



'No Pet' Covenants and the Law: A Harm Assessment Approach to Regulating Companion Animals in Rental Housing Across the World

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Accepted: 8 May 2024
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Abstract

The covid-19 pandemic, and in particular, the rise in pet ownership, the greater focus on home-life during lockdowns and the normalisation of hybrid-working conditions post-pandemic, has shed light on an under-researched area of law that affects millions of people across the world: the use of 'no pet' covenants in private rental housing. This article identifies the prevalence of 'no pet' covenants as a socio-legal problem that is of global significance. It assesses the legal regulation of pets in private rental housing through a Harm Assessment approach that has global application. A Harm Assessment approach balances harms to various stakeholders in both the use and restriction of 'no pet' covenants. In countries that have no legal regulation of pets in housing it can be used to assess the need for legislation. This approach considers the character, magnitude and likelihood of the harm, something which has had little consideration to date. Drawing, by analogy, on the work of Feinberg and his analysis of harm within the context of the legitimacy of state interference with individual liberty, this article adapts his theory of harm to assess the need for legal regulation of pets in rental housing. The legitimacy of a Harm Assessment approach is supported by the existing literature on 'no pet' covenants, from which the dominant theme of harm emerges. Identifying and weighting the types of harm to be balanced varies depending on cultural, religious and geographic considerations and further research is needed to better understand the harms in different countries.

Keywords 'No pet' covenants · Companion animals · Rental housing · Pets and housing · Housing law · Human-companion animal relationship

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Introduction

The question of whether companion animals can lawfully be kept in rental housing is of growing interest in housing law and policy across the world. The covid-19 pandemic has played a role in the heightened interest in the legal regulation of keeping pets in rental housing. Lockdowns led to increased pet ownership (PFMA 2021), emphasised the importance of making a space a home and fuelled a legacy of hybrid working conditions which is more compatible with pet ownership. During the pandemic, countries and cities across the world went into lockdown and most people spent uncharacteristically long periods of time living in one confined space. Home life became all-encompassing emphasising the importance of a space being a home and not just a place in which to live. People wanted to make that space their own and not to be hindered by undue restrictions. Home is the place where family resides and many people, in different parts of the world, now perceive their companion animals as family members, for example, in Australia (Power 2008), India (AWBI 2015), Israel (Shir-Vertesh 2012), Japan (Hamano 2013), the United Kingdom (UK) (Fox 2004) and the United States of America (USA) (Irvine and Cilia 2017). The strong bond that exists between many tenants and their companion animal means that restrictions on keeping pets negatively impinges on a tenant's sense of home. In England in 2022 this contributed to an unexpected last-minute addition to the Government's White paper 'A Fairer Private Rented Sector', leading to the Renters Reform Bill 2023–24 which, if passed into law, will give tenants in the private rental sector a right to request to keep a pet and landlords will not be able to unreasonably refuse permission. These proposals on allowing pets in private rental housing are included in the chapter in the white paper on 'A Positive Renting Experience' which aims to "*help tenants truly feel like their house is their home*" (DLUHC 2022). Having a space that allows tenants to keep their family intact, including their companion animals, affects their perception of that space as their home.

A 'no pet' covenant is a leasehold covenant (or policy incorporated into a tenancy agreement) that prohibits or restricts a tenant from keeping companion animals in their rental housing accommodation.¹ Some covenants exist as blanket bans and exclude all companion animals from the property, others exclude certain species commonly cats and dogs, and others are qualified covenants that permit pets only with the landlord's prior consent. People keep many different species as companion animals but in many countries, the two most popular animals are dogs and cats. In the context of 'no pet' covenants different issues arise depending on whether a tenant is keeping a dog or a hamster. This article focuses on dogs and cats because these are the two most popular pet species, and they are most likely to face opposition from landlords and neighbouring tenants (Battersea 2018). When considering pets and housing there are important distinctions to keep in mind, firstly, the type of property (whether it is a house let as a whole building or an apartment which has

¹ The term companion animal better reflects the role of the animals in people's lives. However, housing law and policy primarily uses the term 'pet'. Therefore, the terms 'companion animal' and 'pet' are used interchangeably throughout this article.

common parts such as hallways and stairs) and secondly, the category of landlord (whether the landlord is a public authority providing social housing or a private individual or company usually renting property as a financial investment). Social housing is more likely to be pet friendly (USDHUD 2020; Cats Protection 2019). There are different responsibilities and considerations for social housing landlords, such as the mental well-being of their tenants, compared to private landlords who are more likely to be primarily concerned with protecting the financial value of their property. Although we sometimes refer to social housing when giving examples from across the world of how 'no pet' policies affect tenants, this article will primarily focus on private rental housing.

The paucity of academic literature on 'no pet' covenants prior to the covid-19 pandemic highlights the lack of interest in the subject at that time in academic and political circles. This disinterest was surprising given the reach and significance of 'no pet' covenants as a topic that is both international and multi-disciplinary. Restrictions on pets and housing is a global phenomenon (Jegatheesan et al. 2024) and affects millions of people. The literature on the topic demonstrates its multi-disciplinary nature with publications from academics in the fields of health sciences, human geography, psychology and, more recently, law (Carlisle-Frank et al. 2005; Fox and Ray 2019; Graham et al. 2018; Power 2017; Rook 2018; Stone et al. 2021). The principal theme to emerge from the pre-pandemic literature is the harm caused to pet-owning tenants. This research, which primarily focused on the tenant experience, identifies the type of harm pet-owning tenants face, for example, rental insecurity and poor-quality housing (Power 2017; Graham et al. 2018). In understanding the effect of 'no pet' covenants and the need for legal regulation in a post-pandemic society, the theme of harm remains significant. In recent years there has been an effort to address the knowledge gap on the landlord's experience with research funded by organisations such as the Society for Companion Animal Studies in the UK and the Michelson Foundation in the USA. This research has sought to understand why landlords and property managers use 'no pet' covenants and how any concerns about restrictions on their use can be addressed. Once again, harm emerges as a significant theme with landlords citing the risk of harm as a justification for prohibiting pets (Assis et al. 2023²; Barker 2022³). Drawing on the theme of harm from the literature review, this article advocates the use of a Harm Assessment approach in assessing the need for legislation to regulate the use of 'no pet' covenants in private rental housing. Making use of Feinberg's theory of harm and applying it, by analogy, to the legal regulation of 'no pet' covenants in housing law, this article considers the character and magnitude of harm, the probability of harm occurring and the

² Assis, Luciana S., Sandra McCune and Daniel S. Mills. 2023. Understanding landlord decisions in relation to pet friendly renting in order to minimise concerns. In: 32nd International Society for Anthrozoology Conference: *'Anthrozoology: The Spectrum of Human-Animal Interactions and Relationships'*.

³ Barker, Ross. 2022. Understanding property managers: The benefits and risks of allowing pets in rental units in the US and UK. Society for Companion Animal Studies Annual online conference: *'Pet-Friendly Housing: How can we keep people and pets together?'*. 18 September 2022.

relative importance of competing harms within the context of ‘no pet’ covenants. This is something that has been afforded little consideration to date.

There is very little research on ‘no pet’ covenants that takes a global perspective. The book chapter ‘Pets and Housing: A One health/One Welfare Issue’, to which the authors contributed, is a first in this respect (Jegatheesan et al. 2024). This article builds on that global perspective to examine ‘no pet’ covenants as a socio-legal problem. Using a global perspective identifies three legal approaches to pets and housing: firstly, those countries with no legal regulation, where contractual freedom prevails and it is up to the parties to negotiate the question of pets; secondly, those countries with some legal regulation to permit the keeping of pets but with notable conditions or restrictions imposed, for example, on the size or number of animals that can be kept; thirdly, those countries whose laws protect the right of tenants to keep pets in rental housing with few or no restrictions. Each of these approaches comes with its own problems as will be discussed in later sections but the focus of this article is on those countries that currently have no legal regulation of pets in housing. For those countries this article offers a theoretical framework to assess whether legislation is needed to regulate pets in housing. This is independent of the legal processes of individual countries because it is assessing the need for legal regulation, thereafter individual countries can use their own processes for enacting appropriate laws if required. There is a difficulty in applying this theoretical approach internationally, but it rests on cultural, religious and geographic differences. Societal perceptions of pets especially dogs can vary significantly across countries, for example, in Malaysia dogs are generally seen as impure by the large Muslim population and people may need to perform a purification ritual if they come into contact with dogs. Geography also plays a role, for example, the dense urban environments characterised by high population density in Asian countries like Japan are very different to the sprawled, lower population density of many countries in the West (Koohsari et al. 2021). Therefore, when applying the Harm Assessment approach, the act of identifying harm and allocating its importance in the balance may vary between countries depending on cultural, religious and geographic considerations.

The article will first identify the use of ‘no pet’ covenants as a global socio-legal problem by examining the situation in several countries. This demonstrates the three legal approaches to regulating pets and housing. The approaches and the problems they encounter will be examined. The article then reviews the existing literature on ‘no pet’ covenants and identifies the significant knowledge gap, demonstrating both the value of this article and the need for further research. Harm emerges as a key theme from the literature review and drawing on this theme, a Harm Assessment framework is advocated to assist countries in assessing the need for legislation where none currently exists. It is suggested that examining the use of ‘no pet’ covenants through the lens of harm supports a reconceptualization of ‘no pet’ covenants from ‘controllers of risk’ to ‘contributors of harm’. This encourages landlords, agents, policy makers and legislators to focus on the potential harmful effects of ‘no pet’ covenants and adopt alternative strategies to address landlords’ concerns about allowing pets in rental housing.

A Global Phenomenon

The authors are part of an International Steering Group on pets and housing whose members represent Africa, Australia, Canada, India, Japan, Malaysia, Singapore, South America, South Korea, the UK and the USA demonstrating the global significance of pets in rental housing. There are a range of legal approaches across these countries with three broad categories identified: no legal regulation; legal regulation with notable conditions or restrictions and legal regulation with no, or few, restrictions. In some countries, such as England (until the English Renters Reform Bill 2023–24 becomes law) and parts of countries such as the USA, Canada and Australia, housing law is silent on the issue of pets so the decision as to whether a tenant can keep a companion animal rests with the landlord and tenant. Underpinning this approach are the legal principles of personal autonomy and freedom of contract; the personal autonomy of landowners to control the use of their land and the freedom of contract of the parties to negotiate a lease on terms acceptable to both. However, this laissez-faire approach needs to be set against the backdrop of housing shortages and the growth of the private rental sector. In consequence of the changing housing sector in countries such as England, Australia and Canada (Rook 2018; Power 2017; Graham et al 2018 respectively), the contractual freedom of tenants in the private rental housing market is in most part illusory; the increased number of private tenants seeking scarce housing means tenants have little bargaining strength in negotiations about pets. As a result, the landlord can dictate the terms of the lease, readily able to find another tenant if a prospective or current tenant wants to keep a pet. Since private landlords predominantly view pets as a property risk, 'no pet' covenants are extensively used in practice. Such views arise and perpetuate due to cultural conceptions of dogs, as unhygienic, disruptive and unruly (Serpell 1996; Jegatheesan 2019, 2010⁴). This cultural framing of pets through notions of risk, specifically as a risk to property and investment dominates the debate about the use of 'no pet' covenants in many countries including the USA (Carlisle-Frank et al. 2005), England (Rook 2018) and Australia (Power 2017). These negative cultural conceptions of dogs can be intensified by religion. In Malaysia, Islam is the dominant religion with 63.5% of Malaysians professing the Islamic faith in 2020 (Statista 2022). Cultural and religious issues come into focus when renting a house or an apartment with cats or dogs in Malaysia. If the owner of the property is of the Muslim faith, it is likely they will be supportive of allowing cats as they are positively viewed in Islam. This contrasts with dogs which are viewed as 'unclean' and therefore families with dogs can face significant challenges in acquiring a rental home and may be forced to relinquish their companion animal. Sometimes religious influences can be positive, such as in Hinduism, but cultural perceptions of dogs can override these positive religious influences, for example, in India. India has a Hindu majority (nearly 80% of the population being of the Hindu faith) and dogs are revered as sacred animals that guard the doors of heaven. In Hinduism, dogs are believed to be a manifestation

⁴ Jegatheesan, Brinda (Keynote Speaker, 2010). The Importance of Culture in Human-Animal Interactions. International Society for Anthrozoology (ISAZ) Conference, Stockholm, Sweden.

of Kal Bhairava, also known as the Hindu God Lord Shiva, who is considered as the Supreme Being (Washburn Hopkins 1894, Kaminska-Jones 2020). In Madurai, a major city that is seen as the religious and cultural capital in the southern state of Tamil Nadu, there are hundreds of Kal Bairav temples and standing close to the deity is a statue of his companion which is a dog. It is common to see Hindus pray at the temples prior to beginning their daily routine. However, despite this religious reverence towards dogs, attitudes towards them can be very negative, especially due to the large population of free-roaming dogs in India being seen as dirty, aggressive and associated with spreading rabies (Thiagarajan 2020; Corformat et al 2023). It has been observed that, *“This aversion towards dogs is a socio-cultural phenomenon that has very deep roots, going back to at least three thousand years”* (Majumder et al. 2014 at p.877).

Malaysia and Singapore are examples of countries where there is some legal regulation of pets in rental housing but with notable conditions or restrictions that limit the keeping of pets. In Malaysia there are no national laws on pets in housing but there are local laws that restrict or even prohibit the keeping of pets in certain types of property. Prior to 2015, pets were not allowed in stratified homes such as condominiums and apartments. This was due to the Deed of Mutual Covenants, a guideline governing stratified homes in Malaysia. However, the situation changed in 2015 following the implementation of By-Law 14 in the Strata Management (Maintenance and Management) Regulations 2015. This now regulates the keeping of pets in strata scheme developments and provides that residents are allowed to keep pets provided that the animals do not cause an annoyance or nuisance to other proprietors, nor cause a danger to their health or safety. However, By-Law 14 specifically states that the keeping of pets must not contravene any relevant state or local law. Under the Strata Management Act 2013, the local authority has power to pass regulations concerning the keeping of pets in strata buildings. Therefore local laws may restrict the type or breed of animal allowed or make other restrictions, for example, Kuala Lumpur City hall only allows nine species of small dog breeds (the Bichon Frise, Chihuahua, Japanese Chin, Maltese, Miniature Pinscher, Papillon, Pekingese, Pomeranian and Poodle) to be kept in strata scheme developments and further require that the dog must be licensed and must be confined to the proprietor’s unit and not allowed to roam freely. The Subang Jaya Municipal Council is more restrictive and prohibits the keeping of any dogs in high-rise strata buildings (Daily Express Property 2020). In this way, it is local authority laws that determine whether pets can be kept in condominiums and apartments.

In Singapore, 80% of Singaporean residents live in Housing and Development Board (HDB) flats of which about 90% own their home (HDB 2022). Under the Housing and Development Board Animals Rules 1989, HDB residents are only allowed to keep one dog of an approved breed per flat failing which there is a fine of up to SGD four thousand (HDB 2023). A list of 62 approved pure-bred dog breeds are permitted in HDB flats and as long as the dog is an approved breed, and has been licensed by the Animal and Veterinary Service (AVS), there is no need for the dog owner to obtain consent from the HDB to keep the dog. Detailed specifications dictate the size of the dog. It must be a maximum height of 40 cm (at their shoulders) and have a weight of 10 kg or below. Since 2012, Project Adore (ADOption

and REhoming of dogs), led by the AVS, has allowed HDB residents to adopt a local, medium-sized mixed breed dog (known as a Singapore Special) from one of five participating dog shelters (AVS n.d.). Dogs in this program can be slightly larger than the 62 approved pure-bred breeds (a maximum shoulder height of up to 55 cm with no weight limit). There are further restrictions in that the dog must be at least 6 months old, sterilized, and have been through basic obedience training by an AVS-accredited trainer. The purpose of Project ADORE is to reduce the number of stray dogs living on the streets by relaxing restrictive pet policies in housing and permitting residents of HDB flats to live with a Singapore Special dog. Cats have been banned from living in HDB flats for 34 years because they were seen as difficult to contain within a flat and when outside tend to roam freely, defecate in public areas and make wailing sounds causing a nuisance to neighbours. However, in December 2023 the Government announced a proposal to amend the law to lift the ban on cats (Ang 2023). If the proposal becomes law each household will be permitted to keep up to two cats which will need to be microchipped and licensed as part of a drive to improve responsible cat ownership. The proposed law is a significant change for Singapore and has instigated calls for similar changes in Hong Kong (Wu 2023).

It is arguable that imposing some conditions and restrictions on the keeping of pets in rental housing helps ensure the welfare needs of the animal are met. In Singapore the proposed new law to permit cats in HDB flats requires cat owners to take measures to ensure their home is a safe environment for a cat to reside. For example, owners will need to install window grilles or mesh to prevent cats from falling from a height (Ang 2023). If laws permit the keeping of any pet in any rental housing, there may be an increased risk of animal welfare concerns especially if the particular housing is not suitable for certain animals. For example, is a small flat on the top floor of a high-rise block of flats in a bustling city a suitable home for a large, energetic dog like a husky or a Doberman? The restrictions we find in countries like Malaysia and Singapore on the size and number of dogs that can be kept in strata buildings prevent this, but do they go too far and place too onerous a burden on pet owners? Such restrictions may require pet owners, who need to move into strata rental housing, to relinquish a well-behaved, cherished companion dog simply because of its large size.

Some countries (or states) have enacted housing legislation to protect the right of tenants to keep pets in private rental housing with few or no restrictions. Examples include France (Article 10 of the Law of 9 July 1970) and Ontario in Canada (s.14, Residential Tenancies Act 2006) and more recently, in 2020, Victoria in Australia (s. 71A-71E, Residential Tenancies Act 1997). In seeking to balance the interests of landlords, pet-owning tenants and neighbouring tenants the legislation includes some restrictions, for example, tenants cannot keep dangerous breeds of animals, but otherwise are generally free to choose the breed, size and number of cats and dogs that live with them. India has gone one step further by providing Constitutional protection for living with pets. The fundamental duties of the Constitution of India make it a duty of every Indian citizen to respect and have compassion for all life forms (section 51(A)(g)). Not allowing pets in an apartment complex or housing society is seen as a direct violation of the Constitution. This applies irrespective of whether the pet owner is renting

from a public or private landlord and whether they live in a house or an apartment complex. The Animal Welfare Board of India (AWBI), which comes under the Ministry of Environment, Forests and Climate Change of the Government of India, has implemented guidelines for the Residents' Welfare Associations and Apartment Owners Associations stating that they cannot ban pets, nor restrict the size or the number of companion animals in a property. The guidelines state: "in trying to 'ban' pets, or limit their number, residents' welfare associations & apartment owners associations interfere with a fundamental freedom guaranteed to the citizens of India, i.e., the freedom to choose the life they wish to live, which includes facets such as living with or without companion animals" (AWBI 2015 at p.4). India has even passed laws to protect the right of stray dogs to be recognised as community-owned animals and given some protection as part of a housing society (Deshpande 2023). India is home to an estimated 15 million stray dogs (also known as native/indigenous dogs although some are abandoned pets), probably the largest population of stray dogs in the world, and they are linked to the spread of rabies in the country (Thiagarajan 2020). According to the World Health Organisation, India accounts for 36% of the world's rabies deaths (WHO, Rabies in India n.d.). There are also concerns about stray dogs attacking people, especially children (Mogul and Farooqui 2023). This contributes to the complex relationship people in India have with dogs—a combination of fear and suspicion together with religious reverence and a deep-rooted respect for nature and animals. In the recent Bombay High Court case of *Paromita Puthran vs Municipal Corporation of Greater Mumbai (2023)* (Writ Petition No. 702), a resident of a cooperative housing society was successful in her petition against the management for preventing her from feeding eighteen stray dogs that resided in the territory. The court referred to a new law (the Animal Birth Control Rules 2023) which aims to control India's stray dog problem without resort to cruelty. As part of this, Residents' Welfare Associations and Apartment Owners Associations must provide feeding spots for territorial stray dogs. The judges observed that "You have nurtured the dogs. They are now part of your housing society". India's laws are very progressive in the protection of pet dogs to reside with their owners and even the protection of stray dogs to be cared for by residents within housing premises.

However, India demonstrates how legislation alone is not sufficient to protect pets in rental housing because cultural norms and societal perceptions may lead to the inadequate enforcement of those laws. In India, attitudes towards pet dogs can be harsh caused by intolerance and fear exacerbated by the country's stray dog problem. Therefore, tenants with dogs may face difficulty finding and retaining rental housing. This clash between law and culture highlights the need for better understanding about the nature of the human-companion animal relationship and effective communication of this to landlords, policy makers, legislators and enforcement agencies.

Having taken a global perspective to identify the prevalence of 'no pet' covenants as a socio-legal problem and illustrate the different legal approaches to the keeping of pet cats and dogs in private rental housing, the next section will review the existing literature to identify both themes and gaps in the literature.

Themes from the Existing Literature

The existing literature on pets and housing is international and multi-disciplinary but there are very few articles published in peer reviewed academic journals from a socio-legal perspective demonstrating the significant knowledge gap in the legal literature. The majority of the articles focus on the experience of pet-owning tenants in the USA, Canada and Australia exploring how pets can shape 'housing pathways' (Stone et al. 2021) and the difficulties tenants face in finding rental housing that will allow them to live with their companion animals (Palluzi 2013; Power 2017; Graham et al 2018; Graham and Rock 2018; O'Reilly-Jones 2019). The main themes to emerge from empirical research on the experience of pet-owning tenants in Australia and Canada are Rental Insecurity, Low Availability and Poor Quality of rental housing advertised as pet-friendly (Power 2017; Graham et al 2018). Pet-owning tenants raised concerns about the low availability of pet-friendly rental housing leading to a need to compromise on quality, cleanliness, location or cost of housing by accepting sub-standard property in undesirable or unsafe areas. The lack of pet-friendly housing led some tenants to keep pets in breach of a 'no pet' covenant and thereby risk eviction (Power 2017). Graham et al (2018) identified a "cycle of rental insecurity" endured by dog owners in Canada during their rental journey of searching for, settling in and staying put in pet-friendly rental housing (2018 p. 4). In addition to feeling powerless in negotiations with the landlord and making compromises in the quality and location of their housing, tenants complained of having no option but to pay non-refundable pet fees such as pet rent (Graham et al 2018). Pet charges can disproportionately harm those who are economically and socially disadvantaged (Applebaum et al 2021).

Most academic research on 'no pet' covenants focus on the experience of tenants, so Carlisle-Frank et al's (2005) study in the USA is significant because it explores the position of landlords and their reasons for seeing companion animals as undesirable occupants. Two-thirds of the respondents cited property damage as a concern with half citing noise nuisance. These concerns did not necessarily arise from direct experience of troublesome pets since 63% of the respondents had never allowed pets in their property (2005 p.69). More recently, research in the UK found similar landlord concerns about property damage (Assis et al. 2023⁵). That landlords generally frame pets as a risk is significant in understanding the prevalence of 'no pet' covenants in the private sector. This view of pets as a risk to property arises from, and is perpetuated by, cultural conceptions of pets, especially dogs, as polluting and disruptive (Serpell 1996). The advantages landlords receive from adopting positive pet policies, for example, a greater number of applicants and a reduced turnover of tenants (Carlisle-Frank et al. 2005; Palluzi 2013; Graham et al 2018) appear to be outweighed for most landlords by this conception of pets as a risk.

⁵ Assis, Luciana S., Sandra McCune and Daniel S. Mills. 2023. Understanding landlord decisions in relation to pet friendly renting in order to minimise concerns. In: 32nd International Society for Anthrozoology Conference: 'Anthrozoology: The Spectrum of Human-Animal Interactions and Relationships'.

Jegatheesan et al (2024) adopts a One Health/One Welfare framework to pets and housing. This approach acknowledges the interdependence of human and companion animal health in a shared home environment whilst also appreciating the social interconnectedness of human well-being and the welfare of companion animals. It recognises the health and social benefits of pet ownership and how the opportunity to experience these benefits, as well as the housing opportunities themselves, are shaped by ‘no pet’ covenants and policies.

The legal literature is very sparse with only three articles examining the law specific to the USA and Canada (Huss 2005; Campbell 2009; Palluzi 2013) and two considering the law in England (Rook 2018; Fox and Ray 2019). The English articles focus on the nature of the human-companion animal relationship and take a human rights approach that advocates the relationship comes within ‘private life and family’ under Article 8 of the European Convention of Human Rights. Fox and Ray (2019) focus on residential and nursing homes for older people in the UK building on earlier research in the field of psychology (McNicholas 2007).

The themes that emerge from a review of the existing literature mostly fall within an overarching theme of harm. From the perspective of the tenant, harms from the extensive use of ‘no pet’ covenants arise from a forced separation from their companion animal, rental insecurity, powerlessness, feelings of discrimination and a lack of choice due to the poor availability of pet-friendly housing. These harms can ultimately have a detrimental effect on a tenant’s mental and physical health. From the perspective of a private landlord, harm from allowing tenants to live with their companion dogs and/or cats arises from the potential risk of damage to the property, or a risk of nuisance claims from neighbours. The finding that harm is the dominant theme in the existing literature supports the use of a Harm Assessment approach to assess the need for the legal regulation of ‘no pet’ covenants and this will be examined in the next section.

A Harm Assessment Approach

Using ‘harm’ as a means to justify legislative changes is not new. John Stuart Mill’s ‘harm principle’ from 1859 continues to influence questions of legitimate state interference with a person’s liberty. In ‘On Liberty’, Mill stated that:

“[T]he only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.” (Mill 1859 at p.223).

Can the harm principle be used to justify state interference with a landowner’s property rights? Laws that restrict or prohibit the use of ‘no pet’ covenants interfere with the landowner’s personal autonomy to control the use of their own land. The problem with applying the harm principle to the legal regulation of pets in rental housing is that both tenants and landlords can claim harm; pet-owning tenants suffer harm from the extensive use of ‘no pet’ covenants while private landlords may be harmed by prohibiting or restricting the use of ‘no pet’ covenants. The work of Feinberg (1987) and his in-depth analysis of harm within the context of criminal law

provides guiding principles which can be applied by analogy here to address this problem in housing law.

Feinberg's Theory of Harm

Feinberg (1987) identifies harm to others as a morally relevant reason for enacting criminal law. As a proponent of Liberalism and antipaternalism, Feinberg is keen to restrict liberty-limiting (or coercion-legitimizing) principles to those circumstances where it can be justified by the need to prevent harm to others. However, he acknowledges that the word harm is “*both vague and ambiguous*” (1987 at p. 31). To better understand a harmed condition, he identifies three senses of harm: the first sense is a derivative or extended sense in which any kind of thing can be harmed such as harm caused to property by smashing a window; the second sense is harm that is “*conceived as the thwarting, setting back, or defeating of an interest*” (1987 at p.33). For this purpose, he defines interests as all those things in which a person has a stake and which are “*distinguishable components of a person's well-being*” (1987 at p.34). Finally, Feinberg identifies a third sense of harm which refers to the way in which one person can harm another by treating them unjustly and thereby wronging them. Feinberg recognised that there are some situations where harm is unavoidable and for these situations, he articulated the need for the priority ranking of conflicting interests. He uses this concept of priority ranking to identify wrongs (his third sense of harm),

“Legal wrongs then will be invasions of interests which violate established priority rankings” (1987 at p.35).

In this way any invasion of the interests of another that are justified by the priority rules are not legal wrongs even though a person may suffer a setback of their interest. According to Feinberg, only wrongful harms can justify interference by the state. If a country or state enacts legislation that prohibits or significantly restricts the use of ‘no pet’ covenants in rental housing, it interferes with the right of a private landlord to control the use of their own property and needs to be justified. Although Feinberg's work is in criminal law, his in-depth understanding of harm provides guidance on how a Harm Assessment approach can be used to examine pets and housing within housing law.

In analysing harm, Feinberg adopts a balancing strategy and devises “*mediating maxims*” and supplemental criteria to help ensure the harm principle is sensibly mediated in practice (1987 at p.187). He advocates the use of the following criteria: the magnitude of the harm committed; the probability of the harm occurring; the relative importance of the harm; and finally, the aggregative nature of the harm. The following section will examine each of Feinberg's criteria in turn and demonstrate how they can be employed within a Harm Assessment approach to assess the need for legislation to regulate the use of ‘no pet’ covenants in private rental housing.

(i) The magnitude of the harm.

Feinberg takes the magnitude of harm into account in his balancing strategy. The greater the harm to others, the greater the justification for liberty-limiting principles of law. In the context of ‘no pet’ covenants, the magnitude of the harm caused to pet-owning tenants by the use of blanket bans on pets is a key theme to arise from the literature. Only by understanding the character of the human-companion animal relationship and the strength of the bond, can the full impact of ‘no pet’ covenants on tenants and companion animals be appreciated. The character of the human-companion animal relationship as a close, socially supportive bond that extends kinship ties means that pet-owning tenants suffer serious harm when they are forced to rehome their companion animals due to ‘no pet’ covenants.

There is extensive research from numerous countries including the UK (Serpell 1996; Fox 2004; Charles and Davies 2008), Australia (Power 2008), Israel (Shir-Vertesh 2012), Japan (Hamano 2013) and the USA (Cain 1985; Irvine and Cilia 2017), to show that many pet owners consider their companion animals as family members. A recent international survey found that 95% of pet owners globally consider their pet as a family member (HABRI 2022). The Animal Welfare Board of India recognises pets as family “*akin to a perennial toddler*” (AWBI 2015). People anthropomorphise companion animals by endowing them with human qualities (Fox 2004) and use vocabulary from human–human social relationships such as ‘*surrogate child*’ (Sanders 1990) and ‘*eternal child*’ (Hamano 2013). The majority of participants in Power’s study of new dog owners in Australia described their dogs as ‘children’ but Power argues this is not “*naive anthropomorphism*” but functioned to “*emphasise the intensive nature of the relationship*” (2008 at p. 541). If social trends show the diversity of family to have crossed the species boundary to incorporate companion animals, what are the implications for the use of ‘no pet’ covenants in rental housing? Currently, housing policy in most countries does not consider companion animals as valued members of a household. Over the years the concept of family has expanded, for example, to include stepchildren, sperm donors and same-sex partners rather than creating a new vocabulary for these relationships (Silva and Smart 1999). This demonstrates the elasticity of the concept of family to reflect changes in societal attitudes to relationships. There is a growing recognition in political and legal circles of the significance of pets as family. For example, in England this instigated the Pet Abduction Act 2024 which creates new offences of dog and cat abduction with imprisonment of up to five years if convicted on indictment. In supporting the new law, the Government recognised family pets as “*treasured members of the family*” and acknowledged that losing a pet through theft was “*a deeply traumatic experience*” (Defra 2024). Research on pet loss and bereavement found that “*One of the most agonizing situations is the forced relinquishment of a valued pet*” (Walsh 2009) since grief can be intensified with feelings of guilt. Pet owners are known to take risks to their own safety to avoid a forced separation from their pet in instances of domestic violence, homelessness and natural disaster (Montgomery et al. 2024). That many owners self-identify their pets as family members demonstrates their perception of the character and significance of the human-companion animal relationship.

Numerous studies demonstrate the socially supportive nature of the human-companion animal bond (Harker et al. 2000; Bonas et al. 2000). These studies demonstrate how companion animals fulfil a number of Weiss' categories of relational provision: attachment, nurturance, reassurance of worth; reliable alliance, which ensure a person has an adequate social life and sense of well-being (Weiss 1974). Weiss advocated that people need a range of different social relationships for their well-being, and companion animals can contribute to this variety. Social support from dogs can reduce the risk of long-standing mental illness for owners (Liu et al. 2019). Ratschen et al (2020) investigated links between pets and mental health during the first covid-19 lockdown in the UK. Their findings show that pet ownership mitigated some of the detrimental psychological effects of lockdown, in particular, alleviating loneliness. In contrast to this body of research, Herzog observes that those studies in which pet owners have been found to be more likely to have specified health problems, have been little publicised thereby over-inflating the actual significance of what he calls "*the pet effect*" which is at best inconclusive (Herzog 2011). However, it is the relationship people have with their pet that is significant to any health benefits. Mere pet ownership alone is not sufficient to test the validity of the claim that pets bring health benefits to their owners; the strength of the bond between the owner and the companion animal, as perceived by the owner, also needs to play into the equation. Hutton argues that it is the owner's perception of support that matters, "a person's *belief* in their animal's supportive presence may be sufficient to "buffer" negative life challenges" (2015 at p.211).

Other studies have focused on the support companion animals give to particularly vulnerable groups such as the elderly (Enders-Slegers 2000; Reniers et al 2022), women suffering domestic abuse (Flynn 2000; Fitzgerald 2007), people living with HIV (Hutton 2015) and homeless people (Irvine 2013a; Cleary et al 2021; Jegatheesan 2022⁶). Irvine's study of homeless pet owners in the USA found that companion animals are constructed as respected significant others who bestow a sense of self-worth, provide a buffer against isolation and in some instances become redemptive figures who keep their owners alive or turn their lives around (Irvine 2013a, 2013b). Being forced to rehome a companion animal and lose this supportive relationship can have a detrimental effect on a tenant's mental health. Fox and Ray found that some older people experienced a "*bereavement*" akin to the loss of a family member when forced to relinquish their companion animal following a move to a care home that prohibited pets (Fox and Ray 2019 at p.211).

Indicative of this close relationship some legislative reforms on pets and housing have acknowledged the joy that pet ownership can bring to tenants. For example, the white paper in England states, "*Pets can bring a huge amount of joy*" (DLUHC 2022 at 6.2). In 2018 the government in New Zealand announced that the main public housing landlord, now called Kāinga Ora, would become pet

⁶ Jegatheesan, Brinda. 2022. Uprooted: The Significance of Human-Animal Relationships in Transforming Trauma during Forced Displacement. Invited Speaker, My Dog is my Home Conference: Shelter and housing for families and children experiencing homelessness with companion animals, March 2022.

friendly and relied on the benefits of pet ownership, especially bringing joy, to justify this change in policy (Housing New Zealand 2018). This rationale of joy emerges from a greater understanding of the nature of the human-companion animal relationship as a socially significant relationship akin to family. Being denied the opportunity to experience the joy of a companion animal is a harm not just to existing pet-owners, who relinquish their pet due to a ‘no pet’ covenant, but also for those tenants who would like a companion animal but do not have one because of a pet restriction in their lease.

In many countries domestic animals are deemed property at law. This legal status disguises the seriousness of the loss for pet-owning tenants who are forced to rehome their companion animal in order to obtain rental housing. Relegating the loss to mere property loss downplays the magnitude of the harm suffered and makes it easier for landlords, letting agents, courts, policymakers and lawmakers in the housing arena to ignore the interests of companion animals. As property, their interests can be readily trumped by human interests however trivial (Francione 1995). Categorising companion animals as kin (Fox 2004) and family members (Kymlicka 2017) emphasises the strength of the human-companion animal bond and its need for special legal protection in the rental sector (Rook 2018).

The character of the human-companion animal relationship as a socially supportive, familial bond means that in Feinberg’s balancing strategy the magnitude of the harm to tenants can be substantial. It can be deeply traumatic for a pet owning tenant to be forced to relinquish their companion animal due to a ‘no pet’ covenant in a lease. This can have grave repercussions on the mental health of the tenant. For example, an Early Day Motion for the UK Parliament in 2021 drew attention to the death of John Chadwick who was lost to suicide “*after he was forced to give up his pets to move into temporary accommodation*” (UK Parliament 2021). Therefore, in the balancing strategy the magnitude of harm to pet owning tenants may need to be allocated significant weight in recognition of the importance of the human-companion animal bond.

(ii) The probability of the harm

In respect of the probability of harm, Feinberg expresses the inverse variation between magnitude of harm and probability as a formula,

“the greater the probability of harm, the less grave the harm need be to justify coercion; the greater the gravity of the envisioned harm, the less probable it need be” (1987 at p.191).

The compound of magnitude and probability is the degree of risk. What is the risk of private landlords suffering harm where legislation imposes a positive pet policy? Until recently there was little academic research on the harm to landlords that a positive pet policy would entail. A survey by the National Landlords Association in England found potential property damage to be the main reason landlords include the covenant in the lease (41%), followed by concerns about tenants leaving the property smelling of animals (26%) and concerns about animals causing annoyance to neighbours (22%) (NLA 2017). Similar reasons are cited

in Japan (Koohsari et al 2022). It is reasonable for private landlords to want to protect the value of their property and to avoid nuisance claims from neighbours, but the probability of that harm has to be considered, for example, research by Cats Protection in England found that 89% of private landlords who allowed cats had not experienced any damage to furniture or fittings belonging to the landlord (Cats Protection 2019). Research suggests that serious harm to property by pets is unlikely (Simcock et al 2024) and is less than that caused by children (Carlisle-Frank et al. 2005). If the probability of harm is relatively small and the majority of pet-owning tenants are responsible pet owners with well-behaved pets, then the degree of risk to the interests of landlords and neighbouring tenants is small. Alternative strategies exist to mitigate the risk of harm to landlords, for example, refundable pet deposits and pet insurance both of which can be used to reduce harm caused by property damage (Berezai 2021). For example, in England, the White paper proposes amending existing legislation (Tenant Fees Act 2019) to allow landlords to require pet-owning tenants to take out pet insurance to cover any damage to property. However, financial strategies to mitigate harm caused by pet damage to property need to be carefully managed so as not to disproportionately impact lower-income tenants (Applebaum et al 2021). A number of states in the USA have passed laws to cap pet deposits and rent, for example, Colorado House Bill 23-1068 came into effect on 1 January 2024. Covenants prohibiting anti-social behaviour or behaviour that causes a nuisance to others can be included in a lease to cover situations where irresponsible pet-owners fail to remove faeces or use their dog to threaten others. Some countries are exploring the way in which residential buildings can be designed to mitigate harm caused by pets, for example, measures to reduce noise transmission through walls in dense cities like Tokyo in Japan (Koohsari et al 2022). Therefore, the probability of harm is a relevant factor to be balanced in the Harm Assessment and alternative strategies, that reduce the likelihood of harm, should be considered within this calculation.

(iii) The relative importance of the harm.

This concept is used for a category of cases that Feinberg identified as being genuinely problematic:

“... to prevent A from harming B’s interest in Y would be to harm A’s interests in X” (1987 at p.203).

Interestingly, in identifying these problematic cases Feinberg provides an example that includes a dog barking and causing a nuisance,

“In nuisance law, there is a conflict between the plaintiff’s interest in the peaceful enjoyment of his land and the defendant’s interest in keeping ... a howling dog” (1987 at p.204).

The regulation of ‘no pet’ covenants fall within this category of problematic cases because to prevent landlords harming the interests of tenants living with their companion animals would be to harm the interest of private landlords in

being able to control the use of their own property and protect its value. In difficult cases such as these legislators must compare the relative importance of the conflicting interests. Feinberg acknowledges that ultimately it is in the discretion of legislators to decide what weight to attach to conflicting interests as it is,

“impossible to prepare a detailed manual with the exact “weights” of all human interests” (1987 at p.203).

However, he identifies certain *“procedures for interest-balancing”* (1987 at p.204) that supplement the use of the harm principle in these circumstances. Other things being equal, he argues, that legislators should:

- (i) Protect an interest that is certain to be harmed in preference to one where harm is conjectural; and
- (ii) Prevent the total thwarting of one interest compared to a small invasion of another interest.

These principles are relevant when balancing the conflicting interests of landlords and tenants in the context of ‘no pet’ covenants. It is more certain that a pet-owning tenant will be harmed if they are forced to relinquish their companion animal, with whom they have a close relationship, than the landlord’s property interests will be harmed if the animal is allowed to reside in the premises. Many dogs and cats are well-behaved and cause little or no damage to rental property nor neighbourhoods.

Feinberg defines harm as the setback of an interest,

“but when interests of quite different kinds are invaded to the same degree, where is the greater harm? That depends, of course, on which of the two kinds of interest is the more important” (1987 at p.204).

This is especially relevant to ‘no pet’ covenants because the relative importance of the interests (protection of the human-companion animal relationship versus protection of inanimate property) is very different in reality although in law both are given the same legal status as property. To help legislators decide the relative importance of conflicting interests, Feinberg identifies three ways interests can differ: firstly, interests differ in their *“vitality”*, secondly, in the degree to which they are reinforced by other interests and finally in their inherent moral quality (1987 at p.204). Vitality measures the extent of damage likely to be caused by harm to the interest. For example, damage to one’s heart causes more harm to a person’s health than an equal degree of damage to a less vital organ. Similarly, damage to a person’s health and well-being causes more harm than an equal degree of damage to a person’s inanimate property because welfare interests are usually the most vital ones. Feinberg’s formula to assist in assessing the relative importance of conflicting interests is as follows:

“Where a standard person’s interest of high vitality in his system conflicts with another standard person’s interest of relatively low vitality in his system, then, other things being equal, the former interest can be deemed more important than the latter” (1987 at p.205).

It is not an easy task to categorise interests as more or less vital. There is a simplicity in advocating that a person's interest in protecting the human-companion animal relationship, a relationship that many owners perceive as family, is more vital than a landlord's interest in protecting their property from potential damage but this can hide the complex relationship between finances and a person's mental health. If a private landlord depends on their rental property for income, damage to the property can cause serious anxiety and hardship. However, it must be acknowledged that there is always some risk of damage to rental property whether a tenant has a pet or not (hence the use of refundable deposits).

Feinberg acknowledges further complexities in determining the question of vitality due to the way in which,

"Interests tend to pile up and reinforce one another" (1987 at p.205).

The aggregative nature of harm is especially relevant here because restrictions on pets in rental housing has an impact beyond the immediate landlord and pet-owning tenant and can harm wider society. The benefits pet ownership can bring to the well-being of local communities and social institutions can be diminished by the extensive use of 'no pet' covenants in rental housing. Research in numerous countries, including England, Australia and Japan, shows that companion dogs can increase social connectedness in local communities creating higher levels of social capital (Wood et al 2015, 2017; Koohsari et al 2021).

Since Friedmann et al.'s ground breaking research in 1980 that discovered that pet owners had better survival and recovery rates one year after discharge from a coronary unit than non-pet owners (Friedmann et al 1980), there have been many studies across the world attempting to measure the effects of pet ownership on human health (Friedmann et al. 2000; McNicholas et al. 2005; Wells 2009; Freidmann et al. 2013; El-Qushayri et al. 2020; Kramer et al. 2019; Taniguchi et al 2023). A comprehensive study in Sweden, involving 3.4 million people over a 12-year period, found that owning a dog lowered the risk of dying from cardiovascular disease, especially for single people (Mubanga et al 2017). A systematic review and meta-analysis found a 31% risk reduction from cardiovascular mortality for dog owners (Kramer et al. 2019). However, this growing body of research is relevant to wider society and not just to the individuals affected. Research from Germany and Australia indicates pet owners rely less on medication and make fewer visits to the doctor than non-pet owners (Headey et al 2002). It is estimated that the health benefits of pet ownership in the UK may save the National Health Service up to £2.45 billion a year (Hall et al 2017).

Studies conducted in the UK, USA, Canada and Australia investigating the reasons for relinquishing dogs to a shelter found that for owner-related reasons (as opposed to animal-related reasons such as behaviour) the most common reason given by owners was 'moving home' and the restrictions imposed by landlords were a key factor (Shore et al. 2003; Coe et al 2014; Eagan et al 2022). There is an economic cost to society when shelters and charities need to rehome companion animals so the fact that these animals already have families who want to keep them represents a waste of societal resources (Stavisky et al 2012; Graham et al 2018).

Another aggregative interest to consider in the balancing exercise is that of the companion animals themselves. At an individual level, the forced separation of a

companion animal from their owner raises significant welfare concerns for the animal: they face the stress of being separated from their owners; living in kennels; adapting to a new home or in some cases, euthanasia (Fox and Ray 2019). However, the welfare of companion animals is a complex factor that can work both ways in the Harm Assessment. Since many cats and dogs suffer through pet ownership, for example, due to cruelty, neglect, becoming victims of domestic violence, enduring unsuitable care such as lack of exercise for dogs, underfeeding or overfeeding leading to obesity, living in unsuitable or stressful environments, it is arguable that easing restrictions on pets in rental housing may lead to more animals being kept as pets and consequently an overall increase in animal suffering. For this reason, it is important that effective animal welfare laws are in place wherever a country or state enacts legislation that makes it easier to keep pets in private rental housing. For example, in England it is an offence to fail to take reasonable steps to meet the welfare needs of an animal for which you are responsible (s.9, Animal Welfare Act 2006). This includes providing a suitable environment.

Applying Feinberg's 'aggregative nature of the harm' principle to 'no pet' covenants demonstrates the complexity of the interest-balancing exercise. The relevant factors go beyond those of landlords and pet-owning tenants. There are wider implications due to the build-up of reinforcing interests, both personal and societal. These wider interests are currently ignored wherever legal systems leave it to individual landlords and tenants to negotiate the keeping of pets.

Conclusion

This article adopts a global perspective to the socio-legal problem of 'no pet' covenants in rental housing something that the existing literature has largely overlooked instead focusing on single countries. A global perspective has the benefit of demonstrating how 'no pet' covenants affect millions of people across the world and allows for a comparison of different legal approaches. Three broad legal approaches are identified: no legal regulation; some legal regulation to protect pets in rental housing but with significant restrictions and finally legal regulation that protects the right to live with pets with few or no restrictions. A global perspective shows how pet-owning tenants in different countries can face similar harms, for example, tenants in both Australia and Canada reported suffering poor-quality housing. It also highlights how cultural and religious factors can underlie significant differences, for example, the different perception of dogs in India and Malaysia compared to the UK and USA which can impact on how landlords view tenants with companion dogs.

For those countries with no existing laws on pets and housing, this article provides a theoretical framework to assess the need for legal regulation of 'no pet' covenants. The article offers a framework, based on a Harm Assessment (drawing on the work of Feinberg in criminal law and applied by analogy), through which to balance the disparate rights of all those affected by 'no pet' covenants—landlords, tenants, neighbours, companion animals and wider society—and thereby critically analyse the need for legislation to regulate the use of the covenants. A Harm Assessment

approach is in line with the existing literature which identifies harm as an overarching theme.

Cultural factors must be considered and will impact on the balancing exercise in the Harm Assessment. Therefore, more empirical research on the impact of no pet covenants on the various stakeholders is needed to support the effective use of the Harm Assessment. Most of the existing research is from the USA, Canada, Australia and the UK and therefore more research from other countries, for example, Asia and Africa, especially Muslim countries where dogs are seen as unclean, is needed given the different cultural influences at play in these countries. The identification of harm, its magnitude and probability and the weighting attached to different harms may vary in different cultural, religious and geographic contexts.

The importance of the human-companion animal relationship to residential tenants is central to assessing the character and magnitude of the harm pet-owning tenants may endure. Research shows that many pet owners perceive their companion animals as family members which is at odds with the current legal status of domestic animals as property. Relegating a tenant's forced separation from their companion animal to the realms of property loss understates the impact of the separation on the tenant's life. The consideration of the probability of harm paves the way for alternative strategies to be adopted to reduce the risk of harm to the landlord, for example, pet insurance and anti-social behaviour covenants. Those countries that leave the question of pets to freedom of contract between the landlord and tenant ignore the aggregative nature of harm, disregarding the ways in which pet ownership can benefit communities and society.

If the Renters Reform Bill 2023–24 becomes law in England it will enable more tenants to keep companion animals in private rental housing. In this way the law recognises the strength of the human-companion animal bond and seeks to protect it in the rental housing sector. It seeks to balance the interests of the parties by allowing landlords to retain some control over the animals that are kept on their property. The tenant must make a written request for consent and the landlord is able to refuse consent where it is reasonable to do so, for example, if the tenant asks to keep a dangerous animal. Damage to property is a legitimate concern for private landlords but using Feinberg's theory of harm the magnitude and probability of that harm is relevant. The Bill addresses the risk of property damage by a provision covering indemnity and insurance for pets. This seeks to reduce the magnitude of any harm to the landlord. However, there are concerns with the Bill as it currently stands, for example, how it appears to favour the acquisition of new pets over the welfare of existing pets (Animal Sentience Committee 2024), for example, the long length of time a tenant may have to wait to hear a landlord's response to their request for consent (42–49 days) which could seriously diminish the effectiveness of any new law for pet-owning tenants.

The Harm Assessment approach enables the harms and benefits of all the relevant stakeholders to be taken into account in the balancing exercise. Concentrating on the nature and significance of the human-companion animal relationship to tenants, animals and wider society shifts the focus of 'no pet' covenants away from the concept of a '*controller of risk*' to that of '*contributor to harm*' thereby highlighting the harmful effects the covenants can have on people and companion animals.

Declarations

Conflict of interest On behalf of all authors, the corresponding author states that there is no conflict of interest.

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