

Barking Mad? Risk Regulation and the Control of Dangerous Dogs in Germany

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The 'focusing event' of a deadly attack on a six-year-old boy by two dangerous dogs provided not only one of the most debated policy issues in Germany in 2000, but also led to regulatory responses by most Länder governments. By assessing the different responses and the selection of regulatory instruments, it is questioned whether the diversity and speed of responses reflected 'barking mad' regulation as predicted by critical commentators of risk regulation. The conclusion argues that the responses reflected incentives existing within the system of German federalism which led to the diversity of responses and regulatory competition 'to the top'.

In late June 2000, a deadly attack on a six-year-old boy by two dogs, an American pit bull terrier and an American Staffordshire Terrier, in a school playground in Hamburg led to widespread calls for the immediate destruction of all *Kampfhunde* among the public and both tabloid and broadsheet media.¹ The issue of dangerous dogs became one of the key issues in political debate throughout the summer of 2000, leading not only to regulatory responses by most Länder, but also to 'informal' regulation by incidents of open hostility towards dog owners as well as to a substantial rise in the number of abandoned dogs.

The following explores the reforms to dangerous dog legislation and regulation across Germany after the severe incident in late June 2000. This example offers a valuable case study for two related debates. First, it reflects on debates in risk regulation by assessing the response towards a particular type of risk profile following a single 'focusing event'.² Arguably, the low probability/high visibility risk profile characterising fatal incidents by dangerous dogs in public is most likely to lead to 'barking mad' regulation. Despite this particular risk profile, the study of regulatory responses to incidents involving dangerous dogs offers valuable insights in debates concerning the state's response to risk and uncertainty, not only in

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'traditional fields' such as criminal justice, food hygiene or factory safety but also in 'new' areas such as changes in technologies and tastes.³ Second, it assesses the German Länder's responses to issues of sudden high salience. Does the German policy making style in the system of co-operative federalism prove resistant to becoming 'barking mad' following a 'focusing event' and public demand for regulatory change?

The next section first sets out the tension between presumed tendencies in the making of risk-regulatory policy and German policy making before exploring the different dimensions of risk and difficulties in designing 'appropriate' regulatory institutions. This is followed by an analysis of the regulatory responses of the German Länder to a fatal dog incident in the summer of 2000. The conclusion assesses the Länder's responses in terms of the context of the risk regulation literature and in the context of traditional assumptions of German policy making. It argues that the regulatory response reveals both the traditional gridlock of policy making at the intergovernmental third level, while offering the incentives of regulatory competition 'to the top' in the face of public demands for immediate action.

RISK, REGULATORY DESIGN AND DANGEROUS DOGS

Regulating Dangerous Dogs

Risk is defined as the probability of a hazard occurring and the likely magnitude of its consequences. The rationale for regulating risk is its 'public bad' characteristics, in particular high information and evasion costs for anyone attempting (if possible) not to be exposed to any particular risk. For public policy, it raises the question at what level of risk the state should intervene in order to protect the individual from an undesirable event. In the case of dogs, risks emerge from both ends of the dog as well as from the other end of the lead, namely dog ownership. Most recent regulatory activity, despite the continuing high public salience of the issue of dog excrement, has targeted the increase of dogs which are said to possess a particularly violent and aggressive predisposition and which have been involved in injuring and killing humans and fellow animals.

The low statistical probability of a fatal injury from a dog attack in public but the high public visibility of such an attack establishes a risk profile which resembles closely those characteristics which Stephen Breyer regards as leading to a vicious cycle of regulatory responses, given highly unstable but intensive public perceptions, legislative attention and overall uncertainties regarding the regulatory process.⁴ Furthermore, risk regulation is said to suffer from 'tunnel vision' regulatory responses in attempting to maximise regulatory control, random agenda selection and inconsistent risk evaluation across government agencies and regulatory issues. In order to

alter the seemingly inevitable dynamics of the vicious cycle, Breyer advocates the establishment of a centralised unit to consider consistency and coherence of regulation across sectors and issues.⁵ After a brief account of German policy making, this section sets out the complexity of risk debates in general, and applies these to debates regarding dangerous dogs in particular.

The example of the British 1991 Dangerous Dog Act offers for many an example of 'barking mad' regulation which has been claimed to have been drafted as a fast response to an immediate public outcry after pit bull incidents in the early 1990s.⁶ Such 'knee-jerk response' seems to be particularly likely in political systems such as the United Kingdom. As Patrick Dunleavy argues, the majoritarian structure of the British system and the absence of institutional veto points inhibits good policy making. One suggested remedy to improve policy making is greater pluralisation.⁷ Assessing German responses to similar public demands after a dog incident offers a good basis for comparison. German policy making has traditionally been characterised by a legal-rational *Sachlichkeit* in its policy making style which demands an objective and thorough examination of policy options, often based on professional consensus with societal groups.⁸ Similarly, Knill has argued, in the case of administrative reforms, that the German bureaucracy is defined by its autonomy in developing reforms in a process of incremental self-adaptation in the light of environmental demands.⁹

In the case of dangerous dogs, the authority for formulating regulatory responses rests solely with the Länder as Art. 70 Basic Law prohibits federal action in the area of public order. Activities by the federal government are therefore limited to issues related to animal health.¹⁰ While, since the early 1990s, all Länder were involved in managing and developing regulatory tools to deal specifically with particular dog breeds and types, this occurred in close interaction with professional experts, such as vets and kennel organisations, as well as in the light of judgments by administrative courts. Furthermore, attempts to co-ordinate responses to the dangerous dogs issue took place at the intergovernmental 'third level' of federalism. Policy making at this level is characterised by unanimity requirements and therefore lengthy decision making processes which are often only resolved under public pressure and by the defensive strategies of Länder bureaucracies to establish policy homogenisation without policy centralisation, thereby safeguarding their organisational autonomy.¹¹ Arguably, this institutional infrastructure should provide sufficient disincentives for 'barking mad' regulation.

At the same time, developing regulatory responses to risk in general and dangerous dogs in particular is marred by great uncertainty in terms of conceptual approach as well as selection of regulatory instruments. Whereas

a 'technical' approach would analyse the probabilities of a specific event occurring, 'economic' perspectives assess the costs and benefits of any particular measure. In contrast, a 'psychological' approach suggests that risk is more about perception of potential impact, visibility and familiarity than 'rational' evaluation. Similarly, 'cultural' approaches claim that risk perception will inherently be biased towards individually held dispositions and identities.¹² Such differences in perspectives also lead to different selection criteria for the design of regulatory instruments. Cultural accounts suggest that dominant world views are more likely to shape the perception of risk and the consequent selection of 'appropriate' instruments, while 'scientific' arguments highlight the instrumental calculation of probabilities and potential costs and benefits, also including side-effects or so-called 'countervailing risks', additional risks incurred from attempts to reduce the original risk.¹³ Similar differences exist with regard to structuring the assessment and management of risk regulation. So-called 'technical' and 'economic' perspectives advocate the insulation of technical and economic expertise from volatile public and political pressure, while participatory accounts stress the importance of societal involvement and debate for the defence of the 'public interest' against the biased views of 'risk blind' experts.

Choices in Regulatory Design

Further choices relate to the selection of 'appropriate' regulatory instruments.¹⁴ In particular, such choices involve the difficulties in establishing statistical certainty, the extent of regulatory instruments' over- or under-inclusiveness and disagreements on the origins of the risk and how these interpretations are translated into regulatory instruments. The 'scientific' approach of assigning probabilities to particular events occurring is often hindered by contested or unreliable statistical material. This ambiguity is enhanced by a lack of scientific consensus on the extent of an event's or development's impact which lead to disagreement on the potential costs of the risk if left unregulated. In the case of dangerous dogs, there has been, across Western Europe, an overall perception of a rapid increase in particular dog breeds and types associated with heightened levels of aggressiveness. For example, estimates in France suggested an increase in *chiens dangereux*, especially in pit bulls, from approximately 2–300 in 1993 to 20–40,000 in 1998. In Germany, despite the existence of a licensing regime, non-compliance was widespread and official statistics or insurance records provided neither a reliable record of the overall dog population nor of the circumstances of dog-related incidents. Estimates suggested that approximately 4.8 million dogs existed in Germany (below European average on a *per capita* basis). One survey by the local

authorities' association, the *Deutsche Städtetag* found that German Shepherds were by far the most incident-prone breed. However, once total numbers of incidents had been cross-read with the 'puppy register' of the German dog association (*Verband des deutschen Hundewesens*), it was suggested that certain dog types, namely the pit bull terrier, Staffordshire Bullterriers and American Staffordshire Terriers were over-proportionately involved in recorded attacks on humans and fellow animals. A similar study of Berlin by the Federal Interior Ministry showed that cross-breeds, Rottweilers and pit bulls were most prominent.¹⁵

Furthermore, regulatory design faces the choice whether to minimise the production of the risk or to rely on the mitigation of negative externalities and the degree of coercion and identification of regulatory targets. Closely related to the discussion on the utility of the so-called 'precautionary principle' are debates about Type I and Type II errors in risk regulation.¹⁶ Conventional regulation is arguably too prone towards erring in favour of Type I errors – rejecting hypotheses which are later shown to be true – rather than erring towards Type II errors in terms of supporting a hypothesis that is later found to be false.¹⁷

Such debates and decisions as to the instruments to tackle risks are inherently linked to judgements as to the origins of risk stemming from perceived 'undesirable elements' regardless of them being human or non-human. Arguments here range from those who attribute socially perceived 'misbehaviour' to natural inheritance, to those which see the primary causes as specific individual characteristics or, more broadly, produced by the environment of the 'misbehaving' actor. As a consequence, advocated regulatory instruments range from the elimination of these particular genetic lines to the mediation of risks by addressing environmental and contextual factors rather than the 'risk target' itself. In the case of dogs, this involves decisions as to whether the dog breed or type is inherently or genetically particularly dangerous or whether it is based on the particular characteristics of individual dogs and the ill-treatment by their owner.¹⁸ While kennel experts generally deny that an automatic link between breed and aggression exists, they point to the existence of particularly aggressive breeding lines where it is possible to assume genetic predetermination, although even 'perfect' breeding lines produce 'misfit' puppies.¹⁹ Further difficulties, however, surround the possibility of diagnosing genetic inheritance, given cross-breeding as well as differences in breed recognition. For example, while the pit bull is regarded as a 'family dog' in the United States, it is not recognised as a breed in Germany and the UK. Further difficulties with categorising particular breeds and types are that it encourages breed switching and 'creative breeding'; in the case of France, change in regulation even led to a switch from dogs to North African Barbary apes.²⁰

Instruments based on 'nurture' assumptions would be directed to mediate the risks of the dog (such as lead and muzzle requirements), including dog examinations to establish individual character traits and the setting of ownership qualifications. In the case of dog examinations, any assessment of individual dog aggressiveness is likely to cause problems in terms of definition as well as legal defensibility. Thus, while extensive tests might show evidence of some propensity to extraordinary violence, the examination of the dog might be biased and not functional as it does not involve the 'protection of territory' motive, or might lead to legal challenges over interpretation of the dog's behaviour. At the same time, regulatory attempts need to deal with two distinct audiences. On the one hand, the 'innocent, but ignorant' owners, and, on the other hand, a large semi-legal target audience where efforts to enforce regulatory compliance against illegal breeding and training is unlikely to be effective. Besides the two 'ownership audiences', regulatory instruments have also to consider two different 'dog audiences', namely controlling the existing stock of dogs, while also decreasing the incentive to acquire or breed particular breeds.

To conclude this section, the regulation of risk involves often controversial choices which are based on different perspectives as to the assessment and the management of risk. It is therefore most likely to lead to contested choices. The following section sets out the regulatory responses in Germany to the dangerous dog issue in summer 2000. Given the traditional German legal rational policy making 'style', did the Länder respond in a 'legal-rational' way or in a 'barking mad' or 'knee jerk' manner?

REGULATING DANGEROUS DOGS IN GERMANY

Debating Regulation

The viciousness of the Hamburg incident, which had gone beyond previous attacks by dogs on children, directly encouraged the search for new instruments.²¹ The Länder responded to this public pressure by passing new legislative and regulative measures, while the federal government aimed to establish an EU-wide ban on pit bulls, American Staffordshire Terriers and Staffordshire Bullterriers.²² However, rather than emerging as a sudden theme, the issue of 'appropriate' regulation of dangerous dogs had been a continuous theme within and across Länder administrations throughout the 1990s. This involved in particular debates about the adoption of breed-based approaches in order to target particular dog breeds and types. Bavaria adopted a breed-based approach in 1992. It was endorsed by the Bavarian Constitutional Court, which argued that the selection of the particular breeds targeted in the Bavarian legislation was not arbitrary given evidence

that these dogs were inherently dangerous. Moreover, it was argued that the non-inclusion of other dogs with a high 'bite incident' record, such as the German Shepherd, was not violating the 'proportionality' principle, given the historical ownership patterns and subsequent long-standing knowledge about the dog's potential dangers in Germany.²³ Other Länder had, throughout the 1990s, attempted to adopt a similar breed-based approach. In contrast to Bavaria, administrative courts defeated these initiatives on grounds of 'proportionality', claiming that there was insufficient scientific evidence to justify the inclusion or exclusion of particular animals, dog breeds and types. These Länder were required to rely on the traditional 'right of the first bite' before any measures could be taken. Kennel clubs and vets also opposed a breed-based approach, claiming that every dog had an individual character and therefore was also different in its potential to be dangerous.

A related debate was conducted with regard to dog taxation. In the late 1990s, various local authorities had attempted to raise local dog tax to discriminate against the ownership of particular dog breeds and types. These attempts had received a mixed response from administrative courts. The legal uncertainty was resolved by the Federal Administrative Court in January 2000. It ruled that local authorities were legally allowed to impose a differential dog tax system, as particular breeds and types had been especially bred to become overly aggressive.²⁴

In 1999, Schleswig Holstein initiated the establishment of a voluntary Länder working group to develop policy options for a co-ordinated strengthening of dangerous dog regulations. This reflected the perception of a growing number of dog incidents involving humans and animals. Despite several attempts to broker a compromise and due to unanimity requirements in the Standing Conference of Interior Ministers, the working group failed to agree on a set of recommended regulatory instruments. However, after considerable pressure from the media, the Standing Conference agreed to recommend that the Länder should aim to develop 'tougher' instruments on their own, such as ownership criteria, the imposition of lead and muzzling requirements and a ban on aggressive training or breeding practices. Following the Hamburg incident, a telephone conference of interior ministers agreed that all Länder should take immediate action. The Bundestag encouraged these measures with all parties condemning the perceived 'laxity' of existing regulatory regimes. The following sets out the instruments which were established by the Länder, in particular in terms of the extent to which breed-based approaches were utilised and how coercive the regulatory instruments were.

Selecting Instruments

Moves towards introducing breed-based approaches, despite the opposition from kennel and veterinary experts as well as administrative court rulings, had re-emerged in the late 1990s. In 1998, Brandenburg adopted a single-list breed-based approach which otherwise broadly resembled the Bavarian provisions, while North Rhine-Westphalia had initiated the drafting of breed-based provisions during 1999. Following the Hamburg incident, most Länder, with the sole exception of Thuringia, moved towards the classification and categorisation of dog-breeds, partly encouraged by the Bavarian rhetoric that it had eliminated the pit bull problem in Munich with its policy.²⁵ The original Bavarian approach had offered two breed-based categories (plus a category for dogs having shown particularly aggressive behaviour regardless of their breed or type), classifying particular breeds as irrevocably or as revocably dangerous, in the latter case allowing the owner to revoke the 'dangerous' status of her dog after a particular dog examination. A further category dealt with all other dogs which had shown evidence of particularly unusual levels of aggressiveness. While some Länder followed this categorisation, others adopted single lists.

The Länder showed great variation in the numbers of targeted dogs, with North Rhine-Westphalia including a total of 43 dog breeds as well as all dogs over 40cm and 20kg. The first category of 'particularly dangerous dogs' listed the breeds and types 'legitimised' by the Bavarian Constitutional Court and the Federal Administrative Court, while the second category involved all breeds defined as 'herding dogs' and those which had been reported to be involved in incidents. Other Länder criticised such an over-inclusive list, claiming that it attracted ridicule (by including extinct breeds) and would cause substantial administrative costs, while also motivating breed switching via imports from Eastern Europe and elsewhere. For example, the Tosa Inu was placed, by most Länder, into the 'tough' regulation category, although only three species of this rare Japanese breed were known to exist in Germany. Furthermore, Saxony was the only Land which did not define the Staffordshire Bullterrier as a dangerous dog.²⁶ Saxony Anhalt, similar to Rhineland Palatinate, Saxony and the Saar, restricted their regimes to pit bulls, American Staffordshire Terriers and Staffordshire Bullterriers. Table 1 provides an overview of the number of dog breeds and types regulated in the respective Länder as well as an illustration of the applied instruments.

The key qualitative difference involved the way in which different requirements were placed on the various categories and the extent to which classifications were 'revocable'. All Länder adopted measures which required the keeping on the lead and the muzzling of the dog in public

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TABLE 1
OVERVIEW OF REGULATORY RESPONSES

Land	Category I: Strict regulation	Category II: Moderate regulation
Bremen		9 breeds and types – registration
Bavaria	5 breeds and types – registration and examination	9 examination to exempt from lead and muzzling requirements
Brandenburg	5 breeds and types – registration, neutering, ban on sale and breeding	13 breeds and types – biannual examination
Berlin	5 breeds and types – immediate notification, ban on breeding, examination	7 breeds and types – lead and muzzle requirements
Baden Württemberg	3 breeds and types – examination to establish breeding ban, registration	9 breeds and types – classification as dangerous where strong evidence, registration
Hamburg	3 breeds and types – registration, neutering, owner & dog examination, ban on breeding of aggressive dogs	10 breeds and types – examination to establish level of aggressiveness and exempt from adjustable conditions
Hesse	3 breeds and types – two year permit after examination, neutering, ban on sale	12 breeds and types – examination to prove non-dangerousness
Lower Saxony	3 breeds and types – individual examination; if failed: destruction; if passed: registration and neutering	11 breeds and types – examination to reverse lead and muzzling requirements
Mecklenburg- West Pomerania		12 breeds and types – dog & owner examination to revoke requirements: otherwise ban on breeding sale
North Rhine- Westphalia	13 breeds and types – breeding ban; individual examination & registration	30 breeds and types – examination and registration
Rhineland Palatinate	3 breeds and types – neutering, ban on breeding and sale, dog & owner examinations	
Saxony		3 breeds and types (established by subsequent regulation), owner competence, ban on breeding and sale
Saxony Anhalt		3 breeds and types – ban on breeding and sale
Saar		3 breeds and types – ban on non-commercial breeding, registration, owner examination
Schleswig Holstein	3 breeds and types – planned sterilisation and ban on breeding and sale. Lead and muzzle	12 breeds and types – lead requirement
Thuringia		Rejection of breed-based approach in March 2000.

places (in some cases, extending to public buildings and public transport) and the provision of secure accommodation. Most Länder adopted an approach which classified the pit bull, the Staffordshire Bullterrier and the American Staffordshire Terrier as irrevocably dangerous, other breeds were classified after a so-called *Wesenstest*. This examination was assessed by a kennel expert or vet and was mainly directed at testing the behaviour of the dog to certain impulses, but sometimes also involved joint dog and owner exercises and practice texts. Different versions of a *Wesenstest* were developed for the Länder by universities and kennel clubs, building to some extent on measures adopted in North Rhine-Westphalia in the mid-1990s, where tests on the social conduct of the dog had been introduced with the support of the dog association.²⁷ Such tests were also considered, by the late 1990s, by Lower Saxony. The extent and consequences of the *Wesensteste* varied considerably across the Länder. While some Länder, for example, Bremen, did not adopt an examination requirement, claiming that these would prove difficult to defend legally, tests differed in particular with regard to their consequences, ranging from destruction, castration, to the imposition of muzzling and lead-keeping requirements, while positive outcomes led to measures ranging from the permitted 'survival' to a full exemption from any specific regulatory measure. Further differences existed with regard to restrictions imposed on dogs classified as dangerous, ranging from the neutering of all classified or assessed dangerous dogs, the wearing of differently coded identification tags or micro-chipping, while some Länder merely required muzzling and keeping on the lead.

Besides these coercive instruments 'on' the dog, financial instruments were considered to increase the cost of dog ownership. This involved the promotion of differentiated local dog taxation. Some Länder actively encouraged local authorities to 'price dangerous dogs out of the market', while others were reluctant to motivate local authorities to open new sources of (minor) revenue, claiming that any new measure would represent an unfair penalty on existing and legal owners of particular breeds, while it would not affect the owners of unregistered dogs. Furthermore, the Standing Conference of Interior Ministers recommended the introduction of compulsory dog insurance as in some cases dog owners had been unable to compensate victims for the damage caused by their dog.

While the immediate source of risk is the dog itself, most experts argue that higher levels of aggression are linked to inadequate ownership. Given, however, that the administration and enforcement of 'ownership' qualifications is more costly than visible signs 'on' the dogs, the Länder measures focused mainly on the suitability and competence of the owner, the 'special interest' (*berechtigtes Interesse*) of the owner in keeping a particular breed or type and the appropriateness of accommodation for the

dog. Building on the Bavarian approach, most Länder adopted provisions similar to those applying for the ownership of firearms, namely adulthood and evidence of 'reliability' through a '*Führungszeugnis*' issued by the police. This ruled out ownership after certain criminal offences, with both Hamburg and North Rhine-Westphalia adopting stricter measures with regard to alcohol-related offences than applied for the carrying of weapons.²⁸ Some Länder required evidence that the owner was knowledgeable and competent by means of joint exercises with the dog and by the assessment of 'theoretical knowledge' on breed-specific and general dog issues. In contrast, North Rhine-Westphalia assumed 'expertise' where a prolonged record of incident-free dog ownership could be proven.

Implementing Regulation: Confusion and Challenges

The diversity was further advanced in the implementation stage. Given that even 'perfect' legislation is likely to fail due to an absence of resources, it was not surprising the German implementation record across the Länder was at best patchy and inconsistent.²⁹ Furthermore, there were problems with mobilising the appropriate resources. Thus, during 2000, animal homes were faced with constraints given a large number of abandoned dogs. Furthermore, enforcement remained at best patchy, with special policy dog patrol units, for example in Berlin, being formed only to be dismantled three months later in the light of competing demands for limited resources. Administrative confusion remained high, with many local authorities unable to cope with the large (but by no means complete) number of dog registrations and enquiries. Furthermore, in Hesse the main provisions of the first regulatory response were considerably weakened within one month and further dismantled by a successful challenge in Hesse's administrative court. The court declared the requirement of automatic castration illegal, eased the criteria for imposing permanent muzzling and removed the 'special interest' criteria for allowing continued dog ownership. This court ruling was accompanied by widespread demonstrations and lobbying by dog owners and kennel clubs. Similarly, while the highest administrative court in Mecklenburg-West Pomerania accepted the breed-based approach, given that it established revocable conditions, it annulled particular provisions, for example the need for a visible identification of dangerous dogs.³⁰ In contrast, in late May 2001 the higher administrative court in Schleswig ruled that the breed-based approach adopted by Schleswig-Holstein was void.³¹ Similarly, Lower Saxony's higher administrative court rejected provisions which demanded a complete breeding ban and the wearing of a muzzle and made these provisions conditional on the failure to pass the *Wesenstest*.

Veterinary experts and kennel clubs attacked the new regulatory frameworks, claiming that they lacked any scientific basis. To regain co-operation with kennel clubs, these were granted a substantial role in the administration and operation of the dog examinations. Furthermore, attempts were made to move from the diversity of regulatory frameworks to a more co-ordinated and co-operative approach across the Länder. This involved the establishment of a further working group of the Länder as well as the encouragement of action at the federal level. It was argued that the breeding of particularly aggressive dog types and breeds involved animal suffering, thus the then Ministry for Agriculture proposed a breeding ban on all pit bulls, American Staffordshire Terriers and Staffordshire Bullterriers after they had failed a specific examination.³² The Bundesrat succeeded in extending the provisions by including the Bullterrier and by eliminating the 'opt out' option of a positive examination. Moreover, on the initiative of Lower Saxony, a provision was introduced to allow the federal ministry to introduce the requirement for a dog owner licence as evidence for the owner's competence, as already had been introduced in various Länder. Furthermore, the federal government imposed an import ban on the four dogs types/breeds and any potential cross-breeds. This ban was also to be applicable to all other dogs being imported to Germany and where the respective Land of final destination had defined the breed as 'dangerous' or 'potentially dangerous'.

BARKING MAD REGULATION?

This concluding section discusses whether the regulatory responses by the Länder reflected 'barking mad' regulation in establishing '102 dog regulations' or rather policy making 'to type', it then assesses the Länder's responses in a cross-European perspective before finally considering why the particular pattern of regulatory responses emerged across the Länder due to one single fatal incident.

At first sight, the regulatory responses indeed suggest a 'barking mad' pattern. First, they were unlikely to prove practicable. Apart from issues of administrative resources and difficulties in enforcing a breeding ban given the large number of 'unplanned' breeding as well as of enforcing import controls, the non-practicability of incongruent regulatory responses was made evident in the example of the travelling pit bull owner. On a journey from northern to southern Germany, a pit bull owner was faced with six to nine different types of regulatory requirements. Second, the regulatory patterns across Germany appeared 'barking mad' as it seemed to fly in the face of what professional groups as well as courts (with the exception of the Bavarian Constitutional Court) had argued throughout the 1990s, namely

that a ban on whole breeds and types was too undifferentiated and non-proportionate a response which also lacked scientific support. While experts, in particular vets, were used, for example in Lower Saxony, for the design of the dog examinations, this operated within the parameters set by the political and administrative officials rather than by the professional consensus. Thus, Lower Saxony's examination was initially assumed to establish whether a dog should be eligible for breeding. After the Hamburg incident, these conditions were changed, now demanding that the examination should establish whether a dog was eligible for survival.

Third, the Länder's responses to the Hamburg incident lacked co-ordination and did not reflect any significant 'learning' or 'transfer' beyond the activities of Internet-based comparison. Even in the case of the Federal Interior Ministry, which had asked German embassies across Europe to report on dangerous dogs regimes in their respective countries, came to the sole conclusion that 'all do it differently'.³³ Similarly, the report by the Länder working group did not refer to any international experiences, although some formal enquiries were made with European ministries.³⁴ Furthermore, the diversity of responses, especially in the extensive variations provided by North Rhine-Westphalia or the initially coercive version applied in Hesse, were regarded by less 'responsive' Länder, such as Saxony, as a dangerous precedent where regulatory rationality had been displaced by the ministerial-political urge to please the demands of the media and the wider public. Finally, in light of the implementation record in this policy domain, it was questionable whether the regulatory responses increased the probability of preventing a fatal incident.

While these arguments seem, at first sight, to confirm that the regulations followed a 'barking mad' pattern as would be suggested by critical commentators such as Stephen Breyer, the German responses also reflected a less 'barking mad' character and followed characteristics often associated with the 'traditional' German policy making style. The regulatory responses reflected debates within the wider risk regulation and the more specific dog-related literature and was initially dominated by technocratic expertise as 'prescribed' by critical commentators of risk regulation. However, given differences between experts – kennel and administrative – on the 'appropriate' means to regulate dangerous dogs which had inhibited regulatory consensus prior to the Hamburg incident, the deliberations in the inter-Länder working group, ended, despite the dominance of technocratic expertise, in gridlock.

Furthermore, the German responses reflected the specific legalistic culture of German policy making. Both the over- and the under-inclusive nature of Länder provisions was justified by the respective administrations with the need to respond to anticipated legal challenges. Thus, North Rhine-

Westphalia hoped to overcome legal challenges by including all dog breeds and types which somehow had a record for being dangerous plus all large dogs. In contrast, others argued that a restricted number of breeds and types would prove more successful under court challenge. To counter legal challenges, most Länder adopted (though with varying degrees of coerciveness) the breeds and types accepted by the Federal Administrative Court and the Bavarian Constitutional Court in the hope that the consent of these courts would convince other administrative courts. Moreover, by the autumn of 2000, policy making returned to previous patterns, with close involvement of kennel clubs and vets in the administration and implementation of regulatory provisions and co-operative attempts to establish a more harmonious framework for the regulation of dangerous dogs.

A comparative perspective further reveals similarities with other West European regulatory responses. Despite the absence of any evidence signalling diffusion of a particular policy model, the German provisions reflected wider patterns across Western Europe, in particular with regard to the selection of breeds and types, policy instruments as well as in terms of policy trajectories.³⁵ The selection of breeds in particular reflected the established European-wide canine system with its breeds, which refused to accommodate 'new arrivals' such as the pit bull, which were also associated with non-institutional kennel interests.

Apart from these broad similarities across the regimes, which were also adopted in the past decade, the German approach resembled the French provisions in adopting breed-based categories, while it also resembled Dutch discussions with regard to the adoption of a dog examination. Furthermore, in all cases, it had been initial dog incidents which had either triggered an immediate or, in the case of France (at the national legislative level), a delayed regulatory response. Finally, across Western Europe, regulatory regimes dealing with dangerous dogs were either under attack or in the process of reform. In the UK, for example, the Act was regarded as a prime example of a bad 'knee jerk response', in France, the enforcement of the provisions proved difficult in the face of non-compliance, breed switching and lack of resources, while in the Netherlands, plans to widen the existing provisions were rejected by the combined efforts of the animal rights and dog association lobby. Given these similarities, the Länder responses appear comparatively similar rather than uniquely 'barking mad'. Finally, potential explanations for the regulatory diversity can be related to 'bureaucratic policy making under crisis' and institutional incentives rather than the particular nature of an individual Land government. To a large extent, the German pattern reflected the 'normal' circumstances of an administration in crisis.³⁶ The political incentive to search for 'quick solutions', meant that the decision making shifted away from consultative

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TABLE 2

State	Which dogs	What instruments
UK (1991 & 1997)	Pit bull, Tosa 'type', other defined 'luxury dogs'	Registration, neutering, microchip, muzzle & lead, no sale or transfer. If violation: mandatory death penalty (until 1997)
Denmark (1991)	Pit bull, Tosa Inu	Sterilisation, ban on sale and breeding
Ireland (1991)	Pit bull, Bullterrier, Staffordshire Bullterrier, Bulldog, Bull Mastiff, Dobermann Pinscher, German Shepherd, Rhodesian Ridgeback, Rottweiler, Japanese Akita, Japanese Tosa and Bandog	Lead and muzzle, collar with ID of owner
Netherlands (1993)	Pit bull	Tattoo, registration, lead and muzzling, sterilisation, ban on sale and breeding
Netherlands (abandoned March 2001)	Extension (on grounds of physical capacity and aggressive character) to American Staffordshire Terrier, Fila Brasileiro, Dogo Argentino, and Mastino Napolitano (Rottweiler)	Ban on ownership, breeding and sale, identification, registration, sterilisation, muzzling and lead. Planned exemption after passing the 'aggressietest', abandoned in 12/00. Rottweiler under closer monitoring.
France (1998)	Category I: Characteristics (<i>éléments de reconnaissance</i>) similar to those of the Staffordshire Bullterrier, the American Staffordshire Terrier, the Mastiff (including the so-called 'Boerbulls') and Tosa. Category II: recognised breeds of the Staffordshire Bullterrier, the American Staffordshire Terrier, the Rottweiler and the Tosa as well as dogs with characteristics of the Rottweiler.	No ownership by minors, people under guardianship, persons with a criminal or prison record and others whose permission for dog ownership had been withdrawn. Dog registration proof of identification, an anti-rabies injection, compulsory dog insurance. Any failure to be penalised with up to three months in prison and a FF25,000 fine. First category: sterilisation certificate, also ban on the acquisition, free transfer or sale and import and introduction into French territory. Penalties up to six months in prison and a fine of FF100,000. Training was only to be conducted by approved associations.

co-ordination with professional groups and moved towards an agenda dominated by 'public order' and 'public security' concerns. In addition, incentives provided within German federalism led to 'races to the top'. In this case, it was less economic incentive as discussed by David Vogel, but far more the symbolical value to gain legitimacy and public support among the electorate by 'talking tough'.³⁷ Thus ministers encouraged their officials, 'when in doubt, place a few more dogs on the list'.³⁸

In contrast, there was no clear-cut party-political or 'departmental' explanation to the diverse pattern. Both Social Democrat- and Christian Democrat-led governments adopted 'tough' (measured by, for example, neutering provisions) as well as 'light' regulatory frameworks. There were also no clear-cut differences between those Länder where the Interior Ministry and those Länder where the Environment or Agriculture Ministry put forward the regulatory responses. Even in terms of the city-states, no shared pattern emerged: Berlin, Bremen and Hamburg took very different approaches, not only among themselves, but also in relation to their immediate neighbouring Länder. Thus, under stress of a turbulent environment, and in the absence of any institutionalised means of requiring a harmonised approach (besides voluntary co-operation), the normal pattern of defensive policy homogenisation via policy making at the third level of federalism collapsed and gave way to regulatory competition.

In conclusion, the Länder's response to one of the most discussed issues of the political year 2000, dangerous dogs, provides indications, at first sight, of a remarkable 'barking mad' response, in terms of the speedy response time after the Hamburg incident as well as in terms of the differential patterns of formal regulatory instruments. However, at the same time, it reflected not only an embeddedness in concerns of legal defensibility in the face of anticipated legal challenges, but also patterns inherent in the system of co-operative federalism which under conditions of 'normal' policy making promotes gridlock, but under strain encourages regulatory competition, at least, given the patchy implementation pattern, in symbolic regulation.

NOTES

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1. For example, 'Kampfhunde ausrotten', *Frankfurter Allgemeine Zeitung*, 28 June 2000.
2. T.A. Birkland, 'Focusing Events, Mobilization, and Agenda Setting', *Journal of Public Policy*, 18/1 (1998), pp.53-74.
3. However, it is not claimed that the following discussion is characteristic of all German risk regulation. Substantial variations are likely to be found given different types of risk as well as different actor constellations within the policy domains (on different types of risk, see R. Baldwin and M. Cave, *Understanding Regulation* (Oxford: Oxford University Press, 1999), pp.138-49, on variations across domains in the United Kingdom context, see C. Hood, H. Rothstein and R. Baldwin, *The Government of Risk* (Oxford: Oxford University Press, 2001).
4. S. Breyer, *Breaking the Vicious Cycle* (Cambridge, MA: Harvard University Press, 1993), pp.33-51. Also H. Margolis, *Dealing with Risk* (Chicago: Chicago University Press, 1992).
5. Breyer, *Breaking the Vicious Cycle*, pp.55-81.
6. A different interpretation has been given by C. Hood, R. Baldwin and H. Rothstein,

- 'Assessing the Dangerous Dogs Act: When does a Regulatory Law Fail?' *Public Law* (Summer 2000), pp.282–305.
7. P. Dunleavy, 'Policy Disasters: Explaining the UK's Record', *Public Policy and Administration*, 10/2 (1995), pp.52–70.
 8. K. Dyson, 'West Germany: The Search for a Rationalistic Consensus', in J. Richardson (ed.), *Policy Styles in Western Europe* (London: Allen and Unwin, 1982), p.44.
 9. C. Knill, 'Explaining Cross-National Variance in Administrative Reform: Autonomous versus Instrumental Bureaucracies', *Journal of Public Policy*, 19/2 (1999), pp.113–39.
 10. These provisions prohibited the breeding and training that enhanced the dog's aggressiveness which was likely to cause injury, pain and damage to the animal. Furthermore, encouraging the dog to attack other animals was also prohibited. See J. Casper, 'Die neuen Regelungen des Bundes und der Länder zum Schutz vor gefährlichen Hunden', *Deutsches Verwaltungsblatt*, 1 Nov. 2000, pp.1581–2.
 11. G. Lehmbruch, 'The Institutional Framework: Federalism and Decentralisation in Germany', in H. Wollmann and E. Schröter (eds.), *Comparing Public Sector Reform in Britain and German* (Aldershot: Ashgate, 2000).
 12. M. Douglas and A. Wildavsky, *Risk and Culture* (Berkeley: University of California Press, 1982); M. Thompson, R. Ellis and A. Wildavsky, *Cultural Theory* (Boulder: Westview, 1990).
 13. J.B. Wiener, 'Managing the Iatrogenic Risks of Risk Management', *Risk: Health, Safety & Environment*, 9 (1998), pp.39–82.
 14. See C. Hood and D. Jones (eds.), *Accident and Design* (London: Taylor and Francis, 1991).
 15. Arbeitsgruppe, 'Bericht über die Vorschläge zur Verbesserung des Schutzes der Bevölkerung vor gefährlichen Hunden – in der Öffentlichkeit oft 'Kampfhunde' genannt – der von dem Arbeitskreis I der Konferenz der Innenminister und – senatoren eingerichteten länderoffenen Arbeitsgruppe', Bonn, 2000.
 16. See A. Wildavsky, 'Trial and Error Versus Trial Without Error', in J. Morris (ed.), *Rethinking Risk and the Precautionary Principle* (Oxford: Butterworth-Heinemann, 2000), pp.22–45.
 17. K. Schrader-Frechette, *Risk and Rationality* (Berkeley: University of California Press, 1991).
 18. Most dog attacks occur in the domestic environment or because of the dog either not being kept securely or not being on a lead in public.
 19. There is also disagreement as to the 'histories' of particular dog breeds. For example, particular breeds have been bred for warfare, although it is debatable whether these dogs were used as 'support' facilities or as 'frontline soldiers'. Similarly, dog fights are said to take on different practices in non-European environments and therefore classifying non-European 'fighting dogs' as 'dangerous' might be inappropriate.
 20. *Irish Times*, 27 Sept. 2000.
 21. Nevertheless, the Hamburg incident highlighted less the absence of regulation but rather implementation failure as both dogs were already known to public authorities for their aggressive character and had been required to be muzzled and kept on a lead in public. Proceedings had been launched against one dog owner in order to disqualify him from dog ownership due to his criminal record. In January 2001, the pit bull owner was sentenced to three years and six months in prison, whereas his partner, owner of the American Staffordshire Terrier, received a probationary one-year sentence.
 22. *European Voice*, 27 July 2000. This initiative was unsuccessful.
 23. Bayrischer Verfassungsgerichtshof, Az Vs 16-VII-92 and Vs 5-VII-93. See also Casper, 'Die neuen Regelungen', p.1585, n.38.
 24. Bundesverwaltungsgericht, BverG 11 C 8.99, 19 Jan. 2000.
 25. Thuringia had reformed its dangerous dog regulations in March 2000 and had explicitly rejected a breed-based approach on the basis that 'scientific' advice had strongly advised against such a policy.
 26. A view shared by the dog association which argued that the Staffordshire Bullterrier was a 'family dog'.
 27. An international increase in interest in developing a tool-set for assessing the individual aggressiveness of dogs emerged in the early 1990s. See W.J. Netto and D.J.U. Planta, 'Behavioural Testing for Aggression in the Domestic Dog', *Applied Animal Behaviour Science*, 52 (1997), pp.243–63.

28. Thus, ownership of a dangerous dog was not permitted in cases of criminal offences involving injury, rape, prostitution, robbery, resistance to public order, alcohol-related offences and violation of animal safety. This also included drug addicts and people with mental illnesses.
29. C. Hood, *Limits of Administration* (London: John Wiley, 1976).
30. *Die Welt*, 7 April 2001.
31. *Frankfurter Allgemeine Zeitung*, 30 May 2001. The ruling was likely to be subject to appeal at the Federal Administrative Court. By late August 2001, Hesse's Administrative Court had declared the special provisions for pit bulls, American Staffordshire Terriers and Staffordshire Bull Terriers illegal. In contrast, the constitutional courts of Berlin and Rhineland-Palatinate had accepted their Land's regulatory responses.
32. It was argued that overt aggressiveness frustrated the dogs in their willingness to socialise with other dogs (BR 580/00). The final regulation, in force on 1 September 2001, also included provisions regarding the proper maintenance of a dog.
33. Interview, senior official, Federal Interior Ministry, November 2000.
34. Interview, senior official, Schleswig Holstein, September 2000.
35. For further examination of the comparative experiences, see M. Lodge and C. Hood, 'Pavlovian Policy Responses to Media Feeding Frenzies? Dangerous Dogs Regulation in Comparative Perspective', PATNET conference, Leiden, June 2001.
36. P. t'Hart, 'Krisenmanagement in der öffentlichen Verwaltung', *Staatswissenschaft und Staatspraxis*, 8/1 (1997), pp.31–48. Thus, crisis not only emerges from large-scale events, such as natural catastrophes, invasions or economic failure, but also from small-scale events, which, in the 'right' conditions (such as pre-existing concern, lack of rival media topics, innocent victims), become highly salient.
37. See D. Vogel, *Trading Up: Consumer and Environmental Regulation in the Global Economy* (Cambridge: Harvard University Press, 1995).
38. Interview, Senior official, Hesse Interior ministry, July 2000. In mid-July 2000, an opinion poll reported that 42 per cent of respondents thought that the strengthening of provisions enhanced individual safety, whereas 50 per cent regarded them as insufficient (www.dimap.de/aktuell/vdw200028.html).