Total Pit Bull Shit: Anomie and Breed Specific Legislation in Windsor, Ontario

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TOTAL PIT BULL SHIT: ANOMIE AND BREED SPECIFIC LEGISLATION
IN WINDSOR, ONTARIO

By

Lauren Joy Sharpley

A Thesis
Submitted to the Faculty of Graduate Studies
through the Department of Sociology and Criminology
in Partial Fulfillment of the Requirements for
the Degree of Master of Arts
at the University of Windsor

Windsor, Ontario, Canada

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TOTAL PIT BULL SHIT: ANOMIE AND BREED SPECIFIC LEGISLATION IN WINDSOR, ONTARIO

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AUTHOR’S DECLARATION OF ORIGINALITY

I hereby certify that I am the sole author of this thesis and that no part of this thesis has been published or submitted for publication.

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ABSTRACT

This study employs Durkheimian sociology, anomie in particular, to examine breed-specific legislation in Windsor, Ontario. This thesis is unique in that it analyses breed-specific legislation (BSL) in a way that has not been done previously, by applying a rigorous, sociological theory perspective. Other than discussions on totemism and limited discussions of animals, previous applications of Durkheim’s theories on anomie, morality and law have not focused on human-animal relationships, especially the relationship between humans and companion dogs. Human animal studies (HAS) and critical animal studies (CAS) literature has not employed the Durkheimian concept of anomie to understand human-animal relationships and BSL specifically. I conceptualize anomie as a social condition resulting from moral derangement and the overabundance of conflicting moral rules, how they are understood and applied that results in a lack of stable moral references. This conceptualization of anomie guides my analysis of the provincial Dog Owners’ Liability Act R.S.O. 1990, CHAPTER D.16 (DOLA) and the municipal By-law 245-2004 (BL-245). I use the DOLA and the BL-245 to analyse how obligations and sanctions are imposed upon humans and animals, while looking for evidence of anomic social relations. The findings of this thesis indicate that there are discrepancies in the collective consciousnesses, law, science, and the general public. It also articulates how risk and responsibility impact human-animal relationships. Finally, this study exemplifies how breed-specific legislation destabilizes the epistemic reference of what makes a dog a dog.
DEDICATION

This work is dedicated to my rescue greyhound Kuya. Your resilience and kindness inspire me. You are my family, my friend, and the best boy.
ACKNOWLEDGEMENTS

To my partner Jon Jimenez, thank you for always been my biggest supporter. You have always listened to the new things I have learned and helped me think through ideas. You keep me grounded and provide an escape when academia overwhelms me. Thank you for always believing in me.

Sydney Chapados, thank you for inspiring me. I cherish the time we spend together sharing ideas and working through tough topics. You have taught me so much and I will always be grateful to you.

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LIST OF ABBREVIATIONS

AKC: American Kennel Club
ASPCA: American Society for the Prevention of Cruelty to Animals
AVMA: American Veterinary Medical Association
BL 245: By-law 245-2004 (Windsor)
BSL: Breed Specific Legislation
C-46: Criminal Code R.S.C., 1985, c. C-46 (Canada)
CAS: Critical Animal Studies
CDC: Centre for Disease Control
CKC: Canadian Kennel Club
DDA: Dangerous Dog Act 1991 (United Kingdom)
DDL: Dangerous Dog Legislation
DOLA: Dog Owners’ Liability Act R.S.O. 1990, CHAPTER D.16 (Ontario)
EFRL: Elementary Forms of Religious Life
HAS: Human Animal Studies
PACT: Preventing Animal Cruelty and Torture Act
PBC: Ontario Regulation 157/05 Pit Bull Controls
RKC: Royal Kennel Club (UK Kennel Club)
RSPCA: Royal Society for the Prevention of Cruelty to Animals
SPCA: Society for the Prevention of Cruelty to Animals
USDA: United States Department of Agriculture
Chapter 1: Durkheimian Sociology and Literature Review

“[…] all living beings are equally living beings, from the humblest plastid to man [sic]”

(Durkheim 1995 [1912]: 2).

Introduction

I have known about the provincial law regulating and banning pit bull-type dogs since it was first introduced in 2005, and I was made aware of the Windsor by-law that restricts pit bull ownership through living in the city and having an interest in animal law and animal rights discussions. It became of sociological interest for my thesis when I considered the discrepancy between the continuation of the law despite significant public opinion against it (see. CBC News Oct. 23, 2021; Ramlakhan Oct 28, 2018; CBC News Sept. 22, 2017).

This thesis critically and productively deploys Durkheim’s sociology of anomie to examine breed-specific laws and how despite ongoing arguments about their ineffectiveness, they are used in Ontario purportedly to reduce the rate and severity of dog attacks against people and other domestic animals. When societies are anomic individuals become unsure of what to do, how to act, and who to be, becoming “[…] lost in this vertiginous, complex, incredibly dynamic world, leading to anomic subjectivity” (Datta & Hanemaayer 2021: 574). I argue that the legislation and the by-law are anomic because there is an anomic derangement of the morals surrounding the written law, the scientific evidence, and public opinion (Mestrovic 1988). This dérèglement or “derangement” is a result of the complex and unclear moral statements regarding breed-specific legislation.

In early twentieth century America, pit bull-type dogs were perceived differently than they are now. The American bulldog was an icon for the United States Army during World War I, often featured in wartime posters (Twining, Arluke, and Patronek 2000). However, within the
last forty years, the perception of them shifted from an American Icon to an American danger. The media associated pit bull-type dogs typically to men who were described as “white thugs” and “poor urban” black and Latino people (ibid.: 2). There was a spotlight on pit bull attacks in the 1980s and the prevalent myth that pit bulls have “lockjaw” making them unable to let go once they bite; both contributed to their reputation as a dangerous animal (ibid.; Toledo v. Tellings 2006). The result is the stigmatization of the dogs and their human companions. This variance indicates a change in the social framework of perception and value judgement regarding pit bull-type dogs.

In Durkheimian sociology in general, and cultural sociology in particular, acts of classifying and organisation play an important role in how we study the social world (Needham 1963). As well, classifying and organizing can help our understanding and conceptualization of human-animal relationships. Observation is a key component to both processes (Durkheim and Mauss 1963). Douglas (1966), following in Durkheim’s footsteps, states that we are perceivers, and we perceive stimuli which interests us and then through this act of perceiving we “construct a stable world in which objects have recognisable shapes, are located in depth, and have permanence” (45). When the things we perceive do not fit our categories, we ignore or distort them so that “they do not disturb [our] established assumptions” (Douglas 1966: 46). Durkheim approached classification and organisation of social life in a similar way to how life sciences and biology classify and organise the natural world (Marcel & Guillo 2010). Classification systems like those of genus and species are not “discovered in nature but rather… obtained from social life in the experience of social hierarchies” (Datta and Hanemaayer 2021: 573). Datta and Hanemaayer (2021) explain that, “since classificatory systems are obligatory for a group, and obligation is the basic force in social life, the constitutive stuff of social life is
classification/language” (573). In the act of classifying, there is a mutually constitutive relationship between the “classification of things” and the “classification of men” (Durkheim & Mauss 1963: 11). The classification of animals is politically charged and plays a role in the animal’s identity and our relationship to them (DeMello 2012: 10). DeMello (2012) quotes sociologist Keith Tester who wrote “a fish is only a fish if you classify it as one” (10). The act of classifying dogs by breed, or by “job,” is an essential aspect of our understanding of them and our domestication of them.

Breed-specific legislation does not achieve the desired, stated goal namely, reducing dog attack. As Will Kymlicka points out, animal law is not established to protect animals; it is established to provide rules and conditions on how humans can use animals (Hirtenfelder 2020). Legislation regarding animals, and breed-specific legislation more specifically, has anomic characteristics since there are many conflicting moral references and forms of capricious regulation within the legislation that are used to determine how humans should interact and form relationships with animals. As is also true with anomic societies, anomic legislation, I will aim to show, is irrational in its “structure and organisation” (Datta and Hanemaayer 2021: 574). It is my position that rigorously applying a Durkheimian concept of anomie to analyse the problematization of human-animal relationships can help us to analyse and critically engage with animal law and how it helps or hinders protecting animals from violence and abuse. The research here analyses two pieces of legislation. The first is the Ontario Dog Owner’s Liability Act (R.S.O. 1990 Chapter D. 16)\(^1\), with a focus on sections 6 - 11 relating to the 2005 amendment regarding the provincial-wide ban of pit bulls. The second is a municipal by-law from Windsor,

\(^1\) Referred to throughout this thesis as DOLA.
Ontario, passed in 2004 *For the Registration and Licensing of Dogs and for the Control of Dogs within the City of Windsor*\(^2\), which includes regulations relating to dangerous and restricted dogs.

**Background and Significance: Purpose and Research Questions**

The purpose of this study is to provide a sociological analysis of the social framework surrounding breed-specific legislation in Windsor, Ontario to demonstrates how such legislation is anomic, contradicting social morals while failing to accomplish what they aim to. I explore how the way in which we perceive and categorize companion dogs influences our relationships with them.

The research questions I intend to answer in this thesis are as follows:

1. How can a rigorously developed Durkheimian conception of anomie be applied to breed-specific legislation in Windsor, Ontario in order to better understand the socio-legal and cultural conditions that delimit and evaluate human-animal relationships?

2. How does breed-specific legislation in Windsor, Ontario frame and rely on risk management as a strategy for the problematization and prevention of dog attacks and “irresponsible” dog ownership?

3. What are the implications of such a conceptualization of risk as a hegemonic form of collective representation?

**Significance**

Recent discussions in the Ontario provincial government on reconsidering the ban on specific breeds of dogs, specifically pit bull-type dogs, mirror existing ongoing debates, particularly in spaces that focus on human-animal relationships. Despite these ongoing debates, there is limited

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\(^2\) Referred to throughout the thesis as BL-245.
research on breed-specific legislation from Canada. Most of the sources used here rely on data from predominantly the United States and some from the United Kingdom. I will also be supporting and adding to the existing literature that argues there are significant racial and socioeconomic factors that influence the establishment of these types of legislation. This thesis contends that the constructions of risk and rationality in these pieces of legislation are a microcosm for how risk and rationality are constructed in human relationships with animals within a broader, complex normative milieu. My study adds to an understanding of human-animal relationships that are grounded in a relati onality that pushes back against anomic laws that harm people and animals and provides the groundwork for further exploration of other laws that govern human-animal relationships.

Why Durkheim?

There are a few terms used within sociology that are distinctly sociological, and “anomie” is one of these terms (Abrutyn 2019). Anomie exists in many facets of social life including economies, governments, and families. Since breed-specific legislation combines human and animal, it may also be a domain articulated in anomic ways. This intersection of human and animal life is reason as to why anomie can apply to better understand human-animal relationships. A full exploration of the theory of anomie will follow in the next chapter; but, this section will explain the reason for choosing Durkheimian theory, despite some skepticism about the applicability of Durkheim’s concepts to the study of human-animal relationships.

Durkheim’s work has influenced numerous sociological theorists and continues to inform contemporary Durkheimians’ substantive and methodological work. Nakhaie, Dadgar, and Datta (2020) use Durkheim’s sociology of the individual, subjectivity, family, and suicide to study
suicidality among Iranian youth in their piece “Tehran’s Troubled Youth”. Datta and Hanemaayer (2021) argue that in anomic epochs “nominalism could well be constructed as the reigning and pathological common-sense” (580). Horgan (2014) applies Durkheim’s concepts of sacred and profane to understand the social dynamics and conflicts over land usage in a rural east coast Canadian town. Mestrovic and Lorenzo (2008), who conceptualize anomie as “derangement”, apply it to study the abuse and torture that occurred at the Abu Ghraib prison in Iraq. Abrutyn (2019) applies anomie to study social psychology by examining social relationships, disintegration, shame, and pro-social behaviour. Mukherjee (2010) argues that anomie “can be posed as one of the most powerful frames for violence, be it in the form of suicide or crime” (10). The analysis of breed-specific legislation involves an analysis of violence. The legislation defines acts as crimes, which can involve direct violence of dog attacks, and the punishments involve violence in the form of culling and population control of certain breeds of dogs through forced sterilization and euthanasia. The works by these sociologists show that Durkheimian theory, especially his various conceptions of anomie and the sociology of morals, can apply to subjects outside of his original application (suicide, family dynamics, religion, the comparison of primitive and modern societies).

For critics of Durkheim, his theories are anthropocentric, and his usage of the term “social fact” as an object of study within the field of sociology creates a divide between the social world and the natural world (Ross 2017). This critique is not unfounded, as much of sociological theory, especially classical social theory, is anthropocentric, along with other problematic positions, which will be discussed below. However, Durkheim explicitly denounces anthropocentrism in The Rules of Sociological Method as it “blocks the path to science” (Durkheim 1982[1895]: 46). I argue that the term “social facts” can be used in the study of
human-animal relationships when we recognize that first non-human animals are social beings and second that the connection between humans and animals cannot be completely severed, especially for domesticated animals. Domesticated animals exist within the social world. Therefore, the relationships between humans and animals can be conceptualized as “social facts” and can be considered an object of study when using Durkheimian theory.

Despite not being central object of study, Durkheim includes animals in discussions throughout his work. One involves animals of primitive religions in The Elementary Forms of Religious Life (EFRL) and the other includes the relationship between women and animals in Suicide. EFRL includes discussions of animals within totemic religions, in which communities or societies use an element of the natural world, an animal or plant, to represent both god and the clan (Durkheim in Thompson 1985). Thus, in totemic religions, animals function as a path between the sacred (god and the clan) and the profane (the members of the clan), making animals an integral part of the community. Evidence of the human-animal connection is shown when Durkheim discusses the “Kangaroo Intichiuma [positive rite] at Undiara (Arunta)³,” where he differentiates between “animal-kangaroo” and “man-kangaroo” (Durkheim 1995 [1912]: 335)⁴ in which both nonetheless share a powerful, constitutive totemic/social principle. Another ritual, performed by the Emu group, seeks to “prevent the species [of emu] from dying out” (ibid.). These rituals are examples of early societies’ conservation efforts and reflect the close relationship humans have had with non-human animals. These rituals represent a cyclical relationship where humans perform rites to ensure the continued life of their totemic animal (or

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³ The Intichiuma is the rite, and the Kangaroo is reference to the kangaroo clan (Durkheim 1995 [1912]: 335).
⁴ The “animal-kangaroo” is the real animal or the clan symbol whereas the “man-kangaroo” is the person of the kangaroo clan.
plant) and this continuation of the species ensures the survival of the clan (Datta 2018). One cannot endure without the other.

In Suicide, Durkheim (2005 [1897]) includes discussions of animals’ “immunity” to suicide, often comparing them to children, amongst whom suicide rates are frequently low (169-170, 173). One of the distinctions Durkheim (2005 [1897]) makes between suicidal tendencies in humans and the lack-thereof in animals is that animals do not have insatiable appetites of desire, they only require their material conditions to be met for survival. Whereas with people, “[u]nlimited desires are insatiable by definition and insatiability is rightly considered a sign of morbidity” (ibid.:208). The other discussion of animals in Suicide is the connection between women and animals. Regarding women’s ability to “endure life in isolation more easily than man” Durkheim (2005 [1897]) states:

As she lives outside of community existence more than man, she is less penetrated by it; society is less necessary to her because she is less impregnated with sociability. She has few needs in this direction and satisfies them easily. With a few devotional practices and some animals to care for, the old unmarried woman’s life is full (174).

This gendered conception of the relationship between people (particularly women) and animals or nature is an example of a common critique of Durkheim, which is discussed further later in this section. This particular quote equates women as more akin to animals and the natural world, in their “immunity” to suicide, rather than to men and the social world. It also supports the misogynistic perception of women as being primarily caregivers. Despite this, Durkheim addresses the relationship between animal companionship and suicidality, which has been a research topic within critical animal studies (CAS) and psychology in recent years (Love 2021;
Douglas, Kwan, & Gordon 2021; shiob⁵, Hussaini, Chandradasa, Saeed, Khan, Swed, & Lengvenyte 2022; Young, Bowen-Salter, O’Dwyer, Stevens, Nottle, & Baker 2020). Love (2021), Young et al (2020) and shoib et al (2022) found that animal companionship can be an effective method in reducing suicidality and improving mental health. Douglas et al (2021) found that the effectiveness of animal companionship in reducing suicidality and improving mental health was conditional on certain behavioural attachment types. From an interview with a woman who experienced domestic violence, Fitzgerald (2007) found that her pet and “the sense of responsibility for [the pet’s] well-being kept her from attempting to commit suicide” (370).

Although Durkheim’s work on animals often includes the reinforcement of the separation between the social and the natural, it is part of his sociology, a potential to be developed by contemporary social theorists and social scientists for investigating human-animal relationships.

The contours of Durkheim’s sociology drew substantially on work by his supervisor and colleague Alfred Espinas, whose dissertation Des Sociétés Animales (1878)—the first sociology dissertation in France—traced “the development of social phenomena from the most fundamental forms of associations in living matter” (Brower 2016: 338). Espinas’ work was influenced by biology and organicism, and Durkheim frequently used biological and organicist metaphors and analogies in his writings. Brower (2016) explains that Espinas used terms such as “representation” and “collective consciousness”; the former were phenomena such as “tactile stimulation, color, odor, noises, play, and display” that sustained unity between animals of the same species and the latter was linked to morality and connected the animal society to the individual animal (341, 343-344). In the conclusion of his dissertation, Espinas (1878) recognizes that animal societies are moral, albeit a lesser form of morality that does not have the

⁵ Last name without capitalization in original.
same characteristics as that of human morality (see 438-439). Although the application of these terms was more biological in the work of Espinas, they become more sociological in Durkheim’s. Therefore, there exists this intellectual connection between Durkheim’s work and the work of his supervisor and colleague Espinas, who wrote a dissertation that discussed animal societies and the inclusion of animals in human societies. This makes it possible to rethink Durkheim’s theory and terminology in terms of human and animal social relationships.

As this thesis addresses crime, it also addresses violence. This violence is in the form of dog attacks, the action these pieces of legislation aim to control. Violence is also present in the punishments imposed on the banned and restricted dogs. Despite not constructing a theory of violence himself, Durkheimian theory is apt for this discussion of violence because, as pointed out by Mestrovic and Caldwell (2010), “every one of his books deals with violence in some form” (142; Mukherjee 2010). This includes atrocities committed during moments of collective effervescence discussed in The Rules of Sociological Method, suicide in Suicide, scapegoats and sacrifice in The Elementary Forms of Religious Life, repressive punishment in The Division of Labour in Society, corporal punishment and colonial abuse in Moral Education, and white-collar crime in Professional Ethics and Civic Morals (ibid.: 142-143; Pearce 2001: 72-73). Thus, it is not out of the scope of Durkheimian theory for it to be applied to this discussion of violence in the form of dog attacks and the punishment of animals.

It is essential to note that classical sociology often perpetuated existing patriarchal discourses even while advancing egalitarian and humanistic ideals; Durkheim was no different. Marshall (2002) argues that classical social theory “drew on and contributed to the construction

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6Espinas’ discussion of animal morality includes a discussion of the nature of social reality (i.e., ontology) and whether there is a nature/social divide, a distinction present within Durkheim’s work. A more elaborate discussion of Espinas follows below.
of a scientifically grounded sexual dimorphism” (136). Regarding Durkheim’s work, Marshall (2002) explains how in *The Division of Labor* “some men become differentiated from other men… while women are only differentiated en masse from men” (140). There is also a sort of trope that is frequently reflected in Durkheim’s work where women are closer to the natural world, whereas men are part of (and the makers of) the social world (Marshall 2002). This not only has implications for women, removing them from the centre of the social sphere, but as with most misogynistic opinions, it has implications for men as well. For human-animal studies, if men are conceptualized as being less-governed nature, then how can they learn to connect with it (Marshall 2002)? How can they enact laws that recognize animal sentience and the human-animal bond?

Pearce (2001) explains that sociologists can use “flawed” work when it is retheorized in way that is critical of it whilst not discrediting it (2). This approach to reading and using classical social theory is reminiscent of Durkheim’s (1982 [1895]) own methodology for social science inquiry, whereby although an individual enters the research space with preconceived notions which influence their selection of research topic, these notions do not skew or manipulate their analysis and findings (72). Therefore, it is crucial to consider these prejudices and exclusions when using classical social theory, but these prejudices do not eliminate its usefulness in modern sociology. Datta (2018) applies a “symptomatic reading” when engaging Durkheim’s work (90). It recognizes “that knowledge production is a language dependent enterprise (but not entirely so),” and that social scientists “develop research programmes in light of existing social scientific discourses” (ibid.). This type of reading allows for more “critical capacity” and opens it applicability of the theories address previously unexplored topics (ibid.).
Situating Windsor

Despite Windsor having a population of 229,660 (2021) and being a metropole for a region of 422,630 (2021), the city has a semblance of a smaller town (Statistics Canada 2021; County of Essex 2022). It is the most southern city in Canada and shares its northern border with Detroit, Michigan. The two cities are connected by the Detroit-Windsor tunnel, the “world’s only international underwater tunnel for vehicular traffic” and the Ambassador Bridge, which is the busiest international land border in North America (Jones 2011: 45; U.S. Department of Transportation n.d.).

The city’s proximity to Detroit has had a significant influence on the socioeconomics and culture of the city. Windsor and Detroit share the same airwaves allowing for television and radio media to “cross the border”. Most televisions in Windsor have access to Detroit news, an example of which is that most Windsorites use Fahrenheit in the summer and Celsius in the winter. For the past century, the city of Detroit has historically been associated with the automotive industry and the influence of the industry travelled across the Detroit River to Windsor (Boyd 2017; Perry 1967). The automobile industry had a significant impact on Windsor with all three major North American car manufacturers, Chrysler, Ford, and General Motors, establishing factories in the region (Price & Kulisek 1992). The influence of Ford Motor Company resulted in the establishment of Ford City in the early 1910’s, a town that was east of Windsor proper (Price & Kulisek 1992). The town is now a neighbourhood of Windsor, but the name Ford City is still used in reference to the area. This automotive heavy industry has resulted in a “blue-collar” and unionized workforce that, although the automotive industry has declined somewhat, continues to be a strong influence on the culture of the region, especially in its working-class values, traditions, and politics.
Detroit’s manufacturing industry was shaped by its African American population, many of whom fled bondage in the South in the nineteenth century (Watson in Boyd 2017). As Boyd (2017) highlights, “almost from the city’s inception, African Americans were vitally involved in its growth and development” not just in the manufacturing industry, but in the creation of the city as it is known today (6). Political organization such as communists, socialists and black nationalists came together at Wayne State University in the 1960s to 1970s and these organizations are the foundation of the institutions that have made Detroit a unique American city (Boyd 2017: 8). The impact of these ideologies influences the current conscience collective and social currents of Detroit residents, which has been and continues to be an example of African American resilience, success, and triumph. As with Detroit, the African Canadian population in Windsor, many of whom came to Canada via crossing the Detroit River to escape slavery, had and still have a substantial impact on its development, (Boyd 2017; Perry 1967). Windsor neighbourhoods that have historically been developed by Black Canadians include Sandwich and the area of the downtown core east of Ouellette, particularly McDougall St., Mercer St., Glengarry Ave., Wyandotte St, Tuscarora Ave. (Perry 1967). These areas of Windsor had established Black communities and were home to family-owned businesses, churches, farms, and crucial community members (ibid.). Perry (1967) argues that Black Canadians “helped to build Windsor, physically, mentally, spiritually, and culturally” (7).

This discussion of African American and Black communities in Detroit and Windsor is important because it is an aspect of the shared and individual conscience collective of the two

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7 Conscience collective defined as “the shared mental and moral orientations of societies” (Coser in Durkheim 1984 [1893]: xvii).
8 Watkins St. in Sandwich is named after a Black family who built multiple houses on Watkins St.and Peter St. Allen Watkins, the patriarch of the family was an escaped slave from the U.S. and, along with other community members, helped build the Sandwich Baptist Church (Perry 1967 36).
9 The sub-100 addresses for McDougall Street mentioned by Perry have been replaced by the Caesars Windsor casino.
cities. Also, as I discuss in the following section, breed-specific legislation is linked to racist and anti-Black laws and housing policies. Thus, Windsor’s relationship to Detroit and historically Black communities may be an influential factor for why the city of Windsor established BSL municipally.

It is important to note that both the City of Detroit and Wayne County, the county for Detroit, do not have breed-specific legislation (BSL Census). Windsor’s proximity to Detroit is a significant influence, both historically and in modernity, on the city and makes it a unique Canadian community. This proximity also provides the foundation for an overlapping conscience collective.

**Literature Review**

This literature review focuses on the research conducted within critical animal studies, psychology and philosophy regarding human-animal relationships, the sociology of animals, animal cruelty, and animal sentience or morality. The literature was acquired through the University of Windsor’s online catalogue and Google Scholar. The search terms that were used for both databases included but were not limited to: “dangerous dog legislation,” “breed-specific legislation,” “pit bull,” “animal abuse,” “animal morality,” “animal rationality,” and “animal law.” This section will discuss the various themes found within the literature and the issues and debates that exist and are ongoing relating to animals within the previously mentioned fields.

**Breed Classification**

Classification is a universal human behaviour and is a cognitive action that is inherent to organization (Douglas 1966: xvii). Classification is also a social process and develops from a

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10 Although beyond the immediate concerns of this thesis, there is scope for extending this research along the lines of “Green Criminology” to analyse law enforcement.
combination of knowledge/intellect and sentiment/emotion (Durkheim & Mauss 1963: 85-87).

However, despite our efforts to categorize and therefore organize most of what we perceive, not everything in life “conforms to our most simple categories” (Douglas 1966: 48). The social activity of breed classification is intrinsically linked to the discussion of breed-specific legislation. The first list of dog breeds printed in English was by Dame Juliana Berners in 1486 who identified fourteen different breeds of dogs11 (Sampson & Binns 2006: 19-20). In 1576 an English translation of Dr. Caius’ *De Canibus Britanicicus* was published, which provided a formal classification of dog breeds; this list was expanded upon by the great taxonomist Carl Linnaeus in the 1700s (Sampson & Binns 2006). After 30 years of dog shows in Britain, the Kennel Club was established by Mr. S.E. Shirley in 1873 (ibid.). National kennel clubs from around the world function as governing and regulative bodies for dog breeding (Wang, Laloë, Missant, Malm, Lewis, Verrier, Strandberg, Bonnett, & Leroy 2018). Kennel clubs “are in charge of the maintenance of breed standards, govern the rules behind the organization of conformation dog shows and working trials, and record genealogical information for pedigree dogs” (ibid, 130). The Kennel Club, UK (RKC) currently classifies their 221 “pedigree dog breeds” into seven breed groups: 1. Gundog 2. Hound 3. Pastoral 4. Terrier 5. Toy 6. Utility and 7. Working (Kennel Club 2022a). The Canadian Kennel Club (CKC) recognizes 187 breeds which they also classify in seven breed groups: 1. Herding 2. Hounds 3. Non-Sporting 4. Sporting 5. Terriers 6. Toy and 7. Working (Canadian Kennel Club 2022a).

The RKC has one pit bull-type dog, which is a “Staffordshire Bull Terrier” and is registered in the Terrier group (Kennel Club 2022b). Pit bull-type dogs registered in the CKC

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include “American Staffordshire Terrier,” and “Staffordshire Bull Terrier,” both of which are part of the Terrier group (Canadian Kennel Club 2022b; Canadian Kennel Club 2022c). There are three pit bull-type dogs registered in the AKC, “American Staffordshire Terrier” and “Staffordshire Terrier” are classified within the Terrier group, and the “American Bulldog” is classified in the Foundation Stock Service group (American Kennel Club 2022a; American Kennel Club 2022b; American Kennel Club 2022c).

Various kennel clubs establish “breed standards.” The AKC defines breed standards as “a written description of the ideal specimen of a breed. Standards describe perfect type, structure, gait, and temperament of the breed – the characteristics that allow the breed to perform the function for which it was bred” (Boccone 2021). This article on breed standards also states that dogs are compared to the written standard rather than each other, for the closer the dog is to the breed standard, “the better that dog’s ability will be to produce healthy, purpose-bred puppies that meet the standard” (Boccone 2021). They go on to explain that mixed breed dogs are ineligible to compete in dog shows, as they do not conform to breed standards. Aligning with Douglas’ (1966) work, dogs that do not conform to the breed standard, whether that be because they are purebred but lack the desired characteristics or because they are a mixed breed, may be considered “unclean” as they “are imperfect members of their class” (69).

The objective of classifying canis familiaris or domestic dogs, aims to improve people’s understanding of their behaviour, with the assumption that if members of a common breed category exhibit similar behaviours, these behaviours might be considered “breed-typical” behaviour (Clarke, Mills & Cooper 2019: 103). The popularity of at-home dog DNA kits is an indicator of the importance people place on classifying and understanding their dog12.

12 See https://embarkvet.com/
Breed-Specific Legislation

One of the issues that arises not only in the creation and implementation of breed-specific legislation but in the general social perception of the dogs, is the clustering of multiple types of dog breeds under the umbrella of “pit bull” (AVMA 2014). Therefore, going forward in this thesis, the use of “pit bull” does not reference a specific breed of dog but the colloquial term that includes a few breeds of dogs. It is also important to distinguish between “dangerous dog” legislation and “breed-specific” legislation. The former references any laws that “track and regulate” dogs regardless of the breed who have behaved in a way where they would be considered dangerous (ASPCA n.d.). The latter refers to laws that regulate or ban specific breeds of dogs, typically pit bull-type dogs but it can also include Rottweilers, German Shepherds, Dobermans, Mastiffs, and Dogo Argentino (ASPCA n.d.; Ledger, Orihel, Clarke, Murphy, & Sedlebauer 2005). The two types of legislation are often confounded but they differ. For example, there are states in the USA that prohibit breed-specific legislation (BSL) but do have dangerous dog laws (ASPCA n.d.).

History of Dangerous Dog Legislation and Breed Specific Legislation

One of the legal factors that have provided a precedent for breed-specific legislation is that legally, dogs are considered “property”. This changes the way that laws apply to them and the extent to which rights can be applied to the ownership of dogs. In the United States, there are two cases which established the precedent that dogs are property and are subject to police state power in the protection of citizens’ health and safety (Lowrey 2018). In 1897, the U.S. Supreme Court ruled that “dogs are owned by citizens of this state are hereby declared to be personal property of such citizens” and
no dog shall be entitled to the protection of the law unless placed upon the assessment rolls and that a civil action for killing a dog, the owner cannot recover beyond the value fixed by himself in the last assessment preceding the killing, is within the police power of the state (Sentell, 166 U.S. at 706).

In the second case, which occurred in 1920, the U.S. Supreme Court ruled that “[i]t is within police power of a state to require payment of licence fee by the owner of dogs in cities under penalty of fine” (Nicchia v. New York, 254 U.S. 228, 230). These legal precedents established a foundation for the policing of dogs and upon this foundation, breed-specific legislation was built.

The United Kingdom enacted breed specific legislation in 1991 under the Dangerous Dog Act (DDA) of 1991. This Act addresses dangerous dogs no matter the breed but also contains a section which prohibits certain dog breeds. Section 1 states:

Dogs bred for fighting
(1) This section applies to-
   a. Any dog of the type known as the pit bull terrier;
   b. Any dog of the type known as the Japanese tosa; and
   c. Any dog of any type designated for the purposes of this section by an order of the Secretary of State being a type appearing to him to be bred for fighting or to have the characteristics of a type of bred for that purpose.

In the DDA, the breeds are explicitly associated with dog fighting and like the DOLA and BL-245 there includes a subsection allowing for the interpretation of whether a dog is a banned breed based on the dog’s physical appearance by an authority.

   Section 1(2) states, among other rules, that no person can breed or breed from a dog listed above, and Section 1(3) states that “no person shall have any dog to which this section applied in his possession or custody” (Dangerous Dog Act c. 65 1991). However, the DDA outlines conditions whereby the Court may allow the continued guardianship of a prohibited dog, as stated in Section 1(5):
The Secretary of State may by order provide that the prohibition in subsection (3) above shall not apply in such cases and subject to compliance with such conditions as are specific to the order and any such provision may take the form of a scheme of exemption containing such arrangements (including provision for the payment of charges or fees) as he thinks appropriate.

Like the DOLA and the BL-245, section 4 of the DDA regulates the “destruction” of dogs defined as banned breeds. Section 4 states:

4 (1) Where a person is convicted of an offence under section 1 or 3(1) … above or of an offence under an order made under section 2 above the court—
(a) may order the destruction of any dog in respect of which the offence was committed and, subject to subsection 91A0 below, shall do so in the case of an offence under section 1 or an aggravated offence under section 3(1) … above; and
(b) may order the offender to be disqualified, for such period as the court thinks fit, for having custody of a dog.

(1A) Nothing in subsection (1)(a) above shall require the court to order the destruction of a dog if the court is satisfied—
(a) That the dog would not constitute a danger to public safety; and
(b) Where the dog was born before 30th November 1991 and is subject to the prohibition in section 1(3) above, that there is a good reason why the dog has not been exempted from that prohibition. (ibid.).

For the DDA, banned breed dogs are exempt from euthanasia if they are considered to not be a danger and are exempted from the prohibition. Despite these clauses that spare certain banned breed dogs, the DDA includes euthanasia as a means of controlling the pit bull population in the UK as it does in Windsor, Ontario.

There are many cities throughout Canada and the United States that have dangerous dog legislation or by-laws, however, there are certain cities or provinces, that include the additional measure of establishing breed-specific legislation (Hawes, Ikizler, Loughney, Temple Barnes, Marceau, Tedeshi, and Morris 2020). The first pit bull ban in the United States was established in 1989 by New York City’s mayor Ed Koch (Boisseron 2018). According to Hawes et al.
(2020), there are estimates that over 900 U.S. cities have placed some form of restrictive legislation on specific breeds of dogs, typically pit bulls. In Canada, in 2005 Ontario has a section of the Dog Owner’s Liability Act that includes a ban of pit bulls, along with Winnipeg, Kitchener/Waterloo and Windsor banning pit bull-type dog breeds in 1990, 1997, and 2004 respectively (Ledger, Orihel, Clarke, Murphy, and Sedlbauer 2005). Montreal had a breed-specific ban and it was subsequently overturned (Hawkins n.d.).

Researchers argue that pit bull bans, specifically in cities in the United States, are connected to increasing “tough-on-crime” policies, that were established around the same time, which have disproportionately impacted people of colour and specifically African Americans (Boisseron 2018). For example, since the 1990s public housing authorities in various cities have banned tenets from owning pit bulls; these policies were occurring while President Clinton established the “One Strike, You’re Out” policy, whereby ex-felons could be evicted from public housing (Boisseron 2018). Linder (2018) has proposed that breed-specific legislation could be considered another form of “redlining”, as a means of keeping “minorities out of major-white neighborhoods” (52). Additionally, the connection between BSL and public housing could imply that BSL is classist as well as racist. Therefore, we must consider the important role that race and class play in the establishment of breed-specific and dangerous dog legislation. It does not exist in a vacuum and historically, it has been enacted to criminalize specific populations.

The Contested Legitimacy of Breed Specific Legislation

Multiple studies have found that breed-specific legislation is not an effective method for reducing the frequency of dog attacks (Nilson, Damsager, Lauritsen, Bonander 2018; see Creedon & Ó Súilleabháin 2017). Ledger et al. (2005) discuss a study out of the United Kingdom

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13 Further analyses on how the white working-class use particular breeds of dogs to appropriate African American culture is warranted and would be welcome.
which tested the frequency of pit bull attacks prior to the implementation of the breed-ban and the frequency of attacks two years after the ban. The researchers reported that there was no significant change in percentage of bites attributed to pit bull-type dogs, 3% of 99 cases prior to the ban and 5% of 99 cases after the ban. Similarly, a Danish study investigated the impact of breed-specific legislation on dog bites by conducting a “time series intervention method” on data obtained from Odense University Hospital (Nilson et al. 2018: 2). From their study they argue that the results,

seem to confirm the conclusions from previous studies that show that breed-specific legislation is ineffective in reducing the number of patients with dog bites presented to medical services...It would seem, therefore, that banning certain breeds has a highly limited effect on the overall levels of dog bite injuries, and that enforcement of the usage of muzzle and leash in public places for these breeds has a limited effect (Nilson et al. 2018: 4).

There are certain organizations or researchers in support of breed-specific legislation whose publications have been criticized “for [their] purported ability to tell dog breeds apart based on medical records and injuries, failure to consult animal care experts, and reliance on Dogsbite.org data” (Lowrey 2018: 408). However, national organizations such as the Centre for Disease Control (CDC), American Veterinary Medical Association (AVMA), American Society for the Prevention of Cruelty to Animals (ASPCA), Humane Society of the United States, American Humane Association, Canadian Veterinary Medical Association, and Humane Canada all oppose breed-specific bans (Herzog 2010; Canadian Veterinary Medical Association 2022; Humane Canada n.d.). The CDC and the AVMA have conducted research which has found that pit bull-type dogs have been frequently identified in fatal dog attack cases, however, the studies conducted by the CDC and the AVMA “went on to explore additional contextual factors (such as responsibility of the owner, spay/neuter status, socioeconomic conditions, and history of abuse)
in concluding that breed of dog is not a reliable indicator for propensity to bite” (Lowrey 2018: 408-409). These institutions in particular have the association of being an “expert” and this categorization, which the public imposes on them, and they also claim, has the institutional power of affecting the conscience collective.

DeMello (2012) points out that dogs who were neglected or abused (being chained, bullied) were more likely to bite than dogs who were treated with kindness. The AVMA (2014) reports that they found, based on behaviour assessments and owners’ surveys, that small to medium-sized dogs were more likely to bite, however, understandably, these attacks can be less dangerous or fatal compared to attacks by larger dogs that have more weight and power. This emphasizes the importance of understanding the many sociological factors that influence animal behaviour in general and dog behaviour specifically in cases of attacks or bites, which involves the socialization process on how to treat dogs. There are other factors, other than breed, that may have an impact on dog attacks. Research from the Netherlands provides support for this multifaceted understanding of dog attacks; and they advocate for “mitigation strategies” that educate children, parents, and dog owners on appropriate human-animal interaction and animal behaviour and socialization (Cornelissen & Hopster 2010). Organizations and research studies advocate for alternative, and breed-neutral, ways of reducing dog attacks which include enhanced enforcement of dog licence laws; increased availability to low-cost spay and neuter services; dangerous dog laws that are breed-neutral; laws that prohibit chaining or tethering; and community-based approaches (ASPCA n.d.). All these approaches address how people ought to socialize with animals, rather than criminalizing a breed or breeds.
Animals and the Law

Animal Law

The following provides a narrow discussion which summarizes animal law as it pertains to breed-specific legislation. In much of Western philosophy, animals are represented as lacking the capacity to reason. This (lack of) understanding of animals resulted in their exclusion from the law for a significant period of time (Brett 2020). One of the sources of attributing rights to animals and the inclusion of animals in legislation was in the creation of the Society for the Prevention of Cruelty to Animals in Britain (SPCA) in 1824, which is now called the Royal Society for the Prevention of Cruelty to Animals (RSPCA) (Donaldson & Kymlicka 2011).

SPCAs have now branched across the world and in particular provinces in Canada SPCA, investigators have the authority to investigate potential animal cruelty cases that fall under the Criminal Code\(^1\) (SPCA International n.d.). However, in Ontario the responsibility for investigating potential animal cruelty and welfare cases shifted from humane societies to government appointed animal welfare inspectors, with the creation of the *Provincial Animal Welfare Services Act (PAWS)* in 2020 (Windsor Humane n.d.; Provincial Animal Welfare Services Act 2019).

In Canada, animal laws exist at all three levels of government, federal, provincial, and municipal. Federally, animal cruelty legislation was added to the Criminal Code of Canada (CCC) in 1892 and legislative power is given to provinces and municipalities to create laws and by-laws, respectively (Pask 2015). Additional federal laws include the *Canada Wildlife Act* (1985), *Health of Animals Act (1990)* and the *Meat Inspection Act (1985)* (Fraser, Koralesky, & Urton 2018; Justice Laws Website 2022). Almost every province and the territory of Yukon have

provincial/territory legislation protecting animals, Nunavut has *The Dog Act* and the Northwest Territories has the *Herd and Fencing Act* and *Dog Act* (Fraser, Koralesky, & Urton 2018; Humane Canada n.d.).

There are no federal laws in the United States that protect domestic or companion animals from animal cruelty, however, there are other federal laws that protect animals. The *Animal Welfare Act* (1966) governs animals under the U.S. Department of Agriculture (USDA) and enforces laws relating to animal use in research and entertainment (Croft 2022). There is also the *Humane Slaughter Act* (1978) which outlines requirements for the animal agricultural industry; the *Preventing Animal Cruelty and Torture Act* (*PACT*) (2019) which makes extreme forms of cruelty, specifically “crush” videos, illegal; the *Endangered Species Act* (1973) and the *Lacey Act* (1900) govern wild animals (Animal Legal Defence Fund n.d.). Additional landmark laws in the U.S. include the outlawing of dog fighting in New York in 1867 and in 1914, Oregon became one of the first states to allow for the assessment of a killed or harmed animal to be determined on more than just its market value in regards to tort recovery (Buhai 2020).

Kymlicka and Donaldson (2014) expand legal and rights theory for animals to include different “categories” of animals. They provide examples of rights that should be attributed to domestic animals, who would receive membership rights within their society; wild animals who would have sovereignty and; “liminal” animals which would include urban wildlife, who would receive “rights of residency” (203).

**Animals as Property**

Increasing attention has been brought to the status of animals as property under the law (Deckha 2012; Buhai 2020). Deckha (2012) provides a comparative analysis of law in the United States and Canada, to explain the “legal subject areas where courts and legislatures have entertained a
disruption to the traditional property categorization” (321). She analyses three areas of civil law: tort, which determines damages; family law which determines custody; and estates, which determines how trusts are accorded (Deckha 2012).

There have been some tort law cases in Canada and the United States that have acknowledged that companion animals’ value is higher than their market value, which is the universal standard of determining compensation (ibid.). Instead, they have included “veterinary expenses, emotional distress, loss of companionship, or ‘special value’” into the financial assessment when a companion animal has been injured or is subject to a wrongful death claim (ibid.: 323). However, these circumstances are not common, and thus animals are typically still considered property in tort law (Deckha 2012). Deckha (2012) points out that this still prioritises the human over the animal; the injury or death harms the human and must be compensated rather than recognition from the court of the pain, distress or death of the animal.

Favre (2004) also discusses the inclusion of animals in American tort law, stating that enhancing tort law to include animals creates legal obligations that humans have to animals, thus making animal interests a priority over human interests. In family law, the property is typically distributed according to the person who purchased the property; however, this also fails to recognize that animals are considered more so as family members than pieces of furniture in the home (Deckha 2012). However, there have been instances in US family law where they have decided where the animal should live based on “best interest standard[s]” which allows them to “consider facts such as stability, safety, and the emotional bonds between companion animals and humans” as is done in child custody cases (ibid.: 334). Buhai (2020) states that courts that have included animals in divorce or custody discussions have recognized the important connections that human and non-human animals share. Some of these courts have considered
“whether support should be ordered and how to best meet the pet’s needs in custody and visitation” (ibid.: 173). Deckha (2012) found that these rulings are far less common in Canadian courts with most cases upholding the property status of animals and ruling that the animal lives with one of the parties based on “property claim[s]” (339). For estate law, there are 45 states in the US where pet trusts have been established, allowing individuals to “set up provisions of care for animals that survive them” (Deckha 2012: 349). In Canada, no statute of this sort exists. Thus, the beneficiaries or executors oversee finding “suitable homes for the animals,” which Deckha (2012) explains is essentially the transfer of property from one owner to another (ibid.).

There are debates about the categorization of animals as property within the literature. Favre (2004) argues that the abolition of defining animals as property is idealistic and problematic because it could result in the “elimination of domesticated animals” (91). Instead, he suggests that animals should remain property under the law but shifting perceptions of the relationship between humans and animals from ownership of animals to “guardianship” (ibid.). This would highlight the importance of responsibility and recognize animals’ needs and desires (ibid.). Whereas Fitzgerald, Barrett, Gray, and Cheung (2022) argue that we should legally conceptualize companion “occupying liminal space between property/objects on the one hand and subjects on the other” (2346). The City of Windsor is one of, if not the only, city in Canada to change the language from “owner” to “guardian”, which occurred a few months prior to BL-245 on May 10, 2004 (In Defense of Animals 2022).

Animal Sentience, Cognition, and Morality

The other pertinent literature concerns theoretical developments and research that has been conducted on human-animal relationships, including discussions of animal sentience, morality, and rights. DeMello’s (2012) template helpfully offers a discussion of animal capabilities,
including research on animal intelligence, emotionality, and cognition, followed by philosophical arguments surrounding animal rights and morality. This entails both the morals that guide human behaviour with non-human animals and morals that guide behaviour between non-human animals.

During the Enlightenment, Descartes’ conceptualized animals as machines lacking rational thought. This view had a significant influence on the way animals were treated (DeMello 2012). This influence, along with the taxonomic work of Carl Linnaeus, resulted in the theories from the nineteenth century about animals focusing on species-specific behaviour and that animal behaviour is biologically determined, innate reactions rather than guided by a more profound cognitive ability (ibid.). This results, argues DeMello (2012), in animals being understood as a “species” and not as individual beings. This prevalence of applying generalized statements to animals as a species (or breed) is exemplified in the breed specific regulations. In the last few decades, there has been increased research in cognitive ethology, that studies animal behaviour by exploring questions regarding animal “emotion, empathy” and “self-awareness” (Allen & Bekoff 2005: 127; DeMello 2012: 355). There is a risk of anthropomorphizing when researching and discussing the subjective experiences of animals. However, it has also been argued that it can be useful when used critically.

Bekoff (2000) suggests the use of “critical anthropomorphism,” which allows one to experience empathy and sympathy for other beings, and in turn, recognize their sentience (Bekoff 2000: 867). Referencing studies that have been performed to understand animal cognition and emotion better, Balcombe (2016) provides multiple examples of non-human animal capabilities, including intelligence, emotionality, awareness and metacognition.

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15 This was also done to humans in the nineteenth century where they categorized homosexuals as a species (Foucault 1978: 43).
communication, pleasure, and virtue. The evidence of these capabilities present in a range of animal species supports the idea that animals are sentient beings (ibid.). The relationship between humans and non-human animals should change accordingly (ibid.). Another perspective that discusses capabilities is the “capabilities approach” presented by Nussbaum (2006: 71). She argues that animals are entitled to ten recognized capabilities, which she also applies when discussing human justice as well (ibid.). These capabilities include life, bodily health, bodily integrity, sense/imagination/thought, emotions, practical reason, affiliation, “being able to live with concern for and in relation to” other species, control over one’s environment, and finally play (ibid.: 393-400).

Play is also one of the most discussed animal behaviours that researchers suggest display examples of morals (Allen & Bekoff 2005; Balcombe 2016; Bekoff 2000). Allen and Bekoff (2005) state that play in animals establishes morals such as fairness. Using cognitive ethology, which considers empathy and emotions of animals observed in natural settings, they argue that the signals that animals use during play are “codes of social conduct that regulate actions that are and are not permissible, and the existence of these codes likely speaks to the evolution of morality” (ibid.: 130). Durkheimian sociologist Roger Caillois describes animal behaviours that reflect three of his four categories of play (Caillois 1958). These four categories are:

1. *Agön/Competition:* Certain animal species, such as felines, canines, bovines, equines, and ursids exhibit behaviours that involve some type of physicality such as duelling, knocking each other down, pushing, without causing harm.

2. *Mimicry:* Animals have been found to mimic yawning, limping, and smiling; young animals will also follow objects moving away from them. Certain birds will perform coordinated dances.
3. *Ilinx*/Vertigo: Dogs will chase their tails and “spin around until they fall down.” Other examples of animals exhibiting *ilinx* play is when gibbons who hold down branches and propel themselves into the air and birds who dive from a height and open their wings in the last moments of the fall. (Caillois 1958:24-25).

The category of play that Caillois describes as “peculiarly human” is “*Alea*” or chance (Caillois 1958: 18). These four categories reflect the “basic attitudes to the world” and Callois also identifies a secondary categorization of play which involves spontaneous play (*paidia*) and rule bound play (*ludus*) (Pearce 2001: 228). This work, amongst others of Caillois’, aligns with Durkheim’s belief that all forms of human [and sometime animal] phenomena that keep recurring within societies of a particular species – whether the phenemen seem superficially conformist or deviant – are socially produced and either themselves functional for society as a whole or a necessary concomitant of something that is functional (Pearce 2001:223).

Thus, rather than play being a strictly human action, there are aspects of play that are prevalent in non-human animal societies. This makes play a social action that can be performed between human and non-human animals as a socialization process based on love and fun.

Discussions on morality and ethics regarding animals appear to fall under two general categories. The first involves debates on how humans ought to coexist with animals and the rights that humans should prescribe to animals; the second is discussions of if and to what degree animals have the capacity for moral behaviour and whether they should be included within a moral realm. There have been debates regarding the moral status of animals and the right ways for humans to act in relation to animals for centuries; in ancient Greece Pythagoras and Plutarch critiqued the use of animals for food, the former abstained from meat and the latter wrote an
essay titled “Of Eating Flesh” (DeMello 2012: 378-388). The Bible addresses morality regarding animals in Exodus 21:28-32:

28 If a bull gores a man or woman to death, the bull is to be stoned to death, and its meat must not be eaten. But the owner of the bull will not be held responsible. 29 If, however, the bull has had the habit of goring and the owner has been warned but has not kept it penned up and it kills a man or woman, the bull is to be stoned and its owner also is to be put to death. 30 However, if payment is demanded, the owner may redeem his life by the payment of whatever is demanded. 31 This law also applies if the bull gores a son or daughter. 32 If the bull gores a male or female slave, the owner must pay thirty shekels[^1] of silver to the master of the slave, and the bull is to be stoned to death.

Regarding Exodus 21:28, Datta and Pizarro-Noël (2020a) argue that “it is not a question of torturing a living being, but of removing an impure being from exchange” (51). Thus, the destruction of the animal is not necessarily to cause suffering but to remove the risk of spreading the impure meat via consumption. Exodus 21:29 addresses the owner’s obligations for keeping members of the community safe from any danger the animal may possess. This attaches a sense of responsibility that the owner has for the animal.

Both René Descartes and Immanuel Kant denied moral agency to animals because they lacked cognitive or rational abilities (DeMello 2012). However, Jean-Jacques Rousseau, a key resource for Durkheim, argued in support of animals’ negative rights; for example, they have the right not to be harmed (DeMello 2012: 381). Jeremy Bentham presented his utilitarian argument that has shaped the ways that we act towards animals to this day; his argument rested on the fact that they can suffer, and because of this, their suffering should be considered when deciding how to act (Bentham 2007 [1780]; DeMello 2012). Bentham’s utilitarian arguments provided the groundwork for Peter Singer to advance the argument for the equal consideration of animals’ interests, stating that:
If a being suffers there can be no moral justification for refusing to take that suffering into consideration. No matter what the nature of the being, the principle of equality requires that its suffering be counted equally with the life suffering-insider as rough comparisons can be made- of any other being (Singer 2015 [1975]: 38).

Sentience is crucial component to Singer’s animal rights position and thus animal sentience must be an equal part of the equation as human sentience (DeMello 2012). For example, when deciding whether humans should kill animals for meat, they must determine if the pain an animal will experience is less than the pleasure or need for the human to eat the meat. Along with the animal’s experience of pain, they also have an interest in living which must be included in the calculation (ibid.).

Opposed to the utilitarian perspective on animal rights, Tom Regan argued that animals are “subjects of a life” and have interests; therefore, they should not be subjected to anything that threatens these interests, whether it is for the greater good or not (DeMello 2012: 387). There has been a multitude of theories and arguments on animals’ rights and morality. There are four major philosophical perspectives regarding animal rights discussions: Nussbaum’s capabilities approach; utilitarianism, which includes Bentham’s traditional perspective and Singer’s “interests” perspective; Regan’s animal rights theory; and eco-feminist approaches, which includes the work of Carol J. Adams (2010 [1990]), who argues that patriarchal power, women’s oppression, and animals’ oppression are interconnected.

In contrast to a philosophical approach, Espinas’ (1878) book Des Sociétés Animales explores the types of social relationships animals form and what constitutes animals’ collective and individual consciousness across all levels of animal species, from parasites to mammals. For him, animal societies are not limited to certain species of animals but are present amongst all
animals, making it a “normal, constant, and universal fact”\textsuperscript{16} (Espinas 1878: 8). Animal societies want to preserve their collective existence just as animals want to preserve their individual existence; and especially in more organized animal societies, their collective interests or wills overtake their individual ones, “\textit{les inclination généreuses sur les inclinations intéressées}”\textsuperscript{17} (Espinas 1878: 377-378). According to Espinas (1878), this prioritization of the collective over the individual could be categorized as a form of animal morals. However, he clarifies that animal morals are not equal to human morals, for they lack reflection and instead originate from an impulse rather than deliberation (Espinas 1878: 378-379).

Animal morality also includes discussions on whether animals themselves can be moral beings and behave morally (see McGinn 1995; Satz 2009; Rutledge-Prior 2019). Rutledge-Prior (2019) supports prescribing moral agency to non-human animal species. In their article, they provide theoretical support for a normative argument of morality, emphasizing that moral decision-making is highly influenced by emotional responses rather than the Kantian, rational-moral model of behaviour (ibid.). From this argument, Rutledge-Prior (2019) explains that, with the experimental support of certain non-human animal species having emotional empathy and a sense of justice, these animal species have the capacity for moral behaviour. Following the logic of Gottlob Frege who states that experience does not exist independently of a bearer for it is attached to a self, McGinn (1995) explains that if we grant animals experiences, if they can feel pain, play, and any of the capabilities previously mentioned in this section, then we also have to grant them a self. He argues that under these conditions, “[t]he moral community is the community of selves” then animals are part of the moral community -(ibid.: 735). Finally, Satz

\textsuperscript{16} Translated from “Ainsi la vie en commun n’est pas dans le règne animal un fait accidentel… Elle est au contraire, et nous croyons en mesure de le prouver abondamment dans le présent ouvrage, un fait normal, constant, universel.”

\textsuperscript{17} Generous inclinations over individual ones.
(2009) criticizes the property status of domestic animals and presents a socio-legal argument in support of the “legal regulation of human interactions with domestic animals” (65). Extending the work of Martha Fineman, Satz (2009) argues that domestic animals have the status of “vulnerable subjects” due to their sentience and their life-long dependency on human beings. Because of this status, domestic animals exist within a moral realm and should receive protections based on this morality (ibid.). These discussions of animal capabilities are coherent and potentially “nomic” in a more rational and democratic moral universe. They are also important for this thesis because it provides context for the development of animal rights and animal law. The advocacy for animal rights and their inclusion in legislation rose as society learned that they were not just machines but did have sentience and expressed emotions. I would argue that our understanding of animals’ capacity to think and reason influences how they experience life, act, have their behaviour shaped, suffer, socialize and are treated and judged within the legal system.

The next chapter defines and provides a substantive discussion of Durkheimian theory, focusing on morality, law, and anomie. Chapter three outlines my methodological position and the resulting analysis. I present my discussion in chapter four which addresses concepts found directly in the legislation and avenues of theoretical exploration because of my analysis. The concluding chapter, chapter five, discusses avenues of further investigation and final remarks.
Chapter 2: Rethinking Durkheim

Introduction

This chapter distils the theoretical approach used in the thesis. I provide an explication of Durkheim’s work on morality, law, and anomie. I then discuss his sociology of individualism and how it differs from other understandings of individualism. I conclude with a critique of utilitarianism, which is pertinent to this work because it is a common philosophical resource used when discussing human-animal relationships and animal rights. The section on law begins with his general sociology of law, followed by his more specific analyses of the different types of law, power and legal administration. Finally, I critically engage with various conceptions of anomie, addressing common misinterpretations of Durkheim’s work. When rigorously, thoroughly, and appropriately applied, Durkheim’s work on morality, law and anomie provides a new way of understanding human-animal relationships, one not reflected in the predominant approaches discussed in chapter one.

Durkheim’s Sociology of Morality

Durkheim “understood sociology to be the science of morality” and his work on morality, which he called the “science of morals”, was an essential part of his work and it is woven throughout most of his publications, including Division of Labor in Society, Suicide, Professional Ethics and Civic Morals, Moral Education, and The Elementary Forms of Religious Life (Mestrovic & Caldwell 2010: 139). Durkheim’s work on morality is intricate, leading to differing interpretations. This section discusses these interpretations including critical assessments. To do so, I examine the integral parts of his theory of morality, namely, the conceptions of obligations,
duties, and rights; regulation and professional associations; the cult of the individual; and utilitarianism.

One of the obstacles to understanding Durkheim’s work on morality comes from the translation of terms from French to English. Hall (1987) explains that there is no precise terminology in either language for morality. In English, we have words such as “morals”, “morality”, “ethics”, “norms”, and “values.” In French, Durkheim uses “morale” or “la morale” and “moeurs” which have been translated differently. I will unpack these terms to establish a vocabulary truer to the logic of Durkheim’s theory. For Hall (1987), “morale” or the “morality” of a group in a particular period is exhibited through “moeurs” which he defines as social norms that are “reduced to the level of human mediocrity” (42). Therefore, the average individual’s interpretation of the rules of morality (morale) and how they apply those interpretations are “moeurs.” Wallwork (1972) has a similar definition of “moeurs” and “morale.” The science or “physique des moeurs” from which Durkheim acquired moral facts is interested in discovering and analysing the “moral precepts in all their purity” rather than the “moeurs” as they are interpreted by the average individual and imperfectly applied (Hall 1987: 43). Datta & Pizarro-Noël (2020b) translated Durkheim’s 1899 Lecture “On Penal Sanctions” and provided translations for various terms Durkheim used when discussing morality. They translated “moeurs” (the rough English translation is “mores”) as “the morality which is effectively observed by men [sic] at any given moment of history” and “la morale” as “morality” since it “refers to the collective representations and practices of moral norms that people actually follow” (Datta & Pizarro-Noël 2020b: 79). There is separation, similar to that of gods and people, where we have the science of morals as being a more pure and perfect form of morality and then an imperfect, human interpretation of how these moral ideals perform in everyday life. This thesis
focuses more on the latter, analysing how the conscience collective influences moral norms and how laws enforce these morals.

Generally, in sociology, moral forces are a “mechanism of binding social governance” and they “shape people’s expectations about just and appropriate ways of living”; they place limitations and constrictions on limitless desires such as “money, influence, and power” (Hunt & Wickham 1994: 95; Nakhaie & Datta 2018: 145). Without these moral checks in place, individuals can experience symptoms of “anomie”. Unless individuals accept the moral force, which regulates behaviour, they will follow their appetites and interests rather than those of the collective, especially in a modern capitalist society where liberal ideology and laissez-faire economics encourage individualism and the pursuit of “greatness.” Hall (1987) explains that “there must be some ‘organization’ that brings the social welfare to mind and obliges people to act in ways that promote it” (28). If these moral forces are unstable or do not exist, then the society falls into disorganization and exhibits anomic symptoms.

Durkheim conceptualizes morality as “a system of rules of action that predetermine conduct” (Datta 2013: 94; Thompson 2002[1982]: 133). This system of rules contains obligations and duties that individuals have to themselves and each other. If individuals do not obey the rules or obligations, predetermined sanctions are imposed (Datta 2013; Gane 1988; Hall 1987). Mestrovic & Caldwell (2010) state that “morality is a universal construct such that” as long as moral rules uphold integration, “all moralities… are true in their own way” (139). This relates to Montesquieu’s understanding that customs are legitimate in the societies and periods in which they take place (Durkheim 1960: 16). Thus, a Durkheimian conceptualization of morality is that there are no universally right or wrong moralities if they express the conscience collective and promote social solidarity of a society.
According to Durkheim, this rational, moral system contains three defining characteristics: “the regularity of behaviour, the feeling that it is obligatory, and the backing of social sanctions” (Hall 1987: 48). Hall (1987) explains that the regularity of behaviour refers to the notion that there is an appropriate moral action for specific situations or circumstances. When someone performs the same actions in response to similar situations, it becomes behaviour or “habituation of social action” (ibid.: 48). Not all habitual behaviour is moral, but it can be understood on a scale of regularized behaviour that ranges from non-moral (customary habits) to significant moral rules and actions (Hall 1987).

Durkheim proposed that moral rules can be categorized into two kinds. The two basic kinds of moral rules are universal rules which “prescrib[e] duties which all people have” and particular rules, which are “duties that people have towards one another because they belong to a certain definite social group” (Hall 1987: 29). Universal rules are then broken down into “those relating to the self and those relating to others;” particular rules are divided into three types “family morality, professional ethics, and civic morals” (ibid.). This is important because these universal rules influence how particular rules are defined and prescribed. In the context of this work, the laws themselves pertain to specific rules since these laws provide expectations for how dog owners, administrators of the law, and animals are to act.

Durkheim analysed “social facts” to understand the science of morals; these social facts are discovered “through comparative history and ethnography… or through the study of social statistics” (Hall 1987: 28). These moral facts encompass mores, habits, customs, laws and legislation, and economic phenomena, including “a broader net… [of] narratives, identities, institutions, symbolic boundaries, and cognitive schemas” (Hitlin & Vaisey 2013). For Durkheim, it is crucial to study moral facts through comparative history and ethnography.
because it allows for an understanding of how social relations are constituted and sustained over time, what ends they serve, and how they change (Durkheim 1957; Hall 1987; Hitlin & Vaisey 2013).

Education is one of the primary ways morals are transmitted throughout society, including both religious education and secular education (Hall 1987). The institution of education “sets out precisely with the object of creation a social being” (Durkheim 1982 [1895]: 54). Thus, since society precedes the individuals within it and the goal of education is production and reproduction of social beings, then the content of education is not created by teachers and parents, for they are merely “representatives and intermediaries” (ibid.). Durkheim argued that secular education would not be as successful in disseminating morals as religious education by stating that “any attempt to teach morality deprived of its sacred authority… was bound to fail” (ibid.: 33). However, secular education can be successful if the “science of moral facts” is used, whereby the phenomena of moral life are treated and studied as natural phenomena (ibid.: 33-34). Education can transmit existing moral facts from an earlier generation to the next.

Nonetheless, it is more challenging to use education to change society’s morals as it is a “means by which society perpetually re-creates the conditions of its very existence” (Thompson 2002 [1982]: 132). Those who are being educated participate in a “systematic socialization” that results in education reproducing society rather than changing it (Thompson 2002 [1982]: 132 & 134). Mukherjee (2010) explains the process of moral education as follows:

Here the young would be socialised through a pedagogy that would obtain consensus and, through the spirit of discipline, attachment to social groups, autonomy and self-determination students would find themselves equipped to participate in the social organ’s prolonged struggle against anomic forces (14).
Thus, to integrate or forestall anomie in industrial societies with an advanced division of labour, a system of education is required to form from the *conscience collective*, prioritizes healthy integration, regulation, and punishment with the recognition that autonomy, or the cult of the individual, is crucial.

Morality changes when a large portion of society determines that the moral rules no longer correspond to the beliefs and/or needs of the collective. From this, collective energies are released and directed towards changing the moral rules. Examples of this include various civil revolutions, including the French Revolution, the civil rights movements, and contemporary protests. Along with education, the transmission of moral rules and norms between individuals occurs through frequent social contact and the exchange of ideas and sentiments (Durkheim 1957: 8).

These rules are crystallized in society through formal institutions such as legal and educational systems, and informal social structures such as traditions and collective rituals (Hall 1987). Ritual practices “bring about the internalization of norms through social effervescence” (Durkheim 1957: xxix). Social or collective effervescence is used to describe the feelings of excitement, passion, and increased energy when individuals participate in communal events. During moments of collective effervescence there is an “emotional transference… which produces a change, collective emotional energy, a sense of belonging to some force greater than oneself” (Eyerman 2006: 195). In both informal and formal institutions, these rules are reinforced through positive or negative sanctions, although primarily through negative sanctions (Carls 2019; Hall 1987). When these rules have been violated, and individuals choose not to fulfil their obligations or duties to others or the society, they risk experiencing negative
consequences, “we may be blamed, blacklisted, or materially hurt- either in person or in property” (Hall 1987: 52).

Conceptualizing pathological and normal moral behaviour is pertinent for Durkheim because it is this distinction between these two categories of behaviour, that allows for the science of morals to be used for ethical judgements (Hall 1987). Both egoism and anomie are pathological forms of morality, and in many cases, they are tied to one another (Mestrovic 1988). For Durkheim, “immorality is not the opposite of morality” just as “sickness is [not] the opposite of health” for they are both on a spectrum of the same concept, immorality and morality are “two forms of moral life” just as health and sickness are “two forms of physical health” (Durkheim 1957: 119). Anomie, or any other pathological or immoral behaviour, is a symptom of a society experiencing a degree of moral instability. Since morality is tied to social life, the organization of social institutions are tied to the degree of morality within society; if there is more disorganization within and between the social institutions, there is a rise in immorality (ibid.: 73). According to Durkheim, the rise of immorality “is not solely because the criminal has a better chance of escaping punishment; it is that in general the sense of duty is weakened” (ibid.).

Obligations, Duties, & Rights

Duty and obligation are central to Durkheim’s conceptualization of morality. They bind individuals to one another, providing the foundation for responsibility, regulation, and sanctions when obligations are not fulfilled. Every society needs “a system of relatively defined social obligations,” these social obligations provide the glue binding individuals in society together (Pearce 2001: 101). Obligation is social and it is transcendent of the individual. Since they are either obliged by other individuals or by the greater collective, there needs to be something greater than the individual for them to feel obligated (Carls 2019). Obligation is also connected
to integration because it is through integration with society and others, that they experience institutional obligation and “reciprocal obligations of care” respectively (Nakhaie & Datta 2018: 146). This connection between social integration and obligation is “proof that these ways of acting and thinking are not the work of the individual”; they are not individual facts but social ones (Gane 1988: 33). Obligations are a moral force in that they compel us, form a direct path of action, and impact how we respond to actions and other social stimuli. Just as with other moral facts, obligations must be clearly defined for them to be internalized by individuals, and they must apply to all the members of a society (Gane 1988).

Durkheim argued that there are different types of obligations; moral obligations are distinct from other obligations because they are imposed through sanctions and “deviations from [moral obligations] are treated as criminal” (Hall 1987: 38). Our legal system contains obligations within tort law and criminal law and in the moral framework of various professions, including medical practitioners who have a duty to cause no harm (Favre 2004). Obligation and duty involve shifting the focus off oneself and realizing the connection between individuals, what they hold in common, and the responsibility to act concerning that commonality (Lukes 1969).

“Solidarity,” understood as “social cohesion” and the force that bonds disparate parts of social life together, is essential for the creation of rights, considering rights are claims recognized and accepted by society (Durkheim 1984 [1893]: 60; Stedman Jones 2001). Rights and duties, which can be established in law or not, provide individual liberties and opportunities (Pearce 2001; Stedman Jones 2001). They are not abstract concepts; they are “real and positive,” and apply in every aspect of social life and can change and manipulate social action (Stedman Jones 2001: 51).
The concepts of obligation, duties and rights are important when discussing human-animal relations. Relationships between humans and companion animals are rife with obligations and duties of care. These obligations can be found crystallized in law through animal cruelty legislation, such as the PAWS Act of Ontario and section 445 of the Criminal Code of Canada. In the PAWS Act, for example, the legislation outlines responsibilities that guardians have to their animals which include providing them with a “standard of care” and not subjecting them to “distress” (Provincial Animal Welfare Services Act 2019). Here, I explicitly look for what humans were obliged to do as outlined in the provincial law and the municipal by-law.

*Individualism*

Durkheim’s sociology of individualism is crucial to understanding his work on morality, obligation, and rights. His conceptualization of individualism follows from the work of Saint-Simon and Comte, who used “culte”, which translates most accurately as “worship” and “system of worship”, when discussing religions of humanity (Gane 1988). Cristi (2012) explains how Durkheim’s theory of the cult of the individual connects to religion and the sacred:

Moral individualism, in short, “is a religion in which man is at once the worshipper and the god” (Durkheim [1898]1973:46). The “sacred” dimension of the modern individual finds its expression in the unique respect granted to him and in the protection of his rights. However, there is no such thing as inherent rights and liberties. Modern society has “consecrated,” him, granted him rights, and made him “worthy of respect” ([1906]1953b:72, [1906]1953a:58) (412).

This type of individualism is based on the respect for people, where people are “considered as sacred” (Lukes 1969: 14). Although this form of individualism originates in religious thought, Carls (2019) explains that it “provides the foundations for decision-making in the public sphere, which can no longer be based on traditional religious principles” (293).
For Durkheim, cult of the individual is different from that of utilitarian individualism; it rather “involves a morality of cooperation and a profound respect for humanity” rather than a “glorification of the self” (Cristi 2012: 413; Lukes 1969: 24). It does not encourage egoism, for egoism does not value the power of social forces and collective energies. The ontological basis of the cult of the individual is a “collective representation,” which obliges us to respect human dignity and each individual’s rights (Mestrovic 1988: 55). It provides a moral framework upon which rituals, such as symbols of national pride and celebrations of national holidays, and documents, such as constitutions or bills of rights, can be established within a society (Carls 2019). In a society that values and prioritizes this type of individualism, all individuals have freedom and are understood to be equal.

The cult of the individual can be established and integrated into different “types of economic arrangements,” but it always supports the specialization of the division of labour and encourages individuals to define and develop their natural affinities and skills (Thompson 2002[1982]: 64). When individuals are not able to align their positions within the division of labour with their natural affinities, Durkheim defines this as the “forced division of labour,” which is a pathological form of the division of labour (Durkheim 1984 [1893]).

Society can have these collective moral beliefs that are imposed while also respecting that each individual experiences morality and other aspects of social life on a scale of gradation (Thompson 2002 [1982]: 49). This is why Durkheim provides two different terms for morality, with “moeurs” being the term for the imperfect application of morality in which individuals participate. For social morality and individual morals to cohere, high degrees of social solidarity are required (Thompson 2002 [1982]).
It is important to note that there have been criticisms of Durkheim’s theory of the cult of the individual regarding its exclusivity. As mentioned in the introduction, using classical social theory can result in the theory being exclusionary. These critiques have been discussed in relation to Durkheim’s theorization of human rights and how it is constructed through a gendered lens that prioritizes educated, employed men. Cristi (2012) has argued that when Durkheim discusses the cult of the individual, he is not referring to the rights of “‘humankind’” but of “‘mankind’” (410). There is no overt exclusion of women in his conceptualization of the cult of the individual, as it appears to apply to human persons in general and not exclusively to men. However, the cult of the individual is attributed to the social individual and Durkheim references men when he discusses the social individual (Cristi 2012). Drawing on Gane (1992), Cristi (2012) contends that Durkheim understood “civilization” to be a “male possession,” whereby women are more connected to nature than to social life, they are more emotional and instinctual rather than logical and social (419). In *The Division of Labor in Society*, Durkheim (1984 [1893]) says that “[w]oman is less concerned than man in the civilizing process; she participates less in it and draws less benefit from it. She more recalls certain characteristics to be found in primitive natures” (192).\(^\text{18}\) If rights, obligations, and morality are within the realm of the social and women are excluded from the social, then it can be inferred that women cannot achieve the same moral rights and obligations as men. Suppose the individual emerges out of the social. In that case, it can be argued that gendered conceptions of men and women also emerge out of the social, rather than out of natural gendered binaries (Cristi 2012).

The cult of the individual can be helpful when discussing critical animal studies and human-animal relations. In recent years, there has been increasing work, especially in the legal

\(^{18}\) This is an example of the nature/social dualism that is contradicted by the social ontology discussion regarding animal morality mentioned on page 10.
realm, of establishing ‘rights’ laws to animals; this includes the work of the Nonhuman Rights Project, which advocates for “recognition of personhood/thinghood” and “writs of habeas corpus” (Nonhuman Rights Project 2020). Therefore, an inclusive conceptualization of Durkheim’s cult of the individual, which recognizes the socially consecrated rights and freedoms of individual human beings, can be applied when theorizing on animal rights. Re-theorizing is required for the cult of the individual to be considered more inclusive.

*Durkheim’s Critique of Utilitarianism*

Durkheim’s conception of the cult of the individual differs substantially from the utilitarian conception of the individual in *laissez-faire* and classical liberalism economics, where the latter argues that the egoistic pursuits of individuals will result in positive morality (Pearce 2001; Thompson 2002[1982]). Utilitarianism is a branch of ethics based on hedonism, where the amount of pleasure one experiences determines the success of a life while limiting the amount of pain one experiences or inflicts (Dimmock & Fisher 2017). The basis of classical utilitarian ethic is a normative stance that attempts to determine what individuals ought to do by calculating actions based on their property to “produce benefit, advantage, pleasure, good, or happiness” against their property to produce pain, evil, or unhappiness (Dimmock & Fisher 2017: 13).

In *An Introduction to the Principles of Morals and Legislation*, Jeremy Bentham (2007[1780]) provides a detailed outline of the principle of utility which he argued that “mankind [sic] [is placed] under the governance of two sovereign masters, *pain* and *pleasure*” (1). He argued that these experiences of pain and pleasure, which guide moral behaviour, come from four different sources, “the physical, the political, the moral and the religious,” and these feelings of pain and pleasure function as sanctions (ibid.: 24). One final component to Bentham’s discussion on the principle of utility to provide an introductory explanation of the theory are the
seven circumstances by which pain and pleasure are measured, which are: “its intensity, its duration, its certainty or uncertainty, its propinquity or remoteness, its fecundity, its purity and its extent” (ibid., 30). The first six are used when calculating the utility of actions for the self, and all seven are used when calculating the utility for “a number of persons” (ibid.: 30).

Durkheim argued that utilitarian individualism “encouraged egoism, ambition, and unlimited aspirations” (Durkheim 1957: xviii). This concept of “unlimited aspirations” is directly linked to anomie, and a society that supports limitless desires was bound to experience anomie. Not only did utilitarianism encourage egoistic behaviour that could result in anomie, but Durkheim also rejected the utilitarians’ understanding of the relationship between individuals and society. For utilitarians, the division of labour was the result of the “search for greater happiness” however Durkheim criticized this reasoning for the expansion of the division of labour on the ground that society is so complex for everyone to understand the repercussions of their actions (Alexander 1982: 147). Thus, because society is too complex, every individual within society cannot calculate and balance the utility of their actions and the outcomes of those actions, for every circumstance.

Utilitarians argued that the individual was the “starting point of analysis,” and society developed because of social contracts that were agreed upon by individuals (Durkheim 1957; Thompson 2002 [1982]). Durkheim rejected this and supported an organic conception of society, whereby society “is ontologically prior to the individual” (Turner in Durkheim 1957: xviii). This difference in ontology also results in a difference in the method of understanding how morality is determined. Durkheim rejected the utilitarian idea that the “psychology of the individual” accounts for the development of society, instead he argued that “a common set of values” was necessary to understand social life (Douglas 1966: 24-25). Utilitarians argued that egoistic
pursuits of individuals in the economy resulted in positive morality; their moral philosophy also argues that moral principles are determined from a “single general principle” and experience, which results in human happiness (Hall 1987: 14). Durkheim did argue in favour of individual rights, stating that the “human person…is sacred” (Lukes 1969: 14). However, this differs from Utilitarian thought because unlike Utilitarian philosophy, there is no wavering in Durkheim’s conception of individual rights; in advanced industrial societies, there can be no moral alternative that outweighs the sacredness of the human person (Lukes 1969). Although Durkheim’s work on individualism predates the Dreyfus Affair, as it is present in The Division of Labor in Society, Durkheim further developed his work on individualism as an argument opposing the racism and antisemitism which occurred during the Dreyfus Affair (Lukes 1969).

Utilitarian ethics has often been a foundation for discussions of animal rights. Bentham’s quote “the question is not, Can they reason? nor Can they talk? but Can they suffer?” is often used when discussing animal rights; however, the context for this quote was not in regard to animal rights but to arguments against slavery (Bentham 2007 [1780]: 311; DeMello 2012: 382). A utilitarian approach to human-animal relationships argues that if morally “right” actions are determined by the experience of pleasure or the negation of pain, and (some) animals have recognized sentience or interests, then any action that increases an animal’s experience of pain would be immoral. On the surface, this appears to be beneficial for animals. However, issues arise when the sum-ranking of actions occurs, and the pleasures that humans experience outweigh the pain that animals might experience (Nussbaum 2006). This is because we live in an anthropocentric world that prioritizes human experience over that of any other living being. For breed-specific legislation, this anthropocentrism manifests not only as speciesism but

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19 Which began October 15th, 1894, when Alfred Dreyfus was arrested for treason until July 12th, 1906, when Dreyfus was exonerated (Derfler 2002).
“breedism.” Where speciesism is attributing rights or moral protection to particular animal species, breedism can be understood as attributing rights or moral protection to particular breeds (Cavalieri & Woollard 2001). Nussbaum (2006) explains the complications of applying utilitarian ethics with a discussion on the reproduction of animals for slaughter:

[f]or the Utilitarian, these births of new animals are not by themselves a bad thing: indeed, we can expect new births to add to the total of social utility. So long as each animal has a life marginally worth living, however close to that margin, the existence of more life experience rather than less is a positive good (345).

This is not to say that utilitarian ethics have been detrimental for the animal welfare/rights movement; quite the opposite: recognizing animal sentience and interests and including this sentience within utilitarian arguments have improved the lives of animals, primarily due to the work of Bentham and Singer. However, some researchers, such as Francione (2010), argue that “animal welfare,” which he relates to utilitarianism, does not go far enough to protect animals. Instead he argues in favour of “apply[ing] the principle of equal consideration” to animals and from this denounces “using” or breeding animals for human consumption and advocates for leaving “non-domesticated animals alone” (ibid.: 35-36). I am interested in exploring using a non-utilitarian, and strictly sociological basis of ethics and morality when discussing human-animal relations.

The Durkheimian study of morality uses the rigorous and empirical exploration of prescribed behaviours, duties and obligations determined by the collective and enforced by the state. Values taught through education as well as formal and informal laws provide areas of analysis to understand morality. Moral decisions and freedoms are external to natural laws because they are socially constituted and can be transformed when there are changing demands. A nomic moral, and therefore legal, system would involve eliminating structural contradictions,
as they result in anomie. For Durkheim, morals develop out of the *conscience collective* and the most crucial precepts are also crystallized in law; studying laws can thus be used to understand the morals and the *conscience collective* of a group or society (Bratton & Denham 2019).

**Durkheim’s Sociology of Law**

For Durkheim, law is a social fact and an external indicator of social solidarity and “the study of law was central to The Durkheimian enterprise” (Lukes & Scull 1983: 2). Law was an object of study in *The Division of Labour in Society, Suicide, Professional Ethics and Civic Morals, and Two Laws of Penal Evolution* (ibid.). The study of laws is apt for Durkheim because “laws… are a demonstration of Durkheim’s favourite theme, the force and power of the social” (ibid.: 4). Laws are tangible *things* which represent the *conscience collective* and when society is nomic “law may safely be treated as an undistorted reflect of society’s collective morality” (ibid.: 6). Law is a visible, external indicator of social solidarity, and can then be analyzed empirically (ibid.: 33). Law protects individuals from each other, and the law is also a way for the state to maintain social order and reproduce society (Pearce 2001: 105-106). It is a “necessary component of a society… which defines and organizes its existence” (Hunt & Wickham 1994: 100). It cannot be an act that offends just a single person, for things such as gossip, or criticism would be deemed criminal.

Although legal codes and laws emerge from morals, Durkheim distinguishes between legal and moral sentiments. Legal sentiments must be not only firmly held in society, as moral sentiments are, but also precise in their definition; “penal rules are notable for their clarity and precision, whilst purely moral rules are generally somewhat fluid in character” (Durkheim, 1984[1893]: 38). They also involve an “average [level of] intensity” of reactions from the
collective, which distinguishes them from other moral sentiments; “[n]ot only are they written upon the consciousness of everyone, but they are deeply written” (Durkheim 1984 [1893]: 37). When someone commits criminal acts, there is collective outrage; it is not only an attack on the victim of the crime but on society as a whole. Durkheim defines an act as criminal “when it offends the strong, well-defined states of the collective consciousness” (Durkheim 1984 [1893]: 39; Durkheim 1982 [1895]). As Mestrovic and Lorenzo (2008) explain, “we must not say that an action shocks the common conscience because it is criminal, but rather that it is criminal because it shocks the common conscience” (188). This definition also means that an act that is not explicitly harmful to society can still be a crime because it ignites collective outrage.

Crimes are actions that “disturb those feelings that in any one type of society are to be found in every healthy consciousness” (Durkheim 1984 [1893]: 35). Few actions are universally defined as criminal since the conscience collective changes depending on the society, making Durkheim’s theory of law not a “natural” one but one that has a more nuanced socio-historical understanding of law. Laws are not static; they evolve and change because the conscience collective changes. Through advocacy and education, specific actions that once offended the conscience collective are deemed acceptable and become decriminalized through legislative changes.

An example of an application of anomie to study crime, one that is true to Durkheim’s original conceptualisation, is the analysis of the war crimes committed by US military personnel at the Abu Ghraib prison in Iraq (Mestrovic & Lorenzo 2008; Mestrovic & Caldwell 2010). Mestrovic and Lorenzo (2008) conducted their research on Abu Ghraib by implementing a Durkheimian analysis of the court-martial testimony and US government reports of the incidents that occurred within the prison. They argue that the lack of accountability, training, safe and
comfortable working conditions, access to food and water as well as the suffering and torture that occurred at Abu Ghraib resulted in chaotic and anomic social conditions (Mestrovic & Lorenzo 2008; Mestrovic & Caldwell 2010). Mestrovic and Lorenzo (2008) define anomie as “a general societal condition of déreglement or derangement – literally, ‘a rule that is a lack of rule’” and argue that “the problem seems to lie not in the lack of norms or moral boundaries, but in a lack of coordination, and in dysfunction in implementing such norms and boundaries” (182 & 186).

There are instances where acts are deemed criminal, and sanctions are enforced despite the act not offending the conscience collective. Durkheim proposes that in these cases, there are governmental authorities that define what these criminal acts are and impose sanctions when these acts “are directed against one or other of the bodies that control the life of society” (Durkheim 1984 [1893]: 41). In these circumstances, the state replaces the conscience collective. These types of sanctioned acts are how the state uses the enforcement of the law to uphold social order. When an individual is punished for a crime, it is predominantly a statement to everyone else in the society of what is and is not acceptable behaviour. As Thompson (2002 [1982]) states, “that punishment of a crime is designed to act more on the law-abiding citizen than on the criminal” (11). The enforcement of laws and sanctions, through trials and executions, are public displays of the firmly held sentiments of the conscience collective, reminders of the values that the society holds.

Another element critical to a Durkheimian understanding of crime is that it is an act that “provokes against the perpetrator the characteristic reaction known as punishment” (Durkheim 1984 [1893]: 31). There are two critical functions of written law that apply to both civil and penal law. One is to establish obligations and responsibilities, and the other is to attach sanctions to the criminal acts (Durkheim 1984 [1893]). Durkheim states that the sanction is dependent on
how the governing bodies perceive the act; if the act contradicts the conscience collective, then the sanction will be imposed (Durkheim 1957). The severity of a punishment is not necessarily proportionate to how impactful the crime is on society.

Durkheim (1984 [1893]) provides the example that homicide is viewed as one of, if not the, most heinous crime and yet a severe economic crisis would have a more significant impact upon society; however, the punishment for homicide is far more severe than the punishment for an act that results in an economic crisis. Datta & Pizarro-Noël (2020a) explore the intricacies of Durkheim’s theorizing of sanctions. They have shown that there are two types of sanctions, “positive” and “negative.” Positive sanctions “are those related to the ones that are in accordance with the rule, that affirm it, such as having a good reputation, the respect of the group, honours, dignity, distinctions that are bestowed for moral acts” (Durkheim [Datta & Noel] 2020a: 46). Repressive and restitutive sanctions fall under the category of negative sanctions, which “are tied to acts that [ill.] violate and negate the rule; therefore, we gave them that name” (ibid.: 3-4).

These sanctions are coercive in that they alter how we can act and move within our world. They provide us with a path of appropriate conduct in the way that a path in a dense forest constrains where we can explore. These sanctions make us contemplate the consequences of our actions and are successful in ceasing an act that may disturb the conscience collective. Previous public displays of punishment teach us that if we disturb the conscience collective, we risk experiencing social exclusion. In the case of breed-specific legislation, the sanctions outlined in the laws and bylaws carry a significant amount of weight, and it establishes fear in individuals who own or want to own pit bulls. This will be elaborated on further in the next chapter.

Although definitions of what constitutes “criminal” can vary across societies, crime itself is universal. For Durkheim, crime is not “pathological” but a “normal” occurrence within every
society; it is a feature of society and is not found to occur in asocial individuals (Durkheim 1982 [1895]; Pearce 2001). However, crime becomes pathological when there are increased rates of either specific crimes or criminal activity in general (Pearce 2001). While crime (at constant rates) is not pathological, Durkheim argued that being ignorant of the laws or “refus[ing] to recognize their authority… are irrefutably symptoms of a pathological aversion” (Durkheim 1984 [1893]: 34). Since these sentiments are deeply embedded into the *conscience collective*, they provide external and internal constraints on individuals in a society, and a rejection of this is pathological.

Legal statutes and the penal system were external social forces that allowed Durkheim to analyse more obscure concepts such as morality and the *conscience collective* (Thompson 2002 [1982]). When the morals of the collective become crystallized in legislation and enforced through sanctions, we can understand not only current laws and moral sentiments but analyse them in relation to sentiments that have existed throughout history. By doing this, Durkheim found two forms of law correlated to two types of societies, “primitive societies” that enforce repressive law and modern societies that enforce restitutive law.

*Repressive & Restitutive Law*

When the *conscience collective* determines a specific act as criminal, and it is enacted into law, the State attributes negative sanctions to the act. Durkheim theorized that as the division of labour increased, societies experience a change in the social structure. Societies that had a low division of labour were considered “primitive” and were founded on mechanical solidarity and used repressive law (Durkheim 1984 [1893]: 61). Historically, with an increase in the division of labour, societies have shifted from mechanical to organic solidarity, from repressive to restitutive
law; which results in a shift from a collectivist society to an individualist society (Pearce 2001; Thompson 2002 [1982]).

Mechanical solidarity derives “from resemblances [and] binds the individual directly to society” and occurs when “states of consciousness” are common to all members of a group, community, or society (Durkheim 1984 [1893]: 61 & 64). Organic solidarity is when there is significant differentiation amongst members of a society, and they must rely on each other for day-to-day life (Durkheim 1984 [1893]: 85). The high degree of interdependence among people and institutions is what provides the basis for organic solidarity. Lukes & Scull (1983) analyse mechanical and organic solidarity by their morphology, types of norms, features of conscience collective, and content of conscience collective (9). Mechanical solidarity typically occurs in low volume populations with low moral density, and strong social bonds (ibid.). The structure of law is penal, and punishments are repressive (ibid.). Societies with mechanical solidarity have a high volume of collective conscious, are heavily religious in nature (ibid.). Societies with organic solidarity are characterized by interdependence, a high volume of population and moral density (ibid.). These societies have “civil, commercial, procedural, administrative and constitutional law” and punishments are restitutive (ibid.). Lukes and Scull (1983) present critiques of Durkheim’s association of repressive and restitutive laws to pre-industrial and industrial societies respectively, which I elaborate on in the following section on the power of the State.

Societies with mechanical solidarity have a strong and deeply embedded conscience collective; this results in defining crime under penal law rather than civil or procedural law (Durkheim 1984 [1893]). Durkheim defines repressive as:

[Legal sanctions] are of two kinds. The first consist essentially in some injury, or at least some disadvantage imposed upon the perpetrator of a crime. Their purpose is to do harm to him through his fortune, his honour, his life, his liberty,
or to deprive him of some object whose possession he enjoys. These are said to be repressive sanctions, such as those laid down in the penal code (1984 [1893]: 29).

Penal law originates from religions in India, Egypt, Rome, Greece, and ancient Germany. These religious ideas rely on a strong conscience collective and prescribed behaviours and obligations, all of which are prevalent in penal law (Durkheim 1984 [1893]). Penal law, especially within the primitive societies that Durkheim references, punishes solely to invoke suffering on the perpetrator; it is highly emotional and irrational in that it does not produce any benefit to those inflicting the punishment (Durkheim 1984 [1893]). There is often no basis in fairness in penal law, which is exemplified in the punishment of animals for crimes, such as pig trials in the 1400s that resulted in the hanging of pigs for infanticide (Evans 1906). The persecution of animals is discussed by Durkheim (1984 [1893]) “[traditional societies] punish animals that have committed the act that is stigmatised” (44).

Restitutive law, which covers civil law, commercial law, procedural law, administrative and constitutive law is defined as follows:

As for the other kind of sanctions, they do not necessarily imply any suffering on the part of the perpetrator, but merely consist in restoring the previous state of affairs, re-establishing relationships that have been disturbed from their normal form (Durkheim 1984 [1893]: 29).

Written, codified laws establish obligations and sanctions. However, there is a much higher prevalence of obligations and sanctions within civil law, and it addresses problems relating to obligations and sanctions separately (Durkheim 1984 [1893]). In civil law, the “nature of the obligation” is determined as precisely as possible, and it is only after establishing the obligation that sanctions are applied (ibid.: 35). Penal law “prescribes only sanctions and says nothing about
the obligations to which they relate. It does not ordain that the life of another person must be respected but ordains the death of the murderer” (Durkheim 1984 [1893]: 35).

Punishments attributed to property law can be penal (e.g., imprisonment for damages to property and theft) or civil (e.g., property suits with restitutive sanctions handled outside of criminal court). Ancient Roman property law was of importance to Durkheim’s theory of property law and sacred property. Durkheim presents two categories of property present in ancient Rome: the first is res sacrae or sacred things which were not owned by anyone and “could not become the object of any real right or any obligation”; the second was res communes which were things that did not belong to anyone because they were communal and belonged to all (Durkheim 1957: 137). Modern examples of res communes would be “property under public ownership – roads, highways, streets, shores of the sea,” property of this nature is the responsibility of the state but is not “owned” by the state in that anyone can access the property (ibid.). Durkheim explains how in ancient Rome, landed familial property20 was the only type of property considered sacred. However, with the development of trade and industry, “personal or moveable property took on greater importance” (Durkheim 1957: 167). This second type of property was under the control of the person who acquired it, and they could move it and do what they wished with it. Durkheim states “that is how this new right of property came about” (ibid.). These “separate phases of evolution in the law” have impact modern day applications of property law. Ownership of private or moveable property is much freer and constrained less by law than real estate property (ibid.).

The primitive law that Durkheim describes corresponds more accurately with ancient and feudal law than primitive law commonly understood in anthropology (Alpert 1939). Pearce

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20 Which included the land, the home, the cattle, and the dead or the land that was reserved for the dead.
(2001) also explains that both Alpert and Durkheim perceived law as being the source of order in society, the basis of which is a centralized political structure. However, in ancient Greece and Rome, common disputes were dealt with within the family “through the extended household” (ibid.: 94).

The Ontario Dog Owner’s Liability Act and the Windsor by-law 245-2004 include repressive and restitutive negative sanctions. Since animals are considered property under the law, both pieces of legislation display restitutive sanctions associated with civil or property law, including defining who carries the onus of proof and the inclusion of liability and compensation. An example of repressive sanctions is that both forms of legislation include conditions where the court can order the dog to be “destroyed” or killed if they are found guilty. This will be elaborated on further in the discussion section in the following chapter.

Law and State Power

A key component to the legal power of the state is how the state uses law to govern individuals. Combining Durkheim and Foucault is useful for understanding law and governmentality. Datta (2008) explains why it is reasonable to use Durkheim and Foucault together, stating that for both theorists, “the subject is constituted by socio-historical conditions producing perceptions of the world and enabling judgements about reality” (287). They “attempt to address… how the world of ‘words’ is attached to ‘things’, including bodies, in a regularized and enduring way” (ibid.). While the “bodies” referred to in this passage are human, it can refer to animal bodies as well. In the case of BSL, through legislation (regularized and enduring) words such as “dangerous”, “violent”, “threatening”, and “pit bull” have an impact on how humans and dogs are socialized, how human-dog relationships form, and how they are governed.
Hunt & Wickham (1994) combine Durkheim and Foucault and present four principles of law as governance. The first is “All instances of law as governance contain elements of attempt and elements of incompleteness” which “may be seen as a failure” but it is a fact of law (102). In the context of BSL, agents of the state and those who enforce provincial laws and municipal by-laws cannot stop every pit bull guardian from having a pit bull and they also cannot pre-emptively stop every dog attack.\footnote{Their willingness or lack thereof can also be dependent on their moral education and thus socialization as responsible moral agents.}

Principle two states “Law as governance involves power and as such involves politics and resistance” (ibid.: 104). There are politics and resistance involved with breed-specific legislation. There are politics involved in breed-specific legislation; within the past year, the Doug Ford provincial government has “eased regulations” regarding breed-specific legislation and an Ontario MPP, Michael Tribollo, helped with the release of a dog who was detained by Vaughan Animal Services on the grounds that they resembled a pit bull-type dog (Casey & Jones 2021; Draaisma 2021). This year, 2022, the majority of Winnipeg’s city council supports the BSL in their municipality. However, the votes were split with nine voting against the recommendation to remove the ban and seven voting in favour of the recommendation, which is an example of how contentious this legislation can be amongst politicians (Dow & Rosen 2022). Resistance to BSL is found with the protests and rallies against BSL; petitions for the UK House of Commons to repeal the ban on specific dog breeds; and various animal and veterinary organizations publicly stating they disagree with BSL (CBC News 2021; Sutherland & Ares 2022; ASCPA n.d.).

The third principle is “[l]aw as governance always involves knowledge” (Hunt & Wickham 1994: 108). Hunt & Wickham explain that “knowledge is used to select objects for
legal governance” and these “objects of legal governance are only ever known through governance” (ibid.). Pit bulls are classified as such because of their “job” history of being a bull-baiting fighting dog and it is because of this classification based on their history that they are selected as an object and target for breed-specific legislation. However, as stated previously, there is competing knowledge arguing that breed-specific legislation is ineffective in reducing dog attacks and pit bull-type dogs are not disproportionately involved in dog attacks. Because pit bulls are the primary object of breed-specific legislation, they are associated with violence.

The fourth and final principle is “[l]aw as governance is always social and always works to bind societies together (which sometimes, ironically, involves social division)” (Hunt & Wickham 1994: 111). The intention behind breed-specific legislation, which is to reduce dog attacks and allow for safe human-dog relationships does objectively try to “bind society.” I think that if it were true that pit bulls were predominantly involved in dog attacks and this was supported by the conscience collective, making the law nomic, then the goal of binding societies together would be achieved. However, because the law is anomic and there is not one strong conscience collective but several, breed-specific legislation does not fill the second part of this principle of binding.

Durkheim outlines two ideal types of relations in the legal sphere. The first involves unilateral relations where “rights [are] given [exclusively] to one of the parties to the agreement over the other; without the latter enjoying any rights corresponding to his duties;” the property law is an example of unilateral relations (Durkheim in Gane 1988: 23). The other ideal type is when relations are bilateral and reciprocal; “the legal bond provides for complete reciprocity in the rights conferred on both parties to the agreement;” just contracts would qualify as this ideal type (ibid.). Animals are usually legally defined as property, and they cannot enter into an
agreement with people or the state, making them unable to participate in bilateral and reciprocal legal relations. For guardians of pit bull-type dogs, the legal relation between the state and the animal/guardian is different. The dog and their guardian exist in a legally precarious position where they agree to the duties outlined by the state (licensing, controlling the dog, sterilization, etc.) but the only right attributed to the guardian and animal is the right to keep the animal.

The state maintains control over social life through the enforcement of laws, which can lead to the securitization of privilege (Pearce 2001). Pearce (2001) explains the inequalities that result from the control of social life:

[B]y a class living off the economic surplus as well as allowing them to generate personal wealth from the operation of law itself (law was also an important source of ruling-class revenue in Anglo-Saxon England- Weisser, 1982). These inequalities generate social problems- vagrancy, poverty- which may themselves be criminalized and which may also lead to criminal actions such as robbery and larceny (94).

The power of state enacted law is not only coercive on individuals, but the state itself is not intrinsically limited by the law it establishes (Pearce 2001). In some cases, it can establish and enforce legislation without being subject to it; this can lead to some degree of autonomy, which is how it upholds class hierarchies and social inequalities (ibid.).

A key factor in having a well-ordered society is for the law to be well defined and for it to be respected; this occurs when individuals have confidence that the law accurately represents the “nature of the facts” and what “ought to be” (Durkheim 1957: 107). Due to the structuring of the specific political system, the chances of this occurring are much more likely in a highly democratic society because the individuals have relatively open communication and access to their legislator; the former can gauge and evaluate how confident they are that the legislators are establishing laws that accurately express the conscience collective (ibid.). If individuals disagree
with the arrangements established by the democratic state, they need to have the ability to “veto” those they disapprove of (Pearce 2001: 182). This is one of the ways legislation can accurately represent the conscience collective. To maintain social order through state-enforced law, citizens must have clearly defined laws that accurately represent the conscience collective while also knowing that the state is not immune to the powers of the law. Societies and their laws exhibit anomie when these requirements are not fulfilled.

There are aspects of this conceptualization of crime that relate to the breed-specific bans. Despite opposition from researchers, animal welfare organizations, and individual citizens, these breed bans are still active pieces of law and are enforced. There are members of society who are outraged by the ownership of pit bull-type dogs. However, I would argue that there is a significant endorsement for the ownership of pit bulls, and as such, there is no stable conscience collective to support breed-specific legislation.

Conceptualizing Anomie

Durkheim discusses anomie primarily in two of his works; the first was The Division of Labor in Society, and the second was Suicide. However, anomie functions differently in each book (Olsen 1965). Although individuals can experience symptoms of anomie, which are displayed through “state[s] of exasperation and irritated weariness,” it is a pathological state of a social system that is not functioning appropriately (Durkheim 2005 [1897]: 324; Olsen 1965; Pearce 2001). There is a common misconception that anomie is comparable to Marx’s use of the term “alienation” due to the experience of alienation that workers may experience when tasks are overspecialized (Besnard 1988). However, as Thompson (2002 [1982]) explains, this is not an accurate
comparison and would only “hold up if anomie is kept separate from the forced division of labour; whereas in practice… they are frequently combined” (68).

*The Division of Labor in Society* provides two pathological forms of the division of labour. One is the “forced division of labour,” which is when workers are unable to perform tasks that align with their natural abilities and instead are forced into specific tasks, or jobs, as determined by the market, resulting in structural inequalities (Thompson 2002 [1982]). The second pathological form is the “anomic division of labour.” This results from either a lack of norms that regulate professions or if there are norms in place, they are not clearly outlined, individuals are not committed to them, or the rules “break down” (Pearce 2001; Thompson 2002 [1982]: 66). When there is an anomic division of labour, these specialized functions are unable to cooperate, and the goals required of the workers are left incomplete (Besnard 1988). The division of labour does not only result in a specialization of tasks but also results in the separation and dispersion of people (Durkheim 1984 [1893]). When people are farther removed from one another, becoming individualized and less bound to a collective, they are less likely to learn the moral and social rules that pertain to the collective. They are not in frequent communication with others, thus, when they need to make decisions and perform actions, they either do not know what the rules are, or there are too many rules from competing parts of society for them to make an appropriate, well-informed decision. The relationships between individuals within a workplace, different industries, and the state are divided, making communication difficult. The division of labour, however, is not bound to be pathological. It can function healthily, and when it does, it is “useful and necessary” (ibid.: 295). Durkheim’s suggestion to remedy this lack of communication is for occupational groups (Durkheim 1984 [1893]).
Occupational groups, also known as “occupational guilds” or “professional associations,” are a solution for the anomic division of labour (Durkheim 1957: xxxiv). Guilds would include representatives from each industry or specialization, these industrial/economic representatives meet with each other and representatives from the state (Durkheim 1957). The expectations of and the rules for each organisation are communicated to each other and the state, allowing task specialisation via the division of labour to continue without the dissolution of communication. The state is the facilitator of this dynamic and remains neutral and mediates the organisations. These guilds are a “moral force” as they are a means of encouraging solidarity and they can impact legal discourse (Durkheim 1984 [1902]: xxxix). However, he does warn that the moral force of occupational guilds should not be the only method of power; these guilds should encourage feelings of empathy and solidarity (Durkheim 1984 [1902]: lii-liii). They should be “a source of life sui generis” and act “as a balancing and restorative influence” (ibid.). These occupational guilds are a positive moral and legal force in the lives of workers and community members, which would be enforced on a national and international scale. Since economic markets have grown from a, primarily, municipal scale to a national and international scale, Durkheim explains that occupational guilds should expand to a national and international level as well (Durkheim 1984 [1902]: 1-li).

In *Suicide*, Durkheim presents four types of suicide, however the fourth, fatalism, is mentioned only briefly in a footnote (Pearce 2001). When social integration is low, egoistic suicide occurs, and when integration is high, altruistic suicide occurs. The third type of suicide is anomic suicide, which results from low social regulation and the fourth is fatalistic suicide which occurs when there is high regulation. Three predominant factors influence the rate of anomic suicide; the first is the lack of regulation imposed upon individuals, which constrains their
desires and wants, the second is societal shifts, and the third is domestic crises. If regulations are not in place to control individuals’ insatiable desires and wants and they do not achieve these desires and wants, they can experience feelings of “melancholy, weariness” and “irritation, disgust, anger, disappointment” (Pearce 2001; Thompson 2002 [1982]: 46 & 96). This “infinity of desires” is compounded when the individual exists within a capitalist society that encourages the acquisition of wealth and can create “anomie of affluence… excess” (Pearce 2001: 170).

Durkheim (2005 [1897]) explains the implications of infinite desires in *Suicide* as follows:

> From top to bottom of the ladder, desires are aroused but have no definite idea on what to settle. Nothing can appease them since the aim towards which they aspire is indefinitely far beyond anything that they might attain (280-281).

A society’s ability to discipline through moral rules and laws is essential to combat anomie resulting from infinite desires (Durkheim 2005 [1897]).

Major societal shifts are another factor that increases the risk for a society to experience anomie. Datta and Hanemaayer (2021) explain how “individuals can get lost in this vertiginous, complex, incredibly dynamic world” which results in “anomic subjectivity” (574). This “anomic subjectivity” results in the individual being unable to determine what they are supposed to do, how they fit in, experiencing “a perpetual existential impasse about the future” (574-575). These societal shifts can be crises of lows and crises of excess. Regarding economic crisis, this can mean economic depressions or recessions as well as significant economic gains. In either case, society does not have the appropriate moral regulations in place for people to properly navigate the new circumstances that arise, they do not have the moral constraint which tells them what the correct action is, and they are left with no point of reference on how to respond (Durkheim 2005
Similar to the first factor, this second factor is also susceptible to the current economic system’s consequences that encourage self-interest (Mestrovic 1988: 67).

The third factor is similar to societal crises; however, the implications are micro-social rather than macro-social. Domestic anomic suicide is due to an unperceived crisis within the family that changes how the family functions or the perceived changes in how the family will function. Durkheim provides an example of domestic anomic suicide, when a person loses their significant other, in his explanation when a husband’s wife dies, there is a disruption within the family structure, the survivor does not know how to function with the new situation, and this leads them to suicide (Durkheim 2005 [1897]). All three of these factors are influenced by how society controls or regulates individuals; some theorists argue that there are no regulations or controls to help people when facing moral crises, whereas others understand anomie to be the result of too many conflicting or incoherent regulations (ibid.).

Durkheim proposed radical suggestions to reform an anomic society that included the state supporting individual rights, as discussed in the section on the cult of the individual, and the dismantling of the wealth inheritance system, as it upholds class hierarchies and inequality (Pearce 2001). For Durkheim, inherited wealth skews the dynamic between individuals entering contracts with one another (ibid.). If there is significant wealth disparity between two parties then the one is in a more vulnerable negotiating position, as they have less resources at their disposal (Durkheim 1984 [1893]: 319; Pearce 2001). Pearce (2001) explains that “institutions of inherited wealth create a gap between the needs of the social order, its legitimations and the actual experience of its subjects” which subverts “the possibility that they could make a rational commitment to the social order” (78) 22. If there is no enforcement of actions to control the

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22 Emphasis kept from original source.
“anarchy of the economy,” Durkheim argued that “society [will] remain anomic” (Durkheim 1957: xxxix).

As mentioned above, there is a relationship between anomie and people’s connections to one another in society. Durkheim (2005 [1897]) explains in Suicide that anomie and egoism are related although independent of one another. Mestrovic (1988) also supports the connection between the two concepts, stating:

The fact that egoism, anomie, and derangement are a kind of unity is important. This trilogy is a refraction of Schopenhauer’s philosophy in the sense that he, like Durkheim, equates the boundless will with egoism, and claims that its end result is wickedness, madness, strife, and many kinds of folly (65).

Carls (2019) also supports this connection between lack of strong ties and anomie, arguing that the West has become an “amoral collection of individuals who have few, if any, strong ties between each other and who lack normative principles to guide social life” due to the structural changes of the nineteenth century (297).

**Acute & Chronic Anomie**

*Suicide* and *The Division of Labor in Society* discuss two states of anomie: “acute” and “chronic.” Acute or “transitory” anomie is the “result of abrupt change in the universe of references” or when there are “social upheavals” (Besnard 1988: 92; Burgi 2014: 293). Acute anomie is when there are instances, specifically regarding suicide for Durkheim, where the rate varies “from time to time, but it would not be a regular constant factor” (Durkheim 2005 [1897]: 215). This type of anomie can occur on the macro-social level; for example, in the aftermath of a sudden economic crisis or a pandemic, it can also occur on a more micro-social level, as described in *Suicide*, when it develops due to widowhood (Durkheim 2005 [1897]).
Chronic or institutional anomie “expresses the fact that the social world is change in itself and is a permanent lack of stable references” (Besnard 1988: 92). Unlike acute anomie, chronic anomie occurs at the mid- to macro- social levels; it occurs within or across social structures and lasts extended periods. Durkheim argued that “the world of trade and industry” is a realm of social life that has a chronic state of anomie (Durkheim 2005 [1897]: 279). Laissez-faire ideologies highly influence this state of anomie. These beliefs encourage “striving after limitless goals” and the decrease in occupational regulations are factors that increase the odds that a social system will develop anomie (Thompson 2002 [1982]: 89-90). Bernard (1988) explains that chronic anomie is not the result of “normlessness” but rather the culture of “constant progress, the longing for infinity, the necessity for a person to advance constantly toward an indefinite goal” (92). Making anomie inherent in industrial society. Rather than social rules limiting individuals’ desires for the infinite, it encourages these behaviours; unfortunately, the infinite, by definition, is not attainable. Therefore, individuals are left with feelings of dissatisfaction, disappointment, and loss. Anomie will continue until the social systems which have been unable to establish clear and effective moral rules provide remedies for the causes of the chronic state of anomie (Mestrovic & Lorenzo 2008). The other form of chronic anomie that Durkheim discusses in Suicide is chronic domestic anomie. However, his discussion is rife with sexist conceptions of marriage and gender, arguing that marriage restrains the boundless passions of men, and the deregulation of marriage as an institution across a society results in chronic anomie (Thompson, 2002 [1982]).

(Mis)Appropriations of Durkheim

“Anomie” is also used to analysed in the study of crime. Two of the most recognized modern theorists of anomie are Talcott Parsons (1937a) in The Structure of Social Action and Robert
Merton (1957) in *Social Theory and Social Structure*, approach “anomie” from a functionalist framework (Mestrovic & Lorenzo 2008). The issue with Parsons’ and Merton’s interpretation of Durkheim is that they distort his theory of anomie. Both Parsons’ and Merton’s anomie theories involve the discrepancy between society’s goals and individuals’ means of reaching these goals (Mestrovic 1988). Parsons stated that it is a “state of social chaos and confusion between goals and means” and uses it when exploring social order and human agency (ibid.: 58). Merton’s theory of anomie, also called “strain theory,” contends that anomie occurs when there is a “lack of means to reach a determined and even prescribed goal” (Besnard 1988: 93). Merton’s theory is conceptualized as strain theory because “some social structures exert a definite pressure upon certain persons in the society” (Merton 1968: 186). Unlike Durkheim, who was primarily concerned with the consequences and outcomes of anomie, Merton focused on the causes of anomie, which Mukherjee (2010) argues resulted in the concept being “robbed… of its opacity and brought it into a conspiracy with late stage capitalism” (10).

A frequently discussed example of this iteration of anomie is the ideology of the “American Dream” in the United States as a goal for people to achieve. Many, however, are unable to achieve this successful lifestyle due to structural barriers, no matter how hard they work or how much effort they put into their aspirations (Messner & Rosenfeld 2007). From Merton’s and Parsons’ perspectives of anomie, when individuals do not have the means to achieve these societal goals, they may resort to crime, such as theft or criminal enterprise, to achieve the desired goal or lifestyle.

Merton’s theory of anomie also involved five “adaptations” (Inderbitzin, Bates & Gainey 2016): 1. “Conformity” is when both institutionalized means and cultural goals are accepted; 2. “ritualism” is when institutionalized means are accepted, but cultural goals are rejected; 3.
“innovation” is when institutionalized means are rejected, and cultural goals are accepted; 4. “retreatism” is when both institutionalized means and cultural goals are rejected; the fifth “adaptation” exists outside of this cadre of acceptance or rejection, 5. “rebellion” is when there are new means and new goals (ibid.). Thompson (2002 [1982]) rejects this interpretation of anomie by explaining that:

[F]or Durkheim, anomie was not produced by the combination of strong culture and weak means, but by the weakness of culture due to inadequacies in the social structure (e.g. forced division of labour, lack of morally legitimate forms of economic association). Anomie was weak culture that failed to define the goals of human endeavour, leaving only insatiable greed, and the meaninglessness (97).

Another critical aspect of Merton’s understanding of anomie was his redefinition of the term as “normlessness” in society (Mestrovic & Lorenzo 2008). “Normlessness” is one of the most common and accepted translations of anomie, however inaccurate it may be. It is difficult to imagine any society lacking some form of normative structure; this conceptualization begs the question; how can individuals remain part of a collective that lacks norms? It is more logical to understand anomie not as “normlessness” but as immorality, for there can be immoral norms (Mestrovic 1988). The term “normlessness” also provides a more secular and individualistic perspective of anomie, distancing itself from the moral, religious, and political ideas that are fundamental to Durkheim’s original discussion of anomie (ibid.). This results in an understanding of anomie that is divested of obligation and duty since norms are more covert in their ability to coerce social action. How norms are implemented and practiced through social action in everyday life makes them appear to be similar to habits of behaviour rather than rules which we are obliged to follow (May & Finch 2009).
Another critique of “normlessness” discussed by Mestrovic (1998) involves a discussion of human will. He argues that framing anomie as “normlessness,” as well as the other functionalist definition involving the relationship between means and goals, assumes that a social actor is a “rational agent capable of accepting society’s goals and means” (ibid.: 61). However, Durkheim’s theory of anomie involves the peoples’ natural inability to control their unlimited desires, and their “will is by nature dangerous to himself and to society,” which is why rules that are supported by sanctions are essential in to constrain undesirable human behaviour (ibid.; Datta & Hanemaayer 2021).

This functionalist perspective raises another issue: it assumes that “society is a stable, self-maintaining, and self-correcting system made up of norms, values, beliefs, and sanctions.” (Mestrovic & Lorenzo 2008: 185). However, this approach does not allow for a nuanced understanding complex and often contradictory interactions of these aspects of society; it does not address the multiple layers, from macro- to micro-social, for the various norms, beliefs, values, and sanctions that exist (ibid.). Stedman Jones (2001) explains how the functionalist, Parsonian interpretation of anomie does not align with Durkheim’s original theory:

Just as Parsons has no theory of conscience, conscience collective or collective representation, so Durkheim lacks the Parsonian conception of the functional prerequisites of a system, a concern with latency, equilibrium and the problem of social control, and the study of actors in terms of deviance and conformity – yet Parsons associates these terms with Durkheim [Parsons 1937b: 376] (5).

As mentioned previously, Durkheim argued that society remains anomic unless steps are taken to combat it. Therefore, the belief that society is self-maintaining or self-correcting is problematic because positive action needs to take place for a society to rid itself of anomie.
Dérèglement: Re-Conceptualizing Anomie

Mestrovic (1988) provides an interpretation of anomie that is more appropriate to a Durkheimian understanding of anomie. He explains that the term “dérèglement” is the only other term that Durkheim used synonymously with anomie; the translation for this term is “derangement,” specifically moral derangement, rather than the standard translations of ‘normlessness’ or ‘deregulation’ (ibid.: 62). For as he explains, the French term “dérèglement” “carries with it… connotations of immorality and suffering” (ibid.). The term derangement also provokes feelings of chaos and confusion, which are often associated with anomie, evident in the connection between social crises and anomic social conditions.

Anomie or moral derangement can be analysed on the micro-social level, the mid-level, and the macro-social level (Mestrovic & Lorenzo 2008). When anomie occurs on a mid- or macro-social level, there can be “extreme social chaos,” and when anomie occurs at a micro-social level, as discussed with widowhood, there can be extreme feelings of loss and pain (Mestrovic & Lorenzo 2008: 182). Durkheim conceptualized anomie through his sociology of morals and argued that “society is the source of morality,” morality provides external constraints on social actions, whether they are acts of individuals, organizations, or states (Orru 1983). Therefore, anomie must be analysed not through an individual or psychological lens but a social one.

Anomie is thus here taken to mean a social condition resulting from moral derangement or the overabundance of conflicting moral positions and rules, rather than normlessness or the lack of means to acquire an expected cultural goal. It is the feeling of being overwhelmed, anxious, unsure, and confused due to the inability to make the appropriate moral choice because there is no clear moral path. Our relationships with animals can be defined by this type of anomie
because there are several moral rules or directions that we can follow, and many of those are contradictory. Throughout my discussion, I will argue that the legal framework surrounding breed-specific legislation is anomie because the laws themselves are deranged in an anomic sense of the word. They contradict existing scientific research and advocacy by expert groups, as well as a significant portion of the general population. My objective is to remain within the logic of this Durkheimian conceptualisation of anomie, and the focus of this work is on the consequences of these anomie manifestations, consequences that impact the lives of people and animals.
Chapter 3: Methodology and Analysis

Introduction

This chapter provides a Durkheimian analysis of the provincial legislation titled *Dog Owner’s Liability Act R.S.O. 1990, CHAPTER D. 16* (referred to as DOLA going forward), a provincial regulation titled *Ontario Regulation 157/05 Pit Bull Controls* (referred to as PBC going forward) and the Windsor (Ontario) by-law titled *By-law 245-2004* (referred to as BL 245 going forward), as well as layout the project’s methodology. Both statutes outline expectations, obligations and sanctions relating to people and their “ownership” or guardianship of dogs, with specific sections in the legislation relating to “dangerous dogs”, “restricted dogs”, and “prohibited dogs”. These two pieces of law, my theoretical work and substantive analysis, are used to answer the following research questions:

1. How can a rigorously developed conception of anomie be applied to breed-specific legislation in Windsor, Ontario in order to better understand the socio-legal, cultural, and normative conditions that delimit and evaluate human-animal relationships?

2. How does breed-specific legislation in Windsor, Ontario frame and rely on “risk management” as a strategy for the problematization and prevention of dog attacks and “irresponsible” dog ownership?

3. What are the implications of such a conceptualization of risk as a hegemonic form of collective representation?

In the discussion section that follows, I argue that both of these laws are articulated in anomic ways.
In Canada, there are two primary aspects to civil law that differentiate it from criminal law. The first is that in civil law there is a plaintiff who sues a defendant whereas in criminal law the “plaintiff” is the Crown, representing the interests of the public. The second aspect is that the standard of proof in civil law requires the plaintiff to prove that the defendant “is legally responsible, or liable, because a civil case is decided on a balance of probabilities” rather than proof beyond a reasonable doubt as it is criminal cases (Government of Canada Civil and Criminal Cases 2021). The DOLA and the PBC are examples of civil law and regulation respectively that outline the civil liability and responsibility of dog owners within the province of Ontario. This includes but is not limited to:

- proceedings regarding an alleged dog attack
- obligations to prevent dog attacks
- the ban and control of pit bull ownership.

Bylaw 245 places regulations on dog ownership within the City of Windsor. These regulations involve, but again are not limited to:

- the registration and licensing of dogs
- the physical containment of the dog
- defining and placing restrictions on the ownership of dangerous, restricted dogs, and prohibited dogs.

The object of this analysis is the legislation but also the relationships and communities that are impacted by breed-specific legislation. Within these relationships and communities are the “juridical subjects” that make up these social dynamics. The collective recognises “juridical subjects” as individuals who have “soul[s], or personalit[ies]” and thus are deserving of respect; with that, there is a mutual understanding that juridical subjects have “autonomy, self-control
and the ability to follow social rules and fulfil social obligations” (Pearce 2001: 101; Datta & Pizarro-Noël 2020b: 80).

The key juridical subjects involved in the legislation, enforcement, and consequences of breed-specific legislation are: law-makers (which includes those at the provincial level and municipal city councillors), provincial law enforcement officers, animal control officers, by-law enforcement officers, humane society employees, dog guardians/owners and banned breed dog guardians/owners more specifically, community members, victims of dog attacks, advocates in favour and against breed-specific legislation. Since dogs are subjects of the law but may not recognize their duties and obligations or the consequences of their actions, they are on the threshold of juridical subjectivity.

**Neo-Durkheimian Methodology**

Durkheim’s *The Rules of Sociological Method* is a “manifesto” for the discipline of sociology (Durkheim 1982 [1895]: 2; Cormack 2002). Specifically, it defines the object of sociological study, “social facts”, and an epistemology and methodology for identifying, analysing, and explaining social forces. Cormack (2002) elaborates on this description of *The Rules* as a “manifesto” by providing examples of how the content and the way in which Durkheim presents the content resemble qualities that are found in manifestos. First, she states that the book was a strategic vessel to promote sociology as a scientific study, it had to “attack all conventional, premodern, as well as competing intellectual explanations of the human world” (Cormack 2002: 38). Another component to *The Rules* manifesto quality is its attempt to reify the concept of “the social” as a tangible and real object of scientific inquiry (ibid.: 38-39). It is important to address the influence of Durkheim’s method and how he describes sociological research. This section
will define and discuss social facts, how they are categorized as “normal” and “pathological,” and how they are understood in the context of sociological research.

My methodological rule is to avoid an error common in theoretical methods as outlined by Pearce (2001) where theories are “developed abstractly and, instead of being used to explore the complexity of social phenomena, turn to reality merely to illustrate their concepts” (14). I use the theory of anomie to explain and contextualize breed-specific legislation and animal law in general, rather than using breed-specific legislation to prove anomie as a theoretical concept. My method includes a combination of Durkheimian methodology and elaborative coding which is discussed in the Data Analysis section of this chapter.

Social Facts

Social facts are “types of behaviour and thinking [that] are external to the individual” and coerce the individual into fulfilling their obligation, duty, or expectation as set out by the social fact (Durkheim 1982 [1895]: 51). According to Gane (1988), this sense of obligation is proof that the social fact is external to the individual because external sources such as laws, institutions, groups or communities, and other people impose obligations onto individuals. These types of facts are social in nature, making them distinct objects of sociological study. This separates social facts from other types of facts, such as biological, psychological, or philosophical facts, which can be studied in the natural sciences, psychology, or philosophy, respectively. Cormack (2002) argues that by defining social facts as an object of sociological study, *The Rules* “makes sociology by generating the moral reality that it studies”23 (44). Durkheim (1982 [1895]) specifically addresses law when describing social facts when he states:

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23 Original emphasis kept.
If I attempt to violate the rules of law they react against me so as to forestall my action, if there is still time. Alternatively, they annul it or make my action conform to the norm if it is already accomplished by capable of being reversed; or they cause me to pay the penalty for it if it is irreparable (51).

He goes on to explain that individuals can also experience feelings of resistance and restrictions in cases of moral rules being violated, this is due to the connection between the *conscience collective* and the *conscience individuelle*24. Durkheim (1984 [1893]) explains this connection between the collective and individual consciences, “is doubtless a self-evident truth that there is nothing in social life that is not in the consciousness of individuals. Yet everything to be found in the latter comes from society” (287). This explicitly creates a connection between law, morality and social facts, thus making law and moral precepts phenomena that can be studied sociologically.

Law, which acts in and on the *conscience collective*, is an external indicator of social forces, it exists prior to the individual and it constrains how any individual can act, behave, and think. This coercion can develop from feelings of obligation or duty. However, the complexity of modern, written, codified law makes it inaccessible to most who are constrained by it. For example, most individuals in Canadian society are aware that murder is a crime, but some are not aware of every act punishable under the Criminal Code of Canada. As such, morals have a greater impact on conduct than law in many circumstances.

Some social facts are beliefs and practices that are crystallized, meaning they are well established within a society, either through law, religious doctrine, or institutions (Durkheim 1982 [1895]). However, Durkheim explains that there is also another category of facts that are

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24 If *conscience collective* is understood to be “the shared mental and moral orientations of societies” then *conscience individuelle* is understood to be the mental and moral orientations of each individual person (Coser in Durkheim 1984 [1893]: xvii).
fluid, which he calls “social currents” (ibid.: 52). Like social facts, social currents are also external to and exert upon individuals. The source of the coercion in social currents is the power of collective emotion. Examples of these collective emotions are “waves of enthusiasm, indignation and pity” (ibid.: 52-53). The outrage against the abuse at Abu Ghraib is an example of these types of collective emotions (Mestrovic and Lorenzo 2008).

Pearce (2001) provides an example of the effect of social currents which develop from collective gatherings. He describes the Ontario Coalition Against Poverty (OCAP) protests at the Provincial Parliament in 2000:

This experience was undoubtedly an effect of collective effervescence, but it was also linked with my personal openness to some kind of transformation at that time… Thus political and ethical concerns, and intellectual engagements helped constitute me to be open to a transformative experience. (Pearce 2001: xviii)

The impact of collective effervescence can be dependent on the participants’ ethical and intellectual connection to the object of the collective effervescence. One is more likely to be moved and influenced by the collective gathering if they already have a moral and/or intellectual connection to the content of the gathering. Social currents can be found in the collective gatherings that protest the enforcement of breed-specific legislation, such as the rally at Queens Park in Toronto in October 2021, a protest walk in British Columbia in September 2012, and a protest in Durham Region in July 2021 (see. CBC News Oct. 23, 2021; Raza Oct. 30, 2021; CTV British Columbia Sept. 30, 2012; Dempsey Jul. 29, 2021). Based on Durkheim’s definition of social fact, law is a prime object of sociological study to better understand society and that is why I chose to analyse the DOLA, the PBC and the BL 245 in order to understand breed-specific legislation and how morals surrounding dog ownership are crystalized.
The Normal and Pathological

Normal sociological phenomena are those which are common to the entire group, although there can be variations throughout the group (Durkheim 1982 [1895]). For Durkheim, then, normal sociological phenomena are those that are average, constant, or common, within a society’s phase of development. Therefore, Durkheim counter-intuitively viewed crime, generally, as a normal social phenomenon, because it occurs in all societies, across all periods of time. Crime is designated as pathological when there is a significant change in the rate of occurrence, this can be in relation to lower crime rates or higher crime rates. The indication here of something pathological is that there is a change or shift in society that has resulted in an increase or decrease in rates of the social phenomenon, whether it be crime or suicide (Bratton & Denham 2019). This societal change or shift can include economic crises, war, food scarcity, or political upheaval. Therefore, when a social phenomenon shifts from being normal to pathological, it can be an indicator of social change, similar to how the movement of tectonic plates produces earthquakes and tsunamis. In Durkheimian terms, law is “normal” when it represents the morals and conscience collective of the society in which it operates. In the case of breed-specific legislation, the law is pathological because it does not accurately represent the conscience collective, either of a significant portion of the general public or of the scientific community.

Understanding Social Facts

Durkheim (1982 [1895]) outlines three rules for studying or understanding social facts. The first is that “one must systematically discard all preconceptions” (72). Despite this rule, Durkheim understood that social phenomena are “recognized subjectively” due to the representations that mediate between humans and their perceptions of the world (Pearce 2001: 15). When social facts are crystalized, in law for example, how one understands and applies them can be like light
refracting from the crystal. In written law itself, there is a lot of room for how legal authorities and the courts interpret and enact the law. These nuances are examples of how individual subjectivity affects social reality. The second rule is that “[t]he subject matter of research must only include a group of phenomena defined beforehand by certain common external characteristics and all phenomena which correspond to this definition must be so included” (Durkheim 1982 [1895]: 75). For this research, the subject matter was the breed-specific laws that constrain dog ownership in Windsor, Ontario. The other breed-specific laws that exist in Canada or the United States do not directly impact my research and thus were not taken into consideration when I performed my analysis.

The third and final rule is that “when the sociologist undertakes to investigate any order of social facts, he [, she, or they] must strive to consider them from a viewpoint where they present themselves in isolation from their individual manifestations” (ibid.: 82-83). This relates to the first rule, which attempts to separate the object of research from the subjectivity of the researcher. Durkheim’s method centered around observation and applying both “inductive and hypothetico-deductive forms of theorization” (Pearce 2001: 15). And although Durkheim is often considered a positivist, Pearce (2001) argues that his application of positivism was marginal. Datta and Hanemaayer (2021) state that Durkheim supported “epistemological realism” by acknowledging that concepts precede but must not determine the outcome of sociological research (570). I think it is reasonable, in my case, to use Durkheimian methodology even though I do approach my research without completely disregarding preconceived notions, because I understand that my position in relation to this topic is an example of the subjective refraction mentioned previously. With this understanding, I can approach this research with a reasonable amount of objectivity so that my research is not reducible to my own speculations, while still
accepting that I bring my own thoughts and understanding of the circumstances surrounding the legislation to my analysis.

**Data Collection**

The discrepancies between public opinion in the *conscience collective* and the law provided an interesting starting point for a Durkheimian analysis of a topic that has been a personal interest of mine for over a decade. This initial recognition was confirmed when I conducted my literature review where I found that both the scientific community and various animal organizations oppose breed-specific legislation (see. Nilson, Damsager, Lauritsen, Bonander 2018; Creedon & Ó Súilleabháin 2017; Canadian Veterinary Medical Association 2022; Humane Canada n.d.).

After this initial planning stage, I acquired copies of the laws; BL 245 from the city of Windsor’s website and DOLA from the government of Ontario’s e-laws website (included with DOLA was the Pit Bull Controls regulation). In the context of Ontario provincial legislation, regulations are established to “provide detail about how a statute is to be implemented. i.e., Definitions, licensing requirements, registration requirements, performance specifications etc.” (Seneca Libraries n.d.). Therefore, my analysis focuses on one provincial statute, the *Dog Owner’s Liability Act*; the corresponding regulation, the *Pit Bull Controls Regulation*; and one Windsor by-law, *By-Law 245-2004*. A secondary object of study is a social media post from the local Windsor-Essex Humane Society, to contextualize *conscience collective*.

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26 See. https://www.ontario.ca/laws
Data Analysis

Sociological legal document analysis is useful because it provides an empirically accessible repository of the rules, obligations, duties, and rights established for a specific society or collective. Obligations and sanctions are key identifiers of law, with the former being a more abstract criteria and the latter being concrete criteria. This provides an authority on the morals of a society which in other circumstances can be difficult to define. Legal documents not only outline or define these moral or collective expectations, but they also describe the practical applications of the law. Therefore, it does not exist as strictly “moral jargon” but also has explicit real-life implications. For Durkheim “the definition of crime as any which infringes the social conscience and which receives a response in the form of a sanction from society” (Gane 1988: 44). Because of this, one of the components to my analysis involved coding the pieces of law using the following questions:

- What are humans obliged to do?
- What actions by humans are sanctioned?
- What actions by animals are sanctioned?
- What are the sanctions?

This categorization was followed up with further organization of the documents based on themes such as: risk, defining pit bulls, the exclusion of wild animals, mitigating factors, and sanctions. These themes will be discussed in depth in the following two sections of this chapter.

The organization and reorganization of categories and themes within my data was influenced by elaborative coding. Auerbach & Silverstein (2003) define elaborative coding as
“the process of analysing textual data in order to develop theory further” (104). Auerbach & Silverman (2003) present six steps for elaborative coding which are as follows:

1. Explicitly state your new research concerns, your theoretical constructs, and what you want to develop further. 2. Select the relevant text for further analysis. Do this by reading through the raw text with Step 1 in mind, highlighting relevant text. Select text that is consistent with your old theoretical constructs, as well as text that suggests new ones. 3. Record repeating ideas by grouping together related passages of relevant text. Organize the repeating ideas with respect to old and potentially new theoretical constructs. 4. Organize themes by grouping repeating ideas into coherent categories. As before, the organization of themes should reflect old and potentially new theoretical constructs. 5. Elaborate old theoretical constructs by grouping themes into units consistent with them. Develop any new theoretical constructs by organizing themes into meaningful units. 6. Create a theoretical narrative by retelling the participants’ story in terms of both old and new theoretical constructs (105).

The goal of this type of coding is that it “elaborates on the major theoretical findings” of previous studies “even if there are slight differences between the two studies’ research concerns and conceptual frameworks” (Saldana 2013: 229). In my case, I began my research with a previous theoretical concept, anomie, specifically using Mestrovic & Lorenzo’s (2008) definition of anomie and applied it to breed-specific legislation. I did so with two objectives in mind, the first was to better understand breed-specific legislation and the discrepancy between public opinion, scientific evidence, and the established law. My second objective was to show the relevancy of anomie in contemporary sociology. As mentioned above, I categorized and reorganized various concepts and themes found within the three legal documents, which were grounded in a Durkheimian understanding of law. From there I applied my existing knowledge of the theory to explain the connection between the laws and anomie. The rest of this chapter will elaborate on my findings and discussion.

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28 Found in Saldana, 2013, 229.
Analysis

This chapter analyses the specific codified rules that regulate pit bull guardianship in Windsor, Ontario, the DOLA, PBC, and BL 245, using my Durkheimian framework. Despite the Windsor by-law existing prior to the Ontario legislation, I begin with the provincial legislation and regulation and narrow the scope of my analysis to the municipal by-law.

*Provincial Law Dog Owner’s Liability Act R.S.O. 1990, CHAPTER D. 16*

The current version of the DOLA has been in effect since January 1, 2020, and the amendment relating to the inclusion of breed-specific policies received assent March 9, 2005. The legislation begins by outlining various definitions of terms that are of importance to the statute, as is common custom for various types of legal documents whether they be federal, provincial, or municipal. This is followed by a section that outlines the “liability,” explaining who is at fault under the law. The third part addresses proceedings, including on what grounds the court can begin a proceeding against a person; the sanctions that are imposed on the dog and/or the person; and the contributing factors that may have influenced the circumstance. The discussion of the proceedings is a short section outlining precautionary expectations for dog guardians. Section five is most pertinent since this section provides all the obligations, regulations and sanctions for pit bulls and pit bull ownership within the province of Ontario. Section six outlines the rules for search and seizure and is followed by a section addressing their sanctions. The final section of the DOLA addresses the powers of the Lieutenant Governor in Council to make regulations in relation to this Act. Aspects of all these sections will be analysed below, with special emphasis placed on content pertaining to pit bulls.

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29 Which are referred to in the DOLA as “owners”.

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In section 1(1) of the DOLA, the Act defines “pit bull” as:

“pit bull” includes,
(a) a pit bull terrier,
(b) a Staffordshire bull terrier,
(c) an American Staffordshire terrier,
(d) an American pit bull terrier,
(e) a dog that has an appearance and physical characteristics that are substantially similar to those of dogs referred to in any of clauses (a) to (d); (“pit-bull”)

Along with this definition, in section 1(2) the legislation elaborates that:

(2) In determining whether a dog is a pit bull within the meaning of this Act, a court may have regard to the breed standards established for Staffordshire Bull Terriers, American Staffordshire Terriers or American Pit Bull Terriers by the Canadian Kennel Club, the United Kennel Club, the American Kennel Club or the American Dog Breeders Association. 2005, c. 2, s. 1 (3).

Section 1(1)(e) is of particular interest because it opens up the criteria for identifying pit bull-type dogs, adding a condition where an owner31 of a dog is liable based on the physical characteristics, or phenotype, of their dog. Physical characteristics have often been used to vilify pit bull-type dogs. Their large heads, wide mouths, and muscular bodies have all added to the perception that they are dangerous. Placing importance on the physical characteristics of a dog may be influenced by the lack of understanding of how an animal’s phenotype impacts the animal’s potential to be dangerous. An example of this is the debunked myth that pit bulls have “lock jaw,” this misinformation having a significant impact on the perception of pit bulls.

The sections that address the breed-specific legislation in particular, are sections 6 to 11.

Section 6 outlines the banning of specific actions in relation to pit bulls, which include:

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30 All bold font used in reference to the legislation is kept from the original document.
31 The definition of “owner” “includes a person who possesses or harbours the dog and, where the owner is a minor, the person responsible for the custody of the minor.
Except as permitted by this Act or the regulations, no person shall,
(a) own a pit bull;
(b) breed a pit bull;
(c) transfer a pit bull, whether by sale, gift or otherwise;
(d) abandon a pit bull other than to a pound operated by or on behalf of a municipality, Ontario or a designated body;
(e) allow a pit bull in his or her possession to stray;
(f) import a pit bull into Ontario; or
(g) train a pit bull for fighting. 2005, c. 2, s. 1 (16).

Human actions that are sanctioned relating to pit bull-type dogs include owning, breeding, transferring ownership, or importing pit bulls. As well, people cannot abandon their pit bulls, allow them to be on the loose, or train them for fighting, which is also mentioned in the Criminal Code of Canada\textsuperscript{32} and the Provincial Animal Welfare Services (PAWS) Act\textsuperscript{33}.

Along with providing definitions of what a pit bull is and how they can be identified, section 7 provides a category outlining “restricted pit bulls.” Ownership of restricted pit bulls is described as:

7 (1) For the purposes of this Act, a pit bull is a restricted pit bull if,
(a) it is owned by a resident of Ontario on the day subsection 1 (16) of the Public Safety Related to Dogs Statute Law Amendment Act, 2005 comes into force; or
(b) it is born in Ontario before the end of the 90-day period beginning on the day subsection 1 (16) of the Public Safety Related to Dogs Statute Law Amendment Act, 2005 comes into force. 2005, c. 2, s. 1 (16).

Same
(2) Despite clause 6 (a), a person may own a pit bull if it is a restricted pit bull. 2005, c. 2, s. 1 (16).

Controls on restricted pit bulls
(3) A person who owns a restricted pit bull shall ensure compliance with the requirements set out in this Act and the regulations that relate to restricted pit bulls, within such time frames as are provided for those requirements in this Act or the regulations. 2005, c. 2, s. 1 (16)\textsuperscript{34}.

\textsuperscript{32} See C-46 447(1)
\textsuperscript{33} See Part IV Section 16
\textsuperscript{34} The DOLA, PBC, and BL-245 refer to animals as “it,” this contradicts my position that animals are subjects rather than objects.
For this legislation, “restricted pit bulls” are pit bulls that are allowed to continue to live with their guardian in the province if they were owned prior to the amendment of Section 6 mentioned above. This would also include any newborn pit bull-type dogs that would have been conceived prior to these amendments becoming active. The average lifespan for most pit bull-type dogs is between 12-16 years\(^{35}\) (American Kennel Club 2022d). Which under the law would make most restricted pit bull ownership in Ontario non-existent from 2017 to 2021.

Along with obligations and actions which are sanctioned, the legislation also provides sanctions to both dogs and their owners, which are outlined in sections 4(3), 4(4), 4(5):

**Final order**
(3) If, in a proceeding under subsection (1), the court finds that the dog has bitten or attacked a person or domestic animal or that the dog’s behaviour is such that the dog is a menace\(^{36}\) to the safety of persons or domestic animals, and the court is satisfied that an order is necessary for the protection of the public, the court may order,
(a) that the dog be destroyed in the manner specified in the order; or
(b) that the owner of the dog take the measures specified in the order for the more effective control of the dog or for purposes of public safety. 2000, c. 26, Sched. A, s. 6; 2005, c. 2, s. 1 (8, 9).

**Examples, measures for more effective control**
(4) Some examples of measures that may be ordered under subsection (2) or clause (3) (b) are:
1. Confining the dog to its owner’s property.
2. Restraining the dog by means of a leash.
3. Restraining the dog by means of a muzzle.

**Automatic restraint order**
(5) If a dog whose destruction has been ordered under clause (3) (a) is not taken into custody immediately, the owner shall restrain the dog by means of a leash and muzzle and such other means as the court may order until the dog is taken into custody. 2000, c. 26, Sched. A, s. 6; 2005, c. 2, s. 1 (11).

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\(^{35}\) See https://www.akc.org/compare-breeds/?selected=%5B23324%5D

\(^{36}\) In the Canadian Criminal Code, “menace” is used in the French translation. In the English version, “menace” (fr.) is translated to “threat” (C-46, 2022, vi).
The “final order” is one that is enacted if or when the court has found that the dog is a dangerous dog, whether that be because they have previously attacked or bitten a person or a domestic animal or because of the potentiality for them to attack or bite a person or a domestic animal. If a dog is found dangerous, the first sanction states for them to be “destroyed” which means the euthanasia or killing of the animal. If the court decides to not order the dog to be “destroyed” then the less severe sanction is for the owner to enact measures to control the dog. In circumstances where the dog is not “destroyed” immediately after court proceedings, section 4(5) states that while the owner and the dog await its death sentence, the owner must take the control measures mentioned in section 4(4). The use of the word “destruction”, rather than using the word “death,” “euthanasia,” or “killing,” displays the language of property that is used regarding animals in the law. It presents them as an object rather than a living being.

There is also a sanction, 4(7), that orders for the sterilization of the dog if they are not ordered to be destroyed:

**Sterilization requirement**
(7) The owner of a dog that is subject to an order under clause (3) (b) shall ensure that the dog is neutered or spayed, as the case may be, within 30 days of the making of the order or, if the court specifies a different time period, within the time period specified by the court. 2005, c. 2, s. 1 (13).

The rules for this section of the Act are detailed in the Pit Bull Controls Regulation (PBC) and are clarified in the following section which analyses the PBC. There is an implication with section 4(7) that there is a genetic component to aggression or violence. Sterilizing a dog that has been deemed dangerous eliminates the chance that they will pass on this “tendency for violence” to their offspring. The act of sterilizing these dogs is that it can function as a form of culling, by eliminating the way that these dogs reproduce.
Along with the above-mentioned sanctions, there are also specific sanctions for dogs designated as pit bulls who are found to have bitten or attacked a person or a domestic\textsuperscript{37} animal.

Under sections 4(8) and 4(9), the DOLA states:

**Mandatory order under cl. (3) (a)**

(8) When, in a proceeding under this section, the court finds that the dog is a pit bull and has bitten or attacked a person or domestic animal, or has behaved in a manner that poses a menace to the safety of persons or domestic animals, the court shall make an order under clause (3) (a). 2005, c. 2, s. 1 (13).

**Same**

(9) When, in a proceeding under this section, the court finds that the owner of a pit bull contravened a provision of this Act or the regulations relating to pit bulls or contravened a court order relating to one or more pit bulls, the court shall make an order under clause 3(a). 2005, c. 2, s. 1 (13).

The DOLA, therefore, has a mandatory order for any pit bull-type dog that has contravened aspects of the law to be “destroyed” or killed. Making it evident that there are more strict and different punishments for pit bull-type dogs than other dogs that might be labelled as a “dangerous dog”.

The majority of the sanctions which have been discussed so far predominantly place restrictions on the dogs themselves, for example, physically confining the dog, requiring the dog to wear a muzzle or a leash, sterilizing or killing the dog. However, the DOLA also presents sanctions against people. Section 5 prohibits dog ownership:

When, in a proceeding under section 4, the court finds that the dog has bitten or attacked a person or domestic animal or that the dog’s behaviour is such that the dog is a menace to the safety of persons or domestic animals, the court may make an order prohibiting the dog’s owner from owning another dog during a specified period of time. 2000, c. 26, Sched. A, s. 6; 2005, c. 2, s. 1 (14).

\textsuperscript{37} Domesticated animal is not defined in either the DOLA or the BL-245, but scientifically is defined as the process in which animals have been kept by people for a “distinct purpose, humans control their breeding, their survival depends on humans, and they develop genetic traits that are not found in the wild” (DeMello 2012: 84). Domestication differs from taming, which is when a genetically wild animal is brought in close contact with people.
The court acknowledges that the party at fault is not just the animal that has directly committed the act of biting or attacking, but also the owners, since they carry a degree of responsibility and an obligation to ensure that they have control over their pet so that they themselves, their dog, other people, and other animals are safe. These sanctions apply not just to guardians of pit bull-type dogs, but also to all other breeds of dogs.

Prohibiting animal ownership for individuals who have been involved in various types of animal crimes is a common sanction for other Canadian laws, whether that be animal abuse law at the federal or provincial level\textsuperscript{38}.

Further sanctions against people are outlined in section 18 under \textbf{Offences} which states:

\textbf{Offences}

18 (1) An individual who contravenes any provision of this Act or the regulations or who contravenes an order made under this Act or the regulations is guilty of an offence and liable, on conviction, to a fine of not more than $10,000 or to imprisonment for a term of not more than six months, or both. 2005, c. 2, s. 1 (16).

\textbf{Same}

(2) A corporation that contravenes any provision of this Act or the regulations or that contravenes an order made under this Act or the regulations is guilty of an offence and liable, on conviction, to a fine of not more than $60,000. 2005, c. 2, s. 1 (16).

\textbf{Same}

(3) If a person is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to make compensation or restitution in relation to the offence. 2005, c. 2, s. 1 (16).

These sanctions can include both restitutive sanctions, which function as financial sanctions, and repressive sanctions which include imprisonment. They also vary in severity depending on whether the party who is found guilty is an individual or a corporation.

\textsuperscript{38} See Provincial Animal Welfare Services Act Part VIII, 49(9) and Criminal Code of Canada 447.1.
Legislating Risk Management

There are sections of the legislation that rely on probability, foresight, and risk management of the “reasonable person,” that have a representation of juridical subjects in legal discourse. Section 5.1 is an example of one of these, where there is an expectation of dog owners exercising “reasonable precaution” to prevent their dog from “(a) biting or attacking a person or domestic animal; or (b) behaving in a manner that poses a menace to the safety of persons or domestic animals. 2005, c. 2, s. 1 (15).” This focus on “risk” is a key component of law. Specifically in penal law, risk is used as a means of determining “the likelihood of re-offence” (Leiss & Hrudey 2005: 1). For this piece of legislation, a dog owner who exercises “reasonable precaution” displays some understanding that they are aware that their dog can cause harm to others. Therefore, it is expected that dog owners are knowledgeable not only about dogs in general but also about their own dog’s behaviour and non-verbal communication.

Section 4(6) - Considerations - provides circumstances that address types of mitigating factors which are often used in criminal law as a means of understanding the rationale, mindset, or onus of the individual who has allegedly committed the crime(s). These circumstances are as follows:

(6) Except as provided by subsections (8) and (9), in exercising its powers to make an order under subsection (3), the court may take into consideration the following circumstances:
1. The dog’s past and present temperament and behaviour.
2. The seriousness of the injuries caused by the biting or attack.
3. Unusual contributing circumstances tending to justify the dog’s action.
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. 2000, c. 26, Sched. A, s. 6; 2005, c. 2, s. 1 (12).
The court may consider these mitigating factors when determining what the final order (sanction) is if the dog is found to have bitten or attacked a person or a domestic animal.

In criminal law, “mitigating factors” are used after a guilty verdict has been established and before sentencing has been confirmed, with the objective of lessening the sentence\textsuperscript{39} (Steps to Justice n.d.; Jaksa 2021; Legal Information Institute n.d.). For this legislation, considerations one, two, three, and five concern the dog(s); consideration six concerns the owner; and consideration four concerns any number of factors and is based on potentialities. Potentialities or probabilities are also discussed for considerations five and six. This inclusion of foresight and potentials will be elaborated on further in the discussion section on responsibilization and risk management.

The DOLA defines pit bull-type dogs and classifies them as restricted or not restricted. It establishes expectations for how dog owners should control their dog and expectations of the behaviour of the dog. The DOLA also outlines the sanctions imposed upon both human and animal, which range in severity from fines to imprisonment to sterilization and killing the dog.

\textit{Dog Owners’ Liability Act: Ontario Regulation 157/05 Pit Bull Controls (PBC)}

The PBC regulation addresses the control and sterilization of pit bulls, as well as the conditions that include or exclude the involvement of restricted and out-of-province pit bulls in dog shows and flyball tournaments\textsuperscript{40}. The sections of the PBC relate directly to various sections within the DOLA. Section 1 of the PBC addresses the means of controlling pit bull-type dogs. This includes enclosing them within the property of the owner or an individual who consents to have the dog

\textsuperscript{39} See Criminal Code of Canada C-46 718.2

\textsuperscript{40} "flyball tournament" means a dog flyball tournament, whether held in Ontario or elsewhere, that is sanctioned, in writing, by the North American Flyball Association" (Ontario Regulation 157/05 Pit Bull Controls).
enclosed within the property. This section also provides rules for the muzzling and leashing of pit bull-type dogs.

Section 2, which focuses on the regulations for sterilization states:

(1) Subject to subsections (2) and (3), every owner of a restricted pit bull shall ensure that the pit bull is sterilized by a veterinarian on or before the day that is 60 days after the day on which this Regulation comes into force. O. Reg. 157/05, s. 2 (1).

(2) If the effect of subsection (1) would be to require sterilization of a pit bull before it reaches the age of 36 weeks, every owner of the pit bull shall instead ensure that it is sterilized on or before the day on which it reaches that age. O. Reg. 157/05, s. 2 (2).

(3) An owner of a restricted pit bull is exempt from complying with subsection (1) if, in the written opinion of a veterinarian, the pit bull is physically unfit to be anaesthetized because of old age or infirmity. O. Reg. 157/05, s. 2 (3).

(4) If a veterinarian gives a written opinion based on infirmity, the veterinarian shall state, in the written opinion, whether, in his or her opinion, the infirmity may not be permanent. O. Reg. 157/05, s. 2 (4).

(5) Where the veterinarian states that an infirmity may not be permanent, he or she shall specify, in the written opinion, a date by which the owner should have the pit bull re-examined by a veterinarian to determine whether the pit bull is fit to be anaesthetised. O. Reg. 157/05, s. 2 (5).

(6) An exemption based on a written opinion that specifies a date under subsection (5) ends on that date, but a further written opinion under subsection (3) may be sought in respect of the pit bull on or before that date. O. Reg. 157/05, s. 2 (6).

(7) In this section, “veterinarian” means a member of the College of Veterinarians of Ontario. O. Reg. 157/05, s. 2 (7).

The regulation notes that the clauses regarding pit bulls not being fit for anesthesia, thus sterilization, do not negate clause 6(b) of the DOLA. This aims to close any loopholes that would legally allow people to breed their dogs if they are not fit for sterilization.

Sections 3, 4, and 5 relate to restricted pit bulls’ participation in dog shows that have been sanctioned by The Canadian Kennel Club, The United Kennel Club, The American Kennel Club, or The American Dog Breeders Association. Section 4 outlines the conditions for restricting pit bull-type dogs, dogs registered as Staffordshire bull terriers, American Staffordshire terriers, or
American pit bull terriers, may participate in dog shows. Sections 6, 7, and 8 provide regulations for flyball tournaments, which are similar rules to those outlined for dog shows. In both cases, they specify restricted pit bulls, which as defined in the DOLA, apply only to pit bull-type dogs that were born or conceived before the introduction of the Act and are registered within the province of Ontario. The primary focus in this work regarding this regulation are the details on the sterilization component of the DOLA. This regulation provides more context on how courts can enforce this sanction.

*The City of Windsor By-law 245-2004*

The Council of the Corporation of the City of Windsor passed BL 245 on September 27th, 2004. They amended the by-law on November 22, 2004, to include the breed specific legislation. The BL 245 begins by defining terms, followed by Part I which regulates dog licenses within the city of Windsor. Part II concerns dog running at large; Part III and IV are for rules regarding noise and dog excrement respectively, with Part V designating regulations for the muzzle, leashing and containment of dogs. Part VI addresses the rules and regulations for restricted and prohibited dogs. This is followed by a brief part VII on compensations and then Part VIII concerns exemptions. Part IX outlines the offences for the by-law and the last part, Part IX\(^41\) is on the repeal of by-laws. I refer to the by-law by the various Parts and the sections underneath, which I analyse first by number and then by letter. For example, Part I Section 1 subsection b) will be referred to as “I.1.b” and this will be consistent throughout the rest of the analysis for BL 245.

The BL 245 provides definitions for what type of dog is categorized as a “pit bull” under Section 1(bb):

\(^{41}\)This appears to be a typo in the legislation, where the final Part relating to the Repeal of By-laws should be Part X.
bb) “pit bull” includes:
(i) a pit bull terrier,
(ii) a Staffordshire Bull Terrier,
(iii) an American Staffordshire Terrier,
(iv) an American pit bull terrier,
(v) any dog that has the appearance and physical characteristics predominantly conforming to the standards for any of the above breeds, as established by the Canadian Kennel Club or the American Kennel Club or the United Kennel Club or as determined by a veterinarian licensed to practice in Ontario.
(substituted B/L 374-2004, dated Nov. 22, 2004)

This definition has the exact wording of the definition of pit bull dogs in the DOLA. Since BL-245 predates the DOLA, it could be that the Ontario government based their definition of pit bull off of the Windsor by-law. The BL-245 also differentiates between “restricted” dogs and “prohibited” dogs. These definitions are in Section 1(bb)\(^{42}\) and 1(cc) respectively as:

bb) “Restricted Dog” means:
(i) A dog that is a Pit Bull dog; and
(ii) A dog for which the owner has a valid 2004 dog licence issued under Part I.

cc) “Prohibited Dog” means:
(i) A Pit Bull dog which is not a restricted dog;
(ii) A Pit Bull dog, previously designated as a restricted dog, that is kept or permitted to be kept by its owner in violation of the requirements for such dog; or
(iii) A dog, previously designated as a dangerous dog, that is kept or permitted to be kept by its owner in violation of the requirements for such dog.

The definition for restricted pit bull-type dogs is similar to the provincial distinction. Both allow for the people who own pit bulls (which has been licensed within the city for BL 245) prior to the enactment of either legislation to continue the ownership of the dog after the legislation is enforced. The difference is that the BL 245 explicitly provides a definition for prohibited dogs,

\(^{42}\) It should be noted that there is an assumed error in the writing of this by-law considering the section above this, which defines pit bull, is also labelled as (bb).
whereas the provincial legislation implies that all other pit bulls that do not fall under the category of “restricted” are not allowed in the province.

It is interesting to note that the by-law provides a definition for “purebred dog” without any further mention. A purebred dog is defined under Section 1(aa) as “a dog that is registered or eligible for registration with an association incorporated under the Animal Pedigree Act (Canada)”. It is unclear whether the definition was included with the intention of adding something in the by-law regarding purebred dogs or possibly to do with providing specific dog breeds in the definition for “pit bull” and using the various kennel organizations as support for how the breeds are defined. It could also be an important term in the context of the courts and the enforcement of the by-law. Unfortunately, the lack of clarity surrounding the inclusion of the definition makes it difficult to understand the reasoning and context. This contributes to discussions of anomie.

BL 245 has two definitions in relation to dangerous dogs, the first in Section 1(i) defining “dangerous dog,” and the other in Section 1(w) defining a “potentially dangerous dog”. A dangerous dog is defined as:

i) “Dangerous Dog”:
   i. means a dog that, in the absence of any mitigating factor has attacked, bitten, or caused injury to a person or has demonstrated a propensity, tendency or disposition to do so;
   ii. means a dog that, in the absence of any mitigating factor, has significantly injured a domestic animal; or
   iii. means a dog, previously designated as a potentially dangerous dog, that is kept or permitted to be kept by its guardian in violation of the requirements for such dog;

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43 “owner” and “guardian” are used interchangeably throughout the BL-245. Guardian is defined in the BL-245 as “any person who owns, keeps, possesses, or harbours a dog or dogs and “own”, “owns” or “owned” have a corresponding meaning, and where the guardian is a minor means the parents, guardian or person having custody of the minor.
And a potentially dangerous dog is defined as:

w) “Potentially Dangerous Dog” means a dog that in the absence of any mitigating factors, chases or approaches any person or domestic animal, anywhere other than on the property of its guardian, in a menacing fashion or apparent attitude of attack, including, but not limited to, behaviour such as growling or snarling;

A dangerous dog is a dog that has been confirmed to have attacked or bitten a person or another domestic animal. A potentially dangerous dog, as the term describes, relies on indicators to show if that the dog is likely to act in a dangerous way. The by-law later provides regulations for the guardianship/ownership of these two types of dogs. There are two regulations that differ depending on whether the dog is potentially dangerous or dangerous.

The BL 245 defines “mitigating factors” under Section 1(r) as:

r) “Mitigating Factor” means a circumstance which excuses aggressive behaviour of a dog and without limiting the generality of the foregoing, may include circumstances where:
   i. the dog was, at the time of the aggressive behaviour, acting in defence to an attack from a person or domestic animal;
   ii. the dog was, at the time of the aggressive behaviour, acting in defence of its young or reacting to a person or domestic animal trespassing on the property of its guardian; or
   iii. the dog was, at the time of the aggressive behaviour, being teased, provoked or tormented;

BL 245 provides more specific examples for mitigating factors than the DOLA, without reducing the generality of the circumstances. These mitigating factors also suggest that there is a rationale for certain dog behaviour, whereby it is understandable as to why they may have acted in an aggressive manner.

After the section of definitions, Part I provides rules and expectation regarding municipal dog licenses. Section I.3 addresses when guardians are expected to renew their dog licenses for
unrestricted dogs and the fees associated with the renewal, and section I.4 addresses restricted dogs. In the appendices of the by-law, Schedule “A” and Schedule “B” state the prices for dog licenses. Schedule “A” displays the cost of licensing unaltered and altered unrestricted dogs, with the cost being more expensive if the dog is unaltered or has not been spayed or neutered. Schedule “B” is a separate category of pricing specifically for restricted dogs, with the cost differing whether this is the guardian’s first or second restricted dog, the cost being more expensive for the latter. For both Schedules, costs increase if the guardian renews before certain dates. Individuals who have restricted dogs are required to pay more money for licensing their dog, therefore restricted dog owners have a different financial expectation than owners of non-restricted dogs.

Part II addresses dogs running at large within the City of Windsor. This expectation is outlined in section II.8.b which states “[f]or the purpose of this by-law, a dog shall be deemed to be running at large if found in any place other than the premises of the guardian and not under the control of any person” and in II.10.a which specifies:

An Animal Control Officer, Pound Keeper or Police Constable shall seize and impound every dog found,
i. running at large contrary to the provisions of Section 8;
ii. on private property, where requested to do so by the Guardian or occupant of such private property;
iii. off the premises on which it is habitually kept and without a dog tag contrary to the provisions of any by-law passed by the Council pursuant to Section 103(1) of The Municipal Act, 2001, as amended from time to time, or in any other Section of that Act, or any other Statute which may be passed to replace that Act or to amend that Act.

There is an expectation that guardians will not allow their dogs to run loose throughout the city, whether this be by accident and the dog escapes or if an individual purposefully lets their dog go loose. This regulation is in place to protect: the dog; other animals, both domestic and wild;
people; and to attribute a certain level of responsibility to the guardian of the animal to care for that animal.

The sanctions for Part II are detailed in sections II.9 and II.11. The sanctions in section II.11 expand on those initially outlined in II.9. Section II.9 presents:

a) Any dog found running at large shall be seized, impounded, sold, redeemed or humanely euthanized as provided for in this by-law.

b) Any dog found on private property shall, upon the request of the guardian or occupant of such private property, be seized and impounded as provided for in this by-law.

And, section II.1.1 states that:

a) Where a dog has been seized or impounded pursuant to the provisions of Section 10, the Guardian of the dog may redeem such dog within three days (exclusive of Sundays and statutory holidays) after its delivery to the Pound Keeper upon producing a dog licence and dog tag issued for the dog by the City of Windsor for the current year and by paying the expenses of the Pound Keeper provided in Section 10 and further by paying the sum of $10.00 to the Pound Keeper for the credit of the City.

b) After the expiration of the redemption period, the Pound Keeper where a dog has been impounded pursuant to this bylaw may keep, gift, sell or dispose of the dog, subject to the provisions of the Animals for Research Act, R.S.O. 1990, Chap. A.22 as amended. The Pound Keeper will ensure that a purchaser living within the City first obtains a dog licence and dog tag for the dog.

The concern with having dogs on the loose is that they are not in control by their guardian and the sanctions involve the City taking control of the dogs, by seizing and impounding them. When the dog is seized and impounded, the guardian does have the opportunity to retrieve their dog, thus regaining control. The by-law also allows more serious sanctions, which involve selling or euthanizing the dog.

Part V, on the muzzling, leashing and containment, also relates to expectations of control. The focus of Part V is outlined in section 14 which explains that “[n]o guardian shall permit his
or her dog to bite or attack without provocation a person or domestic animal.” Section V.16 provides requirements for guardians that have a dog that has been designated as a “potentially dangerous dog”, these include:

a) to keep such dog, when it is on the property of the Guardian, confined
i. within the Guardian’s dwelling; or
ii. in an enclosed pen of sufficient dimension and strength to be a humane shelter for the dog and to prevent the dog from coming in contact with or making a real and substantial threat of attack on a person other than the Guardian;
iii. or if not confined under subparagraphs (i) and (ii) above, to keep such dog on a leash and under control of the Guardian;
b) to keep such dog, when it is on the property of another person with that person’s consent, on a leash and under the control of that person who is sixteen years of age or more;
c) to securely attach a muzzle to such dog at all times when it is not on the property of the Guardian or not on the property of another person with such person’s consent;
d) to obtain and maintain in force a policy of public liability insurance issued by an insurer licensed by the Province of Ontario providing third party liability coverage in an amount of not less than $1,000,000.00 for any damage or injury caused by such potentially dangerous dog and to provide to the Animal Control Officer a Certificate of such policy and each subsequent renewal of it. Such policy shall contain a provision requiring the insurer to immediately notify the Animal Control Officer should the policy expire, be cancelled or be terminated for any reason;
e) to permit the Animal Control Officer to have a veterinarian insert a microchip implantation in such dog, at the Guardian’s expense, for the purpose of identifying such dog as a potentially dangerous dog.
f) To restrain the potentially dangerous dog in accordance with any written directives which may be given by an Animal Control Officer.

Section V.17, which regulates requirements for dogs designated as dangerous dogs, is written very similarly to V.16. However, V.17.a.iii. instead states that the owner “conspicuously display on his or her property a sign provided by the City warning that there is a dangerous dog on the property.” The liability coverage and microchip requirements are the same for both potentially
dangerous dogs and dangerous dogs. Section V.20, attributes authority to Animal Control

Officers to:

either on his or her own initiative or as a result of information received by him or her from any source conduct an inquiry into whether a dog should be designated a potentially dangerous dog or as a dangerous dog or as a restricted dog or as a prohibited dog, as the case may be.

The most important section of this by-law is Part VI, which regulates restricted dogs within the City of Windsor. Part VI.26 provides all the owner requirements for restricted dogs, which are included in a notice for the owner. Some of these requirements are similar to the ones mentioned for other dog designations, such as:

(b) to keep the restricted dog, when it is on the lands and premises of the owner, confined:
(i) within the owner’s dwelling and under the effective control of an adult; or
(ii) in an enclosed pen constructed with a secure top and sides and either a secure bottom effectively attached to the sides or sides embedded in the ground to a minimum depth of 30 centimetres (1 foot), or as otherwise approved by the Animal Control Officer. The pen shall provide humane shelter for the restricted dog while preventing it from escaping therefrom and preventing the entry therein of unsupervised children;
(c) to keep the restricted dog under the effective control of an adult person and under leash, such leash not to exceed 1.8 metres (6 feet) in length and to be approved by the Animal Control Officer, at all times when it is not confined in accordance with clause (b);
(d) to securely attach a muzzle as defined in Part I to the restricted dog at all times when it is not confined in accordance with clause(b);
(e) to have a microchip inserted in the restricted dog by a licensed veterinarian and to permit the Licensing & Enforcement Service Unit to verify the implantation of such microchip;

and:

(k) to purchase and display, at the entrance to the owner’s dwelling which a person would normally approach, a warning sign provided by the Licensing & Enforcement Service Unit. The sign shall be posted in such manner that it cannot
be easily removed by a passerby and it is clearly visible to a person approaching the entrance.

(l) To obtain and maintain in force a policy of public liability insurance issued by an insurer licensed by the Province of Ontario providing third party liability coverage in an amount of not less than $1,000,000.00 for any damage or injury caused by such restricted dog and to provide to the Animal Control Officer a Certificate of such policy and each subsequent renewal of it. Such policy shall contain a provision requiring the insurer to immediately notify the Animal Control Officer should the policy expire, be cancelled or be terminated for any reason.

These regulations are similar to those for potentially dangerous dogs and dangerous dogs, but they also include a regulation that is specific to restricted dogs namely:

(j) A guardian shall have his or her restricted dog spayed or neutered. A guardian shall notify the Licensing & Enforcement Service Unit within two (2) working days of whelping in the event that the restricted dog has a litter. If the animal was pregnant when the by-law takes effect it shall thereafter be spayed or neutered. The owner shall deliver the offspring to the Essex County Humane Society within six (6) weeks of whelping to be disposed of in a humane manner; (substituted B/L 374-2004, dated Nov. 22, 2004).

This regulation is a measure of controlling the population of restricted dogs, not only through spaying and neutering but by killing new-born puppies.

This type of sanction is not found in the provincial legislation and therefore is specific to the municipal by-law. It is a sanction that makes a biological reductionist assumption that all these dogs are a risk or a danger no matter how old they are, or that these dogs are innately dangerous and therefore cannot be trained to be anything but dangerous. A regulation such as this, one that presumes danger before it has occurred, is a concern for how pit bull-type dogs, no matter the age, are perceived and judged within the City of Windsor. But this reductionist risk discourse unwillingly creates a social risk. The dogs and their guardians may be at risk of experiencing social ostracization, judgement, or harassment when they are out in public.
This is followed by section VI.27 on prohibited dogs whereby when:

the Animal Control Officer designated a dog as a prohibited dog, the Animal Control Officer shall serve notice upon the owner of such dog. If the Animal Control Officer has not seized and impounded the prohibited dog, the notice shall require the owner, upon receipt of such notice, to deliver the prohibited dog within (6) working days to the pound.

According to V.28.c if the dog has been designated as a prohibited dog the notice to the owner shall include “a statement that the dog will be disposed of in a humane manner.” This requires a prohibited dog, or a dog that has been deemed a pit bull dog that was born after the by-law came into effect, to be humanely euthanized. Therefore, both the provincial legislation and the municipal by-law include sanctions that result in the death of pit bull-type dogs.

In Part VIII, the by-law provides a list of organizations or businesses that are exempt from the regulations of this by-law. These include, but are not limited to, veterinary hospitals, animal shelters, research facilities, pet shops, exhibitions, animal supply facilities, schools that use animals for research, zoos, the City of Windsor or government authority, and finally any municipal, provincial or federal police service.

The key aspects of this by-law include the definition of pit bull, with the DOLA having an identical definition. The definitions which distinguish restricted dogs from prohibited dogs and dangerous dogs from potentially dangerous dogs are also significant in order to understand the context of the by-law and the larger conscience collective which has impacted the writing and enforcement of the law.

There are numerous regulations throughout the by-law that require guardians to have and maintain control over their dogs, whether the dog is designated as a potentially dangerous dog, a dangerous dog, a restricted dog, or none of the above. This establishes an expectation of
responsibility for the guardian. If the guardian does not act accordingly to these regulations of control, then the city takes over the responsibility of controlling and containing the dog. Part VI provides information on how restricted and prohibited dogs, or more generally dogs which have been designated as pit bull-type dogs by the city of Windsor, are regulated and treated legally within the bounds of the by-law. There are similar regulations to the other categories of dogs mentioned throughout the by-law, however, they are given stricter sanctions in the forced euthanasia of both the puppies and of prohibited dogs.

This analysis extracted pertinent sections from the provincial law and municipal by-law and analysed them by looking at what responsibilities humans are obliged to uphold, what actions are sanctioned for both people and animals, and what those sanctions are for both species. The obligations set for people involve establishing control over their dog, providing the state with updated information on their dogs, maintain liability insurance for the dog, and to ensure the dogs do not breed. Sanctioned actions include the ownership of prohibited dogs, breeding banned breeds, and the pit bull-type dogs exhibiting threatening or violent behaviours. The sanctions attributed to these actions include the euthanasia and sterilization of the dogs, and imposing fines on the owners.
Chapter 4: Discussion and Implications

Introduction

In this discussion, I address content from the pieces of legislation that are indicators of anomie. These include different practices for pit bull-type dogs; the implications of how pit bulls are classified and the sanctions that are imposed upon them; the intentional practices outlined in the BSL to extinguish pit bull-type dogs from Windsor and Ontario; the way in which rationality is attributed to dogs as mitigating factors. There are also points of discussion that developed more generally regarding the politico-legal environment surrounding breed-specific legislation, which include: the competing collective consciousnesses surrounding the debates in favour of and against breed-specific legislation; and the types of knowledge used in advocating for or against breed-specific legislation and the anomic quality of the advocacy.

Different Practices for Pit Bull-Type Dogs

It is evident the DOLA and the BL 245 specifically target pit bull-type dogs and impose different sanctions or expectations for pit bulls compared to other dogs. Before I proceed with a discussion of how pit bull-type dogs are treated in the DOLA, PCR, and BL 245, I address how the provincial legislation and the municipal by-law define “pit bull”. The DOLA and the BL 245 provide a list of breeds (defined by various kennel clubs) that are considered pit bulls, however neither provide specifications on the percentage of “pit bull” a dog must be for them to be considered an illegal pit bull-type dog. The question of legality of individual pit bull-type dogs is open to interpretation by various juridical subjects based on the dog’s lineage and genetic proximity to pit bulls. The ambiguity of the legal definition of a banned breed is a result of the lack of clarity concerning whether the legislation determines the dog to be a pit bull based on
genotype or phenotype. If the concern is the genetics, whereby a dog is considered a pit bull because they have the genes of those specific breeds, then to what degree are mixed breed dogs considered illegal in the province of Ontario and the city of Windsor? On the other hand, if by-law enforcement and the courts are concerned with the physical characteristics of the dog, then what differentiates pit bull-type dogs from dogs of similar size and strength, for example, Rottweilers, Cane Corsos, German Shepherds, and Mastiffs? There are no clearly defined lines between dogs that could be pit bull mixes and are either excluded or included within the legislation and therefore subject to the designated sanctions. Although the legislation uses established systems of classification (breeds defined by national kennel clubs), the lack of clarity on what constitutes a pit bull contradicts the essential component to social life which is sound classification and organization. A lack of clear and stable references upon which individuals can classify legal and illegal dogs threatens not only the ways in which individuals perceive dogs but also the way they perceive their relationships with them. The legal definition of what constitutes a pit bull a pit bull is inconsistent and vague, therefore making the application of the law anomic.

The 2005 amendment titled *Pit Bulls – Ban and Related Controls* added BSL to the DOLA. This section outlines all the actions relating to pit bulls that individuals cannot do, which includes owning and breeding a pit bull, thus, making pit bull ownership prohibited within the province of Ontario. They also state that people are allowed to keep restricted pit bulls, i.e., dogs that were owned prior to the legislation coming into force.

The sanctions outlined in the BSL reflect how pit bulls and their owners are treated differently compared to other breeds of dogs. For example, under the DOLA, if a dog, of any breed, has bitten or attacked a person or domestic animal, one of the possible sanctions is that the dog is euthanized, the other option involves the owner having increased control over the animal.
However, if the dog is found to be a pit bull-type dog under the legislation, there is a *mandatory* order for that dog to be euthanized, with the other control methods precluded. In the provincial legislation, pit bull-type dogs have a different, and more severe, punishment than other breeds of dogs.

The primary component of the PBC is that there are controls outlined for pit bulls, which include equipping the dog with a muzzle and leash and that the pit bull’s movements are controlled by a person. These regulations are in place whether or not the pit bull has shown aggressive behaviour. Therefore, whereas other breeds of dogs must *first* show signs of aggression before they are sanctioned with a requirement to be muzzled, dogs that are defined as pit bulls under the DOLA are *automatically* required to be muzzled. The regulation also includes requirements for pit bull guardians to sterilize their dogs. This section of the PBC is expanded upon in the following section on the “culling” of pit bull-type dogs. Both examples show that the law equates pit bull-type dogs, that have not shown any types of aggressive behaviour, to dogs of other breeds that are demonstrably aggressive - presenting the argument that non-aggressive pit bull-type dogs are just as dangerous as aggressive dogs of other breeds to the general public and other domestic animals.

There are terms defined in the BL 245 that are solely used for pit bull-type dogs: “restricted” and “prohibited.” “Restricted” dogs are those that were born prior to the creation of the by-law in 2004 and thus are able to be kept by their owner; “prohibited” dogs include any pit bull (defined as such by the by-law) that was born after the implementation of the by-law. These definitions are separate from the terms “dangerous dog” and “potentially dangerous dog,” which can be applied to any dog no matter the breed. However, pit bull-type dogs can have both designations applied, “restricted/prohibited” and “dangerous/potentially dangerous.” As the term
states, “prohibited” dogs are not allowed within the city. “Restricted” dogs have different licensing requirements and sanctions than other breeds. The yearly fee for licensing a restricted dog is significantly more expensive than other breeds of dogs, with the difference in cost ranging from $41 to $92. This provides economic constraints on pit bull owners that owners of other dog breeds do not have to experience.

In Part VI of the BL 245, there are three sections of requirements that are specific to restricted dogs. Some of the rules involve the expectations of control that the guardian has over their dog; this includes ensuring the animal resides in a contained and secure space and that the animal is on a leash and is muzzled. It also requires the guardian to have the dog microchipped “for the purpose of identifying such dog as a potentially dangerous dog” (BL-245 2004: 5). As with the DOLA, these regulations are specific to restricted dogs, whether they are classified as dangerous/potentially dangerous or not. Thus, unlike other breeds of dogs where certain restrictions are set in place after the dog has shown aggressive or threatening behaviour, these restrictions are placed upon pit bulls before they have shown any of these behaviours.

The punishment of entire “regions, institutions and families – even… pets” not just individuals, for crimes was common in traditional societies and Durkheim argued that there has been a shift away from this externalization of punishment where modern society punishes to defend rather than avenge (Mestrovic & Caldwell 2010: 142). However, both Durkheim and Fauconnet “conclude that the traditional approach never disappears entirely from collective consciousness” (ibid.). This spectre of vengeance is the reason for breed-specific legislation. Rather than dangerous dog legislation focusing solely on individual dogs that are suspected or proven to be aggressive, the legislation pre-emptively punishes suspected breeds. This logic is reflective in Foucault’s (1978a) work on the “dangerous individual”, in which he describes a
shift from the object of law being a crime/act to being a criminal/individual (13). Instead, this kind of discourse functions as a “knowledge-system able to measure the index of danger present in an individual; a knowledge-system which might establish the protection necessary in the face of such a danger” (ibid.). In sum, the breed-specific legislation reflects this modern penal rationality in that the focus shifts from the crime to the individual (in this case the breed) that recalls a traditional time where collectives were punished for individual crimes.

These pieces of law apply different sanctions and modes of control to pit bull-type dogs compared to other breeds of dogs, most of which can be aggressive to the same degree if not more than pit bull-type dogs. And this focus on “the dangerous breed” rather than only the individual attacks is anomic because it is “a form of derangement” that stems from “misplaced responsibility” (Mestrovic & Caldwell 2010: 155). Additionally, because pit bull-type dogs are treated differently in the jurisdictions where BSL is in place, it imposes a burden on animal welfare associations. For example, the Windsor-Essex Humane Society must transport pit bull-type dogs outside of the province, placing a financial burden on them and requiring more labour from employees⁴⁴. These ways of controlling and sanctioning pit bulls are specific to Ontario and Windsor; however, dog owners and specifically pit bull owners in these jurisdictions are aware that this does not apply to all pit bull-type dogs and their guardians across the country, which can evoke feelings of confusion, frustration, anger, and sadness that their companion animal relationship is threatened. This, and the fact that the dog attacks do not decrease, creates space for questioning the law/by-law and resistance to the law/by-law and assessing the anomic context in which they operate.

⁴⁴ See Appendix Two as an example.
Intentional Practices to Extinguish Pit Bull-Type Dogs

Culling is often used to control animal populations, whether in the wild or in domesticated farming. Reasons include stopping or slowing the spread of infectious disease among the group, poor fertility and productivity, and genetics (Degeling, Lederman, & Rock 2016; Prentice, Fox, Hutchings, White, Davidson, & Marion 2019; Scharko, Johnson, Mobini, & Pugh 2012). I argue that the sterilization and euthanasia regulations in the laws are a means of controlling the pit bull population to the degree that can be considered culling. These breeds of dogs do not have an infectious disease, but those who created and implemented the breed-specific legislation perceive pit bulls to be a threat to public health and the wellbeing of the human and domestic animal community.

There are other situations where the euthanasia of certain dog breeds is done for reasons that are considered in the best interest of the dog’s health. There are certain dog breeds, specifically those that are brachycephalic, whose health issues significantly affect their quality of life. For this reason, Norway established bans on the breeding of British Bulldogs and Cavalier King Charles spaniels; the Oslo District Court ruled that breeding these dogs contravenes the national Animal Welfare Act due to the health issues that result from selective breeding (Ng 2022; AFP 2022). The animal rights group Animal Protection Norway that brought the case to court argued that “selective breeding meant that there are no animals from either breed that could be categorized as “healthy,” and therefore cannot be ethically used for breeding” (Ng 2022). That being said, the law does not restrict the ownership or importation of either breed into Norway (AFP 2022). There is a difference between banning the breeding of specific dogs, which addresses inhumane and dangerous breeding practices of both backyard breeders and Kennel
Club-approved breeders, and the purposeful killing of dogs that have already been born and have not displayed any risk of disease or aggressive behaviour.

Another process of euthanasia that is used in veterinary medicine is “behavioural euthanasia.” Behavioural disorders are defined as “a behaviour pattern that is dangerous or annoying for humans, creating a communication dysfunction between both species and compromising their mutual well-being” (Barrios, Gornall, Bustos-López, Cirac, & Calvo 2022). Pegram, Gray, Packer, Richards, Church, Brodbelt, and O’Neill (2021) performed a study on euthanasia practices in the UK. They found that 89.3% of deaths in a veterinary clinic were due to euthanasia, with undesirable behaviour having an 11.36 odds ratio⁴⁵ (ibid.). They found that the fourth most common reason, out of the 21 listed reasons for euthanasia was a behaviour disorder. Furthermore, they state that 9% of dogs in Canada were euthanized due to aggression and 4.2% due to behavioural abnormalities (ibid.). Behavioural euthanasia is nevertheless different from euthanasia policies within BSL. Behavioural euthanasia occurs on an individual basis regarding a specific dog rather than the breed. Whether there is an impact of breed on behavioural disorders is outside of the scope for this thesis, but I think it does play an important role in our overall understanding of dog behaviour.

There is explicit language in the provincial legislation and the municipal by-law that requires the sterilization and euthanasia of pit bulls. In the DOLA, it is mandatory for any pit bull-type dog that has been found to have bitten or attacked a person or another domestic animal to be euthanized. Along with this, even if the dog has not bitten or attacked a person or another domestic animal but the guardian of the pit bull has contravened a provision or regulation within

⁴⁵ Odds ratios (OR) are “a measure of association between an exposure and an outcome. The OR represents the odds that an outcome will occur given a particular exposure, compared to the odds of the outcome occurring in the absence of that exposure” (Szumilas 2010).
the Act, the pit bull must be euthanized. The objective with the forced sterilization of pit bull-type dogs is for the control and management of the breed population and the population health of dogs in the community in general, since it is not just pit bulls breeding with other pit bulls but also pit bulls breeding with other “non-dangerous” breeds. The legislation is concerned with dogs that are part pit bull because they include dogs that resemble pit bulls in the definition.

The PBC provides regulations on the forced sterilization of pit bull-type dogs within the province of Ontario. The guardians are expected to have their dogs sterilized within sixty days of the regulation coming into effect, and if the dog is unable to be sterilized within the aforementioned period due to them being too young, the guardian is required to get their dog sterilized after they turns nine months old. The BL 245 requires the euthanasia of any dog that an Animal Control Officer has designated as a prohibited dog. Along with the sterilization and euthanasia of adult pit bull-type dogs, there are also regulations in Part VI of the BL 245 which state that if a pit bull has a litter of puppies, the guardian of the dog must deliver the offspring to the humane society before the puppies are six weeks old for them to be euthanized.

This is related to Douglas’ discussion of dirt and the role that it plays in the process of classification. Douglas (1966) explains that, “Where there is dirt there is system. Dirt is the by-product of a systemic ordering and classification manner, in so far as ordering involved rejecting inappropriate elements. The idea of dirt takes us straight into the field of symbolism and promises a link-up with more obviously symbolic systems of purity” (44). Amongst dog breeds in Windsor, and Ontario more generally, pit bulls are the dirt or the “rejected inappropriate element” to the dog breed classification we have established. If pit bulls are perceived as dirt, and thus a threat to the purity of the rest of the breeds in the classification system, then the act of sterilization and euthanasia has specific objectives of removing the possibility of the “dirt” from

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the rest of the group of domesticated dog breed. The objective of all these practices is for population decrease and eventual elimination of pit bulls within the province of Ontario and the municipality of Windsor. The sterilization requirement ensures that pit bulls cannot breed within the province and/or city. The euthanasia policies aim to kill adult pit bulls that people may have obtained illegally, along with any puppies born to unsterilized dogs (legally allowed or not). Unlike the breeding bans in Norway, which aim to improve the wellbeing of Cavaliers and English Bulldogs, and behavioural euthanasia, which functions on a case-by-case basis, BSL, which includes euthanasia and sterilization policies, establishes all-encompassing measures to cull undesirable breeds of dogs on the unsubstantiated understanding that these breeds are inherently more aggressive than other breeds of dogs. This is reminiscent of Foucault’s (1978b) work on racism in *The History of Sexuality v1*, where the elimination of “defective individuals, degenerate and bastardized populations” was to ensure the “moral cleanliness of the social body” (54). One of the reasons for culling pit bull-type dogs from Windsor and Ontario are similar to those described by Foucault. Another is that these sanctions in the legislation and by-law are established without empirical grounding.

**Rational Animals**

Historically, there has been a separation between what is “rational” and what is “animal,” where rationality has been reserved specifically for humans and is categorized as a “human” characteristic (DeMello 2012). Human beings have cognition and are rational, whereas animals rely on instinct and behave in a reactionary manner, exhibiting behaviour patterns that are “unconscious and triggered by environmental stimuli” (ibid.: 351). DeMello (2012) explains that

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46 See Nilson, Damsager, Lauritsen, & Bonander 2018; Creedon & Ó Súilleabháin 2017; Ledger et al. 2005.
47 Actions are rational when there is an “appeal to reason” (Pearce 2001: 44).
this type of separation between humans and animals is influenced by biological determinism, viewing “animal behavior from a strictly biological perspective that tends to exclude culture, social practices, and personality as factors in behavior” (46-47). There has been research contesting biological determinism, instead arguing that the difference between human and animal cognition is not great as once believed. This is important because these discourses on animal minds have shaped the way we understand animals and how we have created laws surrounding them. Examples of this understanding of rationality and animals can be found embedded in the legislation discussed above.

The DOLA and the BL 245 include sections on mitigating factors. In laws that sanction human action, mitigating circumstances are “those that can decrease sentence severity,” and address questions of perpetrator culpability (Amirault & Beauregard 2014: 79; Roberts 2011). Culpability is concerned with “blameworthiness” and thus responsibility (Simester 2021: 52). Although we are unaware as to whether animals take responsibility for their own actions, when we sanction animals and outline mitigating and aggravating factors, we attribute a form of external responsibility onto the animal, along with its guardian. For example, since humans have domesticated dogs for tens of thousands of years (DeMello 2021), we expect certain behaviours that are associated with domestication, and we also expect them to not behave in ways we deem as “wild” or “feral”; such as showing any form of aggression and in some situations even barking.

In the DOLA, mitigating circumstances are mentioned in part XI, section 4(6) under the subtitle “Considerations.” These considerations include “unusual contributing circumstances

48 Methods of reducing or eliminating barking in dogs include shock collars that are triggered when a dog barks and “debarking” surgery (Westbridge Veterinary Hospital Feb. 24, 2020, https://www.westbridgevet.com/a-logical-approach-to-unwanted-barking/#:~:text=Surgical%20debarking%20is%20a%20drastic,or%20frequency%20of%20barking%20itself.)
tending to justify the dog’s action.” The BL 245 provides more specific context for what types of circumstances “excuses” the actions of the dog. These include acting in defence of itself, its young or its property, and “being teased, provoked or tormented.” As mentioned, these are more specific examples of why a dog would react in an aggressive manner compared to the DOLA. Implications of rationality are prevalent in the examples of mitigating circumstances presented in BL 245, which states that if an animal attacks or bites in reaction to protecting itself, its offspring, or its property, then there is ground for the court to reconsider the severity of the punishment.

I argue that aspects of this discussion of considerations are linked to “Christian rules of holiness” which Douglas (1966) argues “disregard the material circumstances and judge according to the motives and disposition of the agent” (13)49. This is not to say that these considerations do not have a place when determining sentencing. However, the over-reliance on the disposition of an animal and the mitigating and aggravating50 factors attributed to the behaviour are examples Foucault’s critical analysis of the dangerous individual (Foucault 1978a).

A breed-essentialist conceptualization of animal behaviour based on reactions rather than cognition results in understanding animals as a species rather than as individuals (DeMello 2012). This is the crux of breed-specific legislation. For all other types of dogs, their violent, aggressive, or concerning behaviour is assessed on an individual basis. But, with pit bull-type dogs, negative behaviours are considered a breed problem rather than a problem for the specific dog. Thus, even though they are all the same species, legal discourse categorizes pit bull-type dogs as different from the rest of Canis familiaris. It is through this Linnaean system of

49 c.f. Foucault in History of Sexuality
50 These factors increase sentence severity.
categorizing animals that we have come to conceptualize them. Therefore, it should be a stable scientific reference for people when they attempt to understand animals. However, the legal distinction between pit bull-type dogs and the rest of Canis familiaris results in anomie because it destabilizes this epistemic reference of what makes a dog a dog.

The Conscience Collective and the Law

In Durkheimian terms, law functions optimally in a society where it well reflects the conscience collective. A discrepancy between the conscience collective and the law indicates anomie. I argue that regarding BSL, there is a divide between those who are in favour of it and those who are against it, both have strong moral reasons and are vocal, made evident in news articles on protests against BSL and online group discussions.

Given public sentiment, there is a misalignment between the conscience collective and the law, meaning that the law is not supported by a significant portion of the general public. A local Windsor example of this is a recent Facebook post made by the Windsor/Essex County Humane Society (WECHS) on April 21st, 2022. The humane society had a pit bull-type dog in their possession and made a post written from the perspective of the dog explaining that they would have to be adopted out of the province. They note that, “[t]here’s apparently some law in Ontario that says I’m not allowed to live here. I think it’s silly, and the people [at the humane society] agree, but we’re all stuck with the law for now” (Windsor/Essex Humane Society Facebook 2022). Along with this statement which disagrees with the provincial law, the comments on the post also enforced this position. Examples of people voicing their opinion regarding the law include51:

51 The post from Facebook is in Appendix Two.
“I wish the law would change cause I would adopt her in a heartbeat!!”
“Dumbest law ever! She is absolutely beautiful!”
“Hate that law so much!”
“It’s so wrong that you can’t live in Ontario.”
“The law needs to change. She is gorgeous”
“Stupid, stupid law”
“Aww I would love her, stupid Ontario with stupid rules (crying emote) I hope she finds a great home!”
“That’s a bunch of crap, that needs to be changed now. It’s not the breed’s fault it’s the owners who do not now [know] how to train them. They are fantastic dogs.”
“We do need to get rid of that stupid law”
“This stupid law needs to go!! I’d love to have her”
Good for you for being responsible and adopting out of province even though the law is stupid it is the law. So many are still importing banned breeds and putting them at risk”
What a sweetheart… that law needs to go! It’s ridiculous… any dog can be aggressive!”
“How do we go about changing this law?”
“I hope you find a home little girl (heart emote) I did not know of this law (anxious emote). Don’t believe I care too much for it”

There was also a comment on this post thread that received a significant amount of discussion, with 47 replies, which stated, “Glad there’s a law here. Watching the news in the U.S. of kids getting mauled to death. We have gun laws and dog laws for a reason.” This comparison of a breed of dog to gun violence is peculiar. It is also pertinent that this individual mentioned children being the victims of dog attacks since this is a common reason for supporting breed-specific legislation, especially when outlawing pit bulls. Individuals who follow the WECHS Facebook page have, at minimum, an interest in animals and potentially an interest in animal welfare and those who follow the group might not be exclusively against BSL, in comparison to a Facebook group that has the objective of advocating against BSL. That being said, although the

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52 This can be found throughout DogsBite. They include various images and statistics specifically regarding dog attacks and children. Includes “children are disproportionately victims of these attacks” (https://www.dogsbite.org/dangerous-dogs.php).
original post from the Windsor/Essex County Humane Society does show some bias against the provincial or municipal BSL, the majority of the comments were not in support of BSL. This provides a snapshot of the collective conscience not aligning with the legislation.

There is one source specifically that strongly supports breed-specific legislation, targeting pit bull-type dogs. DogsBite.org is a 501(c)(3) registered non-profit organization with the aim of educating and providing materials for public awareness. Their website contains a lot of information on dog attacks, pit bull-type dogs, victims’ experiences, and breed-specific legislation. Their information on BSL success contradicts the scientific research discussed in chapter 1. DogsBite states that:

Well enforced breed-specific pit bull laws absolutely reduce damaging attacks by pit bulls. In our ongoing report, Cities with Successful Pit Bull Laws; Data Shows Breed-Specific Laws Work, we document these results in the U.S. and Canada. The most dramatic results are often seen in jurisdictions that ban pit bulls because a ban reduces the breeding and the importation of new pit bulls into a community. There have been excellent results with other types of ordinances as well.

Although this opposes research conducted by Nelson et al. (2018), Creedon & Ó Súilleabháin (2017), and Ledger et al. (2005), DogsBite presents their own sources that provide evidence that suggests that BSL is effective, and they use this information to support their position against pit bulls and the ownership of pit bulls.

DogsBite addresses the “myth” that pit bulls do not have a locking jaw. They argue that:

Pro-pit bull groups continuously attempt to debunk the pit bull “locking jaw” expression that is often used by the media and the public. A pit bull’s jaw may not physically lock, but due to selective breeding for a specific bite style - to hold on and to shake indefinitely - we consistently hear in news reports that the dog “would not let go.” (DogsBite.org)
This both contradicts and supports the previously mentioned research on the myth regarding pit bulls having “lock-jaws.” They argue that there has been an attempt to debunk this myth while also stating that pit bull jaws do not lock. However unreliable their statements may be, these types of arguments are used when advocating for breed-specific legislation.

They also provide moral statements to support their statistics which include stating they “champion the rights of victims through our research, education and advocacy.” Elaborating, they claim that:

Our **compassion** for dog mauling victims and communities, our **courage** to stand up to multi-million dollar animal organizations in the battle to save human lives and the **outrage** that barbaric maulings on public streets and within residential backyards by recognized dangerous dog breeds continue to be tolerated by policymakers, including the CDC, is what defines us (original emphasis from DogsBite.org).

Another way in which they use moral statements is by focusing on the impact dangerous breeds of dogs have on certain vulnerable groups, specifically children, women and older adults; with statements such as “children and pit bulls do not mix” found on flyers. The collective conscience of those who support BSL use this combination of statistics and moral statements.

Regarding the connection between anomie and the **conscience collective**, Pearce (2001) states that:

> a likely feature of a colonial or any other society where there has been a fusion of different species [of society] - and this is true of virtually every modern state - will be an ever-present anomie. At each stage of the division of labour when similar organs, informed by different collective consciences, come into contact there will be a struggle for dominance (73).

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53 See in Appendix Three
This is followed by a struggle for a dominant moral discourse in the conscience collective, whether this dominant collective conscience is established or not, there is no collective conscience that represents the general interest (Pearce 2001: 73). Regarding breed-specific legislation, there are multiple competing moral discourses. The first are those who do not support breed-specific, whether that be because they have affection for the affected breeds, they have read the research which has found that breed-specific is ineffective, or their moral rules align with ideas of justice that are based on respecting animals and perceiving them as individual beings. The second group are those that support breed-specific legislation for reasons such as they have personally witnessed or been attacked by the breed, they associate the breed with crime, they think those breeds of dogs are more dangerous than other breeds, or their moral rules align with protecting children, even if that puts animals at risk. There are discourses of the guardians and/or owners of the banned dangerous dog breeds, who may align with the first group but may have different moral positions from those who do not own a dangerous dog breed. There are also legislators and politicians; by-law officers and agents who enforce the legislation; victims; and risk discourse.

The legitimacy of legal order relies on the fact that the “[l]aw represents the most general level of the assertion of the unity and integration of the social system” (Hunt 1993). If there is instability or irrationality in the legal order, it threatens the state of the social system in general. Since breed-specific legislation is positioned in between these two strongly opposing collective consciences, both of which are strengthened by their individual moral positions, there is inherent instability and, therefore anomie, in the creation and execution of the law.
Knowledge and the Law

A key feature of the anomie present in the BSL is the discrepancy between scientific knowledge and the legal documents that have been analysed. This misalignment between what is known and what is being practiced is an example of anomie. The research regarding the “dangers” of pit bull-type dogs does not support breed-specific legislation\(^{54}\), resulting in irrational moral reasoning. Rules are decided on, not through scientific evidence on dog attacks and the role breed plays in the prevalence of dog attacks, but on an essentialist conception of a breed that attributes unhealthy and pathological behaviour to pit bull-type dogs.

Hunt and Wickham (1994) present four principles for law as governance, with principle three being “law as governance always involves knowledge” (108). They state that knowledge is used to select objects of legal governance, and this is done by “invisibly posing and answering questions” (109). This process of discussion, dialectic and knowledge creation is directly linked to Durkheim’s explanation for the creation of legal and moral rules (Durkheim 1982 [1895]). Durkheim (1982 [1895]) states that “collective custom [is expressed] by word of mouth, transmitted by education and even enshrined in the written word” and argues that this social process of knowledge-making is the “origins and nature of legal and moral rules” (54-55). Along with knowledge being used to select objects of legal governance, there is a secondary level to knowledge, where the objective is to control and manage. These control and management techniques can be simple or complex and informed by rational or irrational knowledge (Hunt & Wickham 1994: 109-110). This interest in control and management is linked to Durkheim’s point on taxonomic schemas having normative impact. By outlining definitions for pit bulls and categorizing them as dangerous dogs, the legislation aims to control pit bull guardianship within

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\(^{54}\) See Nilson, Damsager, Lauritsen, Bonander, 2018; Creedon & Ó Súilleabháin, 2017; Ledger et al. 2005.
the legal jurisdiction. In breed-specific legislation, irrational knowledge is being applied to forms of legal governance that aim to control and manage pit bull ownership and pit bull breed existence in Ontario and Windsor.

Dog breeds in breed-specific legislation are included because they are considered more aggressive than other breeds of dogs. Casey, Loftus, Bolster, Richards, and Blackwell (2014) found that dogs “did not show aggression in multiple contexts,” supporting the hypothesis that aggressive behaviour is a learned social practice that dogs tend to show in specific situations (52). Therefore, aggression is not a characteristic of a dog but a behavioural response to engagement with human relations, which the dog may perceive as threatening or upsetting. This contradicts the public opinion that a dog is inherently aggressive or vicious, and this argument can also apply to pit bulls. Casey et al. (2014) also found bull and mastiff breeds are not at an increased risk of showing aggression, and they also argue that while “breed seems to be a contributory factor influencing risk, other factors have a much greater influence… hence… it is inappropriate to make assumptions about an individual animal’s risk of showing aggression based on breed” (61). Therefore, if breed-specific legislation, which includes sterilization and euthanasia policies, is accepted, and passed on the basis that certain breeds are more aggressive, it can be argued that based on scientific research, this is not an accurate position.

Våge, Bønsdorff, Arnet, Tverdal, and Lingaas (2010) did find that there are specific genes that are expressed differently in aggressive and non-aggressive dogs, genes UBE2V2 and ZNF227, which may indicate that aggressive behaviour has genetic as well as environmental factors. However, their research did not state whether there is a correlation between the two aggressive genes and specific breeds of dogs. Enacting breed-specific legislation based on the
belief that certain breeds have an inherent higher propensity for attack or being aggressive is not a substantiated reason.

When Quebec was considering the implementation breed-specific legislation, a policy and bylaw officer from Ottawa testified against the legislation, stating that “Ontario’s legislation has had no verifiable impact 13 years after it was adopted,” with only 2% of the 450 dog bites in Ottawa “involved pit bull type dogs” (Woods 2018). Due to the lack of scientific evidence supporting BSL, and the aforementioned testimony of the by-law officer, Quebec decided not to establish their proposed breed-specific legislation. Despite the provincial legislation being abandoned, there are multiple municipalities within the province of Quebec that have by-laws banning certain breeds of dogs (Woods 2018). In this case, with the provincial legislation in Quebec, legislators were able to understand the current research on the efficacy of BSL and the feedback from “experts.”

Although there is scientific evidence showing that breed-specific legislation is not an effective method in reducing the number of dog attacks in a community, the arguments against breed-specific and thus in support of pit bull guardianship tend to be highly emotional (see the Windsor-Essex Humane Society Facebook post). In the context of mundane social interactions (in comparison to political or academic settings), individuals who advocate for pit bull guardianship do not reference the scientific research to support their position. The same is true on the opposite side of the debate, with the use of misinformation regarding pit bull attacks to support the continuation and expansion of BSL (Lowrey 2018: 408). If the goal is to enact political and legal changes in favour of pit bulls then there needs to be more scientifically-based advocacy, as Durkheim (1960) states:
[t]he collection of arguments by which [people] support their opinions do not reflect phenomena, realities, or the actual order of things, but merely states of mind. Such procedure is the opposite of true science. (7)

Risk and Responsibility

Douglas (1992) explains how the modern concept of “risk” is linked to “danger” in that risk is used when a community or collective determine behaviours that are understood to be dangerous. Risk also involves a calculation, similar to the discussion of utilitarianism mentioned previously, of not only the probability of an action occurring but also the “probable magnitude of its outcome” (ibid.: 31). Thus, risk involves determining the probability of dangerous potentialities. Douglas (1992) elaborates on this by arguing that “[r]isk’ is the probability of an event combined with the magnitude of the losses and gains that it will entail. However, our political discourse debases the word. From a complete attempt to reduce uncertainty it has become a decorative flourish on the word ‘danger’” (40). The word ‘danger’ invokes an immediate threat, an action or situation that needs to be contained or avoided immediately to ensure safety. ‘Risk’ however, differs from this. As previously stated by Douglas, risk involves the calculation of probability, there is potential for something undesirable to occur, but it is not a certainty.

Pearce (2001) states that “[e]very collectivity will impose obligations on its members and impute to them the capacity for responsibility, and collectivities may hold each other responsible for their members’ actions” (97). In the DOLA, guardians are obliged to act with reasonable precautions to reduce the probability of their dog attacking a person or another animal. For a guardian to take reasonable precautions, they must be able to interpret their dog’s verbal and non-verbal/behavioural communication. Thus, humans have the responsibility to first have the
knowledge regarding how their pets communicate and what they are communicating and therefore imposing obligations and, secondly to use that knowledge to act accordingly and control their dog. In turn, if they are responsible dog guardians then there will be a reduced risk or danger of dog attacks. One of the problems that can arise with this is that there is a significant lack of understanding regarding animal behaviour. There are various perspectives on how to train dogs, how to interpret dog behaviour and how to act in response to that behaviour and some of these perspectives or methods are contradictory; these include dominance training, positive reinforcement training, clicker training, electric collar training, model-rival training, relationship-based training, and scientific-based training (Marrs 2022). Dog training lacks an overarching consensus on what is the best method to understanding how dogs communicate with us and each other. That being said, most experts do not recommend dominance training however, it is still a training method that trainers employ, albeit perhaps not as frequently as other methods. Alternatively, science-based training is suggested, but it is not easily accessible for everyone to research articles on animal behaviour or consult experts in the field. There is a responsibility for owners to socialize their pets, with humans and animals, along with appropriate training, which in-and-of-itself includes forms of socialization. However, because of the stigma against pit bull-type dogs and other banned breeds, there may be limited opportunities and spaces where they feel they are accepted to socialize and train their animal. This results in a cycle where these dogs may act in undesirable ways, by showing threatening behaviour or attacking, because breed-specific legislation has created barriers for guardians to socialize and train their pets.

Another obligation, set out in the BL 245, is the requirement for restricted dog guardians to acquire public liability insurance with a minimum coverage of $1,000,000.00. The BL 245 also defines requirements for guardians of dangerous and potentially dangerous dogs, designated
as such by the by-law, to acquire public liability insurance with a minimum coverage of $1,000,000. This issue with this is that the legislation groups together restricted dogs, no matter their potentiality for violence, with dangerous and potentially dangerous dogs. Thus, restricted dogs, such as pit bulls, carry the same level of risk, legally, as potentially dangerous, and dangerous dogs, whether the restricted dogs present a real threat of violence or not.

This discussion uses Durkheimian theory to investigate issues present in the DOLA and the BL 245 regarding breed-specific legislation. Through this analysis I identified how breed-specific legislation depicts fundamental Durkheimian concepts - conscience collective, legal and moral rules, obligations, knowledge production, juridical subjects, and anomie. And, how the use of these concepts advance our understanding of BSL. Breed-specific legislation shows there are obligations set out for people and sanctions pertaining to people and animals. Through the analysis of the obligations and sanctions I was able to extract normative themes that relate to animal issues such as: culling; breed bias; animal behaviour, cognition, and genetics; misconception of dogs; risk and danger, as well as themes pertinent to a Durkheimian analysis such as: conscience collective; knowledge; morals; and anomie. The lack of plausible scientific support for breed-specific legislation, the misinformation surrounding banned breeds, and the competing discourses, such as the difference in law between Ontario and Quebec, in the conscience collective result in anomie.
Chapter 5: Conclusion

Summary

In this thesis, I demonstrated that the Ontario provincial legislation and the Windsor municipal by-law on breed-specific legislation are indicators of anomic relationships between humans and animals and an indicator of the general anomic quality of law.

I presented three research questions which functioned as a guide while I conducted my analysis and wrote my discussion. These research questions were:

1. How can a theory of anomie can apply to breed-specific legislation in Windsor, Ontario in order to better understand the socio-legal conditions that confine human-animal relationships?

2. How does breed-specific legislation in Windsor, Ontario conceptualize and use risk management as a strategy for preventing dog attacks and “irresponsible” dog ownership?

3. What are the implications of such a conceptualization of risk?

I answered the first question throughout this thesis by providing examples of anomic aspects to breed-specific legislation and the relationships between humans and pit bulls. These are the main points of discussion in which anomie appeared to me:

- The BL 245 and the DOLA are not supported by scientific research on breed-specific legislation. Research on BSL shows that it is not an effective method in reducing or managing the prevalence of dog bites or attacks. Research has also shown that pit bull-type dogs are not consistently the leading dog breed involved in dog bite/attack incidents. This is a display of legal anomie because the laws contradict the current scientific research, which argues that breed-specific legislation is not an effective method in
reducing dog attacks. Thus, BSL does not achieve its intended objective which is to keep people and companion animals safe. The one of the rules of law is that the law is in place as a means of establishing safety and security and if this does not occur, as BSL research has proven, then the rule of law is deranged, making it a key indicator of anomie.

- Breed-specific legislation contradicts established definitions and categorizations of what makes a dog a dog. Companion dogs are scientifically categorized as *Canis familiaris* under which all domesticated dogs fall under. However, breed-specific legislation consistently selects one of those breeds, pit bulls, sometimes amongst other varying breeds, as different. Systems of classification are intended to “unify knowledge” of a particular group or society (Durkheim and Mauss 1963: 81). However, if institutions, such as law, question these frames of reference by altering how we understand systems of classification then there is something anomic present. This indicates another form of anomie, discourse anomie, whereby previously accepted discourses – such as taxonomic systems of classification – lose their legitimacy. This once “fixed moral boundar[y]” we use to identify domestic dogs is lost, albeit not entirely but enough to destabilize our understanding of dogs (Mestrovic & Lorenzo 2008: 182).

There are different forms of anomie present throughout this thesis, all of which exists on the same social plane, in the same society. Since there are multiple types of anomie present at one time, this indicates that there is a greater, more general sense of societal anomie, not just surrounding breed-specific legislation, but surrounding our relationships to animals. The lack of rule, not necessarily legal rule but social rule, surrounding how to understand their behaviour and what types of relationships we want to form with them, provides an environment for anomie to
develop. This is because, as mentioned by Mestrovic and Lorenzo (2008) anomie is a “rule that is a lack of rule” (182).

For the second question, risk is used within breed-specific legislation to identify a potential danger. The legislation and by-law impose obligations and sanctions with the intent to reduce or eliminate this danger. The difference between the use of risk in BSL compared to the rest of the dangerous dog legislation is that BSL identifies a breed or breeds of dogs that are a danger without the individual dog exhibiting any risky or dangerous behaviour. In situations with dangerous dogs, they can exhibit concerning behaviour prior to the dog attacking or injuring a human or animal. It is in these situations prior to the dog attacking, where a guardian is expected to recognize, control, and stop the dog’s behaviour before it escalates. On the other hand, with pit bulls and other banned breeds guardians, the dog does not need to display any concerning behaviour for people to perceive the dog as a threat. Under BSL, a pit bull-type dog’s existence is a risk to people and other animals.

Finally, for the third question, the implication of this conceptualization of risk is that the public perceives these dogs and their owners as being a threat of violence. The perceived risk of these dogs attacking or acting in a threatening way is just as high as dogs who have previously exhibited threatening or violent behaviours. Because of this owners remove their dogs from the social realm, either because of social stigma or to avoid potential legal ramifications for owning a banned breed; thus, reducing the dogs opportunity for socialization, which is a key component to reducing dog attacks. Additionally, this conceptualization of risk provides legal grounds for the intentional culling of the “undesirable” breed, through euthanasia and sterilization.
New Directions and Policy Recommendations

It is my understanding that this research is one-of-a-kind, as I have been unable to find any existing research on a theoretical analysis of breed-specific legislation or on the anomic conditions of pieces of legislation in general. Because of this, there is a multitude of avenues researchers can explore regarding the connections between human-animal relationship, legislation, and anomie.

New Directions

Regarding further research on anomie and breed-specific legislation, I think that exploring examples of the conscience collective, similarly to how I discussed the Windsor-Essex Humane Society post, would provide interesting examples of the collective consciousness surrounding breed-specific legislation. The logistics of enforcement appear to be anomic, warranting further investigation. Thus, I think an important aspect to understanding breed-specific legislation is by speaking to animal control officers, by-law enforcers, and law enforcement officials to gain an understanding of the extent to which BSL is investigated and sanctioned within Ontario and Windsor. Research of this kind could produce the answers to questions such as: how frequently do cases arise from the DOLA and/or the BL 245? How often do members of the community report their neighbours to the authorities for having banned breeds? What methods do dog guardians implement to keep dogs that might be considered prohibited under the DOLA and the BL 245? How frequently do humane societies or veterinary offices euthanize prohibited dogs, including puppies? Another avenue of socio-legal research would be to investigate the legislative process and debate that resulted in the creation and passing of the DOLA and the BL 245. I was unable to acquire transcripts from the City of Windsor city council meeting from when the BL 245 was presented in city hall, and I think this would provide some insight into the conscience
collective of the public officials who supported or did not support the by-law. This current research also opens avenues for more in-depth research on the anomic conditions surrounding breed classification, breed standards, and national kennel clubs.

A goal of this thesis is to conceptualize anomie in a way that makes it applicable to modern sociological concerns. It is my understanding that anomie applies to other human-animal relationships, which could include the dog breeding and showing industry, animal agriculture industry, and how laws and urban expansion control and coerce wild and liminal animals. Another avenue for the application of Durkheimian theory and anomie specifically, would be to understand the way children are socially defined. Concepts prevalent in this thesis, such as classification, responsibility, and obligation, can apply to our understanding of how children function in the social world. There are implications for the gender differences in the way children are classified, for example, when we refer to female children as “young women” or when we refer to adult women as “girls.” This presents girls as being more mature and infantilizes women. Children and domestic animals also share a similar experience within the legal system and how laws view them as both property (of their guardian) and a living human/being simultaneously, which carries implications for how law and justice function.

Policy Recommendations

I recommend a re-evaluation of the provincial breed-specific legislation in Ontario and the municipal by-law in Windsor. At the forefront of this re-evaluation process should be scientific research on the success of BSL in reducing dog attacks. Those involved in the process should discuss BSL with stakeholders and juridical subjects who are impacted by the enforcement of the legislation and/or by-law. These stakeholders and subjects should include previous and current pit bull guardians, dog behavioural experts, by-law and provincial law enforcement officials,
animal control officers, humane society workers, veterinarians, medical professionals who specialize in traumatic injuries, victims of dog attacks, and advocates for and against BSL.

**Final Remarks**

These discussions of breed-specific legislation, animal classification, and animal behaviour indicate a general sense of anomie that exists within human-animal relationships. In *Suicide*, Durkheim (2005 [1897]) identifies areas in social life where anomie is present, which include economic, conjugal, or marital, and political. Mestrovic and Lorenzo (2008) identify other social institutions in which anomie is present, “religious, political, military, and intellectual” (183). This current research provides the groundwork to explore a type of anomie that has not been addressed by Durkheimian theorists, which is human-animal anomie. This type of anomie manifests in a multiplicity of human-animal social dynamics, including how we subjugate animals, are ability or lack there of to understand their behaviour and forms of communication, the way we classify them both taxonomically and in the ways we use them, and how we can both care for them while inflicting violence upon them. Human-animal studies researchers, green criminologists, and anthrozoologists have explored these topics, however, using the concept of human-animal anomie provides for a different theoretical position when exploring these objects of study. Also, this expands the applicability of theoretical concepts to modern problems, which is important for the continued development and growth of sociological theory. This thesis is an example of how anomie, a classical sociological theory concept, can be an effective tool in understand modern social events, laws, and human-animal relationships.
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Herzog, Hal. 2010. Some We Love, Some We Hate, Some We Eat: Why It’s So Hard to Think Straight about Animals. New York: Harper Collins Publishers.


Nicchia v. New York, 254 U.S. 228, 230


R.S.O. 1990 Chapter D. 16


Sentell, 166 U.S. at 706


## APPENDIX ONE

### BSL 254 Analysis

<table>
<thead>
<tr>
<th>WHAT ACTIONS BY ANIMALS ARE SANCTIONED</th>
<th>WHAT ARE THE SANCTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>dog was acting in defence to an attack from a person or domestic animal (PS)</td>
<td>dogs running at large are seized, impounded, sold, redeemed, or humanely euthanized</td>
</tr>
<tr>
<td>dog was acting in defence of its young or reacting to a person or domestic animal trespassing on the property of its guardian (PS)</td>
<td>not following requirements for having a dangerous dog</td>
</tr>
<tr>
<td>dog was being teased, provoked or tormented (PS) attacked, bitten, or cause injury to a person or has demonstrated a propensity, tendency or disposition to do so</td>
<td>prohibited dogs will be disposed of in a humane manner</td>
</tr>
<tr>
<td>in the absence of mitigating factor has significantly injured a domestic animal</td>
<td>liable to a fine</td>
</tr>
<tr>
<td>running at large is the dog is found any place other than the premises of the guardian and not under control</td>
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</tr>
<tr>
<td>dog on private property at the request of the guardian or occupant of the private property</td>
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</tr>
<tr>
<td>being off the premises on which it is habitually kept and without a dog tag</td>
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<tr>
<td>the dog may be kept, gifted, sold or disposed of if the guardian does not come to get it during the redemption period</td>
<td></td>
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<tr>
<td>WHAT ARE HUMANS OBLIGED TO DO</td>
<td>WHAT ACTIONS BY HUMANS ARE SANCTIONED</td>
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<tr>
<td>Control: a dog is on a lead not exceeding three metres and under control of a</td>
<td>designated as a potentially dangerous dog kept or permitted to be kept by its guardian in violation of</td>
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<tr>
<td>responsible person or is otherwise physically restrained</td>
<td>the requirements for such dog</td>
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<tr>
<td>verify that a dog has been spayed or neutered if that is the basis for their</td>
<td>pound keeper responsible for maintaining the pound on behalf of the Municipality for the purpose of</td>
</tr>
<tr>
<td>request for lower dog license fee</td>
<td>enforcing and carrying out the provisions of this by-law</td>
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<tr>
<td>obtain a licence for each dog and pay a licence fee (both restricted and non</td>
<td>registered pit bull type dogs being restricted</td>
</tr>
<tr>
<td>restricted dogs)</td>
<td></td>
</tr>
<tr>
<td>the licence must be renewed every year before Feb 1st (both restricted and non</td>
<td>non registered pit bull type dogs being prohibited</td>
</tr>
<tr>
<td>restricted dogs)</td>
<td>a dangerous dog in violation of the requirements being prohibited</td>
</tr>
<tr>
<td>the guardian must securely fix the tag on the dog at all times</td>
<td>producing a certificate to the Issuer for a dog that is not the dog in question</td>
</tr>
<tr>
<td>the correct tag must correspond to the correct dog and the correct year</td>
<td>keeping a dangerous dog</td>
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<tr>
<td>the issuer must deliver all the dog licences issued including complete written</td>
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<tr>
<td>records of all dog registrations, dog licences issues, dog tag particulars, dog</td>
<td></td>
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<tr>
<td>licence fees</td>
<td></td>
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<tr>
<td>guardian not permit the dog to run at large in the City</td>
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<tr>
<td>animal control officer, pound keeper, or police constable shall seize and</td>
<td></td>
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<tr>
<td>impound every dog found running at large, on private property, off its</td>
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<tr>
<td>habitual premises</td>
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<tr>
<td>animal control officer, pound keeper, or police constable shall deliver every</td>
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<td>seized dog to the pound and the pound keeper is to provide quarters and keep</td>
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<tr>
<td>track of all expenses</td>
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<tr>
<td>for the guardian to collect the dog at the pound they must produce a licence,</td>
<td></td>
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<tr>
<td>dog tag, pay expenses and pay a $10 fee within three days</td>
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<tr>
<td>not permit persistent barking, calling, whining or other noise making that is</td>
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<tr>
<td>clearly audible at a point of reception located in the city</td>
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</tr>
<tr>
<td>immediately remove and dispose of any excrement left by the dog</td>
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<tr>
<td>not permit the dog to bite or attack without provocation a person or domestic</td>
<td></td>
</tr>
<tr>
<td>animal</td>
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<tr>
<td>keep the dog from leaving the property by means of enclosure, contained within</td>
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<tr>
<td>a fenced area, physical restraint of the dog by a chain or other similar means</td>
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<tr>
<td>if the property is zoned and used for agricultural purposes the dog may be kept</td>
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<tr>
<td>from leaning on its own by any reasonable means</td>
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<tr>
<td>animal control officer to serve a dangerous dog notice is the dog is</td>
<td></td>
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<tr>
<td>designated as a postentially dangerous dog</td>
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<tr>
<td>guardian to comply with the requirements of the dangerous dog notice</td>
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</table>
to keep the dangerous dog confined within the guardians dwelling, in an enclosed pen of sufficient dimensions and strength to be a humane shelter, to keep the dog on a leash and under control of the guardian.

keep the dog when on the property of another person on leash and under control of a person who is 16 or older.

securely attach a muzzle to the dog at all times when not on the property of the guardian or the property of someone else with their consent.

contain public liability insurance with coverage no less than $1,000,000.00. the policy must include that the insurer notifies animal control officer if the policy expires, is cancelled or terminated.

permit the Animal control officer to have a veterinarian insert a microchip implantation in the dog at the guardians expense for the purpose of identifying the dog as a dangerous dog.

to restrain the potentially dangerous dog.

Appeal committee shall hold a hearing within 15 working days of the licence commissioner's receipt of the request for a hearing and may: affirm or rescind the designation, substitute its own designation, substitute its own requirements pursuant to section 16 (a)-(f), substitute its own requirements pursuant to section 17 (a)-(e), substitute its own requirements pursuant to section 26(a)-(f), or substitute its own requirements of a pit bull pursuant to section 26 (a)-(f).

a guardian of a potentially dangerous dog shall advice the animal control officer immediately if they transfer guardianship.

notices or requests for hearings by an animal control officer must be provided by hand delivery or prepaid registered mail.

the animal control officer shall not restore that dog to its Guardian or any other person unless the animal control officer is satisfied that the guardian is aware of and in compliance with the provisions of the requirements.
the owner of a restricted dog must comply to the requirements of the notice: obtain a restricted dog license; keep the restricted dog confined to the premises, within the owners dwelling, in an enclosed pen that is humane but prevents the dog from escaping and prevents entry therein of unsupervised children; keep control of the dog on a leash not exceeding 1.8m at all times when not confined; securely attach a muzzle when not confined; have a microchip inserted in the dog; provide the Licensing and Enforcement service unit with the name, address and telephone number of the new owner within two working days of selling or giving away the restricted dog; to advise the Licensing & Enforcement Service Unit with the name, address and telephone number of the new owner within two working days of selling or giving away the restricted dog; to advise the Licensing & Enforcement Service Unit within two working days of the death of the restricted dog; to advise the Licensing & Enforcement Service Unit forthwith if the restricted dog is running at large or has bitten or attached any person or animal; guardian shall have the dog spayed or neutered, a guardian shall notify the Licensing & Enforcement Service Unit within two days of the whelping in the event that the restricted dog has a litter; if the animal was pregnant when the by-law takes effect it shall thereafter be spayed or neutered, the owner shall delivery the offspring to the Essex County Humane Society within six weeks of whelping to be disposed of in a humane manner; to purchase and display a the entrance of the dwelling a warning sign provided by the Licensing & Enforcement Service Unit; to obtain and maintain in force a policy of public liability insurance issued by an insurer licensed by the Province of Ontario providing third party liability coverage in an amount of not less than $1,000,000.

the animal control officer shall serve a notice to the owner of a prohibited dog

the owner upon receiving the noticed shall deliver the prohibited dog within six working days to the pound.
## DOLA Analysis

<table>
<thead>
<tr>
<th>WHAT ARE HUMANS OBLIGED TO DO</th>
<th>WHAT ACTIONS BY HUMANS ARE SANCTIONED</th>
</tr>
</thead>
<tbody>
<tr>
<td>liable for damages resulting from a bite or attack by the dog on another person or domestic animal</td>
<td>owner did not exercise reasonable precautions to prevent the dog from biting or attacking a person or domestic animal, behaving in a manner that poses a menace to the safety of persons or domestic animals</td>
</tr>
<tr>
<td>if the dog has been ordered to be destroyed but not taken into custody immediately the owner shall restrain the dog by means of leash and muzzle and such other means as the court may order</td>
<td>allegedly if a person contravenes a provision of the Act or the regulations or a court order made under the Act</td>
</tr>
<tr>
<td>the owner shall ensure that the dog is neutered or spayed within 30 days of the marking of the order</td>
<td>owning a pit bull</td>
</tr>
<tr>
<td>the owner carries the onus of proof to prove the dog is not a pit bull</td>
<td>breeding a pit bull</td>
</tr>
<tr>
<td>the owner of the dog shall exercise reasonable precautions to prevent it from: biting or attacking a person or domestic animal, behaving in a manner that poses a menace to the safety of persons or domestic animals</td>
<td>transferring a pit bull, as sale, gift or otherwise</td>
</tr>
<tr>
<td>a person who owns a restricted pit bull shall ensure compliance with the requirements set out in the Act and the regulations related to restricted pit bulls</td>
<td>abandoning a pit bull other than at a pound</td>
</tr>
<tr>
<td>every warrant must have a date on which it expires which date shall be not later than 30 days after its issue</td>
<td>allow a pit bull in his or her possession to stray</td>
</tr>
<tr>
<td>every warrant must be executed between 6am and 9pm unless the justice by the warrant otherwise authorizes</td>
<td>import a pit bull into Ontario</td>
</tr>
<tr>
<td>a peace officer who seizes a dog under section 13, 14 or 15 shall promptly deliver the seized dog to a pound operated by or on behalf of a municipality, Ontario or a designated body</td>
<td>train a pit bull for fighting</td>
</tr>
<tr>
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</tr>
<tr>
<td>Onus of proof, pit bulls (10) If it is alleged in any proceeding under this section that a dog is a pit bull, the onus of proving that the dog is not a pit bull lies on the owner of the dog. 2005, c. 2, s. 1 (13).</td>
<td>a person who owns one or more pit bulls acquires a pit bull after the day the act comes into effect</td>
</tr>
<tr>
<td></td>
<td>a person who does not own a pit bull acquires a pit bull after the day the act comes into force</td>
</tr>
<tr>
<td>WHAT ACTIONS BY ANIMALS ARE SANCTIONED</td>
<td>WHAT ARE THE SANCTIONS</td>
</tr>
<tr>
<td>---------------------------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>dog has bitten or attacked a person or domestic animal</td>
<td>the dog be destroyed in a the manner specified in the order</td>
</tr>
<tr>
<td>dog has behaved in a manner that poses a menace to the safety of persons or domestic animals</td>
<td>that the owner of the dog take the measures specified in the order for the more effective control of the dog or for purposes of public safety</td>
</tr>
<tr>
<td>(warrant to seize dog) a dog is in any building, receptacle or place, including a dwelling house, other than in a pound operated by or on behalf of a municipality, Ontario or a designated by or in a research facility registered under the Animals for Research Act; it is not desirable in the interests of public safety that the dog be in that location</td>
<td>examples of measures: confining the dog to its owner's property; restraining the dog by means of a leash; restraining the dog by means of a muzzle; posting warning signs (ALSO COULD GO UNDER WHAT HUMANS ARE OBLIGED TO DO)</td>
</tr>
<tr>
<td>dog has on one or more occasions bitten or attacked a person or domestic animal</td>
<td>if the dog is a pit bull and has attacked or bitten a person or domestic animal, the dog will be ordered to be destroyed</td>
</tr>
<tr>
<td>the dog has on one or more occasions behaved in a manner that poses a menace to the safety of persons or domestic animals</td>
<td>if the dog is a pit bull and the owner contravened a provision of the Act, the dog will be ordered to be destroyed</td>
</tr>
<tr>
<td>an owner of the dog has on one or more occasions failed to exercise reasonable precautions to prevent the dog from biting or attacking a person or domestic animal OR behaving in a manner that poses a menace to the safety of persons or domestic animals</td>
<td>seizure of the dog</td>
</tr>
<tr>
<td>the dog is a restricted pit bull and the owner of the dog has on one or more occasions failed to comply with one or more of the requirements of this Act or the regulations respecting restricted pit bulls</td>
<td>guilty and liable on conviction to a fine of not more than $10,000 or to imprisonment for a term of not more than six months, or both</td>
</tr>
<tr>
<td>the dog is a pit bull other than a restricted pit bull</td>
<td>a corporation that contravenes any provision of the Act is guilty of an offence and liable, on conviction, to a fine of not more than $50,000</td>
</tr>
<tr>
<td>there is reason to believe that the dog may cause harm to a person or domestic animal</td>
<td>if a person is convicted the court may order the person convicted to make compensation or restitution in relation to the offence</td>
</tr>
<tr>
<td>OTHER</td>
<td></td>
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<td>---</td>
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</tr>
<tr>
<td>the liability of the owner does not depend upon the knowledge of the propensity of the dog or fault or negligence on the part of the owner, but the damages awarded may be reduced in proportion to the degree to which fault or negligence contributed to the damages</td>
<td></td>
</tr>
<tr>
<td>a person is on the premises with the intention of committing, or in the commission of a criminal act and incurs damaged caused by being bitten or attacked by a dog, the owner is not liable unless the keeping of the dog on the premises was increasable for the purpose of the protection of persons or property</td>
<td></td>
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<td>Court can take the following this into consideration: the dog’s past and present temperament and behaviour; the seriousness of the injuries caused by the biting or attack; unusual contributing circumstances tending to justify the dog’s action; the improbability that a similar attack will be repeated; the dog’s physical potential for inflicting harm; precautions taken by the owner to preclude similar attacks in the future; any other circumstances that the court considered to be relevant</td>
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<td>a restricted pit bull is if it is owned by a resident of Ontario on the day the Public Safety Related to Dogs Statute Law Amendment Act, 2005 comes into force: it is born in Ontario before the end of the 90-day period beginning on the day the Public Safety Related to Dogs Statute Law Amendment Act 2005 comes into force</td>
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<td>a person may own a pit bull if it is a restricted pit bull</td>
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<td>a pound may own a pit bull that is not a restricted pit bull for as long as reasonably necessary to fulfill its obligations under the Animals for Research Act</td>
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<td>a research facility registered under the Animals for Research Act may own a pit bull that is not a restricted pit bull that is transferred to it under the Animals for Research Act</td>
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<td>an owner of a restricted pit bull may transfer that pit bull by gift or bequest</td>
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<td>$9(2) &amp; 9(3)$ does not apply to pounds</td>
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<tr>
<td>a pit bull may be transferred from the owner to a pound in Ontario</td>
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<tr>
<td>a pit bull may be transferred in accordance with section 20 of the Animals for Research Act</td>
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<tr>
<td>an individual who leaves Ontario with a restricted pit bull and returns to Ontario with that pit bull within three months is not importing an pit bull into Ontario</td>
</tr>
<tr>
<td>an individual who owns a pit bull on the day the Act is enacted and is legally resident in Ontario on that day, but who is not present in Ontario on that day, is not importing a pit bull into Ontario if they return to Ontario with that pit bull within three months of that day</td>
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<tr>
<td>if there is a conflict between a provision of the act and a provision of a by-law passed by a municipality relating to pit bull, the provision that is the most restrictive in relation to control or bans on pit bulls prevails</td>
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<td>the following persons are peace officer: police officer, a special constable, a First Nations constable, and auxiliary member of a police force; a municipal law enforcement officer: a public officer designated as a peace officer</td>
</tr>
<tr>
<td>the justice of peace may issue a warrant authorizing a peace officer named in the warrant to enter any building, receptacle or place, including a dwelling house, to search for and seize the dog and any muzzle, collar or other equipment for that dog</td>
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<tr>
<td>exigent circumstances if it would be impracticable to obtain a warrant because of exigent circumstances a peace officer may exercise any of the powers of a peace officer described in section 13</td>
</tr>
<tr>
<td>exigent circumstances include circumstances in which the peace officer has reasonable grounds to suspect that entry into any building, receptacle or place, including a dwelling house, is necessary to prevent imminent bodily harm or death to any person or domestic animal</td>
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<tr>
<td>A peace officer may seize a dog in a public place if the officer believes on reasonable grounds that; the dog has on one or more occasions bitten or attacked a person or domestic animal; the dog has on one or more occasions failed to exercise reasonable precautions to prevent the dog from biting or attacking a person or domestic animal, behaving in a manner that poses a menace to the safety of persons or domestic animals; an owner of the dog has on one or more occasions failed to comply with one or more of the requirements of this Act or the regulations respecting restricted pit bulls; the dog is a pit bull other than a restricted pit bull; or there is reason to believe that the dog may cause harm to a person or domestic animal.</td>
</tr>
<tr>
<td>a peace officer may use as much force as is necessary to execute a warrant</td>
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(Identification of pit bull) A document purporting to be signed by a member of the College of Veterinarians of Ontario stating that a dog is a pit bull within the meaning of this Act is receivable in evidence in a prosecution for an offence under this Act as proof, in the absence of evidence to the contrary, that the dog is a pit bull for the purposes of this Act, without proof of the signature and without proof that the signatory is a member of the College.
UPDATE - Bailey has been adopted and will be moving to Alberta to be with her new family soon!

"Hey there! I’m Bailey, and I need a home! I had a home, but my mom had a baby who was allergic to me and, well, her human baby needed her more. But I’ll be ok! I’m a friendly and happy girl who loves to meet new people. I’m only 10 months old so I’m still learning to be the best girl ever. I love going for walks, exploring new things, meeting new people, and just having fun in life! They told me that I would be best for a home with sturdy older kiddos who aren’t as likely to be knocked over by my exuberant energy! Just kiddos who aren’t allergic to me please. 😊

Oh yeah...one other thing. There’s apparently some law in Ontario that says I’m not allowed to live here. I think that’s silly, and the people here agree, but we’re all stuck with the law for now. So they said I need to find a home in someplace called Michigan, or Quebec, or out west, or out east. Heck, apparently many places have smartened up and done away with this breed prejudice business, so there are LOTS of options for me. If you have friends or family in any places that are not Ontario, please share this with them and help me find a home!” 😊

Visit here to apply to adopt Bailey: https://bit.ly/3k0D3MB For the right family who is willing to give her a home and work with us to transport her there, the Humane Society will waive her adoption fee ❤️🐱
#adoptmeplease #BSLsucks
IS IT WORTH THE RISK?

Children and pit bulls do not mix.

“She suffered a fractured skull and required more than 300 stitches ... She also lost many teeth and had numerous bones in her face shattered.”

Source: Mother of 3-year old child attacked by pit bull.
www.dogsbite.org/dog-bite-victim-voices.php

This safety alert is brought to you by
www.dogsbite.org
A public education website about dangerous dogs
Please visit our website to learn more

DogsBite.org
Some dogs don't let go
VITA AUCTORIS

Lauren Sharpley was born in 1995 in Ajax, Ontario. She graduated from Pickering High School in 2013. From there she obtained a Bachelor of Arts in Criminology from the University of Windsor in 2018. She is currently a candidate for the Master of Arts degree in Sociology at the University of Windsor and hopes to graduate in Spring 2023.