neutral "Dangerous Sexual Offender" title in 1960 legislation. In 1969, the Ouimet Report made a number of criticisms of the Dangerous Sexual Offender legislation which reflected a justice model perspective. There were "regional disparities in its application...difficulty (in) determining an individual's dangerousness on a brief psychiatric interview...and the failure to include dangerous non-sexual offenders."³⁶ The report recommended the removal of the habitual and Dangerous Sexual Offender provisions and the creation of dangerous offender legislation. The Ouimet Report, however, kept the assumptions of the medical model in the recommendations for indeterminate sentences for individuals identified by scientific methods as dangerous and in need of treatment.³⁷

In 1975, the Law Reform Commission reflected even more justice model influence by recommending against indeterminate sentences, arguing instead for sentencing under regular criminal provisions. Prediction of dangerousness was presented as inaccurate although actuarial methods consistent with medical model means were recommended as an alternative.

³⁵ M. Petrunik, *Models of Dangerousness: A Cross-Jurisdictional Review of Dangerousness Legislation and Practice* (Ottawa: Ministry of the Solicitor General, Supply and Services Canada, 1985) at 41.

³⁶ Canadian Committee on Corrections, 1969 at 258 in *ibid.* at 82.

³⁷ *Ibid.*

The Habitual Offender and Dangerous Sexual Offender provisions were removed in 1977 and replaced by Dangerous Offender provisions in the Canadian Criminal Code. The Dangerous Offender was defined as one who had committed a violent or sexual offence against another person, (a Serious Personal Injury Offence), with the exception of treason and first and second degree murder offences which involve sentences of life imprisonment.³⁸ In order to be determined a “dangerous offender,” one of the following criteria had to apply:

- 1) the act must have been of such a ‘brutal’ nature that it compels the conclusion that the behaviour is unlikely to be inhibited in the future,
- 2) there is a pattern of repetitive behaviour that suggests a likelihood of causing future harm,
- 3) there is a pattern of aggressive behaviour showing indifference to the consequence of the violence to other persons, and
- 4) there is a likelihood of causing injury through a failure to control sexual impulses.³⁹

Also required was “the prediction of the likelihood of violent behaviour and an assessment of the prognosis of treatment to control the offender’s behaviours... (requiring) the testimony of two psychiatrists or psychologists who could provide testimony regarding the issues of future violence and the offender’s ability to benefit from treatment.”⁴⁰

These criteria and procedures are highly indicative of the perseverance of the medical model. Justice model influences are apparent in the criterion that all alternatives to imprisonment for controlling offender violence in the future are inadequate, and the procedures for review of dangerous offender status three years following the

³⁸ *Criminal Code*, ss. 752(a) & (b) in G.P. Rodrigues, ed., *The Pocket Criminal Code* (Scarborough: Carswell, 1996).

³⁹ J. Bonta, I. Zinger, A. Harris & D. Carriere, “The Dangerous Offender Provisions: Are They Targeting the Right Offenders?” (1998) 40:4 *Canadian Journal of Criminology* 377 at 379-380.

⁴⁰ *Ibid.* at 380.

determination and every two years after that.⁴¹ Overwhelmingly, however, the Dangerous Offender provisions of 1977 retained the principles of the medical model. The influence of the justice model seems to have been largely bypassed in its formulation.

One characteristic of the dangerousness provisions was the financial imperative of the Canadian government to conserve its resources “according to an economy of scarcity.”⁴² Penal resources were reserved for “the really serious” offender as opposed to “the rest” who were to be “dealt with in cheaper ways, sometimes outside of the penal system altogether.”⁴³

In the 1970s, dogs who behaved counter to acceptable parameters, were responded to with a death sentence. Dog owners who could not control their aggressive dogs had to give them up. The dog owner did not lose the right to have a dog, only that dog in particular. The dog was looked upon as a dangerous piece of property and the onus was on the owner of that property to ensure that it did not harm anyone. Implicit in this policy were a number of assumptions: The responsibility of the dog owner to control the dog, that once a dog had bitten it would bite again, and the dog owner was not implicated as a cause of the dog’s aggression.

The medical model in dangerous dog legislation of the 1970s does not apply to the psychological state of dog or owner. A form of positivism, however, is indicated. The popularity and influence of a discourse that viewed domestic dogs as creatures of instinct may have been at root in the requirement that the dog be eliminated. Instinct is genetically intrinsic to the dog. If instinct was to blame for aggression towards humans,

⁴¹ *Ibid.*

⁴² *Supra* note 27 at 30.

⁴³ Chan & Ericson, 1981; Bottoms, 1983 in *ibid.*

consistent with the policy suggestions of the early Positivist criminologists, because it is not a cureable condition the only other solution is segregation or elimination. A medicalization is present in the reifying of the human body as inviolable. Dogs have been biting humans since prehistory. For “vicious dogs” to be vilified in this period is indicative of shifts in attitudes concerning the body, dangerousness, the status and nature of the dog, and the human/dog relationship.

Dangerous Dog Legislation in the 1980s

In the 1980s, the legal response to dogs who bite seemed to reflect more of a 1977 *Dangerous Offenders Act* sentiment in its concerns for the seriousness of the offence, the temperament of the dog and the probability of a future like offence rather than simply the repetitiveness of offences. A 1980 provincial dog owner liability statute added to the 1970 *Vicious Dog Act* by spelling out the strict liability of owners of dogs that bite. Although mitigating factors were not considered in the determination of the dog’s “guilt,” they were allowed in the determination of the dog’s “sentence.” No longer did the liability of the owner depend upon “*scienter* or fault or negligence on the part of the owner,” although the victim’s contribution to the bite was considered when awarding damages.⁴⁴ If the court found that the dog had indeed bitten a person, the dog could be ordered destroyed or the owner could be ordered to “take...steps..for the more effective control of the dog.”⁴⁵ The court was to consider the following circumstances:

1. The past and present temperament and behaviour of the dog.
2. The seriousness of the injuries caused by the biting or attack.
3. Unusual contributing circumstances tending to justify the action of the dog.

⁴⁴ *An Act to provide for Liability for Injuries caused by Dogs*, R.S.O. 1980 c. 65, s. 2(3).

⁴⁵ *Ibid.*, s. 4(2).

4. The improbability that a similar attack will be repeated.
5. The dog's physical potential for inflicting harm.
6. Precautions taken by the owner to preclude similar attacks in the future.
7. Any other circumstances that the court considers to be relevant.⁴⁶

These considerations were reflective of the 1977 *Dangerous Offenders Act* in a manner which began to link owner and dog in the determination of a dog's dangerousness. It added elements of a medical model psychologizing and actuarial probability in speculating on the dog's physical capacities and mental state. The seriousness of the bite was considered, just as the "brutal nature" of the human offence. The likelihood of future harm, which was demonstrated by "repetitive behaviour" in humans was determined by considering the "improbability that a similar attack will be repeated" in the dog, as was the "past and present temperament and behaviour of the dog." Significantly different from the 1970 Vicious Dog legislation was the inclusion of the owner's behaviour in the likelihood of future harm. "Precautions" taken by the owner were taken into consideration for the probability of the dog biting in the future. Overall, the *Dog Owners' Liability Act* of 1980 (and 1990) while holding the dog owner strictly liable for civil damages, set up a separate system of guilt for the dog in that the sentencing (capital punishment versus stricter owner control) was determined using considerations which are parallel to the *Dangerous Offenders Act* of 1977.

Differing from the 1970 legislation which demanded the destruction of the dog for biting a human if the owner knew of the risk, the 1980 legislation extended this owner responsibility to absolute liability for the behaviour of the dog but also raised the status of the dog by considering other factors and by not necessarily requiring the death of the offending dog. The notion of the dog's diminished responsibility became evident in the

⁴⁶ *Ibid.*, s. 4(3).

new legislation. Whereas in 1970, the dog that bit was thought to be the sole causal agent of the bite, and the owner simply liable for not preventing it, a greater amount of responsibility was placed on the owner in 1980, not only for the damage caused by his/her property, but in accounting for the dog's behaviour. Consideration was afforded to the ongoing daily relationship and lifestyle of the owner and dog.

Dangerous Human Legislation in the 1980s

Dangerousness legislation was established to account for risk. A shift began to occur in the 1980s toward a social climate that was less tolerant of risk. Well-publicized failures of the criminal justice system in protecting the public from violent and sex offenders provided impetus for another shift in popular and academic ideology towards a model of community protection⁴⁷ or crime control.⁴⁸ In these models, the rights of the community are seen to outweigh those of the offender (or potential re-offender).

The practice of "gating" by the National Parole Board was instigated by public reaction to a number of violent and sexual offences committed by inmates on conditional release.⁴⁹ Gating involved "authorizing the release of an inmate on mandatory supervision and then immediately issuing a warrant of apprehension suspending mandatory supervision on the grounds that the inmate presented such a risk of re-offending that he (or she) should be returned to custody."⁵⁰ The practice was ended with the 1983 Supreme Court decision which required that under current legislation, to

⁴⁷ Reid & Reitsma-Street, 1984 at 3 in S. Reid-MacNevin, "A Theoretical Understanding of Current Canadian Juvenile-Justice Policy" in A. W. Leshied, P.G. Jaffe & W. Willis, eds. *The Young Offenders Act: A Revolution in Canadian Juvenile Justice* (Toronto: University of Toronto Press, 1991) at 29.

⁴⁸ *Supra* note 35 at 92.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

suspend mandatory release of inmates, the decision had to be based on an offender's conduct after release, not a prediction based on past conduct.⁵¹ A Bill passed in 1986 in effect reversed this decision by allowing the National Parole Board to detain individuals convicted of a serious violent offence beyond their mandatory release date if there were reasonable grounds to believe they were likely to commit, before warrant expiry, an offence causing death or serious harm."⁵² Clearly, community protection measures to suppress risk outweighed justice model concerns in human dangerousness legislation in the 1980s.

The *Dog Owners' Liability Act* placated the risk by making dog owners absolutely liable thereby providing insurance that there was financial and legal accountability for any dog bite. Just as the Sheep Protection acts imposed absolute liability on dog owners for the costs of damaged property (sheep) and the death of the offending dog, the 1980 *Dog Owners' Liability Act* ensured that the victim would be civilly compensated and the risk presented by the dog duly suppressed, if not eliminated. Crucially, the absolute liability inferred that all dogs were potential biters or, in other words, inherently dangerous. By casting all dogs as dangerous, this implied that all dog owners have *scienter*, or knowledge that their dog presents a bite risk. Whereas 1970 Vicious Dog legislation held that dog owners should not assume their dogs would bite until it was demonstrated, under 1980 legislation, all dogs were dangerous despite the absence of any aggressive incident. This placed more responsibility and blame for actual acts of violence on the dog owners, who were obligated to control their inherently dangerous property. Although the *Dog Owners Liability Act* changed very little from 1980 to the present, this

⁵¹ *Ibid.*

⁵² Government of Canada, 1993 at 3 in *ibid.*

climate of risk control in the name of community protection is reflected increasingly in legislation directed at dog owners, particularly in the municipal by-laws of Ottawa in the 1990s.

Dangerous Dog Legislation in the 1990s

There are only two modifications to the *Dog Owners' Liability Act* of 1980. The 1980 Act was edited to address acts of violence by dogs not only on people but on *other domestic animals*.⁵³ This raising of status of dog to that of victim in that the response to dogs who bite dogs is, on paper, the same for dogs who bite humans is worthy of note. Also interesting is a new section added to specify that owners *prevent* their dogs from attacking or biting people or domestic animals.⁵⁴ So, there are now good dogs, who are potential victims, with good responsible owners and there are bad dogs with bad, irresponsible owners.

In the late 1980s and throughout the 1990s, efforts were made at the municipal level to target specific breeds of dog for prohibition but abandoned due to their "impossibility". A 1991 motion before Council was not approved because after reviewing the "banning of certain types of dogs such as pit bull terriers, (an interministerial working group) became convinced of the impossibility of isolating breeds as vicious."⁵⁵ In 1994, an attempt was made to prohibit specific breeds, citing the prevalence of "attacks by pit bull terriers and other breeds of vicious dogs" and the

⁵³ *Dog Owners' Liability Act*, R.S.O.1990 c. D.16, s.2, (emphasis mine).

⁵⁴ *Ibid.*, s. 5 (emphasis mine).

⁵⁵ City of Ottawa Legal Department. *By-law Prohibition of Certain Animals – City of Vanier Report*. ACS1991/0201-014. (October 4, 1991) at 1.

ineffectiveness of leashing of such dogs.⁵⁶ Some of the concerns and recommendations raised in this executive report show a remarkable similarity to those concerns of the late nineteenth-century. For example, the Hintonburg Community Association suggested the “mandatory neutering of all mixed breed stray dogs or dogs at large to control aggression.” This is reminiscent of the lumping together of impure breeding and dangerousness. The third element, class, is included in the Association’s other suggestion that the Pound release fee for stray dogs be doubled with each violation.⁵⁷ Although these recommendations were not included in legislation, they are indicative of a background or subordinate discourse that once more links dangerousness with blood purity and class. Again, dogs running at large are thought to be dangerous and the wallets of “irresponsible” dog owners are targeted as a means of eliminating the perceived risk they and their dogs present to the community.

Also around this time further regulations on dog owners were implemented requiring that they be more directly responsible for their dog’s behaviour. The *Stoop and Scoop* bylaw of 1988 required that dog owners pick up their dog’s waste “forthwith” on any property but their own. A 1992 by-law prohibiting dogs from running at large retained the same definition as found in the 1975 by-law. Dogs found “in any place other than the premises of the owner of the dog and not under the control of any person” were deemed to be “at large.”⁵⁸ The new by-law, however, specified that dogs be on a two-

⁵⁶ City of Ottawa Department of Engineering and Works. *Animals-Dogs-Vicious Dogs Report*. ACS1994/0805-097. EWICO343 at 1.

⁵⁷ *Ibid.* at 8.

⁵⁸ City of Ottawa, By-law No. 138-75 *A by-law of The Corporation of the City of Ottawa to prohibit the running at large of dogs in the City of Ottawa*, (1975), s. 2; City of Ottawa, By-law No. 83-92, *A by-law of The Corporation of the City of Ottawa to prohibit the running at large of dogs in the City of Ottawa* (1992), s. 2.

metre leash *and* under control when on City land with few exceptions.⁵⁹ The mandatory leash, previously never mentioned in law, indicates a lack of faith in the possibility that owners can have control over their dogs using words, hand signals or other means of communication. That the “running at large” by-law is repeated indicates continued non-compliance or lack of enforcement.

Interestingly, the 1999 by-law “to prohibit the running at large of dogs” in Ottawa incorporates specifications against dogs that “attack” or “bite”. Besides requiring that dogs be kept on a leash with specific exceptions, the by-law added a section requiring that owners not allow their dog to “bite or attack without provocation a person or domestic animal.”⁶⁰ This reflects the added section in the 1990 *Dog Owners’ Liability Act* requiring that owners prevent bites from occurring.

In addition to legislative increases in the regulation of dogs running at large, the National Capital Commission (NCC), in 1999, commissioned several studies concerning dogs on NCC land. In an NCC report it is suggested that because dogs are to be leashed on all federal park land, in order to be consistent dogs should not be permitted off-leash on NCC land and instead proposes that “dog run facilities” be established so that dogs may run off leash in a fenced area.⁶¹ Also in 1999, the NCC commissioned an “environmental assessment” of proposed “domestic animal regulation” which is directed primarily at dogs. The report describes domestic animal issues as a “growing concern on NCC lands” and includes issues of inconsistent by-laws, lack of compliance with leash

⁵⁹ City of Ottawa, By-law No. 83-92, *A by-law of The Corporation of the City of Ottawa to prohibit the running at large of dogs in the City of Ottawa* (1992), ss. 4-7.

⁶⁰ City of Ottawa, By-law No. 83-92 *A by-law of The Corporation of the City of Ottawa to prohibit the running at large of dogs in the City of Ottawa*, (1999) s. 7(a).

⁶¹ National Capital Commission, *Proposed NCC Domestic Animal Regulation: Dog Run Facilities Study* (Ottawa: National Capital Commission, 1999) at 2.

and waste by-laws, “increasing public complaints” and “increasing conflicts among users” of NCC land.⁶² Citing a 1999 dog-bite study of the Ottawa-Carleton region, these proposed NCC regulations are particularly oriented around safety and health issues concerning dog bites. “There are approximately 350 reported dog bites per year in the Region of Ottawa-Carleton.”⁶³ The interests of dogs are considered in terms of their need for socialization and risk of contracting communicable diseases from other dogs and wildlife.⁶⁴ Overall, the bias of the study is in favour of keeping dogs on leashes as much as possible, or confining dogs when they are running off-leash.

The title of an article in the *Ottawa Citizen* seems to capture the climate of the late 1990’s: “Dog Owners Are the New Smokers”, which reflects the medicalized demonization of domestic dogs in public spaces.⁶⁵ Dogs present a potential bodily and disease threat to humans and other dogs. In a sense, it seems that the perspective of the late 1990’s, early 2000 is one of strictly community protection or crime control, in that all dogs are seen as potential biters and (non dog-owning) humans receive total precedence in legal considerations.

Human Dangerousness Legislation in the 1990s

During the 1990s, a continued adherence to community protection model ideology paved the way for a shuffling of definitions and stricter, wider reaching provisions for humans who offend against the body. In 1991, after continued well-

⁶² Delcan, *Proposed Domestic Animal Regulation Strategic Environmental Assessment: Draft Final Report* (Ottawa: National Capital Commission, 1999) at 3.

⁶³ Region of Ottawa Carleton, *Dog Biting Study Summary* (Ottawa: Region of Ottawa-Carleton, Environmental Health/Communicable Disease Control Division) 1999 in *ibid.* at 9.

⁶⁴ *Ibid.* at 11.

⁶⁵ M. Battista, “Dog Owners are the New Smokers” *Ottawa Citizen*, (31 July 1999).

publicized violent sexual offences by inmates on conditional release, the *Corrections and Conditional Release Act* came into force.⁶⁶ It puts in place a number of public safety measures including:

Exclusion from the accelerated parole and unescorted temporary absence programs; delay of parole eligibility from 1/6 of sentence to 6 months before full parole eligibility date; judicial determination of parole eligibility at ½ of sentence rather than 1/3.⁶⁷

Community protection measures were also enacted to distinguish between offenders who were found not criminally responsible. In keeping with justice model concerns, a maximum limit for custody was put in place of indeterminate sentencing. Offenders who are not criminally responsible, “but meet the legislative criteria for a dangerous offender,” can be declared a ‘dangerous mentally disordered accused’ person and incarcerated in a “mental health facility until release is ordered by a Criminal Code Review Board.”⁶⁸ Again, the resources are reserved for the most serious offenders.

Further proposals were made in 1993 to extend the ability of the Crown to declare offenders “dangerous” while they serve their determinate sentences.⁶⁹ This was ratified later in Section 753(3) and (4) of the *Dangerous Offenders Act* as seen in 2001. In cases where the offence is not serious enough to warrant “dangerous offender” status, for those persons who have been convicted repeatedly for sexual offences, they may be labeled a “long term offender” and be subject to indeterminate sentencing.⁷⁰ It also provides for long-term supervision in the community.

⁶⁶ *Supra* note 35 at 93.

⁶⁷ *Corrections and Conditional Release Act*, 1992, Government of Canada, 1993 in *ibid*.

⁶⁸ Government of Canada, 1993, at 10-11 in *ibid*.

⁶⁹ Ministry of the Solicitor General, 1992, in *ibid*. at 96-98.

⁷⁰ *Criminal Code of Canada*, 2001 s. 753.1

It seems that for individuals deemed “dangerous” Canadian law leaps straight from the medical model perspective to incorporating the community protection model. Justice concerns appear to have had little effect on the legislation concerning violent and sexual offenders. For dogs, too, the restriction of movement, the required physical attachment of dog to owner by leash required in many places and times in the City reflects a community protection model. The leash and spatial by-laws are a physical manifestation of the link between the owner’s responsibility for their dog’s behaviour which was previously only implied by the generalized word “control”. Interestingly, while humans must have a history of violent offences to warrant the “dangerous” label, the regulations for dogs imply a “dangerous” status for all, regardless of their having a history of violence.

This legislative trend, which seems to cast a very wide net in the name of safety and risk reduction, is consistent with a wider criminological strategy that is a rejection of individual positivist perspectives on criminal behaviour. As Pat O’Malley suggests of the latter twentieth century, “crime increasingly comes to be understood not as a matter of personal and social pathologies in need of correction, but as a set of risks, more or less inevitable in some degree, but predictable and manageable in aggregate terms.”⁷¹ For example, the statistical data which suggests that the majority of dog bites tend to occur in the early afternoon hours of the summer may explain bylaws that prohibit dogs from being off-leash in Ottawa’s public parks during those times.⁷² O’Malley cites the work of

⁷¹ P. O’Malley, “Risk and Responsibility” in A. Barry, T. Osborne & N. Rose, eds. *Foucault and Political Reason: Liberalism, Neo-liberalism and Rationalities of Government* (Chicago: University of Chicago Press, 1996) at 190.

⁷² For example, Central Park in the Glebe, East side of Bank Street at Patterson.

Simon who suggests that regulations such as this are more efficient than previous modes of regulation.

First, unlike the disciplines, they act by manipulating the environment or the effects of problem behaviours, rather than attempting to correct errant individuals. Secondly, they act on categories derived from risk analysis that need not overlap with the categories of everyday experience, and which thus are less likely to be recognized and resisted. Thirdly, they act *in situ* rather than by separation or exclusion of deviant cases, and as a by-product have less need to be coercive.⁷³

Operating in tandem with the community protection model, this actuarial risk reduction strategy explains some of the legislative responses to the issue of the biting dog. Of particular note is the shift in “dangerousness” from a demonstrated risk in 1970 to an assumption of intrinsic risk in 1980 and the shift from holding the dog owner financially responsible for any harm caused by the dog in 1980 to the additional requirement that the dog owner actually prevent a bite from occurring. These shifts point towards a increasing positivist assumption that all dogs will bite and a corresponding increase in the responsibility of the dog owner to control the dog.

O'Malley suggests that the late twentieth century is characterized by neo-liberal strategies of governance over subjects who are “recast as rational, responsible, knowledgeable and calculative, in control of the key aspects of their lives”⁷⁴ and who are concerned with the reduction of risk to their own personal safety, and the safety of others. Onus falls on the bite victim to reduce their risk and the dog owner to take steps to prevent the dog from biting. It can be expected that the governance literature, directed at dog owners who actively seek out the assistance of “expertise”, will reflect this legal demand that they be responsible and accountable for the actions of their wards. The

⁷³ Simon, 1988 at 773 in *supra* note 71 at 191.

⁷⁴ *Ibid.* at 203.

following chapters detail the developments in how the governance literature seeks to convey certain discourses to aid the dog owner in being a “good” governor.

CHAPTER FOUR

The Rise of the Dog-Child

Comparative templates and moral regulation

Dogs, in the latter twentieth century, have come to be viewed as having much in common with children. The linking of dogs and children is evident in the manual literature from the mid-nineteenth century onward. The regulation of children shifts from overt state intervention into family life in the nineteenth-century to an internalizing of familial norms and self formation of parents in the latter twentieth-century. There is a rich sociological historiography on the topic of childhood and the regulation of the family which is not detailed here. The discourses governing parents and dog owners do not always mirror each other nor do they necessarily parallel at the same time, often they leapfrog. As my focus is on the regulation of dogs, particular attention is given to the occasions where the dog manuals draw upon the template of the “family”, specifically normalized parent/child relations, in order to instill a similar subjectivity in the dog owner.

The manuals serve as a source of discourse by which parents/dog breakers evaluate themselves and other parents/dog breakers. The nineteenth- and early twentieth-century manuals for both dogs and children are intended to instill in the reader concepts which inspire self-formation and self-regulation. In reading the ideals of human/dog relations in the manual, the dog breaker is told that to behave like a good governor, the techniques and ideologies prescribed in the manual must be followed.

Consistent with Foucault’s concept of discipline, from various locations discourses of “truth” instill in the dog owner or parent is an ideal which is normalized.

By virtue of reading the manual, the dog owner or parent is encouraged not to think of him/herself as the irresponsible or bad governor or the disparaged “other,” but as the good governor. In order to be a good governor, the dog owner or parent must perform the recommended training techniques and adhere to the prescribed roles for themselves and their ward. The manual promotes self-formation by setting an ideal standard. The dog owner tries to live up to the ideal, forms an identity based on the manual, and regulates him or herself against this standard. When around others who also adhere to the normative ideal, the dog owner will be observed, inspiring further self regulation. Dog owners, as a population, reinforce each other through their mutual interactions, and perpetuate the good owner/bad owner dichotomy in their opinions about dog owners in their communities. From almost all fronts, the dominant discourses surrounding the dog owner also reinforce this ideal and “truth” about the human/dog relationship. This is, in effect, the moral regulation of the dog owner.

Parallels between Dogs and Children in the late Nineteenth, early Twentieth century

Child-rearing books and dog breaking manuals of the mid-nineteenth-century both make comparisons between children and animals. Child rearing manuals emphasize similarities in instinct and brain capacity. For example, “The dog, the kitten and the child at certain periods of their existence are remarkably close together.”¹ Another author likens mother and child to colt and calf in explaining the child’s inclination to “run to

¹ A.F. Chamberlain, *The Child: A Study in the Evolution of Man*, (London: Walter Scott, 1901) at 288.

their mother by instinct, when want, fear, or pain impels them.”² These parallels are used to promote similar behaviour modification techniques.

Although the manuals geared to hunters in the nineteenth century do not draw such comparisons, they begin in the early twentieth century to do so, as do the veterinary and show publications. The show-oriented publications of the late nineteenth century present the parallels between children and dogs to encourage a new perspective on dogs, and to explain the developmental progression of canine cognition. A debate begins in the *Kennel Gazette* in 1889 which stems from the question of whether dogs are capable of reason, or simply automaton creatures governed by stimulus and response. An anonymous letter-writer, “Science”, makes the comment that a greater understanding of children and dogs could be achieved by observing “how very much alike they are mentally and morally” in their early years.³ A prominent veterinarian, Wesley Mills, in 1892, notes the similarities in the developmental stages of dogs and children although at first the puppy surpasses the child, and vice versa as time progresses. Mills uses the “human resemblance” of dogs as the “guiding principle” of his book. “If dogs were generally viewed as we do children of different ages, their whole nature and management would be better comprehended.”⁴

The hunting manuals of the early twentieth century adopt this perspective of the dog as possessing child-like elements primarily for the purpose of imploring kinder treatment during “breaking”. This is attempted by requesting that the reader cast their

² J. Abbott, *Gentle Measures in the Management and Training of the Young* (New York: Harper & Brothers, 1904) at 3.

³ Science, “Untitled Letter” (1889) 1:7 *The Kennel Gazette* at 3.

⁴ W. Mills, *The Dog in Health and Disease: Including His Origin, History, Varieties, Breeding, Education & General Management in Health, and His Treatment in Disease* (New York: D. Appleton & Co., 1892) at 18 and 101.

minds back to the corporal punishment of their school days and to consider its effectiveness. The manuals suggest that the role of the dog “breaker” is similar to that of “a teacher in school,” and educational force is not necessary for children or dogs.

One of the golden rules to remember is that the dog in your care is just what a child is in the care of the school teacher.... As corporal punishment is a thing of the past in our schools, so let me beg of you, once and for all, to put aside from you all thought of use of the whip, at least for the *young* dog. Children have been taught to read and to spell in the old days when the schoolmaster’s reign was a “Reign of Terror”; but it was, after all, but a parrot-like, word-of-mouth sort of ‘learning’, often forgotten before the child reached home at night.⁵

It used to be the fashion when some of us were boys for the parents to urge the school-teacher to give the boy a trouncing if he did not behave.... Then Johnny, poor little fellow, would get a licking from his mother, and sometimes he would get another when his father came home. Now all this did not make little Johnny a good boy. The little Johnny of to-day who never feels the schoolmaster’s rod, and is seldom thrashed at home, is a better behaved boy than the little Johnny of thirty or forty years ago. We have learned to despise the logic of the rod in the schoolroom, and we have learned to spare the whip in dog breaking.⁶

Dog breakers are asked to consider the dog’s age and likeness to a child when they are training, specifically not to expect too much from a young dog. By lowering dog breakers’ expectations and humanizing dogs, they hoped to limit the unnecessary whipping of dogs who are expected to accomplish too much. Just as children are not expected to “spell until the alphabet is learned, or to read until well grounded in spelling... so is it with the canine pupil, and no dog will ever be thoroughly well trained when, having only partly learned one lesson, he is hurried on to another.”⁷

The use of the comparison between dog and child was employed mainly, it seems, as a tactic to encourage the humane treatment of dogs. Upon closer inspection,

⁵ T.C. Abbott, *Practical Dog Education* (New York: M.J. Richardson Co., 1902) at 4-5. (emphasis in original).

⁶ C.B. Whitford, *Training the Bird Dog* (New York: The Outing Publishing Co., 1908) at 35.

⁷ *Supra* note 5 at 4.

however, it seems that the linking of children and dogs also serves to aid dog owners and parents in perceiving themselves as micro-sovereigns, as governors.

Governmentality: Encouraging the Micro-Sovereign

The governance manuals for dog owners and parents serve as a vehicle for disseminating discourses of “truth” that have the potential effect of instilling or confirming norms within the reader. As a source of “expertise”, the manuals employ certain techniques to compel the reader to internalize these normative “truths”. This section explores the familial “truths” which the dog and child manuals convey and the manner in which they are presented.

The emphasis in both dog and child rearing manuals on establishing absolute authority is apparent in the late nineteenth- and early twentieth-centuries. Parents are advised that:

The first duty which devolves upon the mother in the training of her child is the establishment of her *authority* over him – that is, the forming in him the habit of immediate, implicit, and unquestioning obedience to all her commands).⁸

This tone is a familiar one for dog breakers who for many years are instructed to immediately impress “upon a dog that you *must be obeyed on all occasions and at all times.*”⁹

At the same time, it is also emphasized that the child or dog *wants* to obey and needs the parent to be a strong authority figure. A 1916 child rearing manual suggests that “the young child would really rather obey than be left to his own decisions...the child feels his helplessness” and he wants “the comfortable consciousness of a superior

⁸ *Supra* note 2 at 31. (Emphasis in original).

⁹ H. Cox, *Dogs and I*, (London: Hutchinson & Co., 1923) at 267. (Emphasis in original).

authority upon which he can safely lean.”¹⁰ The dog books reiterate this supposed need which dogs possess to “obey and please (their) master.”¹¹ This theme is evident throughout the twentieth century, the key difference being that the early century books use the following strategy which later disappears.

To encourage parents to assume a position of absolute authority they are told that their ward will think badly of them if they do not. For example, a child-training book insists that:

The mother who does not govern her children is bringing them up not to love her, but to despise her.... The children will all, girls and boys alike, see and understand her weakness, and they will soon learn to look down upon her, instead of looking up to her, as they ought. As they grow older they will all become more and more unmanageable.¹²

A dog manual echoes this sentiment in its advice to dog owners who are too affectionate or permissive with their dogs. “Inordinate mollicoddling generally reacts unfavourably upon most breeds and may well lead to a feeling of actual repugnance.”¹³ Thereby, the early twentieth century literature for both dogs and children promotes the desire for the exercise of absolute authority by the parent/owner and the likelihood of disrespect towards those who do not assume such a role.

By the mid twentieth-century the “absolute authority” of the parent of children is softened, and best exemplified by the work of Dr. Benjamin Spock, whose book, *Baby and Child Care*, is first published in 1946. The theme of the parent-child relationship differs quite drastically from the very early century. Children no longer have to be “sternly trained.” A healthy, happy, socially competent child is a product of “his nature,

¹⁰ S.M. Grunenberg, *Your Child: Today and Tomorrow* (London: J.B. Lippincott, 1916).

¹¹ L.S. Crandall, *Pets; Their History and Care* (New York: Henry Holt & Co, 1917) at 6.

¹² *Supra* note 2 at 20.

¹³ R.S. Lemmon, *About Your Dog* (New York: Frederick A. Stokes Co., 1928) at 4.

provided he grows up with loving, self-respecting parents.” Parents are to be self-confident, and have a “comfortable, affectionate attitude toward their children.”¹⁴ The goal of parenting is to work with the child’s natural instincts and abilities to produce a confident, happy child.¹⁵ The dog manuals, as will be evident in the following section, eventually catch up with this sentiment in the 1990s.

The early manuals for both dogs and children are very explicit, appealing to class, intelligence, and notions of civilization to compel the reader. Parents who hit their children are a disparaged, uncivilized “other.”

Children that are treated like animals will behave like animals; violence and brutality do not bring out the best in a child’s nature. It would seem that *intelligent* parents do not need to resort to such methods in the training of normal children.¹⁶

The mother who is made angry by the misconduct of her children, and punishes them in a passion, acts under the influence of a brute instinct. Her family government is in principle the same as that of the lower animals over their young....But human parents, in the training of their human offspring, ought surely to aim at something higher and nobler.¹⁷

The dog training manuals appeal to similar admonishments. The dog breaker who allows his dog to run away after a beating is a “foolish, passionate” man.¹⁸ In one manual, an entire chapter describes an uneducated breaker as “other” who will unwittingly use the wrong techniques and ruin his dog.¹⁹ Those who behave according to the manual are “true sportsmen” who “know the value of a good dog.”²⁰ Dog breakers are told that their excessive use of the whip is “brutal” or “cruel” and that in so using the whip, they will “ruin” their dog.

¹⁴ B. Spock, *The Pocket Book of Baby and Child Care* (Montreal: Pocket Books of Canada, 1947) at 19.

¹⁵ *Ibid.* at 21.

¹⁶ *Supra* note 10 at 41.

¹⁷ *Supra* note 2 at 50.

¹⁸ J.Y. Koster, *The American Shooters Manual* (Philadelphia: Carey, Lea & Carey, 1827) at 131.

¹⁹ *Supra* note 6 at 19-33.

²⁰ *Ibid.* at 96.

Although dog owners are instructed to assume absolute authority throughout the nineteenth and twentieth centuries, the characterization of the authority takes a different form in the 1970s and 1980s, being reflective less of a parent/child dynamic in favour of a canine behaviourist perspective. Much more dominant than the child-parent parallels in the 1980s, and throughout the early 1990s, is the “pack” template for the human dog relationship. It is likely that the ethnographic research on wolves and feral dogs spurred a sentiment of the domestic dog as being very much like a dog, or even a wolf. The concept of the human family as the dog’s adopted “pack” becomes frequently mentioned. Rather than applying a human relational dynamic, the dog’s perspective is assumed and owners are encouraged to take the roll of the “alpha” (most dominant member) of the pack. This gives way to a rather complicated blending of alpha role with that of parent in the early 1990’s. Rather than asking dog owners to behave like dogs (alpha pack leaders) as in the 1980’s, they are asked to understand that their dog will look up to them based on this inherited pack instinct but to behave like parents of children, using positive and negative reinforcement techniques and disciplines paralleling those recommended for children.

A Shift from Owner/Child to Parent/Dog Relationship: 1980 -2000

Whereas parallels between dogs and children were utilized in the manuals of the nineteenth-century to encourage humane treatment, childrearing manuals cease to make the comparison. Dog training manuals also drop the comparison in the early twentieth century, but it resurfaces in the manuals of the 1980s. This time, however, the motivation seems different. The emphasis seems to be on “bad” behaviour of dogs and likening that bad behaviour to that of children in order to compel dog owners to avoid it. For example,

owners of dogs who bark or whine are advised, “if your dog behaves this way, he is acting like a spoiled child and it is necessary for you to be very firm.”²¹ Another book advocates good obedience training in order to avoid one’s dog acting “like a selfish, spoiled child like many over-indulged pooches do with their parent/owners.”²² Dog owners are encouraged to rectify their dog’s “bad” behaviour by being assertive, using the same techniques that apply to similarly behaved children. Violent puppies, for example, can be treated with the same “body-contact therapy” as is employed on violent children.²³ Techniques such as “time out,” and deprivation of attention commonly recommended to parents of children are found in the manuals for dog owners. Consistency, too, is required of both parents and dog owners in order to avoid “confusion, conflict, and neurotic behavior or worse.”²⁴

1980 also marks the beginning of the likening of dog owner to parent, a concept which extends to the point of metaphor later on. In 1984, this metaphorical usage appears in the un-remarked-on use of human affectionate terms in descriptions of verbal positive reinforcement in dog training. For example, a dog is termed “son” in the phrase, “Ben – come on, son, *heel* – that’s a good boy.”²⁵ A 1989 training book contains chapters with headings, “The Problem Child” and “The Problem Parent,” again, not softening the parallel between dogs and children with a “like” or “as” but by a clear naming of the dog as a child.²⁶

²¹ J.G. Bennett, *Command Train Your Dog: Foolproof Obedience Techniques for Home and Show* (Englewood Cliffs: N.J., 1980).

²² M.W.Fox, *How to Be Your Dog’s Best Friend* (Toronto: Academic Press, 1981) at 49.

²³ *Ibid.* at 63.

²⁴ *Ibid.* at 38.

²⁵ J. Cree, *All About Training the Family Dog* (London: Pelham Books, 1984) at 30.

²⁶ T. Baer, *Communicating With Your Dog: A Humane Approach to Dog Training* (Hauppauge, NY: Barron’s Educational Series, 1989) at index.

In the late 1990s, the parent/child characterization of the human/dog relationship becomes quite prevalent, also to the point of metaphor albeit inconsistently. Rather than referring to “bad” behaviour, the motivation behind this characterization seems to be to provide a template of responsibility to apply to the human-dog relationship. A 1997 book reminds dog owners, “you are the surrogate parent,”²⁷ while a 1999 book echoes this term, “As surrogate parents, it is our responsibility to teach our dogs the basics for survival.”²⁸ Dog owners in this period are encouraged to view their dogs as being much *like* children, and to think of their behaviour towards their dog as comparable to that of a parent’s behaviour towards a child. For dog owners choosing food or products to use on their dogs, they are given the advice, “if it’s bad for the child it’s bad for the dog.”²⁹ In discouraging dog owners from allowing their dogs to socialize with dogs in the park they are told, “it’s the same with children; you wouldn’t let your child play with strangers.”³⁰ One chapter title states, “Respect your dog as a ‘person’.”³¹ In a section entitled, “parenting your puppy,” the point is made that “we would never leave a child unsupervised while we go off to work, yet some people think nothing of leaving a puppy alone for eight to twelve hours a day.”³² Finally, in 2000, a book advocating communication between humans and dogs suggests that to treat a dog by forcing a physical sign of submission is the equivalent of an abusive parent forcing a child to say ‘I

²⁷ P. Loeb & S. Hlavacek, *Smarter Than You Think: A Revolutionary Approach to Teaching and Understanding Your Dog in Just a Few Hours*, (Toronto: Pocket Books, 1997) at 18.

²⁸ S. Marlo, *New Art of Dog Training: Balancing Love and Discipline*, (Chicago: Contemporary Books, 1999).

²⁹ *Supra* note 27 at 13.

³⁰ *Ibid.* at 168.

³¹ *Supra* note 26 at 17.

³² *Supra* note 28 at 39.

love you'.³³ By inserting the discourse of "parenting" into the manuals, the dog owner receives a clear message about the role they should take and the expectations that should be applied to the relationship with their dog.

The manuals of the very late 1990s recommend that although the responsibility for a dog should be viewed very much like that for children, dog owners should not forget that their dog is still a dog. Refinements in research on dog behaviour, communication and psychology contribute to this shift. One book recommends that owners try their "utmost to understand dogs as dogs."³⁴ Another reminds the reader, "dogs are not humans"³⁵ which is echoed in the statement, "A dog is always a dog and never a person."

1970 to 2000: Governmentality, Parenting, Responsibility and Community

Dog owners who read manuals in order to gain guidance on how to behave and what to expect from their puppies and adopted dogs are told two major things in the 1970s and 1980s. In addition to the longstanding presence in the manuals discouraging corporal punishment, dog owners are told that they must be strong pack leaders, and responsible dog owners.

Dog owners who fail to undertake the dominant "alpha" role with their dog are criticized in the manuals. Dog owners are warned to not be a "pushover"³⁶ or they risk being dominated by their dog. "If a dog is overindulged and ruined by permissiveness, it

³³ S. Coren, *How to Speak Dog: Mastering the Art of Dog-Human Communication* (Toronto: The Free Press, 2000) at 240.

³⁴ I. Dunbar *Dog Behaviour: An Owner's Guide to a Happy Healthy Pet* (New York: Howell Bodchas, 1999) at 6.

³⁵ *Supra* note 28 at 39.

³⁶ Canadian Kennel Club, "Achieving the Well-Trained Dog" (1985) 76:4 *Dogs in Canada Annual* at 37.

may attempt to assume the number-one position itself and will be virtually impossible to train.”³⁷ In light of these consequences, readers are gently encouraged to use the techniques provided to create a well-trained dog and an appropriate hierarchical power relationship. Consistently throughout the history of the manuals, dog owners or “breakers” are instructed to assume a dominant role towards the dog. What changes over time, however, are the shifting reasons and consequences purported in the manual.

A newer development in the manuals in the latter twentieth century is the overwhelming insistence that dog owners be “responsible.” Whereas the manuals of the early nineteenth century implied a distinction between responsibility and irresponsibility based on class differences, in the later manuals class concerns are not explicit. In the 1970s, dog owners are informed of their responsibilities through references to the practices of the “irresponsible” dog owner. The “how not to behave” example is illustrated by the irresponsible “other.” Noting the prevalence of “anti-dog” sentiment, one author offers an explanation:

Basically it all narrows down to the irresponsible dog owner. He’s the type who gets a dog for himself or family, doesn’t bother to train the dog and then, when the novelty of owning a dog wears off (or the work involved in the care of the dog is too much), lets the dog shift for himself. There are many of these irresponsible dog owners... they provide ammunition for the dog haters and property owners. By continuing to disregard the laws and the rights of their neighbours, these irresponsible dog owners bring disrepute down on the heads of all dogs.... The only way for you and your dog to escape the labels of irresponsibility and nuisance is for you to teach your dog how to get along in the city.³⁸

³⁷ *Supra* note 22 at 39.

³⁸ J.J. McCoy *The Complete Book of Dog Training and Care* (New York: Coward-McCann, Inc, 1962,1970) at 116.

Noting the distinction between good and bad owners, one manual states, “responsible owners are calling for measures to encourage or require equal responsibility by other dog owners.”³⁹

This technique of juxtaposition using the “irresponsible other” gives way to an instilling of responsibility in all manual readers in the 1980s. Dog owners are informed of their “duty” to try to make sure that their dog is an “acceptable member of society”⁴⁰ and that “for every right of pet ownership, there is a corresponding responsibility toward neighbours and toward communities.”⁴¹ This discourse of rights and obligations to the community neatly parallels the shift in the provincial legislation of 1980 that demands that dog owners take responsibility for the behaviour of their dogs.

To bolster this discourse of responsibility, dog owners are told that the bad behaviour of their dogs is their fault. For example, “The blame in almost all cases can be put squarely on the trainer.”⁴² “The problem wasn’t with the dog, it was with the owner.”⁴³ The manuals then offer careful instructions on how to establish a relationship with and train one’s dog. This changes, however, with the 1990s in that rather than simply being told to follow the instructions to produce a well-trained dog, it is acknowledged that many dog owners fall short of this ideal and not for want of trying. A 1989 article relieves dog owners of some of the blame for their dogs’ bad behaviour:

In the past, pet behaviour problems were blamed on either irresponsible owners or crazy owners with crazy pets. (Most problem behaviours) are ‘natural’ dog behaviours seen in healthy animals with normal owners.... The owners, who are well-meaning, intelligent and usually have had pets before, become frustrated

³⁹ B.M. Cochrane, *Your Pets, Your Health and the Law: The Dog and Cat Owners Guide* (Toronto: Personal Library, 1979) at 23.

⁴⁰ N. Elliott & P. Elliott, *The Complete German Shepherd Dog* (Kingswood; Kaye and Ward, 1983) at 285.

⁴¹ *Supra* note 22 at 235.

⁴² B. Gun-Munro, “The Virtues of Patient Training” (1984) Apr. *Dogs in Canada* at 21.

⁴³ *Supra* note 36 at 37.

when conventional techniques fail and the problem get worse. This destroys the bond between the owner and the pet, and often results in euthanasia or abandonment.⁴⁴

The manuals conclude that dog owners need better information⁴⁵ and then set about providing advice on how to establish a good relationship with and train the dog.

Interestingly, in the 1990s, the concept of responsibility incorporates an additional target. Besides being responsible for ensuring that the community is not inconvenienced by the dog, the manuals strongly assert that dog owners should take responsibility for their dog's well-being. This discourse develops concurrently with discourses which elaborate on the "truth" of dog communication, instinct and psychology. Effort is made to challenge the notion of pet dogs as property and instill a responsibility of care for a psychologically complex, relational animal.⁴⁶ "Dogs are responsibilities not possessions."⁴⁷

Parental Responsibility and Liability

The discourse pertaining to the responsibility of dog owners for the "criminal" actions of their dog is dominant in the 1990s. What is particularly intriguing is that this dog parenting discourse of responsibility is reflected in recent calls for parental responsibility for children and youth who commit crimes. The *Dog Owners Liability Act* of 1980 and 1990 and the manuals purport owner liability and responsibility for the behaviour of dogs, their wards, who possess diminished responsibility due to the natural

⁴⁴ D.B. McKeown, U.A. Luescher, & M.A. Machum "The Devil, You Say! How to Handle Problem Behaviour" (1989) 80:4 *Dogs in Canada Annual* at 48.

⁴⁵ I Dunbar, "The Educated Owner" (1990) 81:4 *Dogs in Canada Annual* at 30; B. Kilcommons & M. Capuzzo *Mutts America's Dogs: A Guide to Choosing, Loving & Living Withour Most Popular Canine* (USA: Time Warner Books, 1996) at 167; *Supra* note 34 at 7.

⁴⁶ A. Marde *The Complete Dog Owner's Manual: How to Raise a Happy, Healthy Dog* (New York: Broadway Books, 1997).

⁴⁷ *Supra* note 27 at 21.

instincts of their species. Recommendations in the late 1990s to change the *Young Offenders Act* reflect a sentiment that parents should be held either criminally responsible or civilly liable for the behaviour of their children, their wards, who possess diminished responsibility due to age.

Under the earlier *Juvenile Delinquents Act*, parents could be fined if it was found that they had at all contributed to the their child's delinquency or "‘knowingly’ neglected doing something that would have tended to prevent their child from committing a delinquent act" (section 33).⁴⁸ This was removed by the *Young Offenders Act*. Instead, youths are somewhat autonomous in that only they, technically, "can retain and instruct counsel."⁴⁹ Decisions concerning pre-trial incarceration and sentencing involve consideration of "parental supervision," and "parents are to be notified of the arrest" of their child... and of youth court proceedings. In certain cases, parents may be ordered to attend court."⁵⁰

Bala explains the rationale for not including parental liability in the *Young Offenders Act*. The fining provisions of the *Juvenile Delinquents Act*, which effectively "punish the parent... often had negative effects on rehabilitation and resulted in manipulative behaviour by some adolescents."⁵¹ Also, parents may not be responsible for causing their children's behaviour. The *Young Offenders Act* clearly holds youths, not parents, responsible for their behaviour although in a diminished capacity.⁵²

Interestingly, and most closely paralleling the Dog Owners Liability Acts of 1980 and 1990 is the position of the mid-1990s that parents be held responsible for the actions

⁴⁸ N. Bala, *Principles for Responding to Youth Crime* (Concord, ON: Irwin Law, 1997) at 53.

⁴⁹ *Ibid.* at 52.

⁵⁰ *Ibid.*

⁵¹ *Ibid.* at 53.

⁵² *Ibid.*

of their children. In cases of shoplifting, “some Canadian stores began to send letters to parents of youthful shoplifters seeking ‘restitution’” beyond the costs of the stolen merchandise.⁵³ Under common law, however, a parent can only be liable for their children’s behaviour if a court finds that they had a role in “directing the act or (were) in some way negligent.”⁵⁴

Under Quebec’s Civil Code, (Art. 1459 CCQ) parents are in theory liable for the delicts (wrongful acts) of their children unless parents can show an absence of fault in their supervision, though in practice there does not seem to be any effort in Quebec to use that provision to pursue the parents of youths committing criminal offences. In some provinces there is legislation imposing liability on parents for damages caused by their children to school property.⁵⁵

There have been recommendations that parents be held accountable for their children’s behaviour including vicarious criminal and civil liability. A 1997 Report to the Standing Committee on Justice and Legal Affairs presents the recommendations of various parties, particularly those interested in the interests of victims of crime, for example: Canadian Resource Centre for the Victims of Crime; Crime, Responsibility and Youth (CRY); Victims of Violence⁵⁶ and the federal Reform Party (now Canadian Alliance party).⁵⁷ It is argued that “vicarious criminal liability” should be imposed “upon parents for the criminal acts of their children” because

in many instances parents are actively involved in the offences committed by their children or are so neglectful in their parental obligations as to fail to remedy the behaviour that leads to criminal involvement by their children. The expectation is that exposure to such criminal liability will act as an incentive to parents to take necessary steps to deal with the offending behaviour of their young people... (A) sanction in the form of a fine on negligent parents should be incorporated into the present Act.⁵⁸

⁵³ *Ibid.* at 54.

⁵⁴ *Ibid.*

⁵⁵ Cohen, S. *Renewing Youth Justice: 13th Report of the Standing Committee on Justice and Legal Affairs* (Ottawa: Public Works Canada, 1997) at 67.

⁵⁶ *Ibid.*

⁵⁷ *Supra* note 48 at 54.

⁵⁸ *Supra* note 55.

Similarly, it is also argued that “vicarious civil liability upon parents for the criminal acts of their children” should be imposed. Proponents of this position note legislation “recently adopted in Manitoba and under consideration in Ontario that has the effect of presuming that parents are civilly liable for the criminal acts of their children and in order to avoid civil liability requiring them to prove they have not been negligent in discharging their parental obligations.”⁵⁹ Potential remedies include payment of legal aid costs of their children’s defence and damages, compensation or restitution to the children’s victims.

Despite these suggestions, the Report did not incorporate them into its formal recommendation. The Report only recommended that “parents or guardians be required to attend Youth Court whenever a notice is sent to a young person,” excusable by “exceptional circumstances.”⁶⁰ It seems that the crime control model’s philosophy, consistent with the call for greater parental responsibility, although influential in some respects, is not presently dominant to the extent of forcing these proposals into the *Young Offenders Act*.

Still, it is uncanny that these Crime Control proposals for parental responsibility so closely parallel to the *Dog Owners’ Liability Act* of 1980 and 1990. Both dogs and children are viewed as having diminished responsibility for their actions and, consistent with the late-century climate of responsibilization and community protection/crime control, the onus is on parents/dog owners to cultivate and control the behaviour of those in their care. By discursively linking dogs to children, or at least dog owners to parents, the discourses applying to youth and canine criminal behaviour converge.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.* at 68.

Thus far, it has become evident that an increasing body of legal regulation surrounds the human/dog relationship, demanding certain relational, behavioural, and ideological compliance. A corresponding literature, geared towards dog owners who seek the “truth” and advice about their dogs, supports the formal legal regulation. At the same time, legislation and discourse surrounding the criminal behaviour of both young- and dangerous-offenders roughly parallels the discourses surrounding aggressive dogs. Interestingly, both the manuals and legislation shift at approximately the same times, although it remains to be seen whether one precedes or dictates the other. While this chapter specifically examined how familial discourse is used to compel dog owners towards self regulation and self formation, the following chapter more closely examines the discourses which are applied to explain the phenomenon of dogs biting humans, in essence, the “criminology” of the canine offender.

CHAPTER FIVE

The Criminology of the Dangerous Dog and Moral Regulation of the Dog Owner

Foucault on "Dangerousness"

Nineteenth century theories of criminal behaviour and justice experienced a significant shift in the conceptualization of criminal responsibility. Classical criminology studies the crime itself with an assumption that the perpetrator, except in extreme cases, possesses free will. Conversely, Positivism, which applies scientific principles to the study of crime, focused on the criminal as the critical object of study. This shift in focus from the crime to the criminal is of interest to Foucault who describes the implications of applying a positivist/medical model approach to criminal responsibility. There is a correlation between the perceived psychological responsibility for a crime and the responsibility attributed to the individual. "The more psychologically determined an act is found to be, the more its author can be considered legally responsible. The more the act is, so to speak, gratuitous and undetermined, the more it will tend to be excused."¹ Whereas under the Classical model, medicalized explanations were reserved for only the most "monstrous," inexplicable crimes, Foucault notes that increasingly, psychiatry developed a "psychiatric criminological continuum which permits one to pose questions in medical terms at any level of the penal scale."²

The influence of the Positive School is apparent as an influence in this shift.

Foucault cites the lobbying of Positivist criminal anthropologists to encourage

¹ M. Foucault, "The Dangerous Individual" *Politics Philosophy Culture: Interviews and Other Writings, 1977-1984* (New York: Routledge, 1988) at 140.

² *Ibid.* at 141.

recognition of their newly classified criminal types and the incorporation of their paradigm of criminal responsibility.

The Criminal Anthropologists emphasized that what is called 'penalty' does not have to be a punishment, but rather a mechanism for the defense of society, and therefore noted that the relevant difference is not between legally responsible subjects to be found guilty, and legally irresponsible subjects to be released, but between absolutely and definitively dangerous subjects and those who can cease to be dangerous provided they receive certain treatment. They concluded that there should be three main types of social reaction to crime or rather the danger represented by the criminal: definitive elimination (by death or by incarceration in an institution), temporary elimination (with treatment), and more or less relative and partial elimination (sterilization and castration).³

The Positive School theories were fundamental in promoting the paradigm shift from the Classical School of law and enforcement to incorporating the medical model. The shift required a change in focus, "from the crime to the criminal; from the act as it was actually committed to the dangerous potentially inherent in the individual; from the modulated punishment of the guilty party to the absolute protection of others."⁴

As this chapter will document, from the 1970s onward there is a proliferation of theory on canine aggression which points to the dog's reduced responsibility due to biological instinct, psychological difficulties or, in some cases, medical or genetic ailments. Almost exclusively, these theories are linked to the behaviour of dog owners or "bad" breeders. These positivist theories are by no means unified yet they are incorporated into the concept of canine dangerousness in civil law. Civil law is a particularly useful means of pointing at and dealing with dog bite risk without actually determining whether the cause of, (and therefore blame for), the risk exists within the dog or externally in the dog owner. Foucault cites civil law rather than criminology as being the corner stone of the absorption of the medical model into the legal paradigm.

³ *Ibid.* at 144.

⁴ *Ibid.*

After all, what is a ‘born criminal’ or a degenerate, or a criminal personality, if not someone who, according to a causal chain which is difficult to restore, carries a particularly high index of criminal probability, and is in himself a criminal risk? Well, just as one can determine civil liability without establishing fault, but solely by estimating the risk created and against which it is necessary to build up a defense (although it can never be eliminated), in the same way, one can render an individual responsible under law without having to determine whether he was acting freely and therefore whether there was fault, but rather by linking the act committed to the risk of criminality which his very personality constitutes. He is responsible since by his very existence he is a creator of risk, even if he is not at fault.⁵

Civil law, in the form of the *Dog Owners’ Liability Acts* of 1980 and 1990, provides a way to target both the owner and dog, without favouring one positivist theory over another, by holding both accountable. It is the dog owner who is tried and is subject to civil remedies, but it is the dog whose “dangerousness” is at issue, resulting in reduced freedom or death. This chapter seeks to document the theories that are presented to explain the “dangerousness” in dogs, the “criminology” of dog bites, as deployed in the governance manuals for dog owners.

Causes of Domestic Canine Aggression in the Late Nineteenth and Early Twentieth century

For dogs, the behaviour perceived as “dangerous” at the turn of the century does not include violence towards humans. Aggression towards humans only becomes associated with dangerousness in the 1930s. Prior to then, dangerousness applies to dogs who are carriers of disease, allowed to run at large, or destructive to property.

The first references to aggression towards humans in the manuals point to “chained dogs,” dogs who are isolated from socialization and lacking freedom of

⁵ *Ibid.* 148.

movement.⁶ Rather than being a source of danger, such aggressive dogs are thought to be subject to atrocious cruelty. More dominant are references to the breeding of a dog as one causal factor of aggression which is inextricably linked to the class of the dog's owner. The discursive link between breed and behaviour is much discussed in the manuals.

There is a definite emphasis in the dog breaking/training manuals on the concept of the "purebred" dog. Whereas a "well-bred dog is half broken,"⁷ and "seem to have an instinctive knowledge of (his/her) calling or profession,"⁸ non-purebred dogs are viewed far less generously. A direct link is made between the breed of a dog and its behaviour: purebreds behave well, mongrels or curs behave badly. One author observes that of the many varieties of "the dog tribe," those with "non-descript ramifications... with an ugly and diminutive form, seem to sink much below the general level of the canine tribe in sagacity, while the nobler kind appear to rise in the scale of importance in proportion as they are judiciously bred, and afterwards cherished by the fostering care of their human protector." This linking of pure breeding with virtue is well illustrated in an article on the Mastiff breed. When aggression is found unexpectedly in a purebred Mastiff, it is speculated that the dog's blood is, in fact, not as pure as originally thought.

"There are Mastiffs with sinister and scowling faces, exhibiting the ferocity of a coward and bully, but these will rarely be found to possess the grandeur of form that

⁶ H.D. Richardson, *The Dog: Its Origin, Natural History, and Varieties* (London: W.M.S. Orr & Co., 1851) at 21; W. Mills, *The Dog in Health and Disease: Including his Origin, History, Varieties, Breeding, education, and General Management in Health, and His Treatment in Disease* (New York: D. Appleton & Company, 1892) at 171; L.S. Crandall, *Pets: Their History and Care* (New York: Henry Holt & Co., 1917) at 5; H. Cox, *Dogs and I* (London: Hutchinson & Co., 1923) at 273,274.

⁷ J.Y. Koster, *The American Shooters Manual* (Philadelphia: Carey, Lea & Carey, 1827) at 4.

⁸ Canadian Kennel Club, "Untitled article" (1889) 1:2 *The Kennel Gazette* at 3.

distinguishes the breed, and are often cross-bred.”⁹ Another author recommends that pure-bred, broken hunting dogs not be allowed to associate with non-purebred dogs, or “improper company” because association with “the curs that crowd our streets, has...almost as deleterious an effect upon the dogs, as upon reasoning man...”¹⁰

Perhaps more interesting is the discursive link established between the status of owner and dog breed. As one purebred owner and letter-writer puts it, it is not “those that are spending time and money on high-class animals, and importing the many breeds of dogs” who allow their dogs to “run at large at all hours of the day and night.”¹¹ A more explicit example suggests that,

Dogs even appear to learn from the general manners of those with whom they associate, as may be observed in common society. Dogs kept by the vicious, whether they are kept for fighting, poaching, or other ruffian practices, or not, are invariably vicious dogs; and, on the other hand, dogs which live with persons of mild manners and regular habits, when not chained up,...are always mild.¹²

This reference to the chaining up of dogs is consistent with the observation, then as now, that when dogs are left to live out their days on a chain with little human contact, they will become aggressive. Human influence (or being deprived of it) is seen to have a direct effect on the behaviour of dogs.

In sum, aggressive behaviour in the late nineteenth- and early twentieth century, when not caused by the physical and psychological effects of solitary confinement, is thought to be caused by impure breeding which is primarily the province of “mongrels” who are inextricably linked to the lower classes.

⁹ Canadian Kennel Club, “Untitled article” (1889) 1:5 *The Kennel Gazette* at 5.

¹⁰ *Supra* note 7 at 102, 130.

¹¹ Anonymous, “Response to Dog Hater” (1889) 1:8 *The Kennel Gazette* at 5.

¹² Richardson, *supra* note 6 at 21.

Causes of Dangerousness in the Late Nineteenth and Early Twentieth century

This linking of breed/blood purity and class with humans and their dogs is highly apparent in the discourses of the nineteenth and early twentieth-centuries not only as it applies to canine aggression, but also to perceptions of canine dangerousness. Lower class pet-keeping is targeted as the source of social nuisance and disease. Also, the working and entertainment dogs of the lower classes were targeted for the first anti-cruelty legislation. This interweaving of class concepts with discourses of cruelty and disease is consistent with the linking of the socio-economic status of humans with the behaviour of their dogs.

The breed of a dog seems to have a direct effect on the social status of the person with which the dog is associated. While the pure blood of a dog was sought after to help elevate the status of the dog owner, dogs of impure blood or “notorious reputation” were thought to lower the status of the human associated with them. For example, in 1889 it was purported that the Bulldog, “unfortunately, has become too notorious, from the inhuman and blackguard sports for which he has been generally used, to be suffered to follow the heel of any man who does not desire to be set down as a patron of ruffianism and infamy.”¹³ In this case, the breed of the dog reflects strongly on the dog owner.

Middle class human manipulation of a dog’s genes seems to have a purifying effect by removing the lower class taint from a dog breed. The Mastiff is touted in the *Kennel Gazette* as being a noble breed despite the past purpose of the breed. The good qualities of the “modern Mastiff...show the power of man in taming down the fierce nature of the fighting dogs of Britain...it is impossible to doubt that the animal has been

¹³ *Ibid.* at 111.

greatly modified and improved since he was mainly kept in order to display his prowess in the bull-rings and the bear-garden.”¹⁴ In this case, the adoption of the Mastiff as a formal breed, recognized and manipulated by the Canadian Kennel Club raises its status and thereby negates its association with ruffianism.

Pet keeping by the lower classes necessarily refers to the keeping of dogs with dubious pedigrees. The connection between the mongrel and the poor, along with a moral judgment on pet ownership by the poor, is made explicit.

Useless dogs are badly kept by poor people, and are allowed to run about dirty and diseased. They are a source of waste and insalubrity, as they absorb the already insufficient supply of oxygen in the miserable and badly-ventilated dwellings of their owners, and they consume a certain quantity of food that can ill be spared.¹⁵

The working dogs of the lower classes were disparaged as being “ill-made hounds... miserable, degenerated animals, cast off by the better classes.”¹⁶ Besides the working dogs of rural farmers, the “rest of lower-class dogdom were like roving gangs of delinquents, which worried livestock and harbored rabies, and justified the ‘extermination by law [of all] curs of low degree.’”¹⁷ This statement is consistent with the above-mentioned discursive connections of class, breed and dangerousness.

Responses to Dangerous dogs in the Late Nineteenth and early Twentieth century

Although aggression is mentioned as one of many nuisances associated with dogs running at large, the most serious canine problem behaviours in the late 19th and early 20th centuries appear to be vagrancy and property crime, which are linked together,

¹⁴ *Supra* note 8..

¹⁵ T.M. Dolan, *The Nature and Treatment of Rabies or Hydrophobia* 2nd ed. (London: Balliere, Tindall & Cox, 1879) at 201-202.

¹⁶ M.E. Thurston, *The Lost History of the Canine Race: Our 15,000-Year Love Affair With Dogs* (Kansas City: Andrews & McMeel, 1996) at 40.

¹⁷ *Ibid.*

although not exclusively. These dogs are deemed dangerous. These dangerous canines are targeted as objects of moral regulation in the form of a legal/bureaucratic/humane system as well as a more informal governance strategy targeted at the dogs of the higher classes.

By locating the cause of dangerousness and aggression both within the individual dog (through genetics) and the social status of the dog owner, the response to the “vagrant” mongrel situation called for a double-pronged approach. The moral regulation of the dog owner (in this case by the Ontario and Ottawa municipal governments) targets the financial inability of the lower class dog owner to buy a purebred dog, pay the dog tax, or buy a muzzle if necessary. In addition, persons of the lower classes may not have the leisure time to constantly supervise their dog.

By applying a middle class standard of responsible ownership which implies “walking” one’s dog as opposed to simply cohabiting with it as an independent, autonomous companion, the dog owner who permits his/her dog to “run at large” is, in discourse by 1889¹⁸ and in legislation by 1904,¹⁹ committing an abhorrent and illegal act.

That dogs running at large can be visibly linked with their owners by the presence or absence of a dog tag denoting payment of tax means that the class of the dog’s owner is evident on the dog’s body. Because breed standards were constantly changing and arbitrary, it seems this is the only way to make the blood purity/class link visible. Likely due to the prevailing discourses of animal cruelty, the medieval practice of amputating the tails or toes of peasant dogs in order to render them physically identifiable or render

¹⁸ *Supra* note 11.

¹⁹ City of Ottawa, By-law No. 2361 *By-law to amend By-law No. 1083 entitled 'By-law on Dogs'.* (1904).

them useless to poachers, was no longer acceptable.²⁰ Prior to 1904, only dogs whose owners had paid the tax were permitted to run at large. The dog tag indicated their permission to do so. Any dogs without tags found running at large in Ottawa prior to 1904 were to be impounded and, if not claimed within eight days, killed.²¹ In order to redeem one's dog from the Pound, payment of \$1.00 is required.²² If a dog owner is unable to pay this fee, the dog is killed. When enforced, this bureaucratic system has the effect of eliminating the dogs of the poor without overtly targeting them by breed and class.

The 1904 bylaw amendment prohibiting all dogs, regardless of tax payment, from running at large in Ottawa is the beginning of a shift away from regulation of class to the more generalized concept of responsibility. The discourse on the hierarchical dog/owner relationship and direct owner control of dog behaviour becomes the norm. Dogs without direct owner control shift from being "dangerous" to being deemed "strays" in need of paternal assistance from welfare organizations, (in Ottawa, the Humane Society). This shift targets all dogs running at large, (those living independently, those with owners who cannot afford the reclamation fee, and those with owners who are not responsible enough to reclaim their dog) and eliminates their ability to be a threat and allows them to be culled under the discursive guise of the humane.

Unlike vagrancy, the killing of sheep appears to be a crime for dogs of all classes. Therefore, instead of simply relying on more formal regulation, the moral regulation is deployed in the manuals directed at the "breakers" of dogs of the higher classes, those who are actively interested in acquiring information to become better governors.

²⁰ *Supra* note 16 at 286.

²¹ City of Ottawa, By-law No. 1083, *By-law on Dogs* (1890) s.14.

²² *Ibid.*

Because the Ontario provincial law allows dogs to be shot if found worrying sheep, rather than allowing this alone to regulate their dogs, breakers are given instructions to train their dogs to avoid sheep. The more formal regulation captures the dogs of those who do not maintain close control over their dogs.

The governance template for the human/dog relationship is disseminated, until the 1920s, by hunting manuals. Absolute hierarchical control by the “breaker” and implicit obedience by the dog to military style orders characterizes the ideal power relationship. In these manuals, the dog is afforded a range of roles from servant to well-bred property to a companion or pal²³ who “wishes to please its master.”²⁴ There is a definite progression towards greater familiarity in the more general dog manuals which reflects the growing dominance of pet-keeping (of pure-bred dogs) over the keeping of a kennel of dogs for hunting. These non-hunting manuals focus more on the history of dog breeds, as well as their basic care and feeding, and medical treatment. Rather than purporting a norm of behaviour, these manuals cater to the dog purchasing public by providing information on keeping the dog alive and healthy while emphasizing the longstanding development of the pure bloodlines of dogs. Despite the growing dominance of discourse of the dog as “pet,” this master/servant template for the relationship endures until dog training manuals become almost exclusively geared to “pet” owners in the 1950s.

Throughout the nineteenth century, dog training is referred to as “breaking” and focuses on developing absolute obedience on the part of the dog and absolute authority and control on the part of the dog owner/breaker. The earlier the manual, the more corporal methods of discipline and punishment are prescribed. For example, a 1827

²³ *Supra* note 12 at 4; R.S. Lemmon, *About Your Dog* (New York: Frederick A. Stokes Co., 1928) at 3.

²⁴ Crandall, *supra* note 6 at 6.

manual, while recommending the restrained use of food and praise as reward with clear short commands by a patient, rational breaker, perceived resistance to a command is to be responded to with an “angry voice”, and failing this, “the whip should be used in moderation.”²⁵ Consideration is given to the dog’s “temper” which may require “gentler treatment” or “severe correction.”²⁶ The breaker is reminded to ensure that the whipped dog not be allowed to run away after the “flaggelation,” but to “reconcile” to ensure the dog will not run away the next time it is necessary to chastise it. If necessary, the breaker is to tie a cord around the dog’s neck or tie its legs together before the “chastisement.”²⁷

Corporal discipline techniques are used to curb specific undesirable behaviours common to dogs. Equipment such as the “trash cord” or “drag cord” is used to stop a running dog who does not respond immediately to a command. For very stubborn dogs, the trash cord (which has the same effect as ‘clotheslining’ can be used in conjunction with a “spiked collar” made of nails which will dig in or puncture the dog’s neck when the dog runs beyond the length of the trash cord.²⁸ Keeping with this highly corporal inventory of technique, aversion methods are applied to a variety of behavioural problems including sheep chasing.

It but too frequently happens that young dogs manifest an inclination to *hunt and worry sheep*, which must be instantly corrected. If a severe flogging have not the desired effect, the dog should either be tied to a strong ram, leaving a sufficient length of cord to allow the ram to make a run; or they should be confined together in a barn or some building. Flog the dog till he cries out, making use of the words ‘*ware sheep!*’ They should be kept together for twenty minutes; the ram will not fail to continue his butting, and it may not be amiss to flog the dog several times during this period, making use of the words just mentioned at the same time.²⁹

²⁵ *Supra* note 7 at 108-110.

²⁶ *Ibid.*

²⁷ *Ibid.* at 111, 131.

²⁸ *Ibid.* at 117-118.

²⁹ *Ibid.* at 133. (Emphasis in original).

The “sheep protection” legislation requires a dog who is guilty of worrying sheep to be killed. Concurring, the above quoted manual attests, “once dogs have *tasted mutton*, they are never to be trusted.”³⁰ This notion of risk deriving from one violent incident is one that carries through to the reapplication of dangerousness to violence against humans in the 1970s.

Causes of Aggressive Behaviour in Dogs in the 1970s

The issue of dogs biting humans only really begins to show itself in the literature in the 1960s. The 1970s mark the beginning of the criminology of the dangerous dog who is aggressive towards humans. A body of theory begins in this period that speculates as to the causes and cures of aggressive canine behaviour. This derives from two perspectives: medical and canine behaviourism.

The cause of aggression in dogs has historically been referred to in the manuals as the result of dogs being kept on chains in isolation, inferring a psychological perspective. This begins to be elaborated as indicated by a 1960 article that adds ‘teasing during puppyhood’ as a cause of aggression. In the 1970s, abnormal psychology is applied which, interestingly, does not place any blame for the psychological problems within the dog as stemming directly from the behaviour of the dog’s owner. There is acknowledgement of aggressive behaviour as a normal dog expression, yet its misplaced and undesirable instances are medicalized. “Abnormal behaviour” in dogs is cited by one author as having four major causes, “overexcitement, lack of escape, lack of adaptation, and genetic susceptibility” which combine to produce aggression.³¹ Chronic

³⁰ *Ibid.* at 134. (Emphasis in original).

³¹ J.J. Mc Coy, *The Complete Book of Dog Training and Care* (New York: Coard-McCann, Inc., 1962,1970) at 133.

biters are given five classifications: “shy dogs, resentful dogs, vicious dogs, overly protective dogs and ‘unbalanced’ or mentally ill dogs.” These fall into two causal jurisdictions: that of poor early socialization or biological factors including “genetic susceptibility, disease or injury.”³²

Concurrent with this psychologizing of the aggressive dog, the canine behaviourism perspective is flourishing and becomes highly evident in the manuals in its application to aggression. This concept acknowledges the wild ancestry of domestic dogs and attributes behavioural instincts to them based on those of their wild counterparts. Research on wolf behaviour, and that of other wild canids is the source of the concept of the “pack.” The social hierarchy of the wolf pack designates an “alpha” male and female, the most dominant, who dictate the breeding, hunting, and feeding activities of each pack member. This hierarchical model, is applied to human/dog relations and made its way into the dog rearing manuals of the late 1970s and remains there to the present. “Without a sound understanding of pack structure, how it is established, and how it is maintained, it is impossible to understand dog psychology.” One author makes it clear that aggressive dog behaviours are normal and reasonable for the dog, just not appropriate in the domestic situation. “When a dog wants to show his displeasure, he’ll growl, snarl or bite. He will also bite from fear and in self-defence. These are natural reactions and *normal* behavior, but from our standpoint, any of these traits constitute undesirable behaviour.”³³

The dominance of the canine behaviourist perspective may be explained by the popularity of biosocial theories of human behaviour. Controversial publications such as

³² *Ibid.* at 140.

³³ *Ibid.* at 138.

The Naked Ape by Desmond Morris in 1967 and *Sociobiology* by Edward O. Wilson in 1975 mark a resurgence of the use of biology and behaviourism in explaining the social behaviour of humans. Just as canine behaviours and psychology can be attributed to atavistic wolf instinct, human behaviour can be attributed to “the accumulated genetic legacy of his (sic) whole evolutionary past.”³⁴ Biosocial theories of crime from the 1970s to the present are somewhat paralleled in the biological and medical explanations for canine aggression.

From this period onward, dog manuals include the issue of aggression and they present theory on its causes and how dog owners can respond to aggression in their dogs. Later, these two initial perspectives, psychological positivism and canine behaviourism, become blended and are increasingly supplemented by biological theory.

Causes of Aggressive Behaviour in Dogs in the 1980s

Increasingly prevalent in the 1980s, the dog manuals have an opinion on aggressive behaviour and its causes. Reflecting the concept of irresponsible puppy-rearing, and consistent with the demand of the 1970s and 1980s to recognize the “pack” instincts of the dog, aggression is seen to be the result of the failure of dog owners to establish dominance over their dogs.³⁵ This marks a combining of the psychological and behaviourist perspectives with the blame situated with the dog’s owner. To a much lesser extent, a biological perspective is incorporated which considers inherited temperament

³⁴ D. Morris, *The Naked Ape: A Zoologist's Study of the Human Animal* (London: Jonathan Cape, 1967) at 9.

³⁵ B.M.Cochrane, *Your Pets, Your Health and the Law: The Dog and Cat Owners Guide* (Toronto: Personal Library, 1979) at 107; M.W. Fox, *How to Be Your Dog's Best Friend* (Toronto: Academic Press, 1981) at 249-250; G. Gun-Munro, “The virtues of Patient Training”(1984) Apr. *Dogs in Canada* at 21.

traits and disease as factors which may combine with bad early socialization efforts by the dog's owner to form a highly aggressive dog.³⁶

Causes of Aggressive Behaviour in Dogs in the 1990s

Theory and alarm surrounding canine aggression towards humans is at its peak in the manuals of the 1990s. The blended psychological and canine behaviourist perspectives on aggression veer more in favour of the psychological with the standardizing of two types that become the center of causal theory in the manuals. From 1990 onwards, the aggression towards humans is classified as either “dominance aggression” or “fear aggression”. The causal emphasis in these categories is on puppy socialization with the blame resting firmly on the dog's owner.

Supplementing this typology of aggression is an increasingly elaborate biological/medical perspective. Veterinary publications catalogue a number of psychological and physical/hereditary causes of canine aggression. A manual in 1991 states that in addition to owner/dog relationship problems, dogs may be suffering from disease or the residual effects of disease in puppyhood, genetic endocrine imbalance, or “hyperkinesis”.³⁷ Although this manual was written by a veterinarian, attributing aggression to medical causes becomes a part of more mainstream manuals in the late 1990s. In cases where aggression can not be attributed to lack of socialization, inadequate training or dominance on the part of the owner, non-veterinary manuals suggest that aggression can be blamed on a variety of physical causes: false pregnancy or after giving

³⁶ Fox, *ibid.* at 250; D.B. McKeown, U.A. Luescher, M.A. Machum, “The Devil You Say! How to Handle Problem Behaviour” (1989) 80:4 *Dogs in Canada Annual* at 48.

³⁷ W.E. Campbell, *Behavior Problems in Dogs* 2nd ed., (Goleta, CA: American Veterinary Publications, 1992) at 42-44, 95, 129.

birth, rage syndrome, old age, chronic medical conditions such as pain, failing vision, canine cognitive disorders, heart, kidney and liver disorders, hypothyroidism and epilepsy). Rage syndrome is attributed to a dog who

will suddenly become vicious without any apparent provocation. It may give no warning other than a sudden glazed expression and perhaps a growl before turning on any dog or human within reach. The episode may last only a few seconds, and the dog may be completely normal afterward – until next time. The condition is not well understood, but may be associated with extreme dominance aggression and have a hereditary component.³⁸

A 1999 article in *Dogs in Canada* also suggests that although many behaviour problems are man-made or are caused by lack of training, some are “brought on by instinct, breeding, health problems, or age.”³⁹ Overwhelmingly, however, the majority of the manuals containing sections on aggression attribute it primarily to owner behaviour.

At the creation of the “issue” in the 1970s, psychological explanations of canine aggression are given psychiatric labels which echo those of humans (“shy”, “resentful”, “unbalanced”, “mentally ill”), and operate in opposition to the canine behaviourist perspective. The two perspectives blend in the 1980s, and emerge in the 1990s with a psychiatric-style of labeling which is based more on the dog’s instincts. The shift in the source of aggression from the dog to the owner neatly parallels the provincial legislation that increasingly allocates legal blame to the owner and diminished responsibility to the dog. The proliferation of biological causal theory and its incorporation in the manuals, although not to the level of dominance of the psychological/canine behaviourist perspective, is consistent with a greater biological discourse on dogs in general.

³⁸ J. Bower & C. Bower, *The Dog Owner's Problem Solver: Practical and Expert Advice on Caring for Dogs* (Montreal: Reader's Digest association, 1998) at 128-129.

³⁹ A. Bixler, “Nobody's Perfect!” (1999) 90:4 *Dogs in Canada Annual* at 40.

Response Strategies for Aggressive Dogs in the 1970s

Given these developments in speculation as to why dogs behave aggressively towards humans, a complementary set of recommendations are offered in the manuals to aid dog owners in dealing with it. In the beginning, when aggression is not linked solidly with the behaviour of the dog owner, the emphasis is primarily on controlling the dog. The focus of the 1980s is on dealing with isolated aggressive incidents whereas the 1990s seek to target the human-canine relationship in every location in which power is exerted. The “criminological” theories of canine biting increasingly incorporate the dog owner as a subject of moral regulation and responsible for governing the actions of the dog.

While aggression is speculated as being attributed to the abnormal psychology of dogs, the most dominant perspective employed by the manuals of the 1970s in their recommendations to dog owners is the canine behaviourist perspective. This is consistent with the development in the 1960s and 1970s of the highly popular perspective of domestic dogs as “pack” animals. This has significant repercussions in the nature of the dog/human relationship and prescriptions for and expectations of their behaviour right through to the present.

The most evident insertion of “pack” concepts is in recommendations for training techniques. Earlier books, in the 1960’s and early 1970’s keep some of the “gentler” breaking techniques and justify physical discipline using the new “pack” behaviour theory. “When administered as an instructive rebuff, the slap or swat is not cruelty. It is *natural punishment* (just as) domestic and wild animals teach their offspring”.⁴⁰ As with

⁴⁰ *Supra* note 31 at 100.

the earlier manuals, dog owners are not to use physical force in anger, but to do it calmly and with rational purpose.

In a discursive climate in which anthropological/scientific research presents a dominant view of dogs as domesticated versions of their wild ancestors, and humans are encouraged to act like the “alpha” dog of the pack, aggression is viewed as natural behaviour that must be controlled by the owner. Some psychologizing appears in recommendations for addressing certain aggressive behaviours. For example, desensitization is recommended for the territorial biter.⁴¹ Still, behaviour modification is not recommended as strongly as simple physical control of the biting dog by confinement, leash and muzzle.

If discouraging “nipping and biting” in one’s puppy is unsuccessful and if faced with a grown, aggressive dog, steps should be taken by the owner to eliminate situations and stimuli which trigger aggressive behaviour and to “take every possible step to control (their) dog and alert people to the problem.”⁴² Public education is recommended so that people, particularly children, know how to act around dogs.⁴³ Preventing dogs from running at large and by-law enforcement is encouraged to prevent dog bites.⁴⁴ By 1979, however, the owner begins to be blamed as the main cause of the aggressive displays.

An irresponsible approach to the raising of a young pup can easily turn an otherwise suitable pet into a biting dog. From that point on, through not fault of his own, the dog will not be suitable at all and in the long run it will likely be the dog (or some young child) who will suffer.⁴⁵

⁴¹ *Ibid.* at 137-138

⁴² *Ibid.* at 142.

⁴³ Cochrane, *supra* note 35 at 106.

⁴⁴ *Ibid.* at 23, 107.

⁴⁵ *Ibid.* at 107.

The shift towards holding the dog owner responsible results in a body of theory which further develops the canine behaviourist and psychological perspectives with a strategy to counter aggression when it surfaces.

Response Strategies and Cures for Aggressive Dogs in the 1980s

While training methods continue to move towards a non-corporal reliance on psychological positive and negative reinforcement, most of the manuals of the 1980s acknowledge that “there are a few difficult dogs, a few canine crimes that may require stronger measures.”⁴⁶ The theme for this period is best described as: “aggression must be countered by aggression.”⁴⁷ For the duration of the 1980s, the most prescribed method of dealing with aggressive behaviour in one’s dog is for the owner to counter it with physical admonishment in keeping with the dominant behaviour used by alpha dogs. The idea is to re-establish the owner’s dominance. The dog owner is, in a sense, instructed to behave like a dog in order to make the dog behave in a manner acceptable for cohabiting with humans. Whereas previously, dogs were to adapt entirely to human requirements, humans are now asked to behave like dogs.

In response to displays of aggression, adherence to the “pack” theory of behaviour requires that the “alpha shake” or “alpha roll” be employed⁴⁸ which is explained as an acceptable means of physically admonishing one’s dog. Because canine mothers communicate dominance to their puppies through body language such as “snarling,

⁴⁶ Canadian Kennel Club “Achieving the Well-Trained Dog” (1985) 76:4 *Dogs in Canada Annual* at 38.

⁴⁷ J.Cree, *All About Training the Family Dog* (London: Pelham Books, 1984) at 122.

⁴⁸ *Ibid.* ; *Supra* note 46 at 38 ; A. Bixler, “Training With Love” (1986) 77:4 *Dogs in Canada Annual* at 59,60; T. Baer, *Communicating With Your Dog: A Humane Approach to Dog Training* (New York: Barron’s Educational Series, 1989) at 115.

growling, swatting, straddling (or by) grabbing muzzle or neck,”⁴⁹ dog owners are encouraged to emulate this dominant behaviour in the discipline of their dogs. The “alpha roll” involves forcing the dog on to its back (a submissive body pose) and holding it until it ceases to struggle. The “alpha shake” is performed as follows:

- a) Take hold of the loose skin at your dog’s neck, two handfuls if you like, look him straight in the eye and tell him what you think of him (just as a bitch will put a delinquent youngster in his place). . . . Three seconds of this treatment should be quite sufficient. Let him go and then tell him how good he is. Get his attention firmly fixed on yourself and away from the source of trouble.
- b) (is similar to a,) but on this occasion put your left hand in between his slip collar and his neck. Pull tight on the lead with your right hand and twist the collar with your left. Your knuckles will dig into his neck muscles and it will be very unpleasant for him. Again you give a strong verbal reprimand until you release your grip when it is all praise and pleasantness. Three seconds of pressure on his neck is long enough – remember that you are choking your dog – aggression must be countered effectively by aggression. . . . These methods. . . will probably require to be repeated on a number of occasions (and never with temper or malice).⁵⁰

Some versions of the “alpha shake” require that the dog owner lift the dog up so that its forefeet are raised from the ground. An early 1980s manual goes further to suggest that the owner set up a “dominance fight” with their dog, rigged so that the owner wins.⁵¹

These alternatives to hitting one’s dog for ‘willful misbehaviour’ are recommended in the manual literature until they fade in the early 1990’s.⁵²

There is a slight difference in the use of alpha techniques in the 1980s versus the 1970s. Whereas they are used as a discipline technique with human-style hits and slaps during the 1970s, in the 1980s they are recommended as a method to communicate in dog language and address the relationship between owner and dog, to re-establish an overall

⁴⁹ G. Lansbert, “Your Dog’s Behaviour” (1982) Feb. *Dogs in Canada* at 40.

⁵⁰ *Supra* note 47 at 122-123

⁵¹ Fox, *supra* note 35 at 63.

⁵² See, e.g.: *Supra* note 46 at 38 ; *Supra* note 48 at 59 ; Baer, *supra* note 48 at 115.

power dynamic. Aggression is implied here as a side-effect of a power relationship out of kilter.

Where aggression is attributed to inherited biological or temperament problems from overbreeding, an early 1980s manual suggests that owners resign themselves to having their dog “destroyed.”⁵³ Whereas the psychological and behaviourist theories imply a fixable problem, the insertion of congenital causes implies an irreversibility to aggressive behaviour. This is entirely consistent with the policy recommendations of the positivist criminologists of the late nineteenth and early twentieth century who pointed to the “born criminal” as being beyond medical or psychological treatment and worthy only of elimination from society.⁵⁴ Particularly of note is that the manuals do not explain how to identify whether a problem is due to lack of dominance by the owner or due to overbreeding.

Also beginning in the 1980s is a discourse which implies responsibility on behalf of (potential) victims to prevent harm to themselves. Dog manuals consistently recommend that parents teach their children how to behave around dogs – ones they know as well as strangers. One manual asserts that parents should teach their children “dog safety” because “it’s up to parents to educate their children about dogs and some of it just boils down to good manners.”⁵⁵ One manual goes to the extent to ‘blame the victim’ by suggesting, “children often lie about dog bites to gain sympathy. If a dog bites a child, it is usually the child’s fault for pulling his hair, stepping on his paws, or

⁵³ *Supra* note 35 at 29.

⁵⁴ See e.g.: E. Ferri, *Criminal Sociology* (New York: Agathon Press, 1886) at 126; R. Garofalo, *Criminology* (Montclair, New Jersey: Patterson Smith, 1885, 1968) at 104-105; E.A. Hooton, *Crime and the Man* (Cambridge, Massachusetts: Harvard University Press, 1939) at 391-392.

⁵⁵ Canadian Kennel Club “How to Read Body Language” (1985) 76:4 *Dogs in Canada Annual* at 46-47.

otherwise mistreating him.”⁵⁶ Teaching children dog language, the manuals suggest, will allow humans to react appropriately when faced with an unhappy, fearful, or angry dog so that dog bites may be avoided.

Discursively, teaching children “dog safety” is consistent with the teaching of children how to confront sexual predators and escape unsafe situations. Children, it seems are given greater responsibility for preventing dog bites than are dogs to control their own behaviour, or even dog owners to prevent their dogs from biting. The discourse which suggests that dogs, when they bite, are simply reacting naturally (albeit inappropriately) to situations implies a diminished responsibility for their actions when provoked by children. The discourse of parental responsibility for children is inserted into the dog manuals in a period which emphasizes the instinctual psychological behaviours of dogs as opposed to the late 1990s emphasis on the parent-like responsibility of dog owners to control their dogs.

Responses and Cures for Aggressive Dogs in the 1990s

The techniques for training in the 1990s are characterized by a rejection of “alpha” dominant physical discipline. More detailed research into canine social behaviour revealed that only middle ranking dogs of a pack use displays of physical dominance.

The difficulty with these techniques is that they are based on only a portion of the reliable observations of animal behavior....The owner is stimulating the very behavior s/he is trying to suppress....Nor do Alphas persistently stare at, bully or engage in dominance rituals with subordinate pack members. Such behavior is more often seen in Beta males....Further, dominant/subordinate relationships tend to be *dynamic*, changing as the breeding season approaches, when hunting is nigh, when pups are whelped, or when outsider wolves approach. Inflicting physical or emotional punishment on subordinate members by dominant wolves, or by

⁵⁶ Baer, *supra* note 48 at 115.

domestic dog dams upon their puppies, is not normal *canine* behavior. In fact, it is rarely noted.⁵⁷

The impact of this information on the manuals is quick and by the mid-1990s, the “alpha shake” or “muzzle grab” is recommended exclusively for puppies, as it is more consistent with the mother/puppy behaviour.

By the mid to late 1990s, training is almost completely non-corporal. Dog owners are to be strong “leaders” by establishing their dominance from the very beginning of the relationship with their dog. Vocal cues and vocal positive (and sometimes negative) reinforcement are relied on as the primary means of molding a dog’s behaviour.

A new arsenal of equipment and techniques emerge which aid in providing non-corporal reinforcement. Control of space and freedom by placing the puppy or dog in a crate while unsupervised, or by leashing the dog to the owner while inside the house are popular ways to keep the puppy from doing the wrong behaviour. Negative reinforcement in the form of booby-traps also conform to this controlling of space and the instilling of a sense of owner-omnipotence in puppies. Shake cans which create a loud, startling noise are also employed as negative reinforcement.

Also new to the 1990s is the use of “Halties” or “Gentle Leaders” which replace the traditional collar. These make it so the dog regulates and walks to “heel”, drastically different from the traditional leash jerk with a choke collar. A dog walking while wearing a “Gentle Leader” is deterred from pulling too hard on the leash. When the leash is fully extended, the dog’s muzzle is pulled off to one side, requiring the dog to slow in order to straighten out. Also along these lines are bark collars which release the negative

⁵⁷ *Supra* note 37 at 35-36.

reinforcement of a noxious smell or electric shock to deter the dog from barking excessively.⁵⁸

Dog training in the late 1990s is characterized by a reevaluation of operant conditioning and an almost complete rejection of corporal discipline/punishment. The canine behaviourist perspective becomes more elaborate and is incorporated into recommendations for communication with and greater understanding of one's dog beyond the basic "pack" template. Having given up the physical dominance techniques for addressing aggressive behaviour, the manuals now recommend an innovative blend of psychology and human-dog communication. Most noticeable about the manuals of the 1990s is the significant change in response to aggressive behaviour from the prescribed "aggression must be countered by aggression"⁵⁹ sentiment of the 1980s. Instead, the theme is best characterized by the counter-statement, "aggression is seldom solved by aggression."⁶⁰

There is a proliferation of manuals in the late 1980s and particularly in the 1990s which refer specifically to behavioural problems in dogs. All give reference to dogs who bite, sometimes providing separate sections on the types of aggression displayed according to target and trigger situations. The categories of aggression fall largely into the categories of "dominance aggression" and "fear aggression" as established in the latter 1980s. Rather than recommending that the dog owner reassert his/her dominance via the "alpha shake," owners of aggressive dominant dogs are told to "globally dominate" the dog in every facet of their relationship. By applying a combination of dominant behaviours such as control of food, affection and space the owner gradually

⁵⁸ S. Marlo, *New Art of Dog Training: Balancing Love and Discipline* (Chicago: Contemporary Books, 1999) at 111.

⁵⁹ *Supra* note 47 at 122.

⁶⁰ B. Kilcommons & S. Wilson "Be the Best Owner of the Best Dog" (1994) 85:4 *Dogs in Canada Annual* at 67.

regains power over the dog.⁶¹ This is termed by the manuals, “learn to earn”⁶² or “nothing in life is free”⁶³ because it forces the dog earn things from the dog owner that it had previously taken for granted. There are still remnants of the alpha shake and verbal negative reinforcement for specific aggressive behaviours, but the dominant technique for the late 1990s is the one mentioned above. For “fear aggressive” dogs, the manuals recommend gentler treatment than for the dominant dog, “desensitization” toward trigger situations and plenty of socialization in puppies or fearful dogs.⁶⁴ Also important is to avoid “trigger” situations⁶⁵ or to change the dog’s mood when encountering trigger situations.⁶⁶ Departing from the 1980s approach of responding physically to specific displays of aggression, the techniques of the 1990s seek to realign every location of the exertion of power between dog and owner such that the owner has complete dominance without touching the dog for the purpose of discipline.

Overall, the manuals of the 1990s emphasize that dog owners must try to discourage aggressive behaviour from developing in the first place. Countering aggressive behaviour should begin when the dog is a puppy. Rather than the 1980s recommendation that dog owners discourage their puppies from biting, they are now told to cultivate “bite inhibition.” To do this, dog owners are instructed to encourage their dogs to bite in order to teach them how to mouth certain objects (such as a human hand or another dog) without causing pain or drawing blood. When a puppy bites too hard, the

⁶¹ *Supra* note 37 at 202.

⁶² *Ibid.*

⁶³ NH. Dodman, *Dogs Behaving Badly: An A to Z Guide to Understanding and Curing Behavioral Problems in Dogs* (Toronto: Bantam, 1999) at 8 and Appendix ; J.C. Wright & J. Wright Lashnits, *The Dog Who Would Be King: Tales and Surprising Lessons From a Pet Psychologist* (Emmaus, Pennsylvania: Rodale Press, 1999).

⁶⁴ M. Siegal & M. Margolis, *Good Dog, Bad Dog: Dog Training Made Easy* (New York: Henry Holt & Co., 1991) at 89 ; A. Marde, *The Complete Dog Owners Manual :How to Raise a Happy Healthy Puppy* (New York: Broadway Books, 1997) at 80 ; I. Dunbar, *Dog Behaviour: An Owner’s Guide to a Happy Healthy Pet* (New York: Howell Bodchas, 1999) at 130.

⁶⁵ See e.g.: Dodman, *supra* note 63 at 263.

⁶⁶ See e.g.: *Supra* note 37 at 203.

owner is to provide negative reinforcement in the form of a verbal reprimand⁶⁷ or in some cases, a muzzle grab or slap under the chin.⁶⁸ This way, even if the dog does find herself in a situation conducive to biting she will not bite hard enough to cause any damage.

Dogs not taught bite inhibition, the manuals state, will draw blood every time they bite.

Also significantly different from the 1980s is the supplement to the recommendation that parents teach their children how to behave safely around dogs. Dog owners are now advised in the manuals to not only ensure that local children, or their own children know how to behave, but to ensure that their own dogs are socialized to behave well with children. Responsibility is now placed on both the dog owner and parent jointly to prevent bites from occurring.⁶⁹

The manuals also, acknowledging the complexity of the problem of canine aggression, recommend that dog owners consult “professional” dog trainers or “experts” rather than trying to diagnose and treat the problem themselves.⁷⁰ Cynically, perhaps, it is the growth of the issue of the dangerous dog that has created a need for behavioural specialists.

⁶⁷ I. Dunbar, “The Bite Stops Here” (1992) 82:4 *Dogs in Canada Annual* at 58-59; *Supra* note 38 at 111,123; Dunbar, *supra* note 64 at 130 ; Dodman, *supra* note 63 at 3.

⁶⁸ L. Loeb & S. Hlavacek, *Smarter Than You Think: A Revolutionary Approach to Teaching and Understanding Your Dog in Just a Few Hours* (Toronto: Pocket Books, 1997) at 175; *Supra* note 58 at 38.

⁶⁹ See e.g.: Dunbar, *supra* note 64 at 133; *Supra* note 38 at 123.

⁷⁰ Siegal & Margolis, *supra* note 64 at 89; Marde, *supra* note 64 at 80; Dunbar, *supra* note 64 at 123.

“Just Look at their Fangs!”⁷¹: Discursive Links Between Breed, Behaviour, and Aggression: 1970-2000

Because of recent calls to eliminate certain breeds of dogs because of their purported genetic propensity toward aggression, this section will explore the patterns in the discourses linking breed with behaviour, generally, as well as breed with aggression, specifically in the last thirty years.

The dog manuals of the 1970s point to inherited traits as generalized among breeds. Breed is mentioned as a matter of aptitude, a predisposed physical ability. For example, “the Doberman for sense of attack, the Beagle for sense of smell, the Afghan for speed and keen vision, and the Alsatian (German Shepherd) for brains and wit.”⁷² German Shepherds are thought to have a “natural guarding instinct” and owners are advised to encourage them to “be friendly with everyone.”⁷³ One manual, while emphasizing owner responsibility for biting, cites many sources which suggest that German Shepherds, as a breed, bite more frequently than other breeds.⁷⁴

Beginning in this period is the concept of a dog’s individual temperament which is attributed as a characteristic of specific breeds. For example, a 1975 article laments the public opinion that “the temperament of many of today’s dogs is unreliable.” Speaking about German Shepherds, one author declares, “A temperamentally unsound animal is dangerous in many cases and useless in all cases.”⁷⁵ Temperament refers to the dog’s personality. An aggressive or fearful temperament which is linked to careless breeding

⁷¹ E. Therien cited in J. Bell. “Safety Council Wants Ban on ‘Dangerous’ Dogs” *Ottawa Citizen*, (28 July 2001).

⁷² Cochrane, *supra* note 35 at 18.

⁷³ J.G. Bennett, “Sieger Shows Are Different”(1960) Aug. *Dogs in Canada* at 17.

⁷⁴ *Supra* note 72 at 26.

⁷⁵ G.E. Mann, “The Shepherd Survey” (1960) Aug. *Dogs in Canada* at 17.

of dogs with these temperament traits is thought to be very bad, and to blame for a propensity towards anomalous aggressive behaviour in individual dogs.

So, it is acknowledged in the 1970s that dog breeds, in general, are characterized by particular inherited physical and behavioural attributes. The concept of temperament becomes prevalent in the manuals in accounting for the individual differences between dogs of a given breed, even between dogs of a given litter. With this, it is also speculated that aggression may be associated with particular breeds due to the attributes of the breed, or due to poor breeding resulting in poor temperament. These concepts remain and are developed in the later manuals.

When the finger is pointed at inherited aggressive traits, the trend for the 1980s is to blame “overbreeding”. As one manual states, “Some breeds of dog today are emotionally unstable (a consequence of mass production, overbreeding without good quality control).”⁷⁶ Because certain breeds are particularly desirable, in order to keep up with the demand, little concern is given to the breeding of temperamentally unstable dogs, the result being temperamentally unstable puppies. For this reason, and likely due to the shift in prescription for roles of pet and pet owner, choosing a dog of a particular breed in order to satisfy superficial conspicuous consumption is strongly discouraged:

For your ‘image’? Forget it. People who buy dogs because a particular breed may make them appear tougher, sportier, more fashionable, or trendier, don’t really want a dog. They want an accessory. It’s the difference between driving a Porsche because of its superb handling and engineering excellence, or driving a Porsche because it impresses people.⁷⁷

⁷⁶ *Supra* note 51 at 63.

⁷⁷ *Supra* note 46 at 106.

Acknowledging the problem of overbreeding, the manuals assert that despite this, the responsibility lies with the owner to control the genetic aggressive propensities of their dogs.

Breeding from overprotective dogs can result in the offspring getting into the hands of people who do not appreciate the nature of the dogs they have taken on. Breeding from nervous dogs can also create problems and the lack of ability on the part of some owners to control such dogs can bring out certain traits which would otherwise have remained dormant.⁷⁸

Some dogs, by heritage and/or personality, are more aggressive than others – it's simply built in. Which means you have to be that much clearer in establishing your leadership. Obedience training is the best route.⁷⁹

So even when faced with a genetic mess, the manuals profess that “nurture” should be able to stifle “nature.”

In addition to the desirability of particular breeds, often based on endearing media portrayals (think 101 Dalmatians, or Lassie), dogs may also gain bad reputations from media representations resulting in the negative stereotyping of entire breeds.

Unfortunately certain breeds – thanks to sensationalistic movies and pulp paperback stories – are made out to be killers. A large segment of the general public comes to believe that all big dogs, black dogs, dogs with cropped ears, or Dobes or shepherds, are killers. The way in which they behave around such animals and the fear they transmit could easily spook the most docile dog and make him more likely to threaten or attack.⁸⁰

Acknowledging this problem of negative stereotyping, one German Shepherd manual insists that “responsibility for the good name of the breed is held not only by breeders but by every owner of a specimen. Reputation is achieved by behaviour, and this is the result

⁷⁸ *Supra* note 47 at 118.

⁷⁹ Bixler, *supra* note 48 at 60.

⁸⁰ *Supra* note 35 at 253.

of upbringing and training.... It is our duty to try and make sure that our dog becomes an acceptable member of society.”⁸¹

In the early 1980s, and continuing to the present, breed reputation presents physical and social problems for dogs, particularly regarding aggressive behaviour. This is reminiscent of the late nineteenth-century discourse that suggested that the breed of dog could raise or lower the status of the human. What is different in this period is that the acquisition of a dog for the purpose of creating a status effect is flatly rejected by the manuals because of its unacceptable motivation for dog ownership.

The causes of aggression in dogs, ultimately, whether attributed to poor owners or inherited traits, are thought to be a human failing in the 1980s. Breed traits and temperament problems are the result of humans manipulating the reproduction of domestic dogs.

In the 1990s, the overall theme for inherited effects on canine behaviour is that they are less an important factor than environmental effects which can inhibit or encourage inherited behaviour traits. Particularly worthy of note is the growing dominance of a general breed/instinct discourse, displayed consistently in articles which emphasize the instinctual and behavioural differences between breeds and compel the potential dog owner to choose the breed of their dog very carefully according to lifestyle.⁸² The idea is for dog owners to take into account the needs and behavioural attributes of each breed to increase the likelihood that the relationship will be a success for both parties.

⁸¹ N. Elliott and P. Elliott, *The Complete German Shepherd Dog* (Kingswood: Kaye and Ward, 1983) at 289.

⁸² See e.g.: L. Palika, “Pick a Breed: How to choose the One for You” (1989) 80:4 *Dogs in Canada Annual* at 32; M. Lowell “The Decision” (1994) 85:4 *Dogs in Canada Annual*; S. Coren, *Why We Love the Dogs We Do: How to Find the Dog that Matches Your Personality* (Thorndike, Maine: Thorndike Press, 1998); Dodman, *supra* note 63 at 199.

Choose your breed or breed mix wisely. Breeds were developed to fulfill different functions, and they may not always be appropriate for our lifestyles. If you bring a dog into your home that does not fit your lifestyle, then you may be facing a lifelong struggle with your dog.⁸³

This sentiment derives from the Canadian Kennel Club purebred perspective and mostly ignores the issue of mixed breeds and mutts (dogs of undeterminable ancestry). Still, the link between breed and corresponding needs and behaviours becomes well established in this period.

The manuals of the 1990s are characterized by an increased emphasis on genetically programmed behaviour traits. The theme, that behaviour traits are inherited although environmental factors can encourage or inhibit these traits, is continued in this period. In addition to carefully choosing the breed of dog, owners are told that training should be tailored to the dog's temperament. To illustrate, the following excerpts are included.

Not all puppies are good dogs. Some inherit poor behavior and have problems early in their lives. Dog behavior is shaped by environmental influences as well as by the genetic characteristics of the dog's bloodline Three elements determine a dog's temperament: inherited behavior, the characteristics of its breed, and environmental influences.⁸⁴

The development of a dog's temperament and behavioral repertoire depend on species-specific predispositions (instincts), breed stereotypes (selective breeding), individual differences (the luck of the draw) and experiential factors (socialization and training)....The breed stereotype offers a forewarning of how individuals of the breed are likely to react toward people and other dogs, such that the dog may be socialized accordingly. Selective breeding has produced breeds and individuals that may be predisposed to being sociable, fearful, irritable, irascible or aggressive. Whether these predispositions are manifested, however, depends on whether the dog is socialized and trained.⁸⁵

⁸³ *Supra* note 58 at 11.

⁸⁴ Siegal & Margolis, *supra* note 64 at 6, 9.

⁸⁵ Dunbar, *supra* note 64 at 7,8,

So, it is not only the “breed stereotype” – the instinctual behaviours thought to be cultivated by long term breeding – but the temperament of the dog’s parents which have an effect on the dog’s “predisposition” to certain behaviours. Given knowledge of a dog’s predisposition, training can be geared to temperament to inhibit certain undesirable behaviours or tendencies such as aggression. In some cases, however, manuals choose to gear training strategies to particular breeds.

Tremendous variation from breed to breed in the degree of firmness necessary to get the proper response from a dog. Some breeds are far more strong willed than others.⁸⁶

For example, a section on the German Shepherd breed suggests that, “they must be firmly trained to obedience from an early age....Be aware: These dogs require firm, consistent handling by a strong adult”⁸⁷ In some manuals, however, breed is less important than the particular temperament of an individual dog.

Aggression and breed are somewhat linked in the 1990s but with a complex cycle of human influence. The manuals point to “bad breeding” (the breeding of temperamentally unsound dogs) as a cause of aggression problems. “Instant popularity of a breed creates *demand*...High volume breeding programs reduce the quality of any breed, as the ever-widening gene pool deteriorates from genetic mutations and poor judgment in mate selection...Some breeds are branded as vicious, spooky, fear biters, untrainable, high strung or unpredictable.”⁸⁸

In addition to the problem of overbreeding, another problem is the self-fulfilling prophecy of breed stereotypes. Manuals in the 1980s complain that people buy dogs as “accessories” and this problem continues to be identified in the 1990s. “Tough breeds”

⁸⁶ American Kennel Club, *The Complete Dog Book* 19th ed. (New York: Howell Book House, 1997) at 637.

⁸⁷ Marde, *supra* note at 213.

⁸⁸ *Supra* note 37 at 93,94. (Emphasis in original).

are breeds of dog which are associated in popular culture with “toughness” or aggression. These include German Shepherds, Doberman Pinschers, Pit Bull Terriers, and Rottweilers. Regardless of whether these dogs have actual aggressive predispositions, they are bought for their appearance and the social message they carry.

The manuals of the 1990s counter the stereotyping of these “tough breeds” by insisting that although these breeds may have inherited the physical attributes which give them certain physical aptitudes towards specific (aggression-related) behaviour, aggressive behaviour must be learned. For example, Pit Bull terriers, a “breed” banned in England and other European countries, have a reputation for being aggressive due to their oft-cited locking jaws. Because of this physical aptitude and reputation, their aggressive behaviour is cultivated by their owners.

The most troublesome breed of dog today is the American Pit Bull Terrier. It has been selectively bred to attack and to hold on tenaciously. It has jaw muscles that can be inches thick, with a crushing power of hundreds of pounds per square inch. All information points to the conclusion that these dogs are simply killing machines. But, as with all other aspects of the dog’s mind, the situation is not necessarily as it outwardly appears. When human fatalities from pit bull terrier attacks in the U.S. were studied, several common denominators were observed. Ten of the 20 lethal dogs were owned by males between 20 and 25 years old. Eleven of the owners of these 20 dogs had criminal records and seven of these had criminal records for violence. Eleven of the dogs showed evidence of physical abuse.... The problem is not simply one of genetics. It is, in fact, a human problem in that, for whatever reasons, these dogs are bred and trained, often trained with cruelty and abuse, to attack and not let go.”⁸⁹

The work of Stanley Coren, which is highly purebred oriented, takes a closer look at the “image dogs create” for “the person at the other end of the leash.”⁹⁰ Tough breeds may be chosen to “confirm an image” and often a person with this intention will own not one, but two or more of one breed. “If one big dog says that you are powerful and masculine,

⁸⁹ B. Fogle, “Train of Thought: Understanding Your ‘Furry Human’” (1991) 82:4 *Dogs in Canada Annual* at 37.

⁹⁰ Coren, *supra* note 82 at 69

then clearly (more) will make that point even more evident.”⁹¹ Rather than being companion dogs, these dogs serve the function of accessory or “tool” or “object.” It is possible that these “image” dogs may also be required to not only appear tough, but to also be tough or aggressive.

Consistent with this concept, many of the manuals of the 1990s attempt to humanize dogs and discourage people with “image” motivations from owning dogs. A 1981 manual, noting the proliferation of attack-training schools, asserts that “few owners are trained handlers and many who feel they need an attack trained dog are emotionally unstable.”⁹² More recently, this medicalization of dog owners with the “wrong” motivations in owning a dog is continued. “People who want a dog to accessorize their egos, be vicious, or live chained out back should get help as soon as possible – but don’t get a dog.”⁹³ The manuals are very specific about the parameters of the roles that should be undertaken by dog owners and their dogs.

With regard to the inheritance of aggressive behaviour, it is not a simple concept. Some feel that dogs of certain breeds are conducive, in some cases, to aggressive behaviour relative to other breeds. Some feel that the directly inherited temperament of the dog’s parents is of more direct impact on the aggressive propensities of a dog. Still others assert that while a given breed may be more physically well-disposed to be an effective aggressive dog, aggression is the product of training, not breed. The safest conclusion is that all these elements contribute to aggressive behaviour, and this is the dominant line of the 1990s. In the future, however, this may change significantly with the results of The Dog Genome Project, a research project operating out of the University of

⁹¹ *Ibid.* at 81.

⁹² *Supra* note 51 at 252.

⁹³ B. Kilcommons and S. Wilson, “Matchmaking” (1994) 85:4 *Dogs in Canada Annual* at 35.

California in Berkeley that is trying to map all of the chromosomes in dogs. Rationalized as being in the interests of discovering the genetic sources of diseases in dogs, their “principles and goals” include mention of discovering genes “controlling morphology and behavior.”⁹⁴ Knowledge of specific genes could have drastic policy implications for those in favour of eliminating dogs with “dangerous” genes.

Currently, however, the greatest emphasis in all the manuals is on the malleability of dog’s behaviour which lies entirely in the hands of the dog owner. For aggression attributed to medical causes or genetic overbreeding problems, some manuals do recommend that the dog be euthenized.⁹⁵ As mentioned above, the manuals do not indicate to dog owners how to determine whether aggression is caused by inherited problems or their own behaviour. A veterinarian can kill a dog on the instructions of the owner. A dog owner can decide at any time that their dog’s behaviour is beyond their control and abandon it to the Humane Society or have it euthenized at a veterinary office. Allocating to dog owners the responsibility for their dog’s aggressive behaviour means that dog owners will eliminate the dog at their own discretion. Only some dog owners will take the time and effort (and money) to try to rectify their dog’s behaviour.

The recent calls to eliminate certain dog breeds effectively links owner and dog in a manner not seen since the late nineteenth century. The legal/bureaucratic system of the late nineteenth-century implicitly sought to eliminate mongrels by targeting the ability of their owners to pay the dog tax. Breed-targeted legislation similarly links owner and breeding by targeting the “tough” breeds in order to regulate the irresponsible dog owners who are thought to be responsible for cultivating their dog’s aggressive behaviour.

⁹⁴ J. Rine, “The Dog Genome Project: Principles and Goals” <http://Mendel.Berkeley.edu/dog/manifesto.html>

⁹⁵ See e.g.: *Supra* note 38 at 128-129.

Whereas previously the wallets of the lower classes were targeted to eliminate non-purebred dogs, by targeting the breed of dog it is the irresponsible owner who will no longer be dangerous to the community.

CONCLUSION

I originally began this thesis thinking that I could isolate the experience of the dog from that of humans. I had a hunch that all discourse on dogs is connected with humans but was unaware to what extent. To separate the two is to untangle thousands of years of culture and biological manipulation. Even to isolate the dog as a creature of instinct and biology is to incorporate human breeding influence and current human knowledge of the wild and domestic dog. This thesis fails to even approach an understanding from the dog's perspective except that the dog, from birth to death, is saturated in discourse which accounts for its behaviour, thoughts, motivations, instincts, needs, wants, health – everything. Presently, more than ever, the dog is subject to restrictions in movement and freedom and required to always be in close physical and discursive proximity to a designated human. This is not to say that every dog experiences this, but it is promoted by the dominant discourse which defines and regulates the urban domestic pet dog (in Ottawa).

Set against a hierarchical backdrop of nature, which in western culture places humans over animals, the human/dog relationship is supposed to follow this template of domination. Law supports this hierarchy, locating dogs as the property of humans. Governance literature directed at the “owners” of dogs also bolsters this hierarchy. The manuals offer techniques and ideology which people can use to establish and maintain this hierarchy in their relationship with their dog. This hierarchy is so entrenched that its “truth” can be found in almost every discursive location in western culture. So, when a dog bites a human, it is an affront not only to the bite victim but also to the hierarchy.

Interestingly, dog bites have been a matter of fact for thousands of years yet for some reason dog bites have received more recognition in law, regulation, and discourse in current years than ever before. The mobilization of laws, agencies and discourses in the last thirty years may even warrant the sociological label of “moral regulation movement.”

Since the increasing dominance of the keeping of dogs as “pets” by all classes of people in the last 150 years, their status as animals has continued to rise. Comparisons between pet dogs and children and the governance of dogs and the governance of children have, arguably, contributed to this improved status. Whereas responses to biting dogs have been more or less formal and punitive, with their improved status the responses have taken a particularly complicated form in the latter twentieth century. The violence of the offence and the child-like status of dogs have paved the way for the application of human aggression discourse to dogs who bite. Consequently, the designation of “dangerousness” and its accompanying criminological theory and policy are paralleled to varying degrees throughout history between dogs and humans.

The borrowing of the relational template of “parenting” by dog manuals is a particularly ingenious technique which serves a variety of ends throughout the history of the manuals: At first, to discourage corporal punishment and encourage absolute authority and gentle education methods, later to encourage responsibility to community, responsibility to the dog, and absolute authority. By presenting the dog as comparable to the child, this deploys familial discourse with which dog owners can draw upon to form their perceptions of self and dog. As with child rearing manuals, the dog rearing manuals present an ideal of both owner and dog behaviour which is difficult to attain. When owners exert power over their dogs, they encounter resistance. Corporal and

psychological techniques are employed, more or less following the principles of operant conditioning, to mould the dog's behaviour. Inevitably, despite following the suggestions in the manuals, the dog's behaviour will, to varying degrees, not measure up to the ideal. Such failures do not detract from the ideal. Rather, they affect the self-perception of the dog owner.

Manual literature emerges as a product of a period in history in which people are encouraged to actively seek out expertise to aid in their own self-formation, in this case, as governors of dogs. Law is in place to regulate those who fall outside the influence of this expertise, or those who fail to live up to its ideals. Whereas manuals were consulted by the "breakers" of hunting dogs and, therefore, a particular class of people, manuals from the 1950s onward were directed at and available to the general public. Law provided a source of discourse and coercion which influenced the rest of the population to comply with recommended behaviours, roles, and attitudes towards their dogs. With the proliferation of manual advice, the role of law shifted to catch the failures, to provide insurance, while a social expectation arose that new dog owners will seek out and follow the current discourses on their relationship with their dog. Nikolas Rose explains, as part of his examination of the proliferation of expertise and governance the transition from encouraging social responsibility in the manuals to a more intimate self-formation.

Disciplinary techniques and moralizing injunctions as to health, hygiene and civility are no longer required; the project of responsible citizenship has been fused with individuals' projects for themselves. What began as a social norm here ends as a personal desire. Individuals act upon themselves and their families in terms of the languages, values and techniques made available to them by professions, disseminated through the apparatuses of the mass media or sought out by the troubled through the market. Thus, in a very significant sense, it has become possible to govern without governing *society* – to govern through the

‘responsibilized’ and ‘educated’ anxieties and aspirations of individuals and their families.¹

Those people who do not actively seek out expertise to solve their self-identified problems are the “anti-citizens”.² According to Rose, these anti-citizen dog owners of biting, “dangerous” dogs are subject to an outreach of expertise (or also, according to my research, legal sanction). Dog owners who do not actively seek out manuals or information from professional experts such as veterinarians, humane societies, or canine behavioural psychologists may deal with a biting dog differently than the current discourses prescribe.

Despite being a period in history characterized by widespread projects of self formation and regulation, it is in the 1990s that the manuals begin to acknowledge the widespread failure of dog owners to live up to the training ideals. At this time, too, legal regulation becomes tighter than ever before, seemingly assuming that NO dogs are capable of behaving even remotely like the ideal. Occuring in a period of risk reduction and community protection, dogs are allowed no opportunity to adversely affect anyone through their less than ideal behaviour. Despite these regulations, the lack of enforcement and adherence to laws and by-laws seems to be common throughout history. The importance of the laws of the 1990s is that they provide a source of moral regulation discourse and a safety net of civil law and fines should anything go wrong, particularly in dog bite cases.

Foucault’s observation that civil law is the greatest carrier of “risk” into concepts of criminal dangerousness, more so than positivist criminal anthropology and

¹ N. Rose “Expertise and the Government of Conduct” (1994) 14 *Studies in Law, Politics and Society* at 388-389.

² *Ibid* at 389.

psychology, is supported by this research on dangerous dogs. The behaviour deemed dangerous for both humans and dogs was not always physical violence. That it became so in the mid twentieth century is clear although the reasons why are not explored here. Certainly, however, with the decline in corporal punishment, seriousness attributed to criminal corporal violations increased. In 1970, law reiterates what people have been practicing for thousands of years. If a dog bites a person, it should be killed, or at least prevented from doing so again. Civil law provisions in 1980 and 1990, consistent with the rising status of the dog, dampen the severity of the penalty by requiring a close look at the individual dog, the incident, and the dog owner's behaviour. Bolstering this is an emerging canine criminology which offers psychological and behaviourist support for the diminished responsibility of the dog for biting incidents. All dogs are assumed to be at risk of biting, yet some are more dangerous than others. Corresponding with the dog's diminished responsibility is the increase in owner responsibility in the form of civil liability, the dog's fate is considered by determining its dangerous potential. Whereas a biting dog would previously have been eliminated consistent with a positivist theory of inherent dangerousness based on the dog's instincts, in the 1980s to the present the proliferation of positivist theories of aggression have provided another solution for the biting dog. Thanks to these theories, dogs can be "cured" of their dangerousness through psychological and medical expertise.

In the present, in law and the manuals, dogs have almost no responsibility for their own aggressive actions. Instead, they are attributed to instinct, psychology, genes or medical conditions. In all instances where the aggressive propensity is not specifically inherent to the dog, the dog owner is considered the intentional or unintentional causal

agent of the dog's aggression. In a sense, civil law captures the "dangerousness" of the dog owner who recklessly creates and wields a dangerous dog. Civil law, without having to decide whether it is the dog or the owner who is dangerous, targets both. That the parents of children and youths who commit property damage are now held financially responsible for the damage indicates that the overarching dominance of risk reduction and control means that dog owners and parents are subject to the same responsibility pressure to instill discipline into their wards, to be an effective governor and, if lacking, pay for the consequences.

When Piers Bierne suggests that animal trials have given way to the bureaucracy of the animal shelter he fails to take into account the importance of the intimate linking of animal behaviour (especially in dogs) with that of the owner. The animal shelter deals with dogs whose relations have been severed from their owner. A closer look at dog/owner discursive links may yield insight into the continued formal and informal trial and punishment of violent dogs. Bierne reports on the multiple forms of animal abuse, noting that animal abuse can be a "signifier of interhuman conflict." Research demonstrates that in domestic violence cases, pets may be physically abused in order to psychologically wound the spouse who cares for the pet.³ In Robert Darnton's "The Great Cat Massacre...", it is speculated that the cats were tried and murdered as a means to antagonize the cat's owners. "To the apprentices the killing of her cats was thus to take

³ See for example, C. Adams. And J. Donovan, eds. "Introduction." in *Animals and Women: Feminist Theoretical Explorations* (Durham, N.C.: Duke University Press, 1995).

exquisite revenge on Madame and on her as her husband's property. It was to defile Madame's body, even to rape her, which to the apprentices was an act of justice...".⁴

My position is this: If abuse of an animal can be instrumental in (psychologically, financially, emotionally, etc.) harming the owner of the animal, it may in some cases follow that when an animal inflicts abuse on another person, the owner of that animal is implicated in that abuse (as a causal contributor, negligent, or financially liable by virtue of ownership). One theory presented to explain the phenomenon of medieval animal trials suggests that "animal trials were devised to intimidate those who were responsible for an offending animal's dangerous actions. If so, animal trials served as vehicles to convey to animal owners a moral message to oversee their charges."⁵ Although Bierne does not think this theory sufficient to explain the phenomenon, he supposes that this explanation for the rationality of the animal trial is the most plausible. If this theory is on the mark, the linking of the "criminal" behaviour of animals to humans is a longstanding discursive practice. The *form* it takes is what shifts over time. The way a given culture deals with animal "crime", as Bierne states, is "subject to a variable configuration of temporal, national, gender, class, religious, and other factors."⁶ I argue that the form adhered to is a product of the discourses of a given period and dependent on the current status of the animal, the way the human/animal relationship is defined, prevailing legal and regulatory practices, discourses of crime, human and animal behaviour.

The current calls for the elimination of particular "dangerous" breeds in Ottawa goes against the manual literature and current Ontario legal policy which, counter to the

⁴ R. Darnton, *The Great Cat Massacre and other Episodes in French Cultural History*. (New York: Vintage, 1985) in P. Biernes, "The Law is an Ass: Reading E.P. Evans' 'The Medieval Prosecution and Capital Punishment of Animals.'" (1994) 2:1 *Society and Animals* 27at 28.

⁵ Bierne, *ibid.* at 38.

⁶ *Ibid.* at 39.

legal policy of a number of nations, has chosen to examine each biting incident, not categories of potentially dangerous dogs. The Canadian Safety Council's position of compiling a "dangerous dog database" and then "sterilizing and eventually eliminating" specific breeds of dog is not supported by the manual literature. It is more consistent, however, with the current climate of risk reduction and community protection which favours casting a wide net of preventative regulation. Targeting specific "tough" breeds has the effect of targeting their owners, some of whom may consciously or unconsciously cultivate aggressive behaviour. The recent emphasis on breed/behaviour connections in the manual literature may, however, pave the way for breed-specific legislation. Having a subordinate status, currently, the discourse on dangerous breeds may gradually gain a dominant position and be put into effect in formal or informal regulation.

Academic and Social Value of the Research

This thesis, while confirming the utility of moral regulation theory as a sociological tool, carves a new niche in the knowledge base surrounding the phenomenon of dogs biting humans, and the human dog relationship. To my knowledge, there is no existing research on the moral regulation of pets or even an examination of social theory on dog bites. This project contributes to moral regulation theory by raising the issue of the interplay between the two subjective forms of moral regulation.

By being primarily exploratory, this research only just begins to document and understand the discourses involved in the linking of humans with dogs. The research demonstrates the drawing-together of a number of discourses which are applied to the phenomenon of dog bites and the formation of a moral regulation movement. This

presents a valuable contribution to the current issue of dangerous dogs, dangerous breeds, and the role of the dog owner in dangerousness. The separation of dog and owner is never fully achieved by law or manual, although the locus of dangerousness has shifted slightly. From targeting dog owners in order to eliminate their dangerous dogs, now policy seeks to target specific breeds in order to target their dangerous owners.

While some descriptions of the history of dog training are available in small summary chapters or articles in the manual literature, none explore the power relations, familial parallels, or criminology of dog bites to the extent that they are here. The governance manuals yield a wealth of insight on, not only dogs, but on the social concerns and theories of various periods in history.

Avenues for future research

If anything, this research has had the effect of raising more questions than it answers. There are a number of areas which are of particular interest to me which have been sparked by my findings.

First, to address the owner/dangerous dog connection and breed stereotypes, a research project could attempt to identify whether “risk” or “danger” in dogs is perceived by laypeople as deriving from the breed itself or the breed in association with people with certain characteristics (for example, indicators of class, responsibility, personality, etc.).

Second, throughout my research, I was tempted to explore the issue of dog breed elimination with discourses of eugenics and race discrimination. This is certainly an avenue worth exploring. I hesitated due to the necessary paralleling of an intentional breeding project with human cultural and physical groupings. They appeared too different

to bend together for the purpose of comparison. Depending on the perspective employed, this may not be the case.

A third avenue of research could explore the phenomenon of breed stereotype, conspicuous consumption and cultivating aggressive behaviour in dogs. Since the current breed elimination policy efforts seem to be directed at this phenomenon, it warrants greater examination.

Because it is clear that although both the law and the manuals disseminate an ideal of behaviour for both dogs and owners, it is clear that a large proportion of dogs and owners do not follow this ideal. Future research on moral regulation could examine how, in practice, manual “truths” are interpreted and used by dog owners, and how dog owners regulate each other.

Due to the small scope of this research, gaps could be filled in the overall response to dangerous dogs by an inquiry into the responses of veterinarians and humane societies to dogs who bite, specifically, what occurs when dogs are turned into vets and humane societies with the label of “dangerous”.

A particularly interesting question arises from this research with regard to the relationship between discourse, governance literature and law. Truth in the manuals and shifts in law appear to occur at approximately the same periods in history. Future research into this phenomenon might yield greater insight into the relationship between discourses, governance literature, and law. It seems, according to this research, that discourse inserts itself into both and there is a fluidity of discourse between law and manuals. Also, at different times, both law and manuals may be consistent with a dominant discourse or function to promote a subordinate discourse.

Advice to Canine Caregivers

Finally, after reading over 150 years of dog training manuals, a word of advice to dog owners who continue to be faced with the challenge of domesticating a new puppy. Dog owners should realize, just as Hardyment suggests in her book on baby manuals, that the discourse on the human/dog relationship does not carry the weight of eternal verity. The “truth” about dogs, as with babies, “veers with the winds of social, philosophical, and psychological change.”⁷ What is the “correct” way now may be the “utterly wrong” thing to do ten years from now. The advice in the dog manuals has changed a drastically in the last two centuries and is not likely to stop changing any time soon.

⁷ C. Hardyment, *Dream Babies: Child Care from Locke to Spock* (London: Jonathan Cape, 1983).

APPENDIX A

Research Method

Sources

Discursive references to dogs can be found in numerous locations, from fiction, medical literature, animal rights books and activist groups, Humane Society resources, breeding and genetics literature, media, and other sources. I have selected two that most directly speak to the issue of the moral regulation of dog owners. The governance literature for dog owners (dog breaking/training/owning manuals) is a primary source of persuasive yet non-coercive discourse with which dog owners can define or situate themselves, or form their identity and justify their behaviour. Books available to Ottawa dog owners have been selected, thoroughly, from the Ottawa public library, McGill University library and the Toronto public library.

The validity of manuals as a source of discourse and data for research is explained by Christina Hardyment, whose survey of baby-care manuals directed at mothers from the 1800's to 1960's closely parallels this thesis. Given the "barrage of information" presented in child rearing manuals, Hardyment suggests that by understanding "why baby-care manuals were first written, and how they came to exceed their original brief," it is possible to "confine them to their proper province. If it can be made clear that, while babies and mothers remain constants, advice on the former to the latter veers with the winds of social, philosophical and psychological change, then we can see the advice in the books we use today as a temporary crutch, not eternal verity."¹ Hardyment concludes that "the manuals are clearly by no means infallible authorities." They should be viewed

¹ C. Hardyment, *Dream Babies: Child Care from Locke to Spock* (London: Jonathan Cape, 1983) at xii.

“as tools, not tyrants, symptoms of the indecisiveness of our age, not certainties.”² Her conclusion reflects her acknowledgement of the manuals’ influence on mothers. Her stance is to imply that these baby governance manuals, although highly persuasive as tools of moral regulation, should be viewed as such.

Finally, by conducting a thorough examination of dog manuals, this thesis serves to provide a similar service to people who live with dogs. A detailed taking-apart of dog manuals has not yet been made available in academic or popular literature, to my knowledge. Therefore this research provides a valuable contribution to a rapidly growing academic literature on the human/dog relationship.

Another source of discourse on dogs is made available in the publications by the Canadian Kennel Club, (CKC), beginning in 1890. *The Kennel Gazette*, and its later incarnation, *Dogs in Canada* have been chosen as an appropriate source of discourse. The CKC publications cater to those interested in owning dogs for the purpose of show and, increasingly over time, companionship. As stated by Elizabeth Dunn, publisher of *Dogs in Canada*, in 1975, that the publication is “the spokesman to members of the hobby and, to a degree, the general public on behalf of the dog.”³ The publication is an asset to this research in that unlike the manuals which are published by different authors it is a relatively consistent source, covering 111 years from 1890 to the present. The CKC perspective also provides a barometer for discourse on purebred dogs, and the link between breed and behaviour. Random volumes were selected for as many years as were available in the National Archives of Canada and the Ottawa Public Library. From the advent of the *Annual* edition of *Dogs in Canada*, the annual for each year until 2000 was

² *Ibid* at 294.

³ J. Morden, “Back Talk” *Dogs in Canada* Feb. 1975 at 19.

examined. Both the manuals (directed at dog owners or “breakers”) and the Canadian Kennel Club publications will be referred to as “manuals” to keep references to either in this text as concise as possible.

The third source of discourse on the moral regulation of dogs is found in federal, provincial, and city legislation regulating dogs and their owners in Ottawa. Enforcement is not considered, nor are rates of breaches. The laws are treated as a coercive and formal component in the moral regulation of dog owners, and as a discourse which also targets the self-formation of dog owners.

To attempt a wider collection of sources of the moral regulatory discourse on dogs would be to go beyond the scope of this thesis and necessarily diminish the thoroughness with which the above sources have been examined.

Method

The above-mentioned primary sources have been closely examined using a Discourse Analysis methodology. Originally derived from studies in linguistic philosophy, ethnomethodology and semiotics, this ‘method’

looks at the subtle ways in which language orders our perceptions and makes things happen and thus shows how language can be used to construct and create social interaction and diverse social worlds.⁴

Although I am using a Foucaultian definition of ‘discourse,’ looking at broad, historically developing, linguistic practices, the method as described by Potter and Wetherell includes

⁴ J. Potter & M. Wetherell, Discourse and Social Psychology: Beyond Attitudes and Behaviour (London: Sage Publications, 1987) at 1.

“all forms of spoken interaction, formal and informal, and written texts of all kinds” in its definition of discourse.⁵

For the various kinds of primary sources, I used Potter and Wetherell’s stages for discourse analysis, keeping in mind their disclaimer:

There is no *method* to discourse analysis....What we have is a broad theoretical framework concerning the nature of discourse and its role in social life, along with a set of suggestions about how discourse can best be studied and how others can be convinced findings are genuine. The ten stages we have outlined are intended as a springboard rather than a template.⁶

Having collected my data, with a pile of “words waiting to be transformed into exciting research findings,” analysis began with coding. It involved putting portions of data into categories. The categories used for the dog manuals and CKC publications included: roles for dog and owner, nature of the dog, main philosophy of discipline and punishment, rejected philosophy of discipline and punishment, means of compelling the reader, mention of dog aggression, causes of dog aggression, the right and wrong way to deal with aggression in dogs, mention of breed and behaviour, aggression and behaviour, reference to laws, and reference to regulatory “others.” The legislation regulating dogs was coded in the following categories: miscellaneous, dog licensing, information taken by municipal government, dogs running at large, liability of owner, conditions for dog to be killed, conditions forcing owner to kill own dog, and regulation of aggressive dogs. Care was taken not to exclude data, and to include “borderline cases and only vaguely

⁵ *Ibid* at 7.

⁶ *Ibid* at 175. emphasis in original.

related instances.”⁷ Data that applied to more than one category was copied and put into all relevant categories.

Once coded, the data was analyzed. It was read, and re-read to discover “systematic patterns.” Attention to detail was emphasized, as opposed to a cursory reading for the “gist” of a source of data. Care was also taken to conduct numerous “critical interrogation(s) of (my) own presuppositions and (my) unexamined techniques of sense making.” I looked for patterns of variability and consistency in content and form. Two sets of notes were made. The first, taking exact quotation selections of relevant primary data from each source for each category. This way, the source could be examined as a whole, and never simply as one quotation without the context of the entire source. Then, timelines were created for each category, noting subtle changes in language, assumptions, and prescribed dog and owner behaviour. These shifts were noted, and then compared with the timelines for the other categories. Patterns began to emerge. It is these patterns, which have been detailed in the expository chapters.

The validity of the research was assessed by checking that the “analytic claims are coherent with the body of discourse.”⁸ The content in Chapters Three through Five, is the primary means of establishing validity. They display my claims with illustrative chunks of data. This allows the reader to assess my conclusions in conjunction with extracts of the data.

Obviously, this method of analysis is highly subjective and has made efforts to justify its existence in terms of traditional scientific concerns such as sampling and validity. The key drawback is that this is a highly subjective enterprise, and not likely

⁷ *Ibid* at 175.

⁸ *Ibid* at 170.

formally scientifically replicable. Overall, as long as this research is viewed and evaluated for what it is, it can be valued as a significant contribution to both moral regulation literature and the literature on the human-dog relationship.

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