

“Private Policing in the Anthrozootic City:
Animal Protection and Control in New York City, 1866-1914”

Jessica Wang, University of British Columbia

The basic analytical vocabulary of political theory has tended to assume a fundamental distinction between public and private, as well as an antagonistic relationship between the private as a sphere of social life composed of self-regulating individuals and their voluntary relationships, versus the public as an arena defined and governed by the coercive power of the state. In actual historical practice, public and private have shared a far more convoluted, intertwined, and blended relationship, so much so that by the early twentieth century, a growing array of scholars and legal analysts argued that in an era of modern economic relationships, the distinction no longer held. During the New Deal period, such an understanding practically became *de rigueur*. As Morton J. Horwitz once observed, “By 1940, it was a sign of legal sophistication to understand the arbitrariness of the division of law into public and private realms.” Yet, Horwitz added, “No advanced legal thinker of that period...would have predicted that forty years later the public/private dichotomy would still be alive and, if anything, growing in influence.”¹ The anti-statism of cold war anti-communism provided an optimal political environment for the reassertion of the virtues of a private sphere untouched by the coercion of the state, and the 1990s vogue of civil society and its advocates’ desire to reassert the power of the voluntary sphere in post-communist societies capped off this decades-long renewal of the public/private distinction.

More recently, however, scholars interested in rethinking the nature of American state power have returned to the division of public and private with renewed skepticism. In particular,

William Novak's departure from Weberian conceptions of the state and his emphasis on the diffuse, multi-layered character of American governance in an unwieldy system that ranges from local to federal levels has challenged those who study U.S. political development to take seriously the messy entanglements of public and private.² Such convolutions were not only part and parcel of nineteenth-century governance, but they have continued to define business as usual in countless areas of American life ever since.

For me, interests in the history of zoonotic disease and the place of domesticated animals in urban life have prompted my own efforts to grapple with the blended nature of the dynamic between public and private, especially as related to the police power. Based on classical conceptions of the state, one might assume the monopoly over coercive power to be a jealously guarded prerogative. Instead, in the U.S. context, delegation of the police power has regularly allowed private agents to exercise public authority, including active law enforcement. The history of the protection and control of domesticated animals in New York City from the end of the Civil War to the eve of World War I provides examples of how ostensibly private organizations operate not just in the world of face-to-face relations between citizens engaged in the work of civil society, but also brandish the police power of the state.

In the post-Civil War period, animal welfare organizations in the United States, rather than relying purely on moral suasion, instead incorporated policing authority directly into animal protection. The American Society for the Prevention of Cruelty to Animals (ASPCA) led the way. The ASPCA became the first animal protection society in the United States upon its founding in New York City on April 10, 1866, under a state charter. Nine days later, ASPCA president and founder Henry Bergh managed a signature legislative achievement with the passage of revisions to New York state laws concerning cruel treatment of animals that

recognized the society's formal authority over animal protection. In addition to defining cruel treatment of horses, cattle, sheep, and other animals as a misdemeanor, the new legal mandates also charged police in New York City and elsewhere in the state with the duty to aid the ASPCA in its enforcement of the animal protection laws, and they allowed half of fines "collected through the instrumentality of the society, or of its agents, for violations of such laws" to "accrue to the benefit of said society."³ The following year, additional revisions expanded the definition of cruelty toward animals in a range of practices and situations, including the treatment of draft horses and other animals that provided labor, as well as the responsibilities of owners and caretakers, whether of working animals, livestock, or pets, for their charges' comfort and maintenance. More significantly for my purposes here, the enhanced animal welfare legislation explicitly granted enforcement powers to ASPCA agents, in addition to designating that all fines collected would go towards the society in support of its animal protection work. As the new statute read:

Any agent of the American [S]ociety for the [P]revention of [C]ruelty to [A]nimals, upon being designated thereto by the sheriff of any county in this state, may, within such county, make arrests, and bring before any court or magistrate thereof having jurisdiction, offenders found violating the provisions of this act; and all fines imposed and collected in any such county, under the provisions of this act, shall inure to said society, in aid of the benevolent objects for which it was incorporated.⁴

Through this legal mechanism at the county level, ASPCA agents no longer had to rely upon the good will and cooperation of local police. Instead, delegated police power granted them the authority to make arrests themselves and haul offenders into court.

The ASPCA avidly deployed its new authority. As Susan J. Pearson has aptly observed in her study of animal and child protection in the late nineteenth century, anticruelty organizations “wielded not just philanthropy but state power; they distributed arrest warrants rather than alms.”⁵ ASPCA agents who enforced the animal protection laws acted like police: they patrolled city streets, issued citations, launched raids, made arrests, and brought offenders before judges and magistrates. In the month of September 1867, the society proudly reported seventeen convictions and the collection of \$170 in fines, mainly involving charges against drivers for working injured horses. Another dozen convictions followed in October. By 1870, the ASPCA was prosecuting hundreds of cases a year.⁶ These figures paled compared to the tens of thousands of horses working throughout the city, not to mention the countless other animals driven to markets or slaughterhouses, the dairy cows stabled in urban barnyards, or the cats and dogs that encountered abuse on the streets. Nonetheless, they reflected a new era of citizen policing on behalf of animals even as ASPCA stalwarts also used political means and the press to draw public attention to the plight of overburdened and harshly disciplined horses, live animals bound up and piled carelessly on carts bound for the market or slaughterhouse, livestock slaughtered without regard for animals’ pain and suffering, dogs, cocks, rats, and other animals pitted against each other in blood sports, and stray cats and dogs subjected to violence and death for no purpose other than humans’ callous amusement or brutal pleasure.⁷ Moreover, numbers of arrests and court cases grew substantially over the last third of the nineteenth century. The society’s annual report for 1891, for example, highlighted the nearly 18,000 prosecutions pursued that year, as well as the more than 49,000 disabled animals it ordered taken off work to allow recovery from disease and injury.⁸

In addition to acting the part of police, eventually, ASPCA agents out on the beat looked the part as well. Initially, agents carried badges and a certificate signed by society president Henry Bergh, but wore no special garb.⁹ Their outward appearance as ordinary citizens sometimes created confusion, as in the spring 1869 report of “a private citizen” in Brooklyn who attempted to stop a streetcar that he thought required another tow horse to make an uphill journey. Once a policeman arrived to settle the dispute, “the citizen exhibited his badge...and made himself known as an agent of the ‘Society for the Prevention of Cruelty to Animals.’”¹⁰ The incident illustrates the power of accouterments to confer governmental authority. The badge, once displayed, transferred an ordinary citizen into an official agent who possessed the power to decree the addition of the tow horse.

By the early 1880s, ASPCA officers also wore uniforms, which further enhanced their ability to exert their police power.¹¹ Towards the end of the decade, an elaborately redesigned ASPCA uniform added overtones of military authority as well. One reporter described “the splendor” of the new finery in elaborate and admiring detail:

The new uniform adopted by the society is little short of dazzling, with its broadcloth finish and lavish trimmings of bright gold color. At present, and until cold weather, the officers will wear a neat single-breasted blue beaver frock coat with standing collar, bearing on one side the initials ‘A.S.P.C.A.’ and on the other side the officer’s number. In Winter a double-breasted frock overcoat will be worn, with buttons stamped with the emblem of the society. The helmets are blue-black, high crowned, and of military shape. The society’s initials and the officer’s number in gold decorate the front.¹²

Such details mattered far more than their value as fashion statements. ASPCA logos, individual officers' identification numbers, the dark blue colors that echoed New York Police Department uniforms, and the gold trim and helmets that suggested the decorum of military discipline together served as visual markers to reinforce the identification of animal protection with organized police work and the legitimacy of the ASPCA's exercise of the state's police powers.

In American society, such uniformed authority was relatively new outside of the military. When New York City first attempted to augment the night watch with an organized police force in 1844, critics sharply objected to uniformed officers as an affront to liberty that threatened the creation of a standing army, an assertion of tyrannical governmental authority, and the imposition of ranks on a republican citizenry. The new police force abandoned its navy blue uniforms in less than a year. The municipal government reintroduced uniforms as part of the Police Reform Bill of 1853, which replaced the night watch entirely with a trained and uniformed police force. This time, the uniforms survived despite another round of attacks on republican principles, and the organized police forces created in New York and other American cities starting in the 1850s helped to make uniforms as a visible marker of authority an acceptable part of American life.¹³ By the late nineteenth century, a growing range of reformers in both voluntary organizations and government also adopted uniforms as a way to promote images of disciplined action for public purposes. The Salvation Army, for example, organized itself along military lines from its founding in 1865, and in 1880 the "soldiers" in "God's Army" began to sport formal, military-looking garb.¹⁴ Municipal law already required at least some public employees, such as street cleaners, to wear uniforms in order to identify them as city workers, but sanitary reformer Colonel George E. Waring, Jr. took this requirement to a new level when he became New York City's street-cleaning commissioner in 1895 and turned the

position into a powerful outpost of progressive reform. As Martin V. Melosi has observed, Waring put street cleaners in white, police-like uniforms to convey an immediately visible message of orderly and healthful cleanliness, as part of a larger program that combined labor reforms, strict behavioral requirements both on and off the job, and “uniforms, parades, and other military trappings.” Through these measures, Waring “markedly improved the image of the street cleaner in the eyes of the public and, most important, made the streets much cleaner.”¹⁵

ASPCA leaders readily recognized this convergence of dress and authority that had become a regular feature of American urban life by the late nineteenth century. As *Our Animal Friends*, the society’s official publication, observed in 1893, “The officers of the Society are clothed with ample police powers. They wear a distinctive uniform and patrol the streets by day and by night. They have full power to arrest and prosecute offenders against the laws relating to animals. In addition to the uniformed police, the Society has over three hundred special agents in different parts of the State, clothed with the same authority and engaged in enforcing the laws for the prevention of cruelty.”¹⁶ As this passage indicates, uniform dress functioned as both outward manifestation and marker of public authority, and it identified the power of law enforcement. ASPCA officers were clothed both literally and figuratively with the police power of the state (Fig. 1).

This delegation of police power to a private organization might seem at first glance a nineteenth-century curiosity, but it persists to the present day. SPCAs and humane societies around the United States continue to enforce the laws against animal cruelty, and they have modernized and professionalized their policing practices in parallel with the evolution of municipal police forces. New York state law today grants “officers or agents of a duly incorporated society for the prevention of cruelty to animals” status as peace officers, and the

ASPCA's Humane Law Enforcement unit, with its uniforms, squad cars, and legal mandate, carries out the work of enforcing the laws against animal cruelty in New York City (Fig. 2). Its officers do not merely "look like" police. They *are* police, even though they operate not as part of the New York Police Department, but as employees of a private, voluntary organization chartered to serve public purposes, including enforcement of animal protection laws through delegated police power.

The history of canine animal control also highlights the blend of public and private authority in American governance.¹⁷ During the nineteenth century, New York City developed three successive systems of dog-catching, each of which represented a different configuration of the public-private relationship. New York's dogs enjoyed complete freedom to roam until the early nineteenth century, when the mayor first ordered police captains to pay bounties of 50 cents for unmuzzled dogs turned in at police stations for dispatch during July and August, the summer months when rabies, according to popular mythology, was supposedly most prevalent. This bounty system reflected longstanding traditions of reliance upon private individuals to fulfill what were considered their civic obligations in order to protect the public health and safety. In 1850, the city augmented the bounty system with the addition of a Dog Bureau to patrol the streets and club to death dogs that posed a public menace. A year later, the city established its first dog pound, where "valuable dogs" at large could find some respite and hope of being reunited with their owners, rather than face immediate destruction.¹⁸

These developments notwithstanding, the bounty system remained the centerpiece of New York City's canine animal control system for decades. By the 1860s, urban reformers in New York launched increasingly vigorous attacks on the bounty system, which they viewed as a semi-criminal realm particularly threatening to the morals of children. From reformers'

perspective, the street urchins and rough men engaged in dog-catching skirted the edge of criminality and occupied an underworld of vice and corruption. In 1874, Henry Bergh warned darkly, “With a bribe of fifty cents, the idle youths of this City have been, in many instances, for the first time seduced into the temptation of stealing and betraying their friendly companions, the dogs.” Bergh also attacked the pound’s proximity to a nearby school, where he feared that “the screams of their condemned four-footed playmates might facilitate the scholars’ acquisition of immorality, and prepare them for the State Prison and the gallows!”¹⁹ Nor did the police necessarily provide disinterested public service. The city’s bounty on loose dogs, as one observer wrote in 1855, merely encouraged “vigilant (?) policemen and dirty urchins, ambitious of the reward of 50 cents given for every seizure.”²⁰ The summer ordinances also prompted thefts of owned dogs, and stories of brazen attempts at canine theft while dogs accompanied their masters peppered the city’s papers throughout the latter half of the nineteenth century. As late as June 1892, “A Citizen” described such a case to the New York Times: “In a contemptible way the roughs whom the city pays to do this work stole up behind the man, seized the dog, and bore it away to their wagon.”²¹

The ASPCA and its supporters responded at first by trying to reshape the bounty system around the edges, an approach that preserved political ordering based on individuals’ role in maintaining urban order. In 1860, reformers succeeded in lowering the dog bounty to 25 cents and restricting direct payments to adults in an effort to remove children from the dog-catching business. The measure backfired, however, and merely shifted the advantage to dog-brokers, middle-men who gave the street “boys” a fraction of the bounty and turned the dogs over to the city themselves at a healthy profit.²² By 1867, the annual dog market had become an oligopoly of sorts, in which “five men...monopolize most of the dog-killing business.”²³ By the mid-

1870s, at the tail end of an era in which city employees and bureaucracies increasingly replaced individual citizens in exercising governmental functions, mayorally-appointed dog-catchers replaced the canine free market. The intervention of Tammany Hall, however, simply integrated the “Dog Ring” into the patronage network. Critics viewed the shift not as a new form of public authority, but a rearrangement of the old order of reliance on private individuals to carry out public functions, in which resources now went to the benefit of private individuals under the guise of municipal authority. One aspiring dog-catcher even used blackmail to secure an official appointment. Charles P. Matthias threatened to release his sixty captured dogs, some of whom he claimed “show symptoms of hydrophobia,” onto the streets of the city if the position failed to come through. According to one commentator, such was the character of “the candidate for dog-catching honors,” who barely concealed “the hand of steel under the glove of velvet.” But Matthias’ gambit apparently succeeded, and an alderman immediately invited him by telegraph to “Come down to the Mayor’s office,” adding, “The city cannot lose your valuable services.”²⁴

By 1890, efforts to reform dog-catching had largely failed to remove children from the trade and to stamp out corruption. In a context of vastly increased activism by reformers on a variety of fronts in 1890s New York, the ASPCA now responded by seeking to extend the police powers that had characterized the society’s anti-cruelty efforts from the beginning and to take over the city’s dog-catching functions.²⁵ Under newly passed state laws, the ASPCA gained authority over lost animals and strays in New York in 1894, and in Brooklyn the following year. New York City closed the municipal pound, and the ASPCA opened a new facility. Legislation also granted the society authority over dog licensing in order to fund its enforcement of canine animal control, and the ASPCA fielded its own force of salaried dogcatchers, whose police-like uniforms added an air of discipline and authority (Fig. 3).²⁶ With this new system of institutional

and administrative power, the society broke the system of dog brokerage and theft that had attracted public complaint for decades.

The ASPCA's monopoly over dog-catching remained uncontested for less than a decade, however. In the early twentieth century, the New York City Department of Health began to expand its rabies prevention and vaccination work, as part of its own ambitions to lift the authority of public health in municipal government. In 1903, the ASPCA and the health department first clashed over public health officials' desire to replace a simple leash law then in force with compulsory muzzling, which animal welfare advocates considered unnecessary and cruel. That dispute launched more than a decade of confrontations, in which the health department attacked the ASPCA for inadequate control on strays and argued that public agencies run by professional experts, rather than private organizations composed of well-meaning citizens, should bear primary responsibility for and authority over animal control as a matter of public health. In 1914, the NYC Department of Health ultimately succeeded in establishing a year-round muzzling ordinance, and over the next several years, public health officials took credit for dramatic reductions in the numbers of rabid dogs found on city streets, as well as human deaths from rabies.

The health department did not, however, succeed in wresting away the ASPCA's power to enforce the city's dog laws. The ASPCA also survived a series of legal challenges to its exercise of the police power in canine animal control. In the early decades of the twentieth century, particularly during the era after the *Lochner v. New York* (1905) decision, the ASPCA faced new challenges to its dog-licensing and animal control prerogatives. In *Lochner*, the Supreme Court famously ruled that a state law to protect bakers' health by limiting their work hours violated freedom of contract, and ever since, standard analyses have identified the decision

with a new political and legal order that privileged an extreme conception of individual economic liberty over nineteenth-century interpretations of the police power and its broad exercise for the public good. That decision opened new challenges to nineteenth-century conceptions of the police power, which soon threatened the ASPCA's role in canine animal control.

The first sign of legal trouble predated *Lochner*. In February 1901, the New York State Court of Appeals, the state's highest court, ruled unconstitutional a law that granted local animal welfare organizations the power to issue dog licenses. *Fox v. The Mohawk and Hudson River Humane Society* cited a vagueness in the relevant state statute that amounted to a taking of "money or property from one citizen and its appropriation to another for its private use," which violated the proper application of the power of taxation. The court also identified an unconstitutional grant of "an exclusive privilege and immunity" to the local humane society, because the law allowed the society's pound to hold dogs without taking out licenses on them.²⁷ The court's decision still recognized the complex nature of public-private relationships, in which, for example, the state granted public funds to private charities for the maintenance of orphanages, asylums for the deaf and blind, and correctional facilities for juvenile delinquents. The court also acknowledged the mixed character of volunteer fire departments, which were neither wholly public nor wholly private, but whose century-long tradition of service reflected an acceptable delegation of police power.²⁸ Nonetheless, the grant of dog licensing to the Mohawk and Hudson River Humane Society lay outside acceptable legal boundaries.

New York City's dog laws came under a separate statute, so *Fox* had no immediate ramifications for the ASPCA. Nonetheless, the case's worrisome precedent led the society to seek revisions from the state legislature to the city's shelter and licensing laws, as well as a

detailed legal analysis from Charles Andrews, former chief justice of the Court of Appeals. Andrews concluded that the ASPCA could survive judicial scrutiny, and that the specific legal issues that had doomed the state's general statute did not apply to the special charter under which the ASPCA operated. The society legitimately exercised the police power of the state, and although technically private in character, it was public in its purposes, and in effect, it constituted "a subordinate public agency to perform a service which the Legislature might delegate to a citizen or public body."²⁹

These maneuvers took place just months before the Department of Health attempted to supplant the ASPCA's authority with a new muzzling ordinance in 1903, and taken together, both developments indicated new pressures on the public authority of voluntary associations. As the ASPCA wrangled with the health department, other court cases further confused the legal landscape. In 1908, an aggrieved Brooklyn alderman who refused to purchase a license for his dog went to court to challenge the constitutionality of the state's dog-licensing statutes. At one level, the legal wrangling symbolized the old conflict between reformers and the political machine, but that struggle now took place in a changed context of municipal bureaucratic authority and new legal skepticism about delegation of police power. Justice William J. Kelly of the Brooklyn Supreme Court heard the case, and in his opinion, he analyzed the question of police power at length. On the one hand, Kelly recognized the legitimacy of the state's police power, particularly with regard to matters of public health. "The act in question," he wrote, "is based on the police power of the state for the protection of the citizens from hydrophobia." Indeed, Kelly indicated that he had actually delayed issuing a decision in the case for several months "in deference to the suggestion...that the continuation of the injunction would in some way interfere with the work of defendant in destroying mad dogs during the summer months, and

because of the assertion that the inhabitants of the city of New York have no protection from mad dogs except through defendant and its agents.”³⁰

Thus far, Justice Kelly provided a classic statement of nineteenth-century jurisprudence and its understanding of the police power’s broad application in the protection of the *salus populi*.³¹ The justice then turned towards his reservations, however, especially his skepticism about the legitimacy of delegation of police power to a private organization. He explained:

I do not believe that the Legislature can vest any such power as is sought to be conferred here in a private corporation. The agents who go into the streets of the city and seize these animals are not public officers....It is a misdemeanor to interfere with these persons. They are described in the act as officers and agents of the society. They are vested with powers greater, in some respects, than public officers bound by oath and responsible to the public. I think the public health should be protected by the state or the municipality, acting through their duly designated representatives....great danger may result from delegating to these private corporations duties which belong to the public and which should be performed by public officers. The Legislature may delegate duties to individuals which cannot be delegated to corporations. Without questioning the good that has been done in many cases by such associations, when it comes to interference with the person or property of the individual, I doubt whether the principle is right.³²

This passage powerfully illustrates the shifting conception of police power and the nature of public authority that proliferated in American law and politics at the turn of the century. First,

Kelly's sense that "interference with the person or property of the individual" might invalidate the ASPCA's dog-licensing functions reflected a new emphasis on individual rights as a rationale for constraint of the police power. Although post-*Lochner* jurisprudence promoted greater skepticism about the state's regulatory authority in general, and not just delegated authority, its formalistic reading of law had particularly threatening implications for the informal, *ad hoc* style of nineteenth-century arrangements that blended public and private authority. The nineteenth century's regular delegation of the police power now came under question before an increasingly vigorous discourse of individualism, especially individual property rights. Second, in positing that responsibility for protection of public health rested with the state or city government, and that its "duly designated representatives" no longer included voluntary associations such as the ASPCA, Kelly expressed an increasingly prevalent understanding that modern government properly operated through professional administration, and not as an expression of civic obligation or contribution.³³

The ASPCA continued to seek legal clarification, with mixed outcomes. In the fall of 1910, a local magistrate in Queens applied Justice Kelly's precedent, ruled the ASPCA's power to issue dog licenses unconstitutional, and declared that his court would no longer issue summonses or warrants to the society's agents.³⁴ The following summer, however, the New York Supreme Court found the ASPCA's dog licensing function constitutional in *The People ex rel. Henry E. Westbay*. Although the court observed that the state legislature "has not the right to vest in private associations authority and power affecting the life, liberty and property of citizens, except in a few special instances," the legislature possessed an "undoubted right to employ private associations and individuals in a purely administrative capacity."³⁵ This emphasis on delegation of the police power as reserved to limited circumstances suggested a narrower range

of action than in the nineteenth-century tradition of the well-regulated society, but it still recognized the ASPCA's legitimacy.

As a lower court decision, however, the 1911 case provided no definitive resolution, and the Department of Health's acquisition of greater power over canine animal control in 1914 took place within this context of legal uncertainty for the ASPCA. Then in 1917, a new state law placed dog licensing under the authority of town and city clerks in smaller municipalities defined as second or third class.³⁶ The law did not apply to New York City, a first-class municipality, but it indicated a significant state-wide decline in the police powers of animal welfare organizations.

Finally, in December 1920, the U.S. Supreme Court's decision in *Nicchia v. People of the State of New York* settled the constitutional question in the ASPCA's favor for good. Mary Nicchia was charged in the fall of 1916 with violating New York City's dog licensing statute. Although found guilty at every stage of the legal process, Nicchia appealed her case all the way to the Supreme Court, which found the city's dog licensing law "within the police power of a State." Although courts now subjected the police power to extra close scrutiny under the Fourteenth Amendment, the New York statute passed muster. First, the court observed, "Property in dogs is of an imperfect or qualified nature and they may be subjected to peculiar and drastic police regulations by the State without depriving their owners of any federal right." The common law tradition that considered dogs in an intermediate position between wild animals and useful domesticated animals opened dogs to more extensive regulation than other forms of property. The court then ruled that the reasonable delegation of the state's power to regulate dogs "to a corporation created by it for the express purpose of aiding in law enforcement" also posed "no infringement of any right guaranteed to the individual by the Federal

Constitution.”³⁷ As with the New York Supreme Court’s 1911 decision in *The People ex rel. Henry E. Westbay*, the U.S. Supreme Court’s ruling in *Nicchia* suggested the reduced range of the police power as compared to nineteenth-century jurisprudence, but those limits still contained considerable scope for delegation of power to voluntary associations such as the ASPCA.

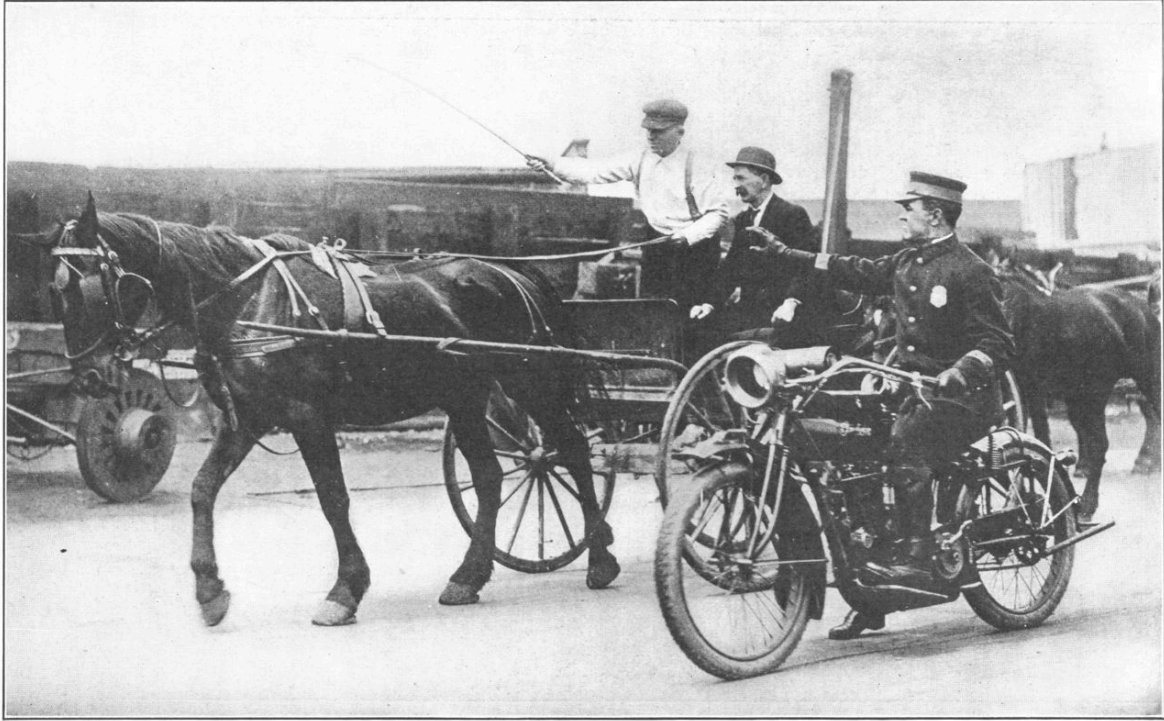
Hence the ASPCA emerged from an era of bureaucratic and legal challenges with its police power intact, and it continued to issue dog licenses, run the city pound, and undertake other canine animal control functions for the next seventy-five years. When the ASPCA got out of dog licensing and animal control in 1995, it did so not because of objections to the wielding of public authority by private organizations, but because of chronic underfunding, combined with an attitudinal shift against the destruction of healthy strays.³⁸ Even so, the ASPCA’s departure did not overturn the private exercise of public authority in canine animal control, but instead produced another convoluted reconfiguration of the public-private mix. Rather than establish a government agency to run the city’s animal shelters, a new not-for-profit corporation, the Center for Animal Care & Control (CACC), took up the task under a municipal contract with the Department of Health and Mental Hygiene. The CACC’s status differed from the ASPCA’s, however, in that the new organization was less a private, voluntary organization than a public-private hybrid created by the state. Formed at the behest of Mayor Rudy Giuliani, the CACC had an initial governing structure that underscored the imbrication of the state within the legal framework of a non-profit corporation. The seven-member governing board consisted of one representative each from the Department of Sanitation, the Police Department, and the Department of Health, with the four remaining members appointed by the mayor and serving at the mayor’s pleasure.³⁹ In 1998, Rosemary Joyce, a former board member who was pushed out following one of the CACC’s frequent internal power struggles, commented acidly on the

blurred institutional identity of the organization: “When it’s convenient, they act like a city agency; when it’s not, they act like a nonprofit....The CACC is just part of the mayor’s machine.”⁴⁰

In its eighteen years of existence, the CACC has racked up a long record of mismanagement, capped off most recently by the organization’s virtual shutdown during Hurricane Sandy in October 2012 and the ensuing disarray for city residents trying to deal with found and displaced animals. Three months later, Manhattan Borough President Scott Stringer issued a lengthy report that indicted the CACC’s general inability, from the very beginning, to maintain safe and sanitary conditions for shelter animals. It is not necessary here to relate the ugly and heartrending details of the CACC’s history of dysfunction, but the organization’s failures should not be taken as proof that the hybrid public-private model does not and cannot work, or that it somehow represents an illegitimate form of governance.⁴¹ For my own analytical purposes, the CACC underscores the wide range of possible mixtures of public and private that are strewn throughout the American political landscape, both past and present, and that defy a simple conceptual division between public and private.

The history of animal protection and control is far from exceptional in highlighting the place of delegated police power and other complex blends of public and private in the American political system. Informal arrangements and highly permeable boundaries between society and government form an integral part of how governance has functioned throughout the history of the United States. In eighteenth- and early nineteenth-century American cities, private individuals’ legal responsibilities for street cleaning in accordance with health and safety ordinances, along with the era of the night watch and urban policing by citizens prior to the rise of formalized police forces, reflected an era of blurred boundaries between citizen, community, and state.

Myriad other arrangements from the late nineteenth century onwards also point to private participation in the exercise of public authority. At the turn of the century, cooperative efforts between the New York Society for the Suppression of Vice, the New York Police Department, and the U.S. Post Office developed into a powerful apparatus to enforce federal anti-obscenity laws. Other Progressive era improvisations, such as the authority under state and federal statutes of the Immigrants' Protective League, the National Council of Jewish Women, and other progressive organizations to guide single, immigrant women to legitimate employment agencies in the early decades of the twentieth century, also allowed voluntary associations to wield state power. The expansion of private forms of policing from the era of the Pinkertons in the late nineteenth century to widespread forms of privatized surveillance, monitoring, and security in the present day offers yet another example of a constant blending of public and private in American historical experience.⁴² Elisabeth Clemens' concept of the "Rube Goldberg state" certainly offers an apt metaphor for capturing the unwieldy, creative, improvised, and chaotic character of American statecraft and the abundant varieties of practice that undermine neat and orderly theoretical concepts of the state and the public-private distinction.⁴³



MOTORCYCLE AGENT STOPPING CRUEL DRIVER

Fig. 1 The uniformed authority of the ASPCA, ca. 1916 (Source: ASPCA, *American Society for the Prevention of Cruelty to Animals: Fifty-First Annual Report, Year Ended December 31, 1916* (New York: ASPCA [1917]), p. 16



Fig. 2 The ASPCA's Humane Law Enforcement Division, from a publicity still of Animal Planet's television show, "Animal Precinct." (photo found on-line at www.sodahead.com (March 2013)

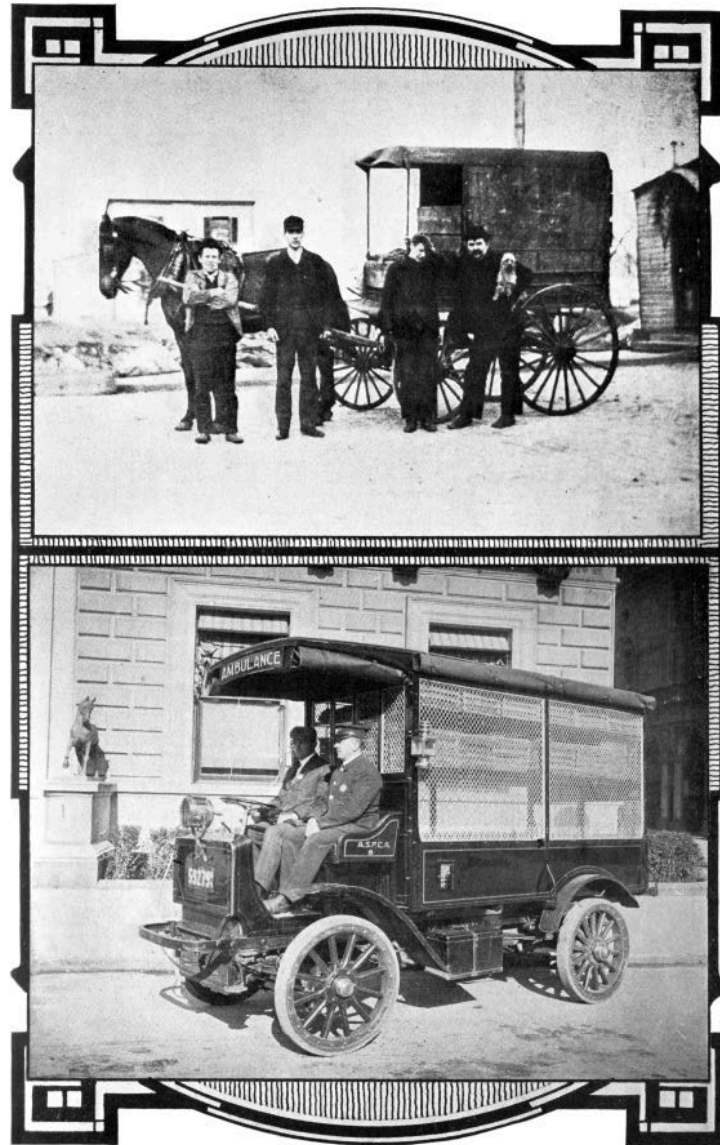


Fig. 3 The ASPCA's allegory of progress: From the unruly dogcatchers of the days of yore to the modern, disciplined, and uniformed force of the early twentieth century ASPCA (Source: ASPCA, *American Society for the Prevention of Cruelty to Animals: Fiftieth Annual Report, Year Ended December 31, 1915* (New York: ASPCA, [1916]))

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1. Morton J. Horwitz, "The History of the Public/Private Distinction," *University of Pennsylvania Law Review* 130 (June 1982): 1426-27.
 2. William Novak, "The Myth of the 'Weak' American State," *American Historical Review* 113 (June 2008): 752-72; Novak, "Public-Private Governance: A Historical Introduction," in *Government by Contract: Outsourcing and American Democracy*, ed. Jody Freeman and Martha Minow (Cambridge, MA: Harvard University Press, 2009), 23-40.
 3. Bernard Oreste Unti, "The Quality of Mercy: Organized Animal Protection in the United States, 1866-1930 (Ph.D. diss., American University, 2002), 76, 79, and 81; and Joseph D. Fay, *Digest of the Laws of the State of New York. Comprising the Revised Statutes and Statutes of General Interest in Force on January 1, 1874*, vol. 1 (New York: James Cockcroft & Company, 1874), 290, 292, and 355, quotation on p. 355.
 4. Fay, *Digest of the Laws of the State of New York*, 356.
 5. Susan J. Pearson, *The Rights of the Defenseless: Protecting Animals and Children in Gilded Age America* (Chicago and London: University of Chicago Press, 2011), 3.
 6. "Local Intelligence—The American Society for the Prevention of Cruelty to Animals," *New York Times*, 17 October 1867, p. 2; "Local Intelligence—Cruelty to Animals," *New York Times*, 6 November 1867, p. 3; "American Society for the Prevention of Cruelty to Animals," *New York Times*, 7 May 1869, p. 8; "Mr. Bergh's Work: What the Society for the Prevention of Cruelty to Animals Has Accomplished," *New York Times*, 19 February 1870, p. 2. For an early report of an ASPCA raid, see "Cock Fighting in Brooklyn—The 'Sport' Interrupted by Mr. Bergh," *New York Times*, 27 February 1870, p. 8.

7. Unti, “The Quality of Mercy,” ch. 3; and Scott Anthony Miltenberger, “Promiscuously Mixed Together: New Yorkers and Domestic Animals in the Nineteenth-century Anthrozootic City” (Ph.D. diss., University of California, Davis, 2006), ch. 4.

8. “A Good Year’s Work,” *New York Times*, 26 February 1892, p. 8.

9. Letter to the Editor from Henry Bergh, “The Society for the Prevention of Cruelty to Animals and Its Officers,” *New York Times*, 18 October 1868, p. 3. The practice of carrying a badge and certificate echoed precedents in New York’s police force. After a public outcry forced the city to abandoned a uniformed police force in 1845, the city’s 1846 police reforms mandated that officers, now in civilian dress, carry a star-shaped copper shield and a certificate. Ngozi Okidegbe, “I Love a Man in Uniform: The Debate Surrounding Uniforming the New York Police Force in the 19th Century,” in *Staat, Macht, Uniform: Uniformen als Zeichen staatlicher Macht im Wandel?* ed. Sandro Wiggerich and Steven Kensy (Stuttgart: Franz Steiner Verlag, 2011), 81-97, on 91.

10. “Cruelty to Animals—A Scene in Brooklyn,” *New York Times*, 7 May 1869, p. 5.

11. The earliest reference that I have found to uniformed ASPCA officers comes from 1882: “Henry Bergh on Vivisection,” *New York Times*, 2 February 1882, p. 8. An account of Henry Bergh’s funeral six years later also described six uniformed ASPCA officers who bore Bergh’s coffin: “Henry Bergh’s Funeral,” *New York Times*, 17 March 1888, p. 8.

12. “To Protect Canal Mules,” *New York Times*, 5 November 1889, p. 8.

13. Okidegbe, “I Love a Man in Uniform,” esp. 91-97.

14. On this point, see, for example, the website of the Salvation Army Museum in Basel: <http://www.heilsarmeemuseum-basel.ch/E/uniform.php> (March 2013).

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15. Martin V. Melosi, *Garbage in the Cities: Refuse, Reform, and the Environment*, rev. ed. (Pittsburgh, PA: University of Pittsburgh Press, 2005), 53-55, quotations on p. 55.
 16. "Organization of Other Societies—Progress of the Work," *Our Animal Friends* 20 (July 1893): 242-43.
 17. Most of the following portion of my paper has been condensed from Jessica Wang, "Dogs and the Making of the American State: Voluntary Association, State Power, and the Politics of Animal Control in New York City, 1850-1920," *Journal of American History* 98 (March 2012): 998-1024.
 18. "City Dogs," *New York Daily Times*, 26 June 1857, p. 8.
 19. Henry Bergh to Mr. Marriott, Pound-master, 16 June 1874, published in "Local Miscellany: The Dogs," *New York Times*, 17 June 1874, p. 8.
 20. "That Dog Pound—Onslaught of the Canines," *New York Daily Times*, 26 June 1855, p. 8.
 21. "A Citizen," "The City's Dog Catchers: They Steal Dogs Walking Quietly with Their Owners," *New York Times*, 12 June 1892, p. 11.
 22. "General City News: About the Dog-Pound in the Dog-Days," *New York Times*, 26 July 1860, p. 8.
 23. "Local Intelligence: The Pound of Dog-Flesh," *NYT*, 3 August 1867, p. 8.
 24. "An Importunate Candidate," *New York Times*, 18 August 1874, p. 4; "The Dog Ordinance in New York," *Brooklyn Daily Eagle*, 18 August 1874, p. 4.
 25. On increased reform activity in the 1890s, see Melosi, *Garbage in the Cities*, chs. 2 and 4.
 26. Unti, "The Quality of Mercy," 473-478.

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27. *Fox v. The Mohawk and Hudson River Humane Society* 165 New York 517, on 526.
28. *Ibid*, on 527-28.
29. “The Shelter Law Amended,” *Our Animal Friends* 29 (May 1902): 193; “Legal and Constitutional Status of the A.S.P.C.A.,” *Our Animal Friends* 30 (January 1903): 98-102; and ASPCA, *Thirty-Ninth Annual Report for the Year Ending December 31, 1904* (New York, 1905), 143-58. The quotation is from “Legal and Constitutional Status of the A.S.P.C.A.,” 100.
30. *Coler v. ASPCA* 122 New York Supplement 549-52 (1908). Note that under the New York’s judicial system, the state supreme courts are, in fact, trial courts.
31. See Novak, *The People’s Welfare: Law & Regulation in Nineteenth-Century America* (Chapel Hill and London: University of North Carolina Press, 1996).
32. *Coler v. ASPCA* 122 New York Supplement 552 (1908).
33. *Ibid*. On the broader trend that stressed individual rights over state action, and formally constituted political authority over a fluid public-private relationship, consult Novak, *The People’s Welfare*, 237, 241-45; and Novak, “Police Power and the Hidden Transformation of the American State,” in *Police and the Liberal State*, ed. Markus D. Dubber and Mariana Valverde (Stanford, CA: Stanford Law Books, 2008), 69.
34. “No Warrants for S.P.C.A.,” *NYT*, 13 November 1910, p. C4.
35. *The People ex rel. Henry E. Westbay, Plaintiff, v. Michael Delaney, a Police Officer of the City of New York, Defendant* 1911 N.Y. Misc. LEXIS 462.
36. “Dog Bill in Effect Today,” *New York Times*, 1 July 1917, p. 13; “New York Dogs Still Safe,” *New York Times*, 2 July 1917, p. 7.
37. *Nicchia v. People of the State of New York* 254 U.S. 228 (1920), 228-31; see also *Sentell v. New Orleans and Carrollton Railroad Company* 166 U.S. 698 (1896).

38. Marion S. Lane and Stephen L. Zawistowski, *Heritage of Care: The American Society for the Prevention of Cruelty to Animals* (Westport, CT: Praeger Publishers, 2008), 41-47; Jonathan P. Hicks, "ASPCA Plans to Stop Killing Strays," *New York Times*, 26 March 1993, p. B1; Francis X. Clines, "A Society Spurns Death for Animals," *New York Times*, 8 January 1995, p. 25.

39. On New York City's dog licensing requirements and administration, see the website of the city's Department of Health and Mental Hygiene: <http://www.nyc.gov/html/doh/html/licenses/vet-doglicense.shtml> (March 2013). On the formation and structure of the CACC, see Michael Brandow, *New York's poop scoop law: Dogs, the dirt, and due process* (West Lafayette, IN: Purdue University Press, 2008), 299-300; and Scott Stringer, Manhattan Borough President, "Led Astray: Reforming New York City's Animal Care and Control," January 2013, accessed on-line at <http://www.mbpo.org/uploads/FINALLedAstrayReport.pdf> (March 2013).

40. Elizabeth Hess, "Shelter Skelter," *New York Magazine*, 10 October 1998, accessed on-line at http://nymag.com/nymetro/urban/pets_animals/features/2773/ (March 2013).

41. Arguably, the central issue for the CACC has more to do with persistent underfunding than inherent flaws in administrative structure.

42. Hendrik Hartog, *Public Property and Private Power: The Corporation of the City of New York in American Law, 1730-1870* (Ithaca and London: Cornell University Press, 1983), 63; James F. Richardson, *The New York Police: Colonial Times to 1901* (New York: Oxford University Press, 1970), ch. 1; Jessica Roney, "Split Sovereignty: Philadelphia Governance, 1682-1776," paper presented at session on "City Planning and Governance," Policy History Conference, Richmond, VA, 6-9 June 2012; Daniel P. Carpenter, *The Forging of Bureaucratic*

Autonomy (Princeton, NJ: Princeton University Press, 2001), chs. 3-5; Carol Nackenoff, “Borrowing and Building State Capacity: The Immigrants’ Protective League 1908-1924 and the ‘Friendly and Sympathetic Touch,’” paper presented at session on “City Planning and Governance,” Policy History Conference, Richmond, VA, 6-9 June 2012; and Robert P. Weiss, “From Pinkerton ‘Spotters’ to Digital Surveillance: The Changing Nature of the Private Eye Business and Its Relation to the State,” paper presented at session on “Capitalism and Surveillance: Shop Floors, Subversives, States, and Competitors,” Annual Meeting of the Social Science History Association, Vancouver BC, 1-4 November 2012.

43. Elisabeth S. Clemens, “Lineages of the Rube Goldberg State: Building and Blurring Public Programs, 1900-1940,” in *Rethinking Political Institutions: The Art of the State*, ed. Ian Shapiro, Stephen Skowronek, and Daniel Galvin (New York: New York University Press, 2006): 380-443.