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ORIGINAL RESEARCH

The UK Dangerous Dogs Act: Improved, but legally and ethically flawed

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Abstract

Background: The Dangerous Dogs Act (DDA) is considered among the most controversial pieces of legislation ever passed in the UK. Its effectiveness and how it works in practice, up until a dog and its owner are charged, has been subjected to considerable analysis. However, there has been little examination of how the DDA works after charging, nor of how courts are interpreting it.

Method: We accessed legal cases from 1992 to 2019, the period in which the DDA has been in force. Each case was examined from a legal and ethical perspective, using doctrinal legal methodology and the principlism approach to ethics described by Beauchamp and Childress.

Results: Analysis showed that while improvements to the function of the act have been made, substantial legal and ethical failings remain, particularly with Section 1 and the therein breed specific legislation (BSL).

Conclusion: Legal failings could be partially resolved by removing the reversed burden of proof placed on dog owners and allowing a change of ownership for banned breeds. However, ethical failings could only be resolved through the abolition of BSL. Further study into whether judicial bias exists against certain breeds found to be dangerously out of control is warranted.

INTRODUCTION

Background

On the 18th May 1991, a 6-year-old girl was 'savaged' by a Pit Bull Terrier (PBT).[1] The ensuing public outcry and parliamentary debate that occurred as a result,[2] led to legislation passing through the House of Commons in just 1 day[3]: the Dangerous Dogs Act (1991) (DDA). Despite a number of amendments since then,[4] the act remains one of the most controversial ever passed in the UK,[5] predominately due to its targeting of specific breeds.[6]

Substance of the Dangerous Dogs Act (1991, as amended)[7]

The DDA is divided up into 10 sections, however several are of particular importance to this paper.

Section 1 is that known as the breed specific legislation (BSL) portion of the act. It prohibits the breeding, sale, gift or exchange of any dog of the type known as the: PBT, Japanese Tosa, Dogo Argentino and Fila Brasileiro. In addition, after an initial introductory period, any dog in these four breed types not registered as exempt became prohibited. Any dog that was registered must be on a lead and muzzled when in public. Section 2 allows for additional breed types to be added to the BSL, but this has never been used.

Section 3 of the DDA is the one that deals with dogs who are actually involved in a dangerous event. It makes it an offence to allow a dog to be out of control in a public place (and additionally also in a private place when amended in Scotland in 2010 and in England and Wales in 2014). It also identifies an aggravated offence as one where a person or assistance dog is injured. However, it does exempt a dog which attacks an intruder into the dog's home.

Section 4 then discusses the sentences that can/should be imposed if an offence under the DDA is committed. It initially required that a dog be destroyed if a Section 1 or aggravated Section 3 offence had occurred. However, in 1997, this was amended to say the court could avoid destruction if it was satisfied the dog won't constitute a danger to public safety.

This then led to section 4A of the act also being added in 1997. This allowed for a contingent destruction order (CDO) to be applied to a dog which had committed an offence outlined in Section 4. This then

states a number of conditions a dog and its owner must adhere to such as muzzling and keeping on a lead in public, neutering and insuring a dog. If these are broken the dog will then be destroyed. Section 4B deals with how to decide if a CDO should be used and states that a dog's temperament and whether the owner is a 'fit and proper person' to own a dog should be considered.

Section 5 of the DDA is concerned with the evidence involved in court cases. It says that anyone authorised to exercise powers under the act may seize a dog that appears to them to be one to which Section 1 applies. It also states that this will be presumed to be true unless the contrary is shown by the accused. This is known as the act's reversed burden of proof.

The remaining sections of the Act are of little relevance to this paper and as such will not be discussed in detail here.

Criticism of the Dangerous Dogs Act (1991, as amended)

Writing in Public Law in 2000, Hood et al stated 'it is a truth universally acknowledged that the UK's DDA is a cardinal example of poor, ill-thought-out regulation'.[8] Although this comes from a single paper, the DDA has received widespread criticism, with dog owners,[9] those working with dogs[10] and campaign groups[11] expressing negative views. Much of the stakeholders' dissatisfaction stems from Section 1 of the act and BSL. BSL is the practice of banning or regulating dogs deemed to be of a 'breed type' perceived to be dangerous to the public.[12] Four breed 'types' are specified in the UK's DDA, but in practice BSL is almost exclusively applied to the PBT.[13]

Studies have looked at the everyday practicalities of BSL and whether it can be consistently enforced. The DDA prohibits 'any dog of the type known as the PBT'.[7] However, two studies in 2014 and 2018[10,13] suggested that members of the public and professionals within dog shelters had difficulty in identifying these dogs and other breed types.

The first study to investigate whether the DDA and specifically BSL had reduced dog bites was in an A&E in Scotland in 1996.[14] It found no reduction in the number of bites after the DDA was passed, and that Alsatians and Mongrels were the most commonly implicated breeds - not those banned by the DDA. Similar studies in Italy in 2003[15] and Ireland from 1998 and 2013,[16] which also have forms of BSL, found similar results.

These results raise questions about whether the DDA outlaws the right breeds. The American Temperament Test Society has a test to assess a dog's temperament.[17] When dogs of 'banned' breeds - including PBTs - took this test, they were just as likely to pass as any other breed, suggesting BSL may lack scientific credibility.[18]

Governmental (2010, 2012),[19,20] non-governmental (2014, 2018)[21,22] and independent (2015)[11] reviews of the DDA have been conducted. Following governmental reviews, some changes were made to the DDA, but the government stated they had no intention of changing the BSL.[4] This has been criticised by the Environment, Food and Rural Affairs Committee (EFRACom) as recently as 2018: 'Defra's arguments in favour of maintaining BSL are not substantiated by robust evidence'.[22] (Section 3, Paragraph 34). In response, the government maintained its commitment to BSL and insisted that the prohibited breed types present an increased risk to public safety.[23]

AIMS OF THE RESEARCH

Most previous analysis of the DDA has focused on BSL, and in particular its effectiveness in improving public safety.[15,16] Research has also been conducted on how the DDA works before and during the charging of a dog and owner.[13,18] However, little attention has been paid to the whole DDA (outside of BSL), the legal process surrounding its use, and whether courts are delivering the best outcome possible in terms of public safety and animal welfare. This research aimed to rectify that deficit through an ethico-legal analysis of the entire DDA to answer two main questions:

1. 'Does the DDA achieve what it is intended to achieve?' Legal analysis focused on the Act's stated objectives of improving public safety,[7] but also on efforts to balance this with animal welfare.
2. 'Are the objectives of the DDA the correct objectives?' Ethical analysis focused on the individual stakeholders, their conflicting needs and the ethics of prioritising the interests of some stakeholders above others.

Among its recommendations, the EFRACom asked the government to conduct a study into 'the factors behind canine aggression and whether banned breeds pose an inherently greater threat'.[23] The government responded, saying it had already commissioned a similar study, with results expected in late 2019.[23] This study, conducted at Middlesex University, began in January 2019; however, no findings have yet been published.[24] Our research presented here is therefore a timely contribution of new information to the policy debate surrounding the DDA.

MATERIALS AND METHODS

This research received ethical approval from the Social Sciences Ethical Review Board at the Royal Veterinary College, reference SR2018-1689.

Doctrinal legal methodology (studying the legislation as written, and then the cases in which it has been used[25]) was used to answer question one: 'does the DDA achieve what it is intended to achieve?'. Legislation and cases were analysed, together with any relevant context, to identify places where the law fell

short, or it was felt that the intended meaning of the legislation didn't match what was occurring in practice.[25]

Appeals and High Court cases across the UK, heard from 1992 to 2019 (99 in total) were accessed from a variety of databases: BAILII, Westlaw and Lexis. Each case was analysed, and any relevant details recorded for later analysis. In particular, this analysis paid reference to the end result of cases; whether a finding of guilt was made, and any sentence imposed.

To answer question two, 'are the objectives of the DDA correct?', ethical analysis was undertaken using the principlism approach.[26] This uses the application of four principles: respect for autonomy, beneficence, non-maleficence and justice. Each principle is considered essential for deciding if an action is ethical, and in combination encompass most other ethical considerations of relevance.[27]

In human medical ethics, autonomy is an individual's right to decide on their own care and is the reason informed consent for procedures is sought wherever possible.[27] Non-maleficence is best explained through the Hippocratic oath a doctor takes to 'do no harm' and aims to limit the negative consequences of a medical intervention.[27] Beneficence meanwhile focuses on the positive impact an action may have, with the aim that a net positive is achieved once the two principles of non-maleficence and beneficence are weighed up together.[28] Finally, justice is often conflated with fairness and relies upon the allocation of treatment based solely on clinically relevant data; every equal person should be treated equally.[27] In the context of veterinary medicine, these principles may be differently nuanced.[29] Autonomy often relates to an animal owner rather than the animal patient. Non-maleficence relates to the regulatory imperative that veterinary surgeons should safeguard welfare,[30] but may be confounded by lack of consensus about what constitutes a harm. Beneficence may be qualified by conflicts between the welfare interests of individuals and herds/flocks. Justice, as in human medicine, may be confounded by insurance status.[29]

Principlism requires that all four principles should be adhered to in order for an action to be ethical, unless there is a direct conflict between them.[27] It doesn't, however, give a framework with which to choose between principles when this happens, and the approach is often criticised for this.[31] However, at least in human medicine, autonomy is often considered 'first among equals'.[28] An action may carry with it significant benefit, but if it is against the patient's direct wishes it may still be considered unethical.

How the principles were applied in this research is outlined in more detail below.

TABLE 1 A table showing the four principles of biomedical ethics as well as a brief description of them and how they will be applied in this project. Information taken from 'The Euthanasia of Aggressive Dogs',[32] Justice of animal use in the veterinary profession,[33] Ethics needs principles—Four can encompass the rest—And respect for autonomy should be 'first among equals'[28] and medical ethics: Four principles plus attention to scope[27]

Principle	Description of application
Respect for autonomy	In veterinary medicine, generally it tends to be the autonomy of the animal owner (not the patient itself) which is considered as an animal is unable to speak for itself. In the context of this project, it was therefore the dog owner's (presumed) wishes that were examined to see if they were respected in case outcomes.
Beneficence	For the purpose of this paper, we looked at the benefits for the dog (taking into account both the quality, as well as quantity of life achieved), its owner, and the public of passing or not passing a sentence in a particular case.
Non-maleficence	In the context of this project, we looked at the harm, or potential perceived harm on a dog, its owner, and the public of passing or not passing a sentence under the DDA.
Justice	Unlike in human medicine, the determination of the fairness of an action on an animal must make allowances for non-clinical factors. In the context of this project, the destruction of a dog may appear unfair if taken in isolation, but if it carries with it significant improvements to public safety it would be just. However, dogs should be treated fairly and equally based on their behaviour and the risk which they present to public safety.

Limitations of the principlism approach are considered in the Discussion below.

In order for complete and proper analysis, the cases were split into categories, and each discussed in relation to the two questions. These categories are outlined below.

Section 1 cases

Cases which involve only Section 1 of the DDA. Banned breed types which have not been shown to be 'dangerously out of control'. (24 Cases)

Section 3 cases

Cases which involve only Section 3 of the DDA. Dogs not listed as a banned breed but that have been found to be 'dangerously out of control'. (60 Cases)

Section 1 and 3 cases

Finally, Section 1 and 3 cases are those involving a banned breed dog found to be dangerously out of control. (8 Cases)

NB in seven cases the breed of dog involved could not be identified.

The nature of the research meant that presenting the results of the ethicolegal analysis necessitated a considerable element of discussion. These sections have therefore been combined below.

RESULTS AND DISCUSSION

Question 1: Does the Dangerous Dogs Act achieve what it is intended to achieve? Legal analysis

Section 1 Cases

When considering this question with regard to Section 1 cases, the results at first appear straightforward. In 75% of cases in this section, spanning from 1992 to 2019, dogs found to be PBTs were destroyed. Studies have shown banned breeds are no more likely to be involved in bite occurrences than others.[34] However, given the assumption within the DDA's objectives that banned breeds are a threat to public safety,[7] it could be argued based on this superficial analysis that the act is doing what it was designed to do.

However, when examining individual cases this is less clear. Many dogs were euthanised for seemingly trivial breaches of their contingent destruction orders (CDOs). These included a brief lapse in the dog's insurance (1997)[A], being inside a car without a muzzle (1993)[B] (as this was deemed a public place), the owner emigrating and not being able to take the dog (2017)[C] and a stray dog which couldn't be rehomed (2018)[D]. The latter two were caused by the DDA's ban on transferring ownership of a banned breed dog.[7] It is notable that none of these breaches was related to an aggressive action by the dog. While the DDA was, strictly speaking, fulfilling its own objectives by ordering the destruction of dogs which had broken their CDOs, it seems difficult to argue that these cases represented a genuine threat to people. It is therefore unclear that euthanising these dogs fulfilled the act's aim of protecting public safety.

Section 1 may also not achieve its objectives due to the often-unreliable evidence upon which cases depend. In one case, there was one witness each for both the defence and the prosecution (1994)[E], who disagreed over whether a dog was a PBT. In another (1993)[F], just one police officer testified that a dog bore similar traits to a PBT. The DDA allows any authorised person to seize a dog that simply 'appears to them' to be of a banned type.[7] It then assumes this to be the case unless the owner can prove otherwise[7] – in these cases they couldn't, and the dogs were consequently destroyed. Given how difficult identifying banned breed types can be,[35] it is possible that where evidence about the breed of a dog was weak or inconclusive but could not be disproved, the act was causing the destruction of dogs it never intended to. If so, this is a serious failing.

Such cases occurred very early in the act's history, before the introduction of CDOs. CDOs ensured an owner didn't need to prove their dog wasn't a PBT to avoid destruction, only that it was not a threat to public safety.[7] No appeals made on the basis of a dog's breed were found after CDOs were introduced. However, this does not mean the act's inverted burden of proof was not still causing the wrong dogs to be destroyed in lower courts (not included in our analysis), or to have a CDO placed upon them. We therefore feel this should be reviewed and amended at the earliest opportunity.

Section 3 cases

When considering Section 3 cases, the results seem clearer. When a dog has attacked a child (2018)[G], police officer (2019)[H], paramedic (2017)[I] or member of the public (2014)[J], their destruction would seem to improve public safety. The DDA ensured this in all Section 3 cases analysed.

However, since 1997, the DDA allows a court not to order a dog's destruction if it feels it is not a threat to public safety.[4] Instead, a CDO places a number of restrictions on a dog, that, if broken, would result in destruction. This would seem to strengthen the act's ability to balance public safety with animal welfare. This becomes less clear when individual cases are analysed. CDOs may not have been used by the courts in a manner consistent with the fulfilment of the act's objectives. Some cases involving attacks on children (2014)[K], a dog biting someone in the street (2010)[L] and a dog attacking several other dogs (2011)[M], resulted in CDOs rather than destruction, as they were considered 'one off' instances. There is some evidence that previous signs of aggression can make a future attack more likely,[36] although this needs more study to become clearer. Whether or not CDOs actually represent a reduction in the protection of public safety is therefore unclear.

The DDA's protection of public safety was improved by an amendment to make it enforceable in private locations in 2014.[4] Previously, multiple dog attacks occurred on private land (1993, 2003)[N,O] but were not within the scope of the DDA. This deficiency risked the dogs involved being able to attack again, which contradicted the act's stated objectives. Resolving this was a considerable improvement.

Section 1 and 3 cases

Cases involving a banned breed being dangerously out of control made up just 8% of those found. It is notable that, unlike the Section 3 cases above, none of these dogs were given CDOs, despite the law allowing for this.[7] However, this may have occurred in lower

court cases that were not accessed for this paper. In every case analysed within this project where a PBT was found to have been dangerously out of control, the sentence was the dog's destruction (2017, 2013, 2010)[P-R]. It is reasonable to suggest therefore, that the function of the DDA in these cases does improve public safety.

Question 2: Are the stated objectives of the Dangerous Dogs Act the correct ones? Ethical analysis

Section 1 cases

Comparing the impact of cases in which a banned breed of dog has been destroyed - having shown no signs of aggression - against the four principles raises serious questions about whether the objectives of the DDA are correct.

Regarding autonomy, a dog can neither understand nor speak for itself and so for this we must look to the dog's owner.[37] The narrative of the cases examined suggests that the owner's interest is in preserving their dog's life. Owners have pursued multiple avenues of legal action to try and save their dogs, often taking several years (1995, 1995, 1996)[S-U]. The fact that each dog nonetheless ended up being destroyed shows that the owner's and - we must assume - the dog's wishes to preserve its own life have not been met.

Overriding owner autonomy could be justified by beneficence arguments around public safety. However, there is weak to no evidence that Section 1 improves this.[38] One study showed no decrease in the number of dog bites that occur,[13] although more up to date research would be beneficial. Analysis of the circumstances often involved (a stray dog whose ownership cannot be granted[D] or puppies owned by someone with mental health problems [2011][V]) only strengthens the argument that public safety is not being improved. Again, it is the DDA's ban on the change of ownership of these dogs that forces the eventual outcome in many cases, and as such we suggest this should be removed.

Consideration of maleficence in relation to the DDA requires an assessment of the harms caused by case outcomes. The destruction of a dog would seem a very high level of maleficence to the animal (although if done humanely this could be disputed) and the owner. Potentially, such maleficence might be outweighed by significant benefit to public health. However, as described above, these are at best equivocal.

Finally, justice; is the outcome fair? In the context of this research, a fair outcome is one in which (a) dogs to whom the same circumstances apply are treated equally under the law and (b) the dogs' impact (positive or negative) on their own interests, those of the owner and those of the public are balanced; acknowledging that public safety is to be prioritised, within reason. Given that these dogs are being destroyed for the way they look (i.e. being a banned breed) and haven't been found to be dangerous, the potential negative impact on the public appears minimal. Furthermore, they are clearly not being treated equally to other breeds, despite the fact that any risk that banned breed dogs might pose to the public has consistently been shown to be no different from that posed by other breeds.[39] This suggests that dogs in equal circumstances are not being treated equally by the law; consequently, a failing under the justice principle must be found.

It might be argued that the reason for this unequal treatment is that the DDA intends to make people 'feel' safe, rather than to solve a genuine problem. This can be traced back to the act's origins and the hysteria surrounded these breeds in the early 90s.[1] This would create some beneficence to the DDA, but would have little to no impact on how it fared under the other three principles. It is therefore an argument the authors feel merits little consideration.

Section 1 cases in which the dog receives a CDO are more complicated to determine ethically. Here, the owner's wishes to not have the animal destroyed are met - autonomy has thus been respected. However, these dogs have never been found to be dangerous and so the likelihood of improving public safety is slim, meaning little beneficence. In addition, it should not be assumed that these CDOs are harmless. Neutering causes significant pain in dogs,[40–42] and the health benefits have become more unclear in recent years.[43] Little research has been done on the stress of muzzling, with one study finding behavioural changes but no change in saliva cortisol.[44] While the owner's suffering is likely reduced, whether or not CDOs cause less suffering for the dog than euthanasia - and therefore fare better under the principle of non-maleficence - is difficult to say. Given that decisions are again being based on the dogs' assumed breed, failings under the justice principle remain.

When the principlism approach is applied to Section 1 cases, it finds failings on multiple fronts. Respect for the owner's autonomy can be improved through the use of CDOs, but the other principles are still not adhered to. The authors feel that these failings are so widespread that the only way to solve them would be to remove Section 1 from the law entirely.

Section 3 cases

Cases in which a dog has been dangerously out of control fare much better under the principlism framework. Although owner autonomy is not respected, the beneficence of the dog's destruction is much more tangible, given it may prevent harm to future humans or animals. To the authors' knowledge, no study has been conducted into whether dogs which have bitten before are more likely to do so again. This would be preferable to ensure the policy is having the assumed benefits on public safety.

A fair outcome under the justice principle here would be one that accounts for a dog's potential risk to public safety and finds equitable ways of minimising this. Destruction of a dog which has been dangerously

out of control removes any risk the dog may present to the public, and if universally applied is fair. The allowance of a CDO in Section 3 cases can be accommodated within a justice framework. A dog which has bitten in the past being required to wear a muzzle seems proportionate, and is likely to improve public safety while minimising the impact on the animal's welfare. If the requirement to muzzle is uniformly applied for such dogs then fairness is maintained. Thus, application of the four principles suggests that for Section 3 cases a justifiable balance between public safety and animal welfare is being achieved.

Section 1 and 3 cases

Like Section 3 cases, a Section 1 and 3 dog has attacked someone, and so its destruction would seem to improve public safety and thus be justified under the principle of beneficence. If dogs were being treated fairly on the basis of their behaviour (Table 1), then where CDOs would adequately reduce the risk to public safety they could be applied in the same way as for Section 1 cases, and destruction avoided. In practice, however, BSL means that dogs are not being treated fairly on the basis of their behaviour. All Section 1 and 3 cases analysed resulted in the dog's destruction: no CDOs were used as they were with non-banned breeds. One judge stated how he 'could not understand why people wanted such dogs' (2011)[W], while another claimed that 'it is common knowledge' that these dogs 'do sometimes show such aggression' (2015)[X]. This suggests that, faced with two dogs which have acted in a comparable way, the legal system is discriminating against some dogs on the basis of their breed or appearance and thus breaching the principle of justice. The unjust nature of such decision making is further accentuated by the fact that these comments were actually made in relation to the Staffordshire Bull Terrier, a breed not outlawed by the DDA.

No study has been undertaken assessing judges' opinions on banned and non-banned breeds of dog, although one US study did suggest that local governments are too quick to classify dogs as dangerous.[45] If judges are biased against dogs of a certain breed or breed type, this is at odds with the attitude of the general public; studies have shown the majority of people don't hold a bias against certain breeds,[9] although some such prejudice certainly does exist.[46] This suggests the public would expect breeds that are banned under the DDA and those that are not to be treated equally based on behaviour. The fact this isn't occurring in the cases here analysed suggests that the principle of justice is being breached in the enforcement of the DDA.

STUDY DESIGN AND LIMITATIONS

It might be argued that reliance on BAILII, Westlaw and Lexis means that the cases considered in this project are not representative of all court decisions.[47] However, it is likely that cases which progressed to the appeals courts were those which would be more complicated and therefore of most interest from an ethico-legal point of view. Thus, while database-related limitation is accepted, the assumed impact upon the results and conclusions of this study are minimal.

There are limitations of using principlism in the veterinary context. It can be difficult to apply to animals,[48] particularly autonomy, given the involvement of both an animal and its owner.[49] The legal issues surrounding the euthanasia of animals and humans are also substantially different.[50] However, although originally designed for human medical ethics, the framework has often been used in veterinary situations.[32] Principlism, despite its limitations, was considered the most appropriate framework to use for this project for several reasons.

The four principles are able to account for both consequentialist and deontological theories of ethics.[51] The beneficence and non-maleficence principles can ensure an action has the greatest good for the greatest number under utilitarianism,[52] while all four can be used to show that an action is 'right' and thus acceptable under deontology.[53] This may lead one to assume that using a wide variety of ethical frameworks may produce the same or similar conclusions, and the authors don't dispute this.

CONCLUSION

From a legal perspective, the DDA has made major steps forward in its near 30-year history, and this should be recognised. However, there are currently two key areas where improvements should be made. The reversed burden of proof of breed identification contained within the act should be amended to ensure that only those dogs intended to be regulated under the DDA are being affected. Additionally, the change of ownership of a banned breed dog should be allowed for. These changes would go a long way to improve the ethical impacts of the act, but we feel the only way to solve these completely is to remove Section 1 and the therein BSL in its entirety. No replacement would be required as the rest of the DDA is able to adequately deal with cases of canine aggression. Elsewhere in the act, the priority must be to ensure consistency when dealing with dogs found to be dangerously out of control.

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